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T R I A L

The trial began in Lincoln County on October 14, 2005, before the Honorable Ellen S. Roper, Judge of Division III of the Thirteenth Judicial Circuit of Missouri, at Columbia.

Mr. Kevin M. J. Crane, Boone County Prosecuting Attorney, and Mr. Daniel K. Knight and Ms. Nicole Gorovsky, Assistants Prosecuting Attorney, appeared for the state.

Mr. Charles M. Rogers, Mr. Jeremy S. Weis, and Ms. Kathryn Benson appeared for the defendant.

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(On October 13, 2005, Deputy Court Marshals Les Werner, Fred Baer, and Jeff Vogan were sworn by the Court to take charge of the jury.)

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The following proceedings were held out of the presence of the jury:

THE COURT: Case Number 165368-01, State of Missouri versus Ryan William Ferguson. What says the state?

MR. CRANE: Ready, Judge.

THE COURT: And tell me for the record who appears for the state today.

MR. CRANE: I'm Kevin Crane. Dan Knight, assistant prosecutor.

THE COURT: All right.

MR. CRANE: First assistant prosecutor, I should

1 say. Sorry.

2 THE COURT: And what says the defendant?

3 MR. ROGERS: Defendant is ready for trial, Your
4 Honor. The defendant, Ryan Ferguson, appears in person and
5 by counsel: Charles Rogers, Jeremy Weis, and Kathryn Benson.

6 THE COURT: All right. Are there any preliminary
7 matters for the state?

8 MR. CRANE: Judge, we've filed, for your acceptance,
9 a Substitute Information that incorporates various
10 endorsements that the state has made, and further gives the
11 defense notice that, if there is a lesser included
12 instruction as to felony murder, it would be in the --
13 premised on the crime of robbery in the first degree. There
14 was a typographical error I believe in Count II, wherein we
15 repeated the defendant's name instead of Chuck Erickson's
16 name, and some other esoteric things I might have forgotten.
17 I don't believe there's any objection to the filing of that.

18 MR. ROGERS: That is correct, Your Honor. We have
19 no objection to the filing of the Substitute Information or
20 to the endorsement of the additional witnesses. And

21 Mr. Ferguson would waive formal arraignment on the Substitute
22 Information and of course enter pleas of not guilty to all
23 charges.

24 THE COURT: Well, the clerk has anticipated my
25 ruling and your lack of objection, because it's shown as

1 filed on the 6th of October. But I will actually show that
2 it is filed on today's date, which is October the 14th. And
3 that defendant does waive formal arraignment, enters pleas of
4 not guilty to Counts I and II. And the motion to endorse
5 Keith Hoskins and Jenny Atwell are -- that is sustained.
6 They are not shown on this original --

7 MR. CRANE: I'm sorry?

8 THE COURT: They're not shown on the Substitute
9 Information? Or they included on the Substitute Information?

10 MR. CRANE: The last two people?

11 THE COURT: Yes.

12 MR. CRANE: Yeah. Keith Hoskins and Jenny Atwell.

13 THE COURT: Yes. I see they're shown as the last
14 two witnesses on that.

15 MR. CRANE: Yeah.

16 THE COURT: So that's just duplicative; is that
17 correct?

18 MR. CRANE: Yeah.

19 THE COURT: Okay. Are there any other preliminary
20 matters for the state?

21 MR. CRANE: Judge, by agreement, and I'll stand
22 corrected if I'm wrong on that, we would ask that Juror
23 Number 46, Riney, who is a member of the court personnel, in
24 fact a bailiff, that he be excused prior to bringing the
25 panel in.

1 THE COURT: What is --

2 MR. ROGERS: No objection, Your Honor.

3 THE COURT: All right.

4 MR. CRANE: He's on this morning's group. Number

5 46.

6 THE COURT: 46 is excused then, with consent of

7 counsel. Any other?

8 MR. CRANE: Yeah. This afternoon, Number 105, I

9 think it's Fletcher, is a current member of the Lincoln

10 County prosecutor's staff. We'd ask that she be -- is that

11 the number? 105? Fletcher?

12 THE COURT: I don't have 105 with me. I just

13 brought in the morning jurors. But --

14 MR. ROGERS: That is the correct name and number,

15 Your Honor.

16 THE COURT: And he should -- is it a he or she?

17 MR. ROGERS: She. Catherine.

18 THE COURT: Catherine? She should be excused?

19 MR. ROGERS: Yes, Your Honor.

20 THE COURT: And so someone will notify her, I assume

21 she may be in the courthouse as we speak, that she needn't --

22 MR. ROGERS: Oh, she's not supposed to be here until

23 1:30. Oh, she's probably, yeah, someplace around here.

24 THE COURT: She's probably working here.

25 MR. ROGERS: Right.

1 THE COURT: All right. Any other jurors? We had
2 previously determined that Juror Number 30 was a convicted
3 felon, did not have rights restored, from the morning panel,
4 and he is excused as well. Any others that we know have not
5 disclosed that they are convicted felons and should be
6 excused? Mr. Crane?

7 MR. CRANE: Not that I -- not that I'm aware off.
8 I'm all ears if there's somebody else.

9 MR. ROGERS: I'm not aware of --

10 CIRCUIT CLERK HOUSTON: I think we might want to
11 check on David Rice.

12 THE COURT: David Rice?

13 CIRCUIT CLERK HOUSTON: We may want to check on him.

14 THE COURT: What number is he?

15 CIRCUIT CLERK HOUSTON: He's Number 77.

16 THE COURT: Okay. He's in the afternoon? Number
17 77.

18 MR. CRANE: Wait a minute. What was the number
19 again on that, Judge?

20 THE COURT: 77. Rice. R-i-c-e.

21 CIRCUIT CLERK HOUSTON: I'm not -- it may be a
22 different one, but I'm --

23 THE COURT: Our circuit clerk here thinks that she
24 may know of one that has a conviction.

25 MR. CRANE: Okay. That's afternoon?

1 THE COURT: An afternoon.

2 MR. CRANE: Can we -- maybe we can check on that.

3 THE COURT: During a recess.

4 CIRCUIT CLERK HOUSTON: Yes, I will.

5 MR. CRANE: Judge, what about Number 9, Gary
6 Dennison? We're showing he has a 1997 DWI conviction.

7 Received a three-year sentence in the department of
8 corrections.

9 THE COURT: He was one of the ones that had
10 indicated that he had been convicted of a traffic -- of a
11 crime other than traffic offenses. And I was going to -- I'm
12 not going to ask each one of those individually, but I'll ask
13 those that checked it if they -- if it was perhaps a felony.
14 I have to believe that, if he served time in the department
15 of corrections, it wasn't on a misdemeanor.

16 MR. CRANE: Well, we show -- our records indicate
17 that he has -- he was convicted and received a three-year
18 sentence. Whether or not he did the time or got probation, I
19 don't know, but we'd ask that he be excused.

20 MR. ROGERS: I don't have a problem with that,
21 Judge. We don't have obviously access to the records that
22 the state has access to, so.

23 THE COURT: Do you know where he was convicted,
24 Mr. Crane? Was it in Lincoln County?

25 MS. MARSDEN: I can find it in just a minute.

1 THE COURT: While we're waiting for that, I note
2 that the prosecuting attorney of Lincoln County will be
3 assisting in this case; is that correct? Just in the voir
4 dire?

5 MR. CRANE: Yeah. He's going to be sitting with my
6 investigator during voir dire.

7 THE COURT: All right. And I suspect there may be
8 people that know him or might be related to him. If you
9 would, for the record, give me your name, please.

10 MR. RICHARDS: John Richards.

11 THE COURT: Yes, Mr. Richards.

12 MR. CRANE: Judge, I'm going to show the -- what's
13 that guy's name? Dennison information --

14 THE COURT: Gary Dennison.

15 MR. CRANE: -- on that felony to the defense
16 attorney here.

17 (Mr. Crane tendering information to Mr. Rogers.)

18 MR. ROGERS: This record does, in fact, indicate a
19 felony conviction, Your Honor. And we would have no
20 objection to him being stricken. There's no need to bring
21 him in and embarrass him in front of everybody else.

22 THE COURT: No. I try not to. And that's why I
23 said, of those that have checked that they had convictions
24 other than traffic offenses, he was one, 22 was one, 34 was
25 one, 35, 36 was one, of course 30, who's now off the panel,

1 and 40 all had said they had convictions other than traffic
2 offenses. I mean, it may be a misdemeanor assault, for all I
3 know, which is certainly an offense other than a traffic
4 offense.

5 Other than those issues --

6 MR. ROGERS: Your Honor, there was another juror who
7 was excused for a medical emergency in his family. And I
8 didn't get the number of that juror.

9 THE COURT: That was Number 71. It was in the
10 afternoon.

11 MR. ROGERS: Right.

12 THE COURT: As I recall.

13 MR. ROGERS: Yeah.

14 THE COURT: I don't have the name with me right
15 here, because I don't have the afternoon docket.

16 MR. ROGERS: That triggered my recollection.

17 THE COURT: But it was 71, I believe.

18 MR. ROGERS: Right.

19 THE COURT: Can you tell me the name and it will
20 ring a bell maybe?

21 MR. ROGERS: The name is Richard Wienecke.

22 THE COURT: Yeah, Wienecke. That was the one that
23 -- whose wife had a blood clot.

24 MR. ROGERS: For the record, we have no objection to
25 that either.

1 THE COURT: All right.

2 MR. CRANE: Which one was that?

3 MR. ROGERS: 71 --

4 THE COURT: Wienecke.

5 MR. ROGERS: -- Wienecke --

6 THE COURT: We already --

7 MR. ROGERS: -- from this afternoon. We already did

8 that, yes.

9 THE COURT: Well, I think we talked about it off the

10 record, but did not make a record of it.

11 Any other things we need to take up before we bring

12 the jurors in?

13 MR. CRANE: Are we going to start at 9 or --

14 THE COURT: We'll start -- I imagine we'll start at

15 9.

16 Do we know how many --

17 BAILIFF BOEDEKER: I'm going to check now, ma'am.

18 THE COURT: Okay. We may have some empty spaces,

19 and I want to give them an opportunity to be here. I was

20 sort of hoping we might have enough in the first group to get

21 a jury, but I think it's -- oh. I will mention this to you.

22 I do want to have at least three alternates. And I assume we

23 could get four for the price of three. I just hate to have

24 something happen. I think two alternates would be sort of

25 iffy, not to have an extra third one.

1 What is the state's position.

2 MR. CRANE: I don't know. I -- I -- we've got two
3 groups. If we got to do two voir dices, so be it. I mean, I
4 was going to say, if we get this morning group done and we
5 got enough for two alternates, I'm willing to role the dice
6 and go back to Boone County and try the case. I would just
7 think, golly, doing a whole afternoon for one alternate, I
8 don't know if that's going to happen, but I'd almost say the
9 same thing if we just got one alternate. Rather than doing
10 an afternoon of voir dire for two more. But I'll --

11 THE COURT: Considering how much time it takes to
12 organize these kinds of trials. And with one alternate, I --
13 I know, from past experiences, we've had to use alternates.

14 MR. CRANE: Yeah, I know, but -- but --

15 THE COURT: Like the man who was taking -- or the
16 wife that was taking the kids to South America and the
17 husband was on the jury. And she was about to leave the
18 country, and he needed to -- I mean, all kinds of things can
19 happen that you would never think would happen.

20 MR. CRANE: Well, I know. Can we cross that bridge
21 when we get to it?

22 THE COURT: All right.

23 MR. CRANE: What I'm saying may not even, you
24 know --

25 THE COURT: It may not be there. But I -- just let

1 me have a feeling for what the defense feels.

2 MR. ROGERS: Your Honor, I tend to agree with
3 Mr. Crane; that if we've got enough for two alternates at the
4 end of the morning, it's kind of a waste of time for a third
5 alternate.

6 THE COURT: I would probably --

7 MR. ROGERS: Two of the last three trials I've had,
8 we've used alternates. And in one of those trials, we
9 actually used two alternates. But that was a trial that
10 lasted six weeks. And I don't know that a -- in one week,
11 losing more than one alternate would be beyond my experience.
12 Having said that, I don't want to jinx us by --

13 THE COURT: Well, I would tend to go with two
14 alternates. But not to have -- just to have one alternate
15 would really concern me a great deal. You just never know --
16 like this man's wife that had a blood clot. You just don't
17 know when things like that in the family might come up. And
18 I --

19 MR. ROGERS: And especially in a case where there is
20 going to be a sequestered -- or an out-of-town experience for
21 them. There might be somebody who something happens tomorrow
22 or Sunday that keeps them from being there, so --

23 THE COURT: That's true.

24 MR. ROGERS: -- start off using an alternate before
25 we get started, so.

1 THE COURT: That would concern me.

2 That brings me to the question of how long you
3 anticipate, assuming we start Monday, this case -- the
4 longest that it would go would be through Saturday, you
5 believe?

6 MR. CRANE: Yeah. I mean, we've always been saying
7 we thought we'd get done by Friday, but, you know.

8 THE COURT: But I want to give people the longest.
9 If someone's favorite niece is getting married on Saturday,
10 and I tell them they can go home on Friday, and they can't, I
11 don't want to have a problem with that situation.

12 MR. ROGERS: I could anticipate there still being
13 deliberations on Saturday.

14 THE COURT: Yeah. So if I tell them through
15 Saturday, they should plan on being here through Saturday,
16 although we'll do our best to finish earlier than then --
17 than that, that's the latest you think that they would be
18 here. Absent some very unusual circumstance. Because they
19 can't --

20 MR. CRANE: I think that's put -- fine by me, yeah.

21 THE COURT: I mean -- and we're not talking about a
22 two-week trial, are we?

23 MR. ROGERS: No. I hope not, Your Honor.

24 THE COURT: Okay. And I assume that everyone that's
25 endorsed on this Substitute Information, possibly not

1 everyone is going to be called.

2 MR. CRANE: We're going to call every single one of
3 them.

4 MR. ROGERS: In the order that --

5 MR. CRANE: No. No, we're not.

6 THE COURT: All right.
7 How many jurors do --

8 BAILIFF BOEDEKER: Ma'am, there's only two.

9 THE COURT: Two missing?

10 BAILIFF BOEDEKER: Yes, ma'am.

11 THE COURT: And who are the two that are missing?

12 BAILIFF BOEDEKER: I didn't get that.

13 THE COURT: Okay. That's all right. What is your
14 procedure here if someone doesn't show up? Do you call them
15 and say --

16 BAILIFF BOEDEKER: We call them and --

17 THE COURT: Tell them to come in right away?

18 BAILIFF BOEDEKER: Yes, ma'am.

19 THE COURT: Okay.

20 BAILIFF BOEDEKER: I tell them to come in at 12:30.

21 THE COURT: You'd put them in the afternoon.

22 BAILIFF BOEDEKER: Yes, ma'am.

23 THE COURT: Okay. So out of these 52, we already
24 have three that are excused. And so that would bring us down
25 to 49. And two more off of that would be 47. Okay. Well,

1 let's just cross our fingers and give them until 9:00 to
2 appear.

3 BAILIFF BOEDEKER: All right, ma'am. May I tell
4 Mr. Riney he can leave?

5 THE COURT: Absolutely.

6 BAILIFF BOEDEKER: So he could go home and change
7 and -- I need the help downstairs.

8 THE COURT: Okay. You may tell Mr. Riney -- you may
9 tell Mr. Dennison, Number 9; Mr. Riney, who is Number --

10 BAILIFF BOEDEKER: 46.

11 THE COURT: -- 46; Mr. Dennison, who is Number 9 --

12 BAILIFF BOEDEKER: All right, ma'am.

13 THE COURT: -- and Mr. Stever, S-t-e-v-e-r. And he
14 may have been already excused --

15 BAILIFF BOEDEKER: Yes, ma'am.

16 THE COURT: -- and left the building, but he may
17 leave. 9, 30, and 46.

18 BAILIFF BOEDEKER: Yes, ma'am. Thank you.

19 THE COURT: All right. And we'll just hope that
20 maybe one or -- one or two extra will be here.

21 MR. ROGERS: Your Honor, while we're talking about
22 numbers, I just want to remind the Court for the record that
23 in our pleading concerning voir dire procedures, which also
24 talked about a jury questionnaire and things like that, we
25 did assert the position that we should be entitled to nine

1 strikes per side because this is a -- the crime of first
2 degree murder is punishable by death, according to the
3 statute, even though the death penalty is not a possibility
4 in this case. And I don't know that you've specifically
5 ruled on that issue. I think we're operating under the
6 assumption that you're going to say no, you get six strikes
7 per side, but I did want to bring that to your attention so I
8 wouldn't be sandbagging you and just leaving it buried in the
9 file.

10 THE COURT: I appreciate your bringing that to my
11 attention. I have tried first degree murder cases where the
12 death penalty has been waived, for one reason or another.
13 Not sought or waived at the time of trial.

14 MR. ROGERS: Right.

15 THE COURT: And the procedure has always been to do
16 six strikes. But if you have an appellate court opinion that
17 says you're entitled to nine strikes, I certainly will give
18 you nine strikes.

19 MR. ROGERS: Your Honor, in the pleading I point out
20 the appellate courts' opinions that say that what you have
21 done in the past is the correct thing to do. I attempt to
22 distinguish them and point out how they're wrongly decided.

23 THE COURT: All right. Well, I sometimes don't
24 agree with them myself, sir, but I'm bound to follow their
25 opinions. And by ruling of the U. S. Supreme Court,

1 Mr. Ferguson, if convicted, could not be sentenced to death,
2 under the current state of the law, even if the state had
3 chosen to ask for the death penalty in this case, because of
4 the age that he was at the time that the alleged crime
5 occurred. So I will overrule your request to have nine
6 strikes in this case.

7 Anything else we need to take up?

8 MR. ROGERS: Just from procedural aspects, assuming
9 that a juror gives answers which appear to be disqualifying,
10 would you like us to wait and make our motions for strikes
11 for cause at the end of the voir dire?

12 THE COURT: Absolutely.

13 MR. ROGERS: Okay.

14 THE COURT: Since we're having two different panels,
15 yes. Because I don't want Juror Number 22 to figure out from
16 Juror 21's absence what to say in order -- I notice there was
17 one person that said they can't judge other people.

18 MR. ROGERS: Right.

19 THE COURT: And, you know, I would -- I'll give you
20 full opportunity to explore with whatever juror, you know,
21 says something, but... Absent someone saying, "I came in
22 with the flu and I think I'm going to throw up right now," I
23 let those go right away.

24 MR. ROGERS: Fair enough.

25 THE COURT: But anything that would be a challenge

1 for cause, certainly if you'll wait until the panel goes out,
2 so that the others -- and I'll give you full opportunity to
3 make an objection --

4 MR. ROGERS: Okay. Thank you.

5 THE COURT: -- before we seat any --

6 MR. ROGERS: That's how I prefer to do it too, but
7 some judges do it differently.

8 THE COURT: Well, I think -- and if you're
9 overruled, I imagine, and the juror somehow stays on that
10 jury, that would be a very unpleasant thing for an attorney
11 to have to deal with, so I agree, that's what we need to do.

12 DEPUTY COURT MARSHAL WERNER: As of right now, we're
13 just missing one.

14 THE COURT: Oh.

15 DEPUTY COURT MARSHAL WERNER: And they don't
16 anticipate that individual being here.

17 THE COURT: Is this the one that has failed to
18 appear on three prior occasions?

19 DEPUTY COURT MARSHAL WERNER: I don't know that.

20 THE COURT: And who has -- is the absent juror the
21 one who doesn't --

22 BAILIFF BOEDEKER: Well --

23 THE COURT: -- seem to want to come to court?

24 BAILIFF BOEDEKER: We have one, ma'am.

25 THE COURT: Yes. And there was one juror I was

1 informed previously who had been summoned and then the
2 sheriff went after him --

3 BAILIFF BOEDEKER: Oh, yes, ma'am. That was
4 Number --

5 DEPUTY COURT MARSHAL WERNER: He's here.

6 THE COURT: He's here.

7 BAILIFF BOEDEKER: -- Number 14.

8 THE COURT: Number 14's here.

9 BAILIFF BOEDEKER: Yes, ma'am.

10 THE COURT: And you -- and there's reason to believe
11 that you don't think that the other juror will appear?

12 BAILIFF BOEDEKER: Probably not, ma'am.

13 THE COURT: Okay.

14 BAILIFF BOEDEKER: The clerk is -- the other clerk
15 is calling them, lining them up in the hallway now. So
16 whenever you're ready, we'll --

17 THE COURT: Okay. Well, we're ready when you're
18 ready.

19 BAILIFF BOEDEKER: All right.

20 MR. ROGERS: Break first, Judge?

21 THE COURT: Oh, yeah. Wait. Let the attorneys go
22 out and take a quick break.

23 BAILIFF BOEDEKER: All right, ma'am.

24 THE COURT: I mean, they can be lined up.

25 Anyone else that needs to take a quick break.

1 (Recess taken.)

2 - - -

3 The following proceedings were held in the presence of
4 the jury:

5 THE COURT: Be seated, please.

6 Good morning, ladies and gentlemen. Thank you so
7 much for arriving so promptly. I'm Ellen Roper. I'm a
8 circuit judge up in Boone and Callaway Counties. 13th
9 Judicial Circuit.

10 I will be introducing some of the other parties here
11 shortly, but my court reporter is sitting in front of the
12 bench, and her name is Diana Taylor. She's writing down what
13 I'm saying at this particular point, but most importantly
14 she'll be writing down your answers to questions concerning
15 your qualifications as jurors as the trial goes on.

16 Because this is a large courtroom, and you don't
17 have the advantage of having a hand mic or even a standing
18 mic to come up to, I'm going to ask you that, if you are
19 going to answer a question, that you stand. And I know some
20 jurors are hesitant for their names to be used, and that's
21 why on your tags you have a number. And if you are -- if you
22 would rather not give your last name and you want to just say
23 "Number 2" or "Number 6" or whatever your number is, that's
24 fine, because we have a list both with names and numbers.
25 You may give your last name if you wish. But if you would do

1 that, that would help Diana make a record here, so that we
2 would attribute your remark to you and not to someone else.

3 If your answer is a "yes" or a "no" to a question, I
4 know what shaking your head up and down or sideways means,
5 and I would bet that all the attorneys and even Diana knows
6 what that means also, but she'll just write you're shaking
7 your head, and we won't know if you're looking at the
8 ceiling, at the lights, or mean a yes or a no. So we're
9 going to have to ask you to say "yes" or "no" if that is the
10 response to a question.

11 I'm assuming that everyone whose names were called
12 were here. There were some people who couldn't come to our
13 affair today, but we're sorry, and maybe they'll get an
14 opportunity in the future to appear.

15 Today's trial for which you have been called for
16 jury service is a criminal case. The State of Missouri has
17 charged that the defendant, Ryan William Ferguson, has
18 committed the offenses of murder in the first degree and
19 robbery in the first degree. The defendant has pled not
20 guilty to the charges. Thus, there are issues of fact which
21 must be decided by a jury, subject to instructions concerning
22 the law, which the Court will give to the jury. The jury is
23 obligated to follow those instructions.

24 A trial of a criminal case does begin with a
25 selection of a jury of qualified and impartial people. In

1 order to obtain such a jury, all of you have been summoned as
2 prospective jurors. From your number, a jury will be
3 selected to hear the case.

4 It is necessary that you be asked various questions.
5 Your answers will assist the Court in determining whether it
6 should excuse you from serving in this case and will assist
7 the attorneys in making their selection of those of you who
8 will hear the case. Thus, the questions which will be asked
9 of you are not meant to pry into your personal affairs.
10 Rather they are the necessary process of selecting a jury.

11 Since this is an important part of the trial, you
12 are required to be sworn before questions are asked. Please
13 rise now and be sworn to answer questions.

14 THE COURT: If you'd raise your right hands, please.

15 (Venire panel sworn by Melba Houston, Circuit
16 Clerk.)

17 - - -

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Be seated, ladies and gentlemen.

21 Please listen carefully to all questions. Take your
22 time in answering questions. Some of the questions may
23 require you to recall experiences during your entire
24 lifetime. Therefore, search your memory before answering.
25 If you do not understand the question, raise your hand and

1 say so. If, later on, during your examination, you remember
2 something which you failed to answer before, or which would
3 modify an answer that you gave before, please raise your hand
4 and you will be asked about it. Your answers must not only
5 be truthful but they must be full and complete. If your
6 answer to any of these questions involves matters which are
7 personal or private, you may so indicate and you will be
8 given the opportunity to state your answer up here at the
9 bench. The attorneys will hear your answers, but the other
10 jurors will not.

11 The trial of a lawsuit involves considerable time
12 and effort, and the parties are entitled to have their rights
13 finally determined. The failure on your part to fully and
14 truthfully answer questions during this stage of the trial
15 could force the parties to have to retry this lawsuit at some
16 future date.

17 The Court will now read to you an instruction on the
18 law applicable to all criminal cases.

19 The charge of any offense is not evidence, and it
20 creates no inference that any offense was committed or that
21 the defendant is guilty of an offense.

22 The defendant is presumed to be innocent unless and
23 until, during your deliberations upon your verdict, you find
24 him guilty. This presumption of innocence places upon the
25 state the burden of proving beyond a reasonable doubt that

1 the defendant is guilty.

2 A reasonable doubt is a doubt based upon reason and
3 common sense after careful and impartial consideration of all
4 the evidence in the case.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of the defendant's guilt. The law does
7 not require proof that overcomes every possible doubt. If,
8 after your consideration of all the evidence, you are firmly
9 convinced the defendant is guilty of the crime charged, you
10 will find him guilty. If you are not so convinced, you must
11 give him the benefit of the doubt and find him not guilty.

12 Is there any of you who, if selected for a juror,
13 could not, for any reason, follow that instruction? If so,
14 would you please raise your hand? I see no hands, so I have
15 to assume, and counsel likewise will assume, that you would
16 be able to follow that instruction.

17 It is your duty to follow the law as the Court gives
18 it to you in these instructions even though you may disagree
19 with it. Are there any of you who would not be willing to
20 follow all instructions that the Court will give to the jury?
21 If so, would you please raise your hand.

22 And I understand that that might be a difficult
23 question, ladies and gentlemen. I've just read to you the
24 one on reasonable doubt. I haven't read you all the other
25 instructions the Court would give you. The point of the

1 question is to find out whether you feel so strongly about
2 some area of law, or perhaps the law that might relate to the
3 charges in this case, that you would not be able to follow
4 the law. And I see no hands in response. So I am assuming
5 that, even if you disagreed with what the law was, you would
6 be able to follow it.

7 The State of Missouri in this case is represented by
8 two attorneys. Mr. Kevin Crane is the prosecuting
9 attorney --

10 MR. CRANE: Good morning.

11 THE COURT: -- of Boone County, Missouri. And this
12 is where this case originated.

13 I need to know if any of you know him personally,
14 related to him by blood or marriage, or have had any kind of
15 dealings of a professional nature with him in any sense of
16 that word. If you'd raise your hand, please. I don't see
17 any hands, so I assume that you do not.

18 His first assistant attorney -- assistant
19 prosecuting attorney is Mr. Dan Knight. And he is standing
20 at counsel table.

21 I'd ask the same question of Mr. Knight. Are any of
22 you personally acquainted with him, related to him by blood
23 or marriage, or have you had any kind of professional
24 dealings with him at any time? He practices with Mr. Crane
25 in Boone County.

1 You may be seated.

2 I don't see any hands there.

3 Let me introduce -- and you probably know him.

4 Mr. John Richards is assisting Mr. Crane today, just for

5 today. He is the prosecuting attorney here in Lincoln

6 County. And I need to know if any of you are acquainted with

7 him, related to him by blood or marriage, or have had any

8 kind of dealings with him of a professional nature. If you

9 would raise your hand and let me call on you.

10 Juror Number 6, would you stand and tell me, how do

11 you know Mr. Richards?

12 VENIREPERSON GALES: I am one of his son's baseball

13 coach. Out of Moscow Mills.

14 THE COURT: Okay. And is that currently? A

15 baseball co -- you're doing --

16 VENIREPERSON GALES: In the summertime.

17 THE COURT: -- whenever the season is appropriate.

18 VENIREPERSON GALES: Yes. In the summertime.

19 THE COURT: Okay. Have you had any social

20 relationship with him, such as visiting in his home or having

21 him in your home?

22 VENIREPERSON GALES: Yes.

23 THE COURT: Okay. And was that just last summer?

24 VENIREPERSON GALES: Yes.

25 THE COURT: How long have you known him?

1 VENIREPERSON GALES: Six, seven months. Eight
2 months, tops.

3 THE COURT: Would the fact that he is not an
4 attorney of record, but assisting the state here in selecting
5 a jury, would that in any way influence your decision here
6 today?

7 VENIREPERSON GALES: No, it would not.

8 THE COURT: Would it influence your decision later
9 on in the case if you're selected as a juror?

10 VENIREPERSON GALES: No.

11 THE COURT: Would you be able, if chosen as a juror,
12 to reach verdicts in this case based only on the evidence
13 that you might see and hear in the courtroom?

14 VENIREPERSON GALES: Yes, I would.

15 THE COURT: Okay. Thank you so much, Juror Number
16 6.

17 VENIREPERSON GALES: You're welcome.

18 THE COURT: Anyone else that might know
19 Mr. Richards? And let me -- let me go across on the first
20 row, and then I'll go into the second row.

21 Is your name -- it's Juror Number 7?

22 VENIREPERSON WAECHTER: Yes, ma'am.

23 THE COURT: Okay. Those sitting on the first row
24 probably don't need to stand, unless you have a really soft
25 voice.

1 How do you know Mr. Richards?

2 VENIREPERSON WAECHTER: Just from professional

3 business dealings with --

4 THE COURT: Okay.

5 VENIREPERSON WAECHTER: -- insufficient checks, bad

6 checks.

7 THE COURT: Okay. And in connection with your

8 business, he has filed on or collected bad checks for you.

9 VENIREPERSON WAECHTER: Yes.

10 THE COURT: How long a period of time has that gone

11 on?

12 VENIREPERSON WAECHTER: What? Five years, six --

13 THE COURT: Do you have a social relationship with

14 him?

15 VENIREPERSON WAECHTER: No.

16 THE COURT: You don't visit in his home or he comes

17 to your house?

18 VENIREPERSON WAECHTER: No.

19 THE COURT: Would the fact that he -- that you've

20 had a business relationship with him over that period of

21 time, would that influence your decision if you're selected

22 as a juror?

23 VENIREPERSON WAECHTER: No, ma'am.

24 THE COURT: Would you be able to reach verdicts in

25 this case, if selected, based only on the evidence that you

1 see and hear in the courtroom?

2 VENIREPERSON WAECHTER: Yes.

3 THE COURT: Thank you, sir.

4 I saw -- let me go to this side, and then I'll go to
5 the other. I don't see any on the second row. Yes, I do.

6 Are you Juror Number 16?

7 VENIREPERSON CAVINESS: Yes.

8 THE COURT: And how do you know Mr. Richards?

9 VENIREPERSON CAVINESS: I worked for the Lincoln
10 County Sheriff's Department, in their processing of their
11 court cases.

12 THE COURT: Okay. In the warrant section?

13 VENIREPERSON CAVINESS: Yes.

14 THE COURT: And do you -- you don't still work
15 there.

16 VENIREPERSON CAVINESS: No, I don't.

17 THE COURT: So in connection with process -- were
18 they criminal warrants as well as serving other process?

19 VENIREPERSON CAVINESS: Yes.

20 THE COURT: Okay. And how long did you work in that
21 department?

22 VENIREPERSON CAVINESS: Four years.

23 THE COURT: Pardon?

24 VENIREPERSON CAVINESS: Four years.

25 THE COURT: And during that four-year period of

1 time, was Mr. Richards the prosecuting attorney here?

2 VENIREPERSON CAVINESS: Yes, he was.

3 THE COURT: And anything more than receiving
4 paperwork from his office? Did you have any other kind of
5 business dealings with him?

6 VENIREPERSON CAVINESS: No, I did not.

7 THE COURT: Do you have a social relationship with
8 him?

9 VENIREPERSON CAVINESS: No.

10 THE COURT: Would the fact that -- and how long has
11 it been since you worked there?

12 VENIREPERSON CAVINESS: Four years.

13 THE COURT: Okay. It was four years ago that you
14 worked there?

15 VENIREPERSON CAVINESS: Yes.

16 THE COURT: And for how long a period of time?

17 VENIREPERSON CAVINESS: Four years.

18 THE COURT: Four years also. Okay. Would the fact
19 that that length of time ago and for four years that you have
20 dealt with him on serving -- or the serving of warrants,
21 would that influence your decision in any way?

22 VENIREPERSON CAVINESS: No.

23 THE COURT: And that's a no?

24 VENIREPERSON CAVINESS: No.

25 THE COURT: Okay. Thank you. And if selected,

1 Juror Number 16, would you be able to reach a verdict based
2 only -- or verdicts based only on the evidence that you might
3 see and hear in this courtroom?

4 VENIREPERSON CAVINESS: Yes.

5 THE COURT: Thank you, ma'am.

6 All right. I did see a hand over here. And would
7 you tell me your number, sir.

8 VENIREPERSON HARRIS: 22.

9 THE COURT: Yes. Juror 22, how do you know
10 Mr. Richards?

11 VENIREPERSON HARRIS: Mr. Richards' office has
12 prosecuted me in court before. And -- misdemeanor trials.
13 DWI and domestic violence.

14 THE COURT: Okay.

15 VENIREPERSON HARRIS: And also, my fiancée's sister
16 worked for Mr. Richards for quite a few years.

17 THE COURT: All right. No longer does, but did.

18 VENIREPERSON HARRIS: No longer does.

19 THE COURT: How long ago was it that Mr. Richards'
20 office had some dealings with you of a professional --

21 VENIREPERSON HARRIS: The last one was in 1996, I
22 believe.

23 THE COURT: So that's nine years ago, approximately?

24 VENIREPERSON HARRIS: Yes, ma'am.

25 THE COURT: And it didn't involve a felony, but --

1 VENIREPERSON HARRIS: No, ma'am.

2 THE COURT: -- were only misdemeanor charges. And

3 Mr. Richards was the prosecutor at that time.

4 VENIREPERSON HARRIS: His office. Yes, his office

5 was.

6 THE COURT: He was --

7 VENIREPERSON HARRIS: Yes, he was. I'm sorry.

8 THE COURT: -- the prosecutor, but he may not have

9 been the attorney that you dealt with.

10 VENIREPERSON HARRIS: Yes, ma'am.

11 THE COURT: Okay. And I don't mean to embarrass

12 you, but do you have hard feelings either against

13 Mr. Richards or the state in general?

14 VENIREPERSON HARRIS: No, ma'am.

15 THE COURT: If selected, Juror 22, as a juror, would

16 you be able to reach a verdict in this -- or verdicts in this

17 case based solely on the evidence that you would see and hear

18 in this courtroom -- or here in the courtroom?

19 VENIREPERSON HARRIS: Yes, ma'am.

20 THE COURT: Okay. Thank you, sir.

21 Anyone else on the second row, either side? Okay.

22 Let us go back to the third row. Anyone who knows

23 Mr. Richards, on either side of the aisle? Okay. The fourth

24 row.

25 Okay. If you would stand, please. And tell me your

1 number. Or you can tell me your name, if you don't care
2 to -- I mean, if you don't -- it doesn't bother you to reveal
3 it.

4 VENIREPERSON SCHISLER: Annette Schisler, Number 45.

5 THE COURT: Okay. And how do you know Mr. Richards?

6 VENIREPERSON SCHISLER: Mr. Richards helped draw up
7 a will for my husband and I about 10 or 12 years ago.

8 THE COURT: Okay. And that's in the civil practice
9 of law, not in connection with his duties as prosecuting
10 attorney.

11 VENIREPERSON SCHISLER: Right.

12 THE COURT: And has he done any other legal business
13 for you?

14 VENIREPERSON SCHISLER: No.

15 THE COURT: And you said that was three or four
16 years ago?

17 VENIREPERSON SCHISLER: No. 10 or 12 years ago.

18 THE COURT: 10 or 12 years ago. Would the fact that
19 you chose to have him draft your wills that long ago
20 influence your decision in this particular case?

21 VENIREPERSON SCHISLER: No.

22 THE COURT: Would you be able, Miss Schisler, to
23 reach a verdict, if selected in this case, on both counts,
24 based only on the evidence that you would see and hear in the
25 courtroom?

1 VENIREPERSON SCHISLER: Yes.

2 THE COURT: Yes?

3 VENIREPERSON SCHISLER: Yes.

4 THE COURT: Okay. Thank you so much. You may be
5 seated.

6 Anyone else on that row? And then on the very back
7 row, that would be the fifth row on the very back, is anyone
8 acquainted with the prosecuting attorney in any way? All
9 right. I don't see any hands, so I assume that you do not
10 know him. And again, he's not an attorney in the case of
11 record, but he is just assisting, and I thought I needed to
12 ask those questions.

13 Representing the defendant in this case is
14 Mr. Charles Rogers. And he is standing at counsel table.

15 MR. ROGERS: Good morning.

16 THE COURT: He practices in Kansas City, but all
17 throughout the state as well. And I need to know if any of
18 you are acquainted with him, related to him by blood or
19 marriage, or have had any kind of legal business with him. I
20 do not see any hands, so I am assuming that you do not know
21 him in any way.

22 Also representing the defendant is Mr. Jeremy Weis.
23 He is standing at counsel table. Need to know if any of you
24 are acquainted with him, related to him by blood or marriage,
25 have any legal business with him. And he too practices in

1 Kansas City, but also throughout the state. I don't see any
2 hands, so I assume that you do not know him in any way.

3 Representing the defendant also is Miss Kathryn
4 Benson.

5 MS. BENSON: Good morning.

6 THE COURT: She practices throughout the state, but
7 she -- her office is in Columbia. I need to know if any of
8 you are acquainted with her, related to her by blood or
9 marriage, or whether she has done any legal business for you.
10 All right. I don't see any hands, so I assume that you do
11 not know her.

12 The defendant in this case is sitting at counsel
13 table. His name is Ryan William Ferguson.

14 And Mr. Ferguson, if you would stand.

15 I need to know if any of you are acquainted with
16 Mr. Ferguson or related to him by blood or marriage. He is a
17 resident of Columbia. I need to -- and that more I can
18 only -- that is all that I know about him to tell you. But
19 need to know if any of you are acquainted with him in any
20 way. Okay.

21 You may sit down, Mr. Ferguson.

22 I don't see any hands.

23 Ladies and gentlemen, I have some questions to ask
24 you. Then you'll be relieved to know only one attorney on
25 each side may ask questions. And hopefully we can move

1 along.

2 Let me just get a little bit of water, because my
3 voice is giving out here.

4 As I mentioned originally, this case originated in
5 Boone County, Missouri. We are selecting a jury here in
6 Lincoln County. And the jury in its work will have to be
7 brought back to Columbia to hear the evidence in this case.
8 We will provide transportation. We will provide room and
9 board while you're there. And the very latest that I
10 understand that the case will last will be into Saturday.
11 Although we're hopeful that the case will conclude prior to
12 Saturday. But I can't tell you that exactly at 4 p.m. on
13 Friday that you would be back in Lincoln County.

14 Understanding that, and understanding now is the
15 time that you need to tell me and the attorneys in this case
16 whether there is any kind of conflict that you would have in
17 serving in this case, whatever the conflict is, we need to
18 hear it now. And if it involves something of a personal
19 nature, as I mentioned before, you may approach the bench.

20 Let me start on the first row, and then I will move
21 backwards into the jury box, to see what your conflicts might
22 be.

23 Anyone in the first row that has a conflict in
24 serving in this case, understanding -- and I guess I should
25 give you a little more information. It will be Sunday that

1 you would be picked up and taken to Columbia, and trial would
2 begin first thing on Monday morning. So if you have your
3 favorite niece's wedding Saturday night, that is something
4 you could go to.

5 First row, any kind of conflict?

6 Yes. Juror Number 7. What is your conflict?

7 VENIREPERSON WAECHTER: I'm very sorry. I have to
8 be in court here as a witness, and I just can't tell you the
9 date. It's within the next week.

10 THE COURT: Okay. Is it on a criminal case or a
11 civil case? Do you know? Is it --

12 VENIREPERSON WAECHTER: I'm sure this is on a
13 criminal case. We had a robbery committed against us.

14 THE COURT: Okay. And is -- I guess I would have to
15 find out from the prosecuting attorney here and/or --

16 VENIREPERSON WAECHTER: I can step outside and call
17 and tell you exactly what it is or what date.

18 THE COURT: All right. Can you tell me -- do you
19 know the name of the defendant who is involved in the case?

20 VENIREPERSON WAECHTER: No, I don't. I can get that
21 for you if I step out in the hall --

22 THE COURT: Okay.

23 VENIREPERSON WAECHTER: -- and I'll call and get
24 that for you.

25 THE COURT: Well, I tell you what. We are going to

1 be taking a recess. I'm sure that we can't ask all the
2 questions we need to ask in the time that would be
3 reasonable. And we do take recesses from time to time,
4 ladies and gentlemen.

5 The prosecutor has indicated that he may go and
6 check on that now anyway. But we do take recesses.

7 VENIREPERSON WAECHTER: Okay.

8 THE COURT: But you're not free just to wander
9 anywhere in the courthouse or go to the clerk's office and
10 look it up, so. We will -- we'll try to find that out and
11 come back to you. But in the event that you're needed as a
12 witness in a case next week, you would be unavailable, is
13 what you're saying.

14 VENIREPERSON WAECHTER: Yeah. I'm sure -- I just --
15 I never thought much about it, but it's the -- I think it's
16 the -- I'm sure it's -- I think it's the 19th.

17 THE COURT: All right. Well, we'll --

18 VENIREPERSON WAECHTER: I'm really sorry about it.
19 I should have -- I never --

20 THE COURT: We'll check on that.

21 VENIREPERSON WAECHTER: Okay.

22 THE COURT: And sometimes those cases get continued,
23 you understand. And you may not be notified until you show
24 up at the courthouse and find out your case isn't going to go
25 to trial.

1 VENIREPERSON WAECHTER: Sure.

2 THE COURT: That happens occasionally. Maybe it
3 doesn't happen in Lincoln County. It happens in Boone County
4 from time to time.

5 VENIREPERSON WAECHTER: But I am sorry I don't have
6 more information on it.

7 THE COURT: All right. We'll see if we can find out
8 that and get back to you.

9 Anyone else on that front row that has a conflict?

10 Yes, ma'am. You are Juror Number 12.

11 VENIREPERSON SCHUPMANN: My mother-in-law is 82
12 years old and has just been diagnosed with cancer.

13 THE COURT: Okay. Would you just speak -- maybe if
14 you stood up, since we are farther away than -- your
15 mother-in-law is in her 80s and has cancer?

16 VENIREPERSON SCHUPMANN: Right. And I've been
17 taking her back and forth to the hospital for treatments and
18 stuff. And I just really don't want to be away from her,
19 just in case.

20 THE COURT: Is her situation at this point critical?

21 VENIREPERSON SCHUPMANN: Yes. She's got both
22 terminal cancer, plus she's got a heart condition.

23 THE COURT: Is there anyone else in the family that
24 might be able to step in for you?

25 VENIREPERSON SCHUPMANN: Well, they could, but I'm

1 just saying, if something was to happen to her, I want to be
2 there for her.

3 THE COURT: Okay. I understand that very well.
4 Thank you so much.

5 MR. CRANE: Judge, I think Number 11 might have had
6 something.

7 THE COURT: All right.

8 I did not see your hand, Number 11.

9 VENIREPERSON BRININGER: Yeah. I got kids --

10 THE COURT: Would you stand up just a bit, because I
11 -- some people have louder voices than others, and it's --
12 I'm sorry we don't have a microphone for you.

13 VENIREPERSON BRININGER: If we got to stay down
14 there, I don't want to leave my kids overnight.

15 THE COURT: Okay. How old are your children?

16 VENIREPERSON BRININGER: The youngest one's 10
17 and --

18 THE COURT: I'm sorry?

19 VENIREPERSON BRININGER: The youngest one is 10 and
20 one is 15.

21 THE COURT: All right. So your children are 10 and
22 15, and they're not supposed to be home alone?

23 VENIREPERSON BRININGER: Not overnight. I mean, my
24 husband works nights.

25 THE COURT: All right.

1 VENIREPERSON BRININGER: I don't allow -- no, I
2 don't want them --

3 THE COURT: So tell me again, your family situation
4 is is that dad works evenings or nights and you're home with
5 the kids overnight and you would not feel comfortable leaving
6 a 15- and a 10-year-old by themselves.

7 VENIREPERSON BRININGER: Right.

8 THE COURT: Okay. I will certainly consider that.
9 Thank you.

10 VENIREPERSON BRININGER: Uh-huh.

11 THE COURT: Anyone else on the front row?

12 Yes, ma'am. You are -- are you Juror Number --

13 VENIREPERSON PUND: Juror Number 10.

14 THE COURT: All right. Yes, ma'am.

15 VENIREPERSON PUND: I also have two small children,
16 five and three. And to stay overnight for a week would be
17 kind of hard.

18 THE COURT: Is there anyone else -- well, is your --
19 is the father at home --

20 VENIREPERSON PUND: Yes.

21 THE COURT: -- overnight?

22 VENIREPERSON PUND: Uh-huh.

23 THE COURT: Okay. And during the day do you
24 normally work?

25 VENIREPERSON PUND: Yes.

1 THE COURT: And so you have day care provided for
2 the children during the day?

3 VENIREPERSON PUND: I do, but not -- he usually
4 leaves earlier, before I take the children. It just would be
5 a little difficult.

6 THE COURT: Is there someone that could either take
7 them to day care when you would normally do that, like a
8 neighbor or someone else that uses the day care?

9 VENIREPERSON PUND: Yeah.

10 THE COURT: Is that a yes?

11 VENIREPERSON PUND: Yes. Uh-huh.

12 THE COURT: Okay. If maybe during a recess, if you
13 have access to a phone, if you would be kind enough just to
14 check to make sure that that would be a possibility.

15 VENIREPERSON PUND: (Nodding head up and down.)

16 THE COURT: Thank you.

17 Anyone else on that row?

18 Yes, sir. Are you Number 2?

19 VENIREPERSON ROBINSON: Yes.

20 THE COURT: Yes, sir. What is your conflict?

21 VENIREPERSON ROBINSON: I personally don't have the
22 finances to be able to be off work for a week. My daughter
23 was on welfare. She had welfare taken away from her. And I
24 now have to help her also, her and her baby. And I don't
25 feel I can afford to miss any more work.

1 THE COURT: Are you self-employed, sir?

2 VENIREPERSON ROBINSON: No.

3 THE COURT: And does your employer have other people
4 that can fill in for you when you're gone?

5 VENIREPERSON ROBINSON: No. I just went to work
6 for -- they started a brand new company. And my crew's off
7 today because I am not working. And I have no other way to
8 take care of them.

9 THE COURT: Are you telling me that if you're not
10 working, you don't get paid.

11 VENIREPERSON ROBINSON: Exactly.

12 THE COURT: In other words, you don't have a
13 straight salary, but you're paid by the day.

14 VENIREPERSON ROBINSON: By hourly.

15 THE COURT: Okay. All right. I will consider that,
16 sir.

17 Anyone else? Let's do the second row then. Anyone
18 on the second row who would find that to be a conflict?

19 And that's Number 15, are you?

20 VENIREPERSON DECLUE: Yes, Your Honor.

21 THE COURT: Okay. And what is your conflict?

22 VENIREPERSON DECLUE: My wife's travelling out of
23 town Wednesday to Indiana to be with my grandmother, with my
24 sister. My 82-year-old grandmother. And I need to be at the
25 house for my 15-year-old son. I wouldn't want to leave him

1 overnight.

2 THE COURT: Are there other relatives that he could
3 stay with?

4 VENIREPERSON DECLUE: No.

5 THE COURT: I'm sorry?

6 VENIREPERSON DECLUE: No, ma'am.

7 THE COURT: Do you work nights?

8 VENIREPERSON DECLUE: No.

9 THE COURT: And normally when he comes home -- I
10 assume he's in school?

11 VENIREPERSON DECLUE: Yes, ma'am.

12 THE COURT: When he comes home from school in the
13 afternoon, is he there by himself for a period of time --

14 VENIREPERSON DECLUE: No. My wife doesn't work.

15 THE COURT: Okay. Does he have any kind of
16 disability or problems that need attention?

17 VENIREPERSON DECLUE: Yes. He's ADHD and bipolar.

18 THE COURT: All right. And I don't -- again, I
19 don't mean to embarrass you, but --

20 VENIREPERSON DECLUE: No, it's fine.

21 THE COURT: -- some circumstances are different than
22 others. There's some 15-year-olds that are mature and able
23 to be on their own for a few hours after school and some that
24 aren't. Thank you, sir.

25 Anyone else on that row there?

1 Number 16.

2 VENIREPERSON CAVINESS: Mine is just the weekend.
3 We are leaving as soon as I leave here today and will not be
4 home until Monday. We have a prior commitment in
5 Springfield.

6 THE COURT: And you're planning on leaving today,
7 are you?

8 VENIREPERSON CAVINESS: Yes, ma'am.

9 THE COURT: And you're going out of town for some --

10 VENIREPERSON CAVINESS: Yes, ma'am.

11 THE COURT: -- planned trip?

12 VENIREPERSON CAVINESS: Yes. My husband and I set
13 on a committee for a sale. The sale's on Sunday at 1:00.

14 THE COURT: Are you -- do you have plane
15 reservations?

16 VENIREPERSON CAVINESS: No. We're driving.

17 THE COURT: And where will you be going?

18 VENIREPERSON CAVINESS: Springfield, Missouri.

19 THE COURT: This is relating to your work, is it?

20 VENIREPERSON CAVINESS: Yes. We have a livestock
21 business. Personal. Family business.

22 THE COURT: All right. Thank you.

23 Anyone else on this part of the second row? Over
24 here.

25 Are you Number 19?

1 VENIREPERSON KAIMANN: Yes.

2 THE COURT: All right. And what is your conflict?

3 VENIREPERSON KAIMANN: I got two small children at
4 home, five and three, and my wife works. It would be
5 difficult to both be gone all week long.

6 THE COURT: Does she work evenings?

7 VENIREPERSON KAIMANN: No.

8 THE COURT: Works during normal daytime hours?

9 VENIREPERSON KAIMANN: Yes.

10 THE COURT: I assume, with such young children, you
11 have some kind of day care during the day?

12 VENIREPERSON KAIMANN: Yes. I pick them up early.
13 She works until 5:00 every day. And I pick them up before
14 then.

15 THE COURT: What time of the day do you drop them
16 off?

17 VENIREPERSON KAIMANN: My wife drops them off at
18 7:30.

19 THE COURT: All right. Thank you, sir.
20 Anyone else on that row?

21 Yes, sir. And you -- are you Number 22?

22 VENIREPERSON HARRIS: Number 22.

23 THE COURT: Yes, sir.

24 VENIREPERSON HARRIS: If the trial and the
25 deliberations last longer than a week, I have a court

1 appearance on October 24th in the City of Troy on a
2 misdemeanor charge.

3 THE COURT: All right, sir. I'm hoping that won't
4 happen, because I have a conflict on that day myself, but --

5 VENIREPERSON HARRIS: And also --

6 THE COURT: -- sometimes we overlook those.

7 VENIREPERSON HARRIS: -- I'm self-employed, and I
8 really can't afford to take off a week's work.

9 THE COURT: I assume if you're not working, sir,
10 then you don't --

11 VENIREPERSON HARRIS: No.

12 THE COURT: -- get paid.

13 VENIREPERSON HARRIS: Nothing.

14 THE COURT: All right. Thank you.

15 Anyone else on that row?

16 Are you Number 23?

17 VENIREPERSON GIBBS: Yes.

18 THE COURT: And what is your conflict, sir?

19 VENIREPERSON GIBBS: I have a state-required CNA
20 class on Thursday.

21 THE COURT: And for those that don't know what a CNA
22 is, is that the certified nursing assistant?

23 VENIREPERSON GIBBS: Correct.

24 THE COURT: Is that correct? And that pertains to
25 your job?

1 VENIREPERSON GIBBS: Yes.

2 THE COURT: And if you don't get certified, you're
3 not able to continue in your job?

4 VENIREPERSON GIBBS: Yeah. I think I have 120 days
5 from the point that I began work, so.

6 THE COURT: Okay. And will -- will -- if you have
7 to take it the next time it's given, will that be past the
8 120 days?

9 VENIREPERSON GIBBS: Well, I'm not sure -- I'm not
10 sure if it will put me over or not.

11 THE COURT: Okay.

12 VENIREPERSON GIBBS: I don't know how many days I
13 can miss. I think it's maybe two days that I can miss.

14 THE COURT: When is this test to be given?

15 VENIREPERSON GIBBS: Thursday.

16 THE COURT: Thursday of next week?

17 VENIREPERSON GIBBS: Yes.

18 THE COURT: Okay. Thank you.

19 Anyone else on that row?

20 Yes. Mr. Number 13? You are Number 13?

21 VENIREPERSON STONEBARGER: Yes.

22 THE COURT: Yes. And what is your --

23 VENIREPERSON STONEBARGER: I also can't afford to
24 take off work for a week.

25 THE COURT: Are you self-employed?

1 VENIREPERSON STONEBARGER: No, I'm not.

2 THE COURT: Are you a salaried or an hourly
3 employee?

4 VENIREPERSON STONEBARGER: Hourly.

5 THE COURT: I will consider that, sir.

6 Anyone else? Let's go to the third row. Anyone on
7 that row? The third row back on this side. My left, your
8 right.

9 Yes. Are you Number 29?

10 VENIREPERSON WILLIAM THOMAS: Yes.

11 THE COURT: And what is your conflict, sir?

12 VENIREPERSON WILLIAM THOMAS: I have an 8-year-old
13 and a 9-year-old at home. I'm responsible for getting them
14 to school in the morning when my wife goes to school.

15 THE COURT: Okay. I'm -- you're going to have to
16 speak up just a bit.

17 VENIREPERSON WILLIAM THOMAS: My wife goes to school
18 in the morning. I get my kids to school. She goes -- she is
19 a practicum student. And she is required to be at her
20 practicum at 6:30 in the morning.

21 THE COURT: So you're the one that's there to take
22 them on -- you say they are -- there's an 8- and 9-year-old?

23 VENIREPERSON WILLIAM THOMAS: Yes.

24 THE COURT: And you get them to school.

25 VENIREPERSON WILLIAM THOMAS: Yes, I do.

1 THE COURT: Is there anyone that could -- they could
2 carpool with for this week to get to school?

3 VENIREPERSON WILLIAM THOMAS: Not that early.

4 THE COURT: Okay. Thank you, sir.

5 Anyone else on that row? Let me go across the aisle
6 to the third row. Is there anyone that has a conflict on
7 that row?

8 And are you Juror Number --

9 VENIREPERSON BLACK: 31.

10 THE COURT: -- 30?

11 VENIREPERSON BLACK: 31, ma'am.

12 THE COURT: 31. Yes, sir.

13 VENIREPERSON BLACK: I have a 3-month-old and a
14 9-year-old at home that I have to baby-sit Wednesday,
15 Thursday, and Friday.

16 THE COURT: What time?

17 VENIREPERSON BLACK: From the morning 'til the
18 evening.

19 THE COURT: And is there anyone else either in the
20 family or otherwise that could sit for these children?

21 VENIREPERSON BLACK: No. Family works, ma'am, and I
22 can't afford a baby-sitter for them three days.

23 THE COURT: I assume that the 9-year-old goes to
24 school?

25 VENIREPERSON BLACK: Yes.

1 THE COURT: But the 3-month-old is in need of care.
2 VENIREPERSON BLACK: Yes.
3 THE COURT: All right. Thank you.
4 Anyone else on that row?
5 I'm trying to see. Are you Number 33?
6 VENIREPERSON McCULLOUGH: Yes.
7 THE COURT: And would you stand, please, ma'am.
8 VENIREPERSON McCULLOUGH: Yes. I can't really
9 afford to take a whole week off work. And I'm not entirely
10 positive that my employer pays for jury service.
11 THE COURT: Are you a salaried employee?
12 VENIREPERSON McCULLOUGH: Hourly.
13 THE COURT: Hourly? Are you full time?
14 VENIREPERSON McCULLOUGH: (Nodding head up and
15 down.)
16 THE COURT: That's a yes?
17 VENIREPERSON McCULLOUGH: Yes.
18 THE COURT: Okay. I will certainly consider that.
19 VENIREPERSON McCULLOUGH: Thank you.
20 THE COURT: Anyone else on that row?
21 Yes, sir. And you are Number 35?
22 VENIREPERSON MOORE: 35.
23 THE COURT: Yes, sir.
24 VENIREPERSON MOORE: I'm very reluctant to leave my
25 wife alone for a week's time. It's just the two of us.

1 THE COURT: Does she suffer from any kind of illness
2 at this time?

3 VENIREPERSON MOORE: Not other than knee problems
4 and such.

5 THE COURT: Is she able to get around physically?
6 In other words, do you have to --

7 VENIREPERSON MOORE: Yes, she is.

8 THE COURT: She is.

9 VENIREPERSON MOORE: Yes, she is.

10 THE COURT: But you don't want to be apart from her
11 for that long.

12 VENIREPERSON MOORE: That's true.

13 THE COURT: She's a lucky lady, isn't she? All
14 right. I will certainly take that into consideration, sir.

15 VENIREPERSON MOORE: Thank you.

16 THE COURT: Anyone else on that row? Let's go to
17 the fourth row.

18 I can't see if you're on the end. Is this 37?

19 VENIREPERSON BETTS: Yes, ma'am.

20 THE COURT: And what is your conflict, ma'am?

21 VENIREPERSON BETTS: I have a boy in middle school.
22 He's 14. And besides that, my husband travels all over
23 Missouri state during the week, so.

24 THE COURT: Is he travelling today as we speak?

25 VENIREPERSON BETTS: Yes, he is.

1 THE COURT: And what -- does he generally come home
2 for the evening?

3 VENIREPERSON BETTS: It depends where they send him.
4 Usually he's gone --

5 THE COURT: Do you know what his schedule is next
6 week?

7 VENIREPERSON BETTS: I think it's to be down in
8 Mt. Vernon, Illinois.

9 THE COURT: And he would not be coming home
10 overnight.

11 VENIREPERSON BETTS: No.

12 THE COURT: All right. Is there any family member
13 that you have that could -- that your son could stay with
14 while you're gone?

15 VENIREPERSON BETTS: No, not really.

16 THE COURT: Pardon?

17 VENIREPERSON BETTS: No, ma'am.

18 THE COURT: All right. Thank you. You may sit
19 down.

20 Anyone else on that row?

21 Yes, sir. And if you would tell me your number,
22 sir.

23 VENIREPERSON SKIRVIN: 41.

24 THE COURT: Yes, sir.

25 VENIREPERSON SKIRVIN: Single-income family.

1 THE COURT: Are you self-employed?

2 VENIREPERSON SKIRVIN: No. I work for Marquitz

3 Motors.

4 THE COURT: I'm sorry?

5 VENIREPERSON SKIRVIN: I work over here at a

6 dealership.

7 THE COURT: And you're a salaried employee?

8 VENIREPERSON SKIRVIN: Hourly.

9 THE COURT: All right. You're full time, though.

10 VENIREPERSON SKIRVIN: Yes.

11 THE COURT: Okay. Thank you.

12 Anyone else over here on the fourth row? On the

13 fourth row, on the -- on your left, my right.

14 All right. If you'd stand, ma'am. And are you

15 Number 43?

16 VENIREPERSON BENNETT: Yes.

17 THE COURT: And please stand up so we can hear you.

18 VENIREPERSON BENNETT: I have a granddaughter that

19 her dad and her live with me. And I am responsible taking

20 her to school and home. And everybody works.

21 THE COURT: Including you?

22 VENIREPERSON BENNETT: No. I stay at home. But I

23 get her in the morning to the school bus, and after school I

24 pick her up.

25 THE COURT: And her dad is your son or --

1 VENIREPERSON BENNETT: Right.

2 THE COURT: All right.

3 VENIREPERSON BENNETT: And they all leave early --

4 early, early in the mornings.

5 THE COURT: What are we talking about, "early"?

6 VENIREPERSON BENNETT: Say about 6:00.

7 THE COURT: Pardon?

8 VENIREPERSON BENNETT: 6:00.

9 THE COURT: All right. And the school bus comes?

10 VENIREPERSON BENNETT: The bus is usually there at

11 quarter after 7.

12 THE COURT: Is there anyone else in the neighborhood

13 whose children --

14 VENIREPERSON BENNETT: No.

15 THE COURT: -- go --

16 VENIREPERSON BENNETT: Not that I would be, you

17 know, letting her with.

18 THE COURT: All right. Thank you.

19 Anyone else on that row?

20 Yes, ma'am. Are you Number 45?

21 VENIREPERSON SCHISLER: Yes, 45.

22 THE COURT: Yes.

23 VENIREPERSON SCHISLER: I just have a 16-year-old

24 daughter and my husband works nights.

25 THE COURT: And you don't feel comfortable leaving

1 her home alone at night?

2 VENIREPERSON SCHISLER: Oh, no. No.

3 THE COURT: Anyone else that she could stay with?

4 VENIREPERSON SCHISLER: Yes. She could stay with
5 friends.

6 THE COURT: Could -- and during a recess, would you
7 be able to call and see if that arrangement could be made?

8 VENIREPERSON SCHISLER: Yes.

9 THE COURT: All right. Thank you.

10 Anyone else on that fourth row?

11 Yes. Are you Number 48?

12 VENIREPERSON MILLER: Yes.

13 THE COURT: And what is your conflict?

14 VENIREPERSON MILLER: I'm self-employed, and if I
15 don't work, I don't get paid. I really can't afford to be
16 off for a week like that.

17 THE COURT: Are you married at this time?

18 VENIREPERSON MILLER: No.

19 THE COURT: I will consider that, sir.

20 Anyone else on the fourth row? Finally, the fifth
21 row, on this side, in the back. Anyone that has a conflict?

22 You may stand up. Is it Number 50?

23 VENIREPERSON STRAUGHTER: Right.

24 THE COURT: And what is your conflict, sir?

25 VENIREPERSON STRAUGHTER: I have a disabled wife,

1 and we have just received guardianship of our two
2 grandchildren. They both have behavioral problems. And my
3 services at home are very much needed. And I couldn't afford
4 to be off for -- or gone for that long.

5 THE COURT: You normally work.

6 VENIREPERSON STRAUGHTER: No. I'm retired.

7 THE COURT: You're retired. I'm sorry. And I don't
8 want to go into great details about your wife's disability,
9 but do you need to help her around physically at the house?

10 VENIREPERSON STRAUGHTER: I do the cooking, I do the
11 washing, I do the ironing, I clean the house.

12 THE COURT: All right. I will certainly consider
13 that, sir.

14 Did I see another hand go up? Is that Number 51?

15 VENIREPERSON GAINES: Yes, it is. I'm a national
16 trainer, and I've got a training session set up for Monday.
17 We're going to train 80 people across the country.

18 THE COURT: And where do you have to be?

19 VENIREPERSON GAINES: I actually do it from my
20 office, which is here in town. It's a Web-X and conference
21 call.

22 THE COURT: All right. And I assume that would be
23 something that you would find difficult to reschedule, or
24 not?

25 VENIREPERSON GAINES: I can't. We actually just

1 changed over a program and we go live with it Monday. So
2 I -- it can't be changed.

3 THE COURT: All right.

4 VENIREPERSON GAINES: If you can change the court, I
5 could be there next week.

6 THE COURT: Unfortunately there are lots of other
7 people that depend on next week's date. Thank you, sir.

8 Anyone else on that row?

9 Number 52.

10 VENIREPERSON FIELDS: I'm scheduled to work
11 midnights a couple nights next week.

12 THE COURT: Your shift changes from time to time, is
13 what you're --

14 VENIREPERSON FIELDS: Yeah. I normally work 7 to 3,
15 but sometimes they schedule me for 11 to 7.

16 THE COURT: And what happens if you're sick or on
17 vacation?

18 VENIREPERSON FIELDS: Well, then they get somebody
19 else to switch around.

20 THE COURT: All right. And you're a salaried
21 employee or hourly?

22 VENIREPERSON FIELDS: Hourly.

23 THE COURT: But full time?

24 VENIREPERSON FIELDS: Yes.

25 THE COURT: All right. Thank you.

1 Anyone else? Now's the time to be heard.

2 Yes, sir. You're Juror Number 1?

3 VENIREPERSON BROWN: Yes. I just thought, on Monday
4 morning I have -- I am a businessman, and I have a
5 teleconference scheduled for two hours, from 10:00 'til 12:00
6 on Monday. I also have an evening appointment next Wednesday
7 evening.

8 THE COURT: As to the teleconference, is this
9 something that can be rescheduled?

10 VENIREPERSON BROWN: I do not know.

11 THE COURT: Are you the presenter, or you're just
12 going to be listening?

13 VENIREPERSON BROWN: I'm going to be listening.

14 THE COURT: All right.

15 VENIREPERSON BROWN: It's a class that I have to
16 attend, but I don't know if they'll offer it again or not.

17 THE COURT: All right. Thank you.

18 Anyone else?

19 Yes, sir. You're Juror Number 7.

20 VENIREPERSON WAECHTER: Yeah. I thought about it.
21 We do have a business. As Mr. Richards, don't want to --
22 hope I'm not out of line. We're extremely busy. I just
23 don't know -- the City of Troy's got sewer mains going in,
24 and we furnish material. We do have employees. I could do
25 it. It's going to be hard.

1 THE COURT: All right.

2 VENIREPERSON WAECHTER: It's going to cause some
3 problems, but -- I'd be willing to serve. It's not something
4 I cannot do. But it is going to put a bind on us.

5 THE COURT: All right.

6 VENIREPERSON WAECHTER: It really is.

7 THE COURT: Well, I appreciate that, sir. And I
8 can't imagine being away from home for a week would be easy
9 for anyone.

10 VENIREPERSON WAECHTER: Well, it's just the City of
11 Troy is doing an awful lot of expansion, and they really
12 depend on us for -- the city, and also the contractors, on --

13 THE COURT: Well, we will consider that, sir.

14 VENIREPERSON WAECHTER: -- all these jobs. Thank
15 you.

16 THE COURT: Ladies and gentlemen, I need to know if
17 you have in any way heard anything about this case in the
18 media. The state has alleged that on or about the 1st of
19 November in the year 2001, in Boone County, Missouri, that
20 this defendant caused the death of one Kent Heitholt by
21 strangling him. And need to know, with that little bit of
22 information -- and I will tell you that this is -- the facts
23 of this case would be that this occurred near the Columbia
24 Daily Tribune business, which is a newspaper in Columbia.

25 With that information, can you recall having heard

1 on television, on radio, or read anything about this in any
2 newspaper, whether it's the local paper or whether you happen
3 to take the Post Dispatch or any other form of media. Has
4 anyone heard about the case?

5 Yes, ma'am. And you are Juror Number 12?

6 VENIREPERSON SCHUPMANN: Yes.

7 THE COURT: Okay. Without telling me what you heard
8 about the case or read about the case, and I'm mindful of
9 your mother-in-law's condition, but I -- this is another
10 question entirely. Would you be able to put whatever you've
11 heard about or read about the case in the media aside and, if
12 selected, make a decision based only on the evidence that you
13 would see and hear in the courtroom?

14 VENIREPERSON SCHUPMANN: Yes.

15 THE COURT: Okay. Thank you very much.

16 Anyone else? I don't see any hands.

17 Ladies and gentlemen, as -- a number of you have
18 made checkmarks on your questionnaire, and we appreciate your
19 doing those in advance, relating to several issues. And the
20 attorneys and I have had the opportunity of looking at that.
21 I notice that some of them were done in July and some in
22 August, and here we are mid-October. I need to know, since
23 that time, or even on that questionnaire, whether any of you
24 have been convicted of a felony offense.

25 And I know some of you checked that little box that

1 said you might have been convicted of offenses other than --
2 other than a traffic offense. And of course there are a
3 number of misdemeanor offenses that are not felony offenses.
4 And so you needn't answer on misdemeanor offenses, unless it
5 was a misdemeanor offense involving moral turpitude. That
6 means whether you tried to bribe a judge or a juror or a
7 witness or didn't pay your income tax. But I'm talking about
8 basically felony convictions. Anyone that has a felony
9 conviction that perhaps that happened after you filled out
10 the form. I don't see anything -- I don't see any hands, so
11 I assume that you -- that has not changed.

12 Anyone on this panel who has problems in reading and
13 writing in English? And I don't see hands now.

14 Anyone on the panel who -- and I don't know how to
15 ask this. Maybe I should ask it this way. Raise your left
16 hands, please.

17 (Venirepersons complying.)

18 THE COURT: You can leave them up.

19 All right. Put them down.

20 The point of the question is: Whether there's
21 anyone that has hearing difficulties, so that you're having
22 difficulty hearing me.

23 Yes, sir. And you're -- and you are Juror Number 8?

24 VENIREPERSON ORR: Yes.

25 THE COURT: Juror Number 8, understanding that we're

1 quite a distance from each other -- and I can tell you that
2 in Boone County, in the courthouse, the witness box might
3 be -- well, like this over here. And the jury box is quite
4 close to it. We also have amplification devices that you can
5 wear that amplifies the sound in the courtroom for you. Do
6 you believe that that would allow you -- and I know you
7 haven't tried it on. And I'm not sure whether they have
8 those hearings devices here or not. The Supreme Court has
9 given them to us, and I think to many courts. Do you think
10 you would have trouble hearing?

11 VENIREPERSON ORR: I really can't say.

12 THE COURT: I know it is a hard question. Do you
13 wear any kind of hearing aid?

14 VENIREPERSON ORR: No, ma'am.

15 THE COURT: Do you have one side that's better than
16 the other? One ear that hears better than the other?

17 VENIREPERSON ORR: All depends on how I turn my
18 head.

19 THE COURT: Okay. So you probably do hear better
20 out of one ear than the other?

21 VENIREPERSON ORR: Most likely.

22 THE COURT: If you were selected as a juror, and you
23 couldn't hear something, would it embarrass you to raise your
24 hand or put your hand on your ear so we would tell the
25 witness to speak up or tell the lawyer to speak up? There's

1 one lawyer here I know who speaks loud enough that you'd
2 probably hear without any problem. And I'm not going to say
3 who that is. You'll have to guess. But anyway, if you had
4 problems hearing -- we obviously would want you to hear all
5 the evidence in the case before reaching a decision in the
6 case. Would it embarrass you or bother you to let us know
7 that you couldn't hear?

8 VENIREPERSON ORR: No.

9 THE COURT: Would you be willing to try one of these
10 assisted hearing devices, if we can find one to provide for
11 you?

12 VENIREPERSON ORR: I guess.

13 THE COURT: It's really -- have you ever -- well,
14 let me ask you this way. Have you used an iPod? You know
15 what those are. They're little ear phones that a lot of
16 people, not only kids, but older people wear, that plays
17 music and so forth. It's probably like that. It has a
18 little -- has a little device that's sort of a square-looking
19 little device there, that is on the chest, and it makes it
20 louder to hear with. So, I need to ask if you would consider
21 wearing something like that, if we can find one -- I don't
22 know if they have one here, but if we have one, maybe we
23 could hunt it up and see if he's able to hear a little
24 better. Would you be willing to try that?

25 VENIREPERSON ORR: I guess.

1 THE COURT: Okay. Thank you.
2 Anyone else that knows they have a hearing problem?
3 Okay.
4 Anyone that came to court today, even though you
5 felt sick, but you know that the sheriff comes after people
6 if they don't come to court? And there may be one or two
7 that -- anyone -- I see no hands.
8 Anyone who has a sick family member who has not
9 already disclosed that to me? About whom you might be
10 concerned or worried here today, but you came anyway because
11 that was your civic duty to do that. Anyone that is in that
12 situation? Other than Juror Number 12.
13 Yes, sir.
14 VENIREPERSON ORR: My mother.
15 THE COURT: Your mother's ill?
16 VENIREPERSON ORR: Has been for the last six years.
17 THE COURT: Is she in some care facility?
18 VENIREPERSON ORR: No. I take care of her at home.
19 THE COURT: And are you her sole provider of care?
20 VENIREPERSON ORR: Yes.
21 THE COURT: Is she able to get on okay by herself if
22 you were in Columbia hearing a case?
23 VENIREPERSON ORR: Probably not. She's on
24 disability and she's on breathing machines 24/7.
25 THE COURT: All right.

1 VENIREPERSON ORR: And she has doctors' appointments
2 twice a week. Nobody in my family will take her because she
3 don't get along with no one in my family.

4 THE COURT: Well, she's lucky to have you, isn't
5 she?

6 VENIREPERSON ORR: That's because I live with her.
7 So I have to help her. But she helps me.

8 THE COURT: I see. And so that really would be a
9 hardship to leave her by herself.

10 VENIREPERSON ORR: Right.

11 THE COURT: All right. Anyone else who has a sick
12 family member? And you may not be caring for them, but they
13 may be in the hospital in real serious condition. I'm not
14 talking about someone that has a cold or, you know, a sore
15 throat or something like that, but something that's more
16 serious. All right. I don't see anyone here who's raised
17 their hand, other than Juror Number 8.

18 Ladies and gentlemen, the state will have the
19 opportunity to question you first. State gets to go forward
20 first because the state has the burden of proof. After the
21 state concludes its questioning, defense counsel will have
22 the opportunity to ask you additional questions concerning
23 your qualifications.

24 We will take a recess around 10:30. It may be at
25 10:35 or 10:40, but somewhere around that time.

1 So we will proceed then with the questioning by the
2 state. Mr. Crane.

3 MR. CRANE: Please the Court?

4 THE COURT: Yes.

5 MR. CRANE: Counsel.

6 - - -

7 VOIR DIRE EXAMINATION

8 BY MR. CRANE:

9 As the Judge told you, my name's Kevin Crane. I'm
10 the prosecutor in Boone County, Missouri. This is my
11 assistant prosecutor, Dan Knight. You all have already
12 talked about John Richards. And over there to John's left is
13 Ruby Marsden. And she's an investigator in my office.

14 I want to express, on behalf of both of us, our
15 appreciation for your service today. Realize that it's
16 inconvenient for a lot of you to be here, but I'm sure you
17 understand that participating in this is crucial to our
18 justice system.

19 The process we're going through right now is to pick
20 12 people who will produce a fair and impartial decision as
21 to whether or not the defendant is guilty in this case.

22 By my questions to you, I sure don't mean to pry
23 into your personal affairs or embarrass you. In the event --
24 and I don't think this is going to necessarily happen, but
25 you never know. In the event there is something that you

1 would rather not talk about out here in front of God and
2 everybody, let us know, and at a break, when the rest of the
3 panel's out, I'm sure the Judge will take that up with you.
4 Okay?

5 The -- I wanted to ask a couple follow-up questions.

6 Mr. Orr, I stepped out for just a second. Did
7 you -- you said you were having potential hearing problems?

8 VENIREPERSON ORR: Yeah.

9 MR. CRANE: Okay. Which lawyer do you think the
10 Judge was referring to? You think they're going to get much
11 louder than I am? They might.

12 VENIREPERSON ORR: Unless you get in my ear and
13 scream.

14 MR. CRANE: Okay. Do you also have back problems?

15 VENIREPERSON ORR: Yes, sir.

16 MR. CRANE: Okay. And I imagine some of the rest of
17 you all are starting to feel like you got back problems,
18 sitting in those chairs.

19 VENIREPERSON ORR: No, I got de -- my spinal cord is
20 deteriorating.

21 MR. CRANE: Okay.

22 VENIREPERSON ORR: I'm under doctor's care.

23 MR. CRANE: It looks like you're kind of
24 uncomfortable right now.

25 VENIREPERSON ORR: I can't sit very long and I can't

1 stand very long.

2 MR. CRANE: And you have hearing problems.

3 VENIREPERSON ORR: Uh-huh.

4 MR. CRANE: Okay. All right. Well, I mean, if you
5 get to a point where you feel like you can't make it, I mean,
6 let me know. Okay?

7 VENIREPERSON ORR: The only thing I got to do right
8 now is go to the bathroom.

9 MR. CRANE: Okay. Well, I can't make that call.
10 That's up to the Judge.

11 THE COURT: Well, let me -- let me just tell you
12 this. Not good to drink a lot of coffee when you come for
13 jury service. But if there is an issue, ladies and
14 gentlemen, where you feel that you can't wait a half an hour,
15 to 10:30 -- I'm not going to let one at a time to go out.
16 We'll break a little bit earlier than we normally would and
17 let you go out a little earlier. Maybe we should just sort
18 of take a roll call and see, is there any -- anyone that
19 feels they need to use the rest room now? And I don't want
20 to embarrass you, but I need to know, is there anyone that
21 feels they can't wait until 10:30?

22 (Show of hands.)

23 VENIREPERSON ORR: I guess I can hold it.

24 THE COURT: You don't know that there are several
25 people behind you --

1 VENIREPERSON ORR: Well, I'm looking that way.

2 THE COURT: Well, I don't usually break so soon, but
3 I hate to put people at a discomfort. I'd just ask you not
4 to load up on a lot of coffee if I take a break.

5 And I'm at a disadvantage now, because one of my
6 contact lenses popped out, and I need to read you an
7 instruction before we take a break. So you'll bear with me.
8 I've probably said this long -- many -- long enough times
9 over 30 years that I probably have it memorized, but I'll try
10 again.

11 And I'm sorry to have to break so early, for our
12 bailiff, but they're used to this kind of stuff --

13 BAILIFF BOEDEKER: Yes, ma'am.

14 THE COURT: -- happening, so.

15 Ladies and gentlemen, it is the Court's duty to
16 instruct you now upon a matter about which you will be
17 reminded at each recess or adjournment of Court. Until the
18 case is given to you to decide, you must not discuss any
19 subject connected with the trial among yourselves, or form or
20 express any opinion about it, and, until you are discharged
21 as jurors, you must not talk with others about the case or
22 permit them to discuss it with you or in your hearing, or
23 read, view, or listen to any newspaper, radio, or television
24 report of the trial.

25 The bailiff and other officers of the Court are not

1 permitted to talk to you about any subject connected with the
2 trial, and you are not permitted to talk to them about it.

3 The attorneys representing the state and the
4 defendant are under a duty not to do anything that may even
5 seem improper. Therefore, at recesses and adjournments they
6 will avoid saying anything to the jury except, perhaps,
7 something like "Good morning" or "Good afternoon." In doing
8 that they do not mean to be unfriendly, but are simply doing
9 their best to avoid even an appearance, that might be
10 misunderstood, that they or you are doing anything improper.

11 The same applies to witnesses and to the defendant.
12 They have been or will be instructed to avoid all contact
13 with the jury, even to talk about matters wholly unrelated to
14 the case.

15 If our bailiff will let us know when the jurors have
16 had an opportunity to use the rest rooms and so forth, we
17 will reconvene then. I can't tell you that it will be 10 or
18 15 minutes. It seems like it's a large group. It may take a
19 while longer.

20 The jury may be in recess at this time.

21 - - -

22 The following proceedings were held out of the presence
23 of the jury:

24 MR. CRANE: Can we approach, Judge?

25 THE COURT: All right. Yes. What is it?

1 MR. CRANE: We --

2 THE COURT: I think all the jurors -- yes.

3 Yes, ma'am.

4 CIRCUIT CLERK HOUSTON: I just have a note about the
5 listening device.

6 THE COURT: Okay. And what is that?

7 CIRCUIT CLERK HOUSTON: The information that I got
8 from the Judge's secretary is that it is not in the case, and
9 we had trouble with the lights interfering, and our IT person
10 was checking on it.

11 THE COURT: Okay.

12 CIRCUIT CLERK HOUSTON: So I assume he has it.

13 THE COURT: Okay.

14 MR. CRANE: Judge, we're okay with letting Mr. Orr
15 go now.

16 THE COURT: Okay. All right. Well, since he seems
17 to be in some degree of pain, we might do that. But thank
18 you for checking.

19 All right.

20 CIRCUIT CLERK HOUSTON: You're welcome.

21 THE COURT: Mr. Crane?

22 MR. CRANE: Yes, ma'am.

23 THE COURT: Was that the only issue that you --

24 MR. CRANE: Unless Mr. Rogers had something --
25 someone else.

1 MR. ROGERS: I had one thing. And I don't know if
2 you noticed this or not. I think Juror Number 5, Mr. Freese,
3 didn't raise his left hand. And didn't look like he heard a
4 word we were saying.

5 THE COURT: All right. Well, I didn't notice that,
6 but I certainly will ask either Mr. Crane or defense counsel,
7 whoever's going to be doing that, to --

8 MR. CRANE: I did not notice that, but I don't
9 dispute the observations.

10 MR. ROGERS: We'll take it up.

11 THE COURT: Okay.

12 MR. ROGERS: Do we have a report back --

13 THE COURT: Let's see. Where is the prosecutor?

14 MR. CRANE: Are you asking to let Mr. 5 -- Number 5
15 go?

16 THE COURT: No. Not --

17 MR. ROGERS: Not yet. We'll find out.

18 THE COURT: Mr. Crane, do we know about Juror Number
19 7, who is supposed to be a witness in a robbery case? Do we
20 know when that case --

21 MR. CRANE: Mr. Richards is checking on that.

22 THE COURT: Okay. And let's see. Was there
23 anything else we need to --

24 MR. CRANE: You know, the thing is: I mean, you can
25 explore that further. I -- I don't know that that would be a

1 hardship on him if he can't make it. It may be a hardship on
2 the state. But --

3 THE COURT: And the state may not want to continue
4 the case.

5 MR. CRANE: I don't -- yeah. That's why -- I think
6 he's going to check.

7 MR. ROGERS: May have a defendant filing for a
8 speedy trial this morning.

9 MR. CRANE: We can debate that issue later anyway.

10 THE COURT: All right. Well, let's --

11 MR. CRANE: I think that's being checked on, though,
12 Judge.

13 THE COURT: All right.

14 MR. CRANE: So we can release Number 8.

15 (Venireperson Freese entered the courtroom.)

16 MR. CRANE: Your Honor.

17 THE COURT: Yes, sir. You need to -- what is it,
18 sir?

19 VENIREPERSON FREESE: I'm just coming back.

20 THE COURT: You need to stay with the other jurors
21 in the jury assembly room. If we could -- if you would go
22 outside this door. And let's see if someone can open it for
23 you. If you'd go right in.

24 VENIREPERSON FREESE: Okay.

25 (Venireperson Freese left the courtroom.)

1 THE COURT: I think that may be the --

2 MR. CRANE: I don't disagree with observations of
3 Juror Number 5. He just walked in. Everybody else is
4 standing out there.

5 THE COURT: He doesn't look like he knows where he
6 is.

7 MR. CRANE: He looks like he may be infirm, with all
8 due respect to him. I'd ask that he be stricken now.

9 MR. ROGERS: I'll concur in that, Your Honor.

10 MR. CRANE: You all didn't see it. I was going
11 through the door, and he just walked in. And everybody else
12 is standing there.

13 MR. ROGERS: Yeah, I thought he was being brought in
14 to see --

15 MR. CRANE: None of them would have thought to come
16 in here.

17 THE COURT: He's Number 5.

18 MR. ROGERS: Right.

19 MR. CRANE: And also Mr. Rogers has indicated he did
20 not raise his right hand and also he did not appear
21 responsive.

22 THE COURT: It was his left hand actually, that I
23 asked them to raise. But whichever one, I know he didn't
24 raise either.

25 MR. CRANE: Oh, on the hearing thing? Okay. I

1 missed that.

2 THE COURT: I sort of do it the other way, just to
3 sort of -- all right. So 5 and 8 you want to have excused;
4 is that correct?

5 MR. ROGERS: That's correct, Your Honor.

6 THE COURT: And that's correct, Mr. Crane?

7 MR. CRANE: (Nodding head up and down.)

8 THE COURT: All right.

9 (Recess taken.)

10 - - -

11 The following proceedings were held out of the presence
12 of the jury:

13 THE COURT: State ready to proceed?

14 MR. CRANE: Ready.

15 THE COURT: Defense ready to proceed?

16 MR. ROGERS: As soon as Mr. -- yeah. He's coming
17 through the door. Yes.

18 THE COURT: All right. You can bring the jury back
19 in.

20 Do we know anything about --

21 MR. RICHARDS: Your Honor, it's not next week. I
22 don't -- you know, he is a victim in a case, a burglary, but
23 it's not set next week. So I think he's just confused.

24 THE COURT: Okay. All right. You're sure it's not
25 a preliminary hearing?

1 Good enough.

2 Mr. Crane, you may inquire.

3 Yes, sir.

4 VENIREPERSON HEADRICK: I really hate to slow this
5 thing down, but I just realized, I have a court date Monday
6 night.

7 THE COURT: Okay. Would you stand up, sir, and tell
8 us your number, or your name, whichever you feel comfort --

9 VENIREPERSON HEADRICK: John Headrick.

10 THE COURT: All right. You're Number 34.

11 VENIREPERSON HEADRICK: Yes, ma'am.

12 THE COURT: And is your court date in a traffic
13 court?

14 VENIREPERSON HEADRICK: Yes, ma'am.

15 THE COURT: And that's here in Troy?

16 VENIREPERSON HEADRICK: No. That's in Ellisville,
17 Missouri.

18 THE COURT: Is it like a first appearance or is it
19 for a trial?

20 VENIREPERSON HEADRICK: No. It's a first
21 appearance. I had got a ticket for not having --

22 THE COURT: Okay. You don't have to tell me why you
23 have to --

24 VENIREPERSON HEADRICK: Well, I have to be there in
25 order to prove my innocence, because, of course, I'm

1 innocent.

2 THE COURT: I assure you everyone is presumed
3 innocent until they're proven guilty. That's the way our
4 system works, sir. Thank you very much.

5 Mr. Crane, you may now inquire.

6 MR. CRANE: I -- I got in your way again, Judge. I
7 apologize.

8 - - -

9 RESUMED VOIR DIRE EXAMINATION

10 BY MR. CRANE:

11 Okay. Is everybody squared away?

12 I wanted to just follow up real quick on a couple of
13 the hardship questions.

14 Let's see. Miss Brininger? Number 11 down here?

15 VENIREPERSON BRININGER: Yes.

16 MR. CRANE: You sounded like you're really in a jam
17 with the kids being home alone; correct?

18 VENIREPERSON BRININGER: Right.

19 MR. CRANE: And that situation's not something you
20 can address. You don't really have any other options?

21 VENIREPERSON BRININGER: Correct.

22 MR. CRANE: Okay.

23 Mr. Declue?

24 VENIREPERSON DECLUE: Yes, sir.

25 MR. CRANE: You've indicated that you've got kind of

1 the same thing. Is -- your wife's leaving town, and then you
2 got to be there to take care of the child who has some
3 issues?

4 VENIREPERSON DECLUE: Give him med -- make sure he
5 gets his medications also.

6 MR. CRANE: Okay. So if you were gone, he would be
7 in a real jam there, without any options.

8 VENIREPERSON DECLUE: Yes.

9 MR. CRANE: And let's see. Miss Caviness? Number
10 16; is that right?

11 VENIREPERSON CAVINESS: Yes.

12 MR. CRANE: You've got -- you're gone until Monday,
13 after today; is that right?

14 VENIREPERSON CAVINESS: That's correct.

15 MR. CRANE: And that was something you were going
16 with your husband?

17 VENIREPERSON CAVINESS: Yes.

18 MR. CRANE: On a -- is it business?

19 VENIREPERSON CAVINESS: Yes.

20 MR. CRANE: Okay. And you would not be back until
21 Monday. That's a done deal; correct?

22 VENIREPERSON CAVINESS: Correct.

23 MR. CRANE: Okay. Let's see here. Mr. Harris. You
24 indicated you got -- I want to make sure I had this straight.
25 You got court the week after the trial?

1 VENIREPERSON HARRIS: It's the 24th of October.

2 MR. CRANE: Okay. You indicated you got problems

3 with work.

4 VENIREPERSON HARRIS: I'm self-employed.

5 MR. CRANE: Yeah. Being off. No work, no pay type

6 thing. But your trial is the next -- the week after next.

7 VENIREPERSON HARRIS: Yes.

8 MR. CRANE: Okay. Or case, was the week after next.

9 Okay.

10 Mr. Gibbs? That nursing thing's a big, big deal;

11 right? That exam you got to take?

12 VENIREPERSON GIBBS: Yes.

13 MR. CRANE: That's next week, Thursday.

14 VENIREPERSON GIBBS: Yeah.

15 MR. CRANE: Okay. Doesn't look like we'd -- you'd

16 be able to do that if you were on this jury, and that would

17 present a major problem to your furthering your career; is

18 that accurate?

19 VENIREPERSON GIBBS: Yeah.

20 MR. CRANE: Okay. Can't get out of it. It's

21 Thursday.

22 VENIREPERSON GIBBS: Yeah.

23 MR. CRANE: There's no other options.

24 VENIREPERSON GIBBS: Not that I know of.

25 MR. CRANE: Okay. Thank you, Mr. Gibbs.

1 Let me see here. Who else? I know I'm skipping
2 some people. Let's see.

3 Mr. Black?

4 VENIREPERSON BLACK: Yes.

5 MR. CRANE: Number 31 is your number; is that right?

6 VENIREPERSON BLACK: Yes.

7 MR. CRANE: Sounded like you had some significant
8 child care problems. Got little kids.

9 VENIREPERSON BLACK: Yeah.

10 MR. CRANE: And you're the only one during periods
11 of the day that takes care of them; is that right?

12 VENIREPERSON BLACK: Yes. My wife works --

13 MR. CRANE: So as much as you'd like to be gone at
14 times, you're unable to; is that correct?

15 VENIREPERSON BLACK: Correct.

16 MR. CRANE: Okay. No other options to take care of
17 those little children?

18 VENIREPERSON BLACK: No.

19 MR. CRANE: Okay.

20 Let's see here. Miss McCullough, I wanted to get
21 straight what you said. Yours wasn't a kid problem, was it?

22 VENIREPERSON McCULLOUGH: No.

23 MR. CRANE: You just got work?

24 VENIREPERSON McCULLOUGH: It's a money problem.

25 MR. CRANE: Pardon me?

1 VENIREPERSON McCULLOUGH: It's just a money problem.

2 MR. CRANE: The no work, no pay situation?

3 VENIREPERSON McCULLOUGH: Yeah.

4 MR. CRANE: Okay.

5 Let's see. And Miss Bennett. You indicated you got
6 kid problems. And did you say you would -- you didn't think
7 you could get any help?

8 VENIREPERSON BENNETT: No, because there's nobody --
9 everybody works. And the ones that I would leave her with,
10 they work too. In the neighborhood. I -- you know.

11 MR. CRANE: Okay. I appreciate that, ma'am.

12 And Mr., is it Straughter? Number 50. You sound
13 like you're doing it all. You got the kids, cleaning,
14 cooking. Whole nine yards.

15 VENIREPERSON STRAUGHTER: Off to school at 6 in the
16 morning, pick them up at the bus in the evening.

17 MR. CRANE: And I'm not trying to get in any depth
18 on this, but you indicated the kids kind of had some issues;
19 it's --

20 VENIREPERSON STRAUGHTER: Right.

21 MR. CRANE: -- difficult to be away from them for
22 particular reasons; is that right?

23 VENIREPERSON STRAUGHTER: Yeah. They would run my
24 wife ragged if she kept them home by herself.

25 MR. CRANE: So that would work an extreme hardship

1 on you and your family to be gone.

2 VENIREPERSON STRAUGHTER: Yes, it would.

3 MR. CRANE: Correct?

4 VENIREPERSON STRAUGHTER: That's correct.

5 MR. CRANE: Okay. Thank you, sir.

6 All right. Let me go over some basic concepts in
7 the law with you, ladies and gentlemen. First of all, I want
8 to talk to you about the presumption of innocence.

9 Under the United States and the Missouri
10 Constitutions, a criminal defendant is presumed to be
11 innocent until 12 jurors, 12 of you, are convinced beyond a
12 reasonable doubt that he's guilty.

13 Is there anybody on the panel today who would not be
14 able to give this defendant, Mr. Ferguson, the benefit of his
15 presumption of innocence, the same as any other criminal
16 defendant is entitled? Okay. I take it by your silence --
17 remember how we were doing this? If you don't raise your
18 hand and let me know, I'm assuming that you can give the
19 defendant in this case his presumption of innocence. As you
20 sit there right now.

21 Yes, ma'am. Miss Schupmann?

22 VENIREPERSON SCHUPMANN: Yes.

23 MR. CRANE: Yes, ma'am.

24 VENIREPERSON SCHUPMANN: I've always had a big
25 problem of judging people.

1 MR. CRANE: Okay.

2 VENIREPERSON SCHUPMANN: When my kids were growing
3 up, my husband would do the judging. You know, decide who
4 was lying to him and who wasn't.

5 MR. CRANE: Well, let me -- I was going to ask a
6 question along those lines later. Miss Schupmann, you've
7 indicated that you have -- anticipate and feel like, even
8 now, uncomfortable with the idea that you'd have to judge
9 another human being.

10 VENIREPERSON SCHUPMANN: Exactly.

11 MR. CRANE: You don't want to be in that position.

12 VENIREPERSON SCHUPMANN: No.

13 MR. CRANE: And do you think that feeling that you
14 have would cause you to be fair -- not able to be fair and
15 impartial if you were selected as a juror in this case?

16 VENIREPERSON SCHUPMANN: It could.

17 MR. CRANE: Okay.

18 Is there anybody else who feels like that they just
19 could not sit in judgment of a fellow human being?

20 Let's see. Don't let me -- Number 3, Mr. -- how do
21 you pronounce that?

22 VENIREPERSON PHILIPAK: Philipak.

23 MR. CRANE: Yes, sir.

24 VENIREPERSON PHILIPAK: That's my name.

25 MR. CRANE: Right. Go ahead.

1 VENIREPERSON PHILIPAK: No, I just don't feel like
2 it's just -- making a call. I don't know. I just don't.

3 MR. CRANE: I mean, you know, right now nobody knows
4 anything about the facts.

5 VENIREPERSON PHILIPAK: I understand this. But I
6 mean, even the facts and stuff and everything put together, I
7 always got a -- I don't know. I guess I don't -- negative
8 about it. I just -- this is my first time, so I really don't
9 know.

10 MR. CRANE: Yeah. You just feel negative kind of
11 about the process?

12 VENIREPERSON PHILIPAK: Well, I don't know about the
13 process itself. It's just --

14 MR. CRANE: About you --

15 VENIREPERSON PHILIPAK: -- making sure if I know the
16 facts or -- you know, I understand facts, but -- you know, if
17 they're -- I guess if they're mostly explained to me. I
18 don't know.

19 MR. CRANE: Well, and you know, I can't get into the
20 facts a whole heck of a lot right now.

21 VENIREPERSON PHILIPAK: Oh, I understand that.
22 That's what I am saying. I don't know if I can deal with
23 that.

24 MR. CRANE: So as you sit there right now, you're
25 thinking you would not be able to sit in judgment of the

1 defendant in this case?

2 VENIREPERSON PHILIPAK: No, sir.

3 MR. CRANE: You don't think you could do that?

4 VENIREPERSON PHILIPAK: No, sir. Innocent or
5 guilty.

6 MR. CRANE: Okay. Thank you, sir. Mr. Philipak?

7 VENIREPERSON PHILIPAK: Uh-huh. That's correct.

8 MR. CRANE: And Miss Schupmann. Appreciate that.

9 Anybody else -- you know, there is no right or wrong
10 answer here. Okay? We're just trying to be fair and
11 impartial.

12 Yes, ma'am.

13 VENIREPERSON BRININGER: (Inaudible.)

14 MR. CRANE: Don't want to be a part of it?

15 THE COURT REPORTER: I'm sorry. I didn't hear what
16 she said.

17 MR. CRANE: Brininger.

18 What did you say?

19 THE COURT: And also, we can't both talk at the same
20 time, Mr. Crane, and whoever else might be talking. I know
21 that in normal conversation you do that, and I do that, but
22 our court reporter can only write down one person at a time.
23 So if the prosecutor is asking a question, or defense
24 counsel, if you'll wait until the question is asked before
25 answering. And with counsel, if you'll wait until the answer

1 is given before moving on to the next, please.

2 Now if you would, Number 11, if you would repeat
3 your answer, because I don't think I got it all.

4 VENIREPERSON BRININGER: I just don't think I could
5 judge somebody.

6 THE COURT: I'm sorry?

7 VENIREPERSON BRININGER: I don't think I could do
8 it.

9 MR. CRANE: Can I proceed, Judge?

10 THE COURT: You may.

11 MR. CRANE: So you're in the same category as
12 Miss Schupmann and Mr. Philipak?

13 VENIREPERSON BRININGER: Right.

14 MR. CRANE: Okay.

15 Anybody else? I take it by -- yes, ma'am. Back
16 there in the back. Are you Miss Fields?

17 VENIREPERSON FIELDS: Yes.

18 MR. CRANE: Yes, ma'am.

19 THE COURT: You'll need to stand up, Miss Fields,
20 please.

21 VENIREPERSON FIELDS: I'm sorry. I just feel
22 uneasy. Feel like I'm judging. It makes me feel uneasy
23 about it.

24 MR. CRANE: Well, you will be. Uneasy, uneasy --

25 VENIREPERSON FIELDS: I know.

1 MR. CRANE: -- is one thing. Do you feel like, as
2 you sit there right now, knowing no more than you do, that
3 you could not fairly and impartially listen to both sides in
4 this case, because of your uneasiness about sitting in
5 judgment of a fellow human being?

6 VENIREPERSON FIELDS: I'm just not sure. I just --
7 I've never done it before, like this gentleman.

8 MR. CRANE: Right.

9 VENIREPERSON FIELDS: And I just -- it's something
10 different. I've just never done it before.

11 MR. CRANE: Okay. Well, I mean, only you know in
12 your heart what the answer is. And I know I'm asking you to
13 look forward into the future, but do you think could you sit
14 in judgment of a fellow person?

15 VENIREPERSON FIELDS: It's hard.

16 MR. CRANE: Nobody's saying it's easy. Nobody's
17 saying it's easy. Miss Schupmann, Mr. Philipak, you know,
18 I'm not saying it's supposed to be easy.

19 VENIREPERSON PHILIPAK: I understand.

20 MR. CRANE: Okay?

21 VENIREPERSON FIELDS: I could do it; I would just
22 feel uneasy (inaudible).

23 MR. CRANE: Understood.

24 THE COURT REPORTER: I'm sorry. I didn't hear what
25 she said.

1 THE COURT: Would you repeat your answer, please,
2 Miss Fields?

3 VENIREPERSON FIELDS: I'm sorry. I said I could do
4 it; I would just feel very uneasy about it.

5 THE COURT: Thank you.

6 MR. CRANE: Thank you, ma'am.

7 I don't see any other hands on that issue.

8 Some other basic concepts.

9 It is the state's burden to prove beyond a
10 reasonable doubt the elements of the offenses for which the
11 defendant is charged. The defense has no burden of proving
12 anything. Okay? It's the state's burden to prove the
13 elements of the offenses. And remember what the Judge said?
14 She said the defendant in this case is charged with murder in
15 the first degree. And it has elements of that offense. And
16 robbery in the first degree. And it has certain elements
17 that the state has to prove beyond a reasonable doubt. Okay?

18 At this point, first of all, everybody understand
19 that just because the defendant is charged with a crime, just
20 because a filing has been made of a charge, does not mean
21 that he's guilty. Right? Just the filing of a charge
22 doesn't make him guilty. Okay? A jury, remember we talked
23 about this earlier, decides that issue. All right? That's
24 kind of back to the presumption of innocence thing.

25 So, at this point in the trial, if we took a vote

1 right now, would everybody vote not guilty? All that's been
2 done is he's been charged; right? There's -- we haven't put
3 on any evidence to see whether or not a jury decides if we've
4 met our burden. Right? Everybody agree with that? Not
5 guilty at this point, because he's just been charged.
6 Correct? Until such time as you hear evidence, and then
7 determine if it's been proven beyond a reasonable doubt. No
8 verdict. Correct?

9 Has everybody got an open mind at this point then?
10 I take it by your silence that you agree with that concept.

11 Reasonable doubt. It's the state's burden to prove
12 the elements of this -- these offenses beyond a reasonable
13 doubt. And the Judge has or will read you the definition --
14 there's a legal definition of reasonable doubt. That's the
15 standard. Beyond a reasonable doubt.

16 Let me ask this. Could each of you, as far as you
17 know, sitting there right now, use your reason and common
18 sense to determine whether or not a reasonable doubt exists,
19 after hearing all the evidence and the law as it's given to
20 you by the Court in this case? Anybody think they could --
21 everybody think they could use their reason and common sense
22 to decide whether or not the state's met its burden beyond a
23 reasonable doubt? Okay. I take it by your silence that you
24 could follow the law on that.

25 After all the evidence is in, the jury will be

1 instructed by the Court as to what the elements I keep
2 talking about are for these particular offenses. And those
3 elements are what you apply this reasonable doubt standard
4 to. Okay?

5 Is there anybody who feels like they would hold the
6 state, the prosecution, to a higher standard than beyond a
7 reasonable doubt? Proof beyond all doubt? Or you hear on TV
8 sometimes, proof beyond a shadow of a doubt. Those aren't
9 the legal standards. It's proof beyond a reasonable doubt.

10 Is there anybody here who feels like the state
11 should be held to a higher burden than the one I'm telling
12 you that is the law?

13 Yes, sir. Mr. -- your thing flipped up there.
14 Number 14. You're Mr. Norton?

15 VENIREPERSON NORTON: Yes, sir.

16 MR. CRANE: Yes, sir.

17 VENIREPERSON NORTON: I just -- I have to be quite
18 honest. And I -- I own my own business. I'm the only one
19 that takes care of that business. I do have a partner, but
20 I'm still -- I take care of the finance. But I do a lot of
21 -- I have a farm. I do have a sick father. I've got a dog
22 that got run over. But I'm not trying to get out of this in
23 any way. I'll do my duty.

24 In applying for this jury, I had -- I have a very
25 rigorous schedule. I had called down here for jury duty and

1 missed it. In my business. And when I did, I called, said,
2 "Hey, I'm sorry. I'm going to get there again." Well, I was
3 picked up the next day and brought down here and was treated
4 by some of the folks that I'm looking around here, as far as
5 security goes, like I was a criminal. I was brought in here,
6 in front of the judge. I talked to some of the folks here,
7 and they were extremely rude to me. And so I went -- they
8 picked me up at my office. They told me that they couldn't
9 get a hold of me before, but yet they knew my place of
10 business and where to pick me up and bring me down here. I
11 sat in front of the judge. I tried to explain, this could
12 happen to anybody. I have to pay a bunch of bills and do
13 these things.

14 MR. CRANE: You mean forgetting the other time?

15 VENIREPERSON NORTON: No. I'm saying that this was
16 in a period of two days. I came down here. But what I'm
17 saying is: That at this point, even sitting here right now,
18 and again, I am probably as open-minded as anybody, but I do
19 hold some prejudice, because also I was brought down here,
20 treated like a criminal, they knew how to get a hold of me,
21 did not call me or anything like that --

22 MR. CRANE: Well --

23 VENIREPERSON NORTON: -- said they couldn't read my
24 number, yet they picked me up. But what I am getting at is:
25 After that, they said, "Well, you got to get a ride home."

1 And then --

2 MR. CRANE: Well, let me run this -- can I run this
3 by you real quick?

4 VENIREPERSON NORTON: Sure.

5 MR. CRANE: And I didn't mean to cut you off.

6 VENIREPERSON NORTON: I just -- I'm sorry. I'm just
7 saying, you asked me that question, and I --

8 MR. CRANE: Hey, man, I'm all for you. Let me run
9 this by you. You know, I had another question. You can just
10 go ahead and sit down. Unless you feel better standing up.

11 VENIREPERSON NORTON: No. That's fine.

12 MR. CRANE: You know, I had another question I was
13 going to ask. I kind of want to stay on that reasonable
14 doubt deal while I'm on it, but I had another question,
15 about: Has anybody ever had a particularly unpleasant
16 experience with the judicial system? I think you might fall
17 in that category.

18 VENIREPERSON NORTON: Well, it's a little fresh.
19 That's all I'm saying.

20 MR. CRANE: No, I'm cool.

21 VENIREPERSON NORTON: They also made me walk back to
22 my office. They gave me a ride up here --

23 MR. CRANE: Bad experience.

24 VENIREPERSON NORTON: Very bad.

25 MR. CRANE: Okay.

1 VENIREPERSON NORTON: So I'm a little --

2 MR. CRANE: And I'm glad you brought that up. And I
3 appreciate that. Now, one thing: I -- I haven't been here
4 in Lincoln County too long, and I haven't been hassled by any
5 of them. But now remember, if you get on the jury, we're
6 going back to the people in Boone County, and everybody is so
7 nice back there. I'm kidding. You understand that that's an
8 experience you've had, and we're going to head back to Boone
9 County if we get a jury selected.

10 VENIREPERSON NORTON: I understand that.

11 MR. CRANE: I mean, Mr. Richards -- well, see, he's
12 gone already. He was going to help me out a little bit on
13 jury selection, but he's not going to be there for the trial.

14 VENIREPERSON NORTON: I'm just being honest with
15 you. I'm not trying to get out of anything --

16 MR. CRANE: I understand.

17 VENIREPERSON NORTON: -- but for that gentleman's
18 sake and the brevity of this situation, I thought would I
19 bring that forward.

20 MR. CRANE: Understood. And I appreciate that. I
21 appreciate that. Very much. And I understand you've -- it's
22 been an unpleasant experience to you. And you don't feel
23 like that, given that experience, and all the other things
24 that are going on in your life, your job, a lot of -- a lot
25 of stressors --

1 VENIREPERSON NORTON: I mean, that has nothing to do
2 with it. I'm just saying that -- that doesn't have anything
3 to do with that.

4 MR. CRANE: Right. You don't think you could be
5 fair and impartial if you were selected as a juror in this
6 case; is that correct?

7 VENIREPERSON NORTON: If you would ask: Does anyone
8 hold any prejudices in this case, there's a little tender
9 wound, and I just thought I would say that.

10 MR. CRANE: Right. No. And my -- but I'm following
11 up with you. Do you think that that experience would make it
12 difficult for you to be fair and impartial in this case?

13 VENIREPERSON NORTON: Not outside of this area.

14 MR. CRANE: Okay.

15 VENIREPERSON NORTON: So if we're in Boone County,
16 no.

17 MR. CRANE: So if you -- well, now, they could be a
18 bunch of mean -- you never know. But you're saying you think
19 right now it's contained to this courthouse.

20 VENIREPERSON NORTON: Yes.

21 MR. CRANE: Okay. All right. Thank you, sir.

22 Talking about reasonable doubt. And I wanted to ask
23 you -- remember, I asked you the questions about the burden
24 of proof and the standard being beyond a reasonable doubt,
25 not proof beyond all doubt, not proof beyond a shadow of a

1 doubt. Remember all that? Okay? Everybody agreed with me
2 that they understand that that is not the burden, shadow of a
3 doubt or all doubt. It is beyond a reasonable doubt. Right?
4 Is everybody okay with that concept? You'd be able to follow
5 the law on that?

6 Let me ask it another way. In every case there may
7 be some unanswered questions in a juror's mind. Okay? About
8 something. What the weather was. What the time of day was
9 when the crime occurred. Is everybody okay with the idea
10 that what the state is -- has to prove beyond a reasonable
11 doubt is the elements of the charge. Okay? You follow me?
12 So if the elements don't include what the weather was,
13 because they don't, that may be an unanswered question. Was
14 it 30 degrees? Was it 40 degrees? And I'm not saying it's
15 going to be an issue necessarily in this case. You see what
16 I mean? There will be some unanswered questions in any case.
17 The state doesn't have to answer every single question that
18 comes into your mind --

19 MR. ROGERS: Your Honor, I'm going to object.

20 MR. CRANE: -- does everybody understand that?

21 MR. ROGERS: Excuse me. I'm objecting, Your Honor,
22 to any further definition of proof beyond a reasonable doubt,
23 beyond what the Court's already given in the instructions.

24 THE COURT: Mr. Crane.

25 MR. CRANE: I wasn't doing any defining. I was

1 asking the jury if they could follow the law.

2 THE COURT: The objection's overruled.

3 MR. CRANE: To be fair to the defense, is there
4 anybody who would hold the state to a lesser burden than
5 what's required by law? Beyond a reasonable doubt. See?
6 Follow me? More likely than not he did it. Okay. I take it
7 by your silence that you're not going to hold the state to a
8 higher burden or a lesser burden than what's required by law.
9 Everybody okay with that? I take it by your silence that you
10 are.

11 Has anybody on the panel, and again, I'm not trying
12 to embarrass you or anything, has anybody on the panel had a
13 particularly unpleasant experience with a police officer?
14 Sheriff's deputy, highway patrol. And I'm not saying you
15 ran -- you know, you rolled through a stop sign and, you
16 know, you got a ticket. I mean -- unless it was particularly
17 unpleasant, you know. A police officer was -- or a sheriff's
18 deputy, somebody like that, was -- was -- it was an
19 unpleasant experience such that it really stands out in your
20 mind. You were at Woodstock back in the '60s and was minding
21 your own business and the police were -- yes, ma'am.
22 Miss Schupmann?

23 VENIREPERSON SCHUPMANN: Yes. We -- we have
24 exclusive hunting and fishing rights to a piece of property
25 here in Lincoln County. And my son, whose name is also on

1 the deed, was down there hunting and got arrested and beat up
2 by a city -- or a county cop.

3 MR. CRANE: Okay.

4 VENIREPERSON SCHUPMANN: For hunting.

5 MR. CRANE: All right. And that -- I'm sorry about
6 this, John, but I got -- that happened in Lincoln County.

7 VENIREPERSON SCHUPMANN: Yes.

8 MR. CRANE: Okay.

9 VENIREPERSON SCHUPMANN: Yes.

10 MR. CRANE: All right. Not in Boone County.

11 VENIREPERSON SCHUPMANN: No.

12 MR. CRANE: Okay. Would that experience, though,
13 cause you to have problems fairly and impartially gauging the
14 credibility of a police officer if they may testify in this
15 case?

16 VENIREPERSON SCHUPMANN: Yes.

17 MR. CRANE: Okay. Thank you, Miss Schupmann.
18 Appreciate your candor.

19 Anybody else have a particularly unpleasant
20 experience with a law enforcement officer, such that you
21 couldn't be fair and impartial?

22 Yes, sir. Mr. Harris.

23 VENIREPERSON HARRIS: It's been a while back, but
24 one night we were living here in town, and we got a knock on
25 the door, and about five police officers come rushing through

1 the door, pinned us -- me and my fiancée against the wall,
2 with guns drawn. And we didn't know what was going on. And
3 come to find out, they had the right address, but the wrong
4 town. And they left the house and did not apologize. Didn't
5 say nothing to us.

6 MR. CRANE: Okay. Would -- that doesn't sound good.

7 VENIREPERSON HARRIS: It wasn't good.

8 MR. CRANE: Would that experience --

9 VENIREPERSON HARRIS: I don't know --

10 MR. CRANE: -- give you difficulty with being fair
11 and impartial, should police officers testify in this case?
12 And, you know, you've been real candid earlier, that you've
13 been -- you've got some issues going, what is it, next --
14 week after next.

15 VENIREPERSON HARRIS: Yeah.

16 MR. CRANE: Would those experiences make it
17 difficult for you to be fair and impartial as a juror in this
18 case?

19 VENIREPERSON HARRIS: Well, you know, I don't know,
20 but I'd hate to have that possibility come up.

21 MR. CRANE: You think --

22 VENIREPERSON HARRIS: It's been a long time ago.

23 MR. CRANE: Right. But it still stands out in your
24 mind.

25 VENIREPERSON HARRIS: It's still there, yes.

1 MR. CRANE: And there is a possibility that you
2 would not be fair and impartial.

3 VENIREPERSON HARRIS: Could be. I'll be honest with
4 you. Could be.

5 MR. CRANE: Well, that's all I'm asking for. Thank
6 you, Mr. Harris. Appreciate that.

7 Anybody else?

8 Yes, ma'am. Is it McCullough?

9 VENIREPERSON McCULLOUGH: Yes.

10 MR. CRANE: Yes, ma'am. Number 33.

11 VENIREPERSON McCULLOUGH: Yeah. My house got raided
12 like, I don't know, about a year ago. Maybe a little bit
13 more. They didn't find anything, but the cops like
14 repeatedly lied, trying to get me to help them.

15 MR. CRANE: You mean they were -- they didn't -- was
16 it a search warrant at your residence?

17 VENIREPERSON McCULLOUGH: No.

18 MR. CRANE: "Raided."

19 VENIREPERSON McCULLOUGH: Okay. They came to the
20 door. And my boyfriend's mother let them in. And then they
21 proceeded to go through the house and tear stuff out of
22 drawers and all kinds of stuff.

23 MR. CRANE: And they were telling you stuff that
24 wasn't right?

25 VENIREPERSON McCULLOUGH: Right.

1 MR. CRANE: And where did that occur?

2 VENIREPERSON McCULLOUGH: At my house.

3 MR. CRANE: Which is where?

4 VENIREPERSON McCULLOUGH: Oh. In Tropicana Village.

5 MR. CRANE: Which is in what county?

6 VENIREPERSON McCULLOUGH: Lincoln County. Sorry.

7 MR. CRANE: Okay. All right. Would that -- thank

8 you, ma'am. Would that experience be something that stands

9 out in your mind and has tainted your impression or your

10 perception of police officers such that you think you could

11 not be fair and impartial as you gauge the testimony of a law

12 enforcement officer?

13 VENIREPERSON McCULLOUGH: It would be a possibility,

14 yes.

15 MR. CRANE: Okay. And you know, you got -- you're

16 the one that knows.

17 VENIREPERSON McCULLOUGH: Right.

18 MR. CRANE: You know. I mean, do you think -- not

19 knowing any more than you do, not knowing who's going to

20 testify in this case, do you think that that would present a

21 problem, that experience, kind of like Mr. Harris,

22 Miss Schupmann indicated, "Golly, I didn't like that, and I'm

23 going to remember that" kind of flashes through your mind

24 whenever you see the police.

25 VENIREPERSON McCULLOUGH: I don't know. I don't

1 have a very strong trust for cops, so.

2 MR. CRANE: And so you think it would make it
3 difficult for you to be fair and impartial if you sat as a
4 juror in this case.

5 VENIREPERSON McCULLOUGH: Probably.

6 MR. CRANE: Thank you, ma'am. Appreciate it.
7 Anybody else?

8 VENIREPERSON HARRIS: Excuse me.

9 MR. CRANE: Yes, sir.

10 VENIREPERSON HARRIS: I just wanted to add that I
11 don't have anything against police officers. I don't
12 disrespect them at all. I have been in trouble a time or
13 two, but that hasn't caused me to be hateful towards police
14 officers or anything.

15 MR. CRANE: Okay. Well, I didn't mean to suggest
16 that.

17 VENIREPERSON HARRIS: And if someone was to testify,
18 I couldn't tell if he was lying or not. He's under oath. I
19 guess he would have to -- he would tell the truth. I would
20 have to assume he's telling the truth. That's all I have to
21 say about that.

22 MR. CRANE: Okay. And I'm going to talk about that
23 here in a minute too. But I appreciate that, Mr. Harris.

24 Other than Mr., oh, Norton, who's already indicated
25 he's had some difficulties with the judicial system, is there

1 anybody -- did I cut anybody off on that police question?

2 Did I get everybody? Okay.

3 Is there anybody who's had a particularly unpleasant
4 experience with the judicial system generally? Like the --
5 being called in for jury duty type situation, or, you know,
6 you had a civil suit, and I don't need to know the details,
7 or a divorce, and you felt like you got wooled around, or you
8 were called into jury duty here a couple years ago and the
9 prosecutor droned on and on while you sat in agonizing seats.
10 Anything that really stands out in your mind about an
11 unpleasant experience with the judicial system that makes you
12 go, "I don't want to be part of that." Anybody?

13 We've noted Mr. Norton. Anybody else? Okay. I
14 take it by your silence nobody's had that experience.

15 Now, can I -- this is just a show of hands. Could I
16 see a show of hands of those of you who are, now listen to
17 me, relatives or close personal friends of somebody in law
18 enforcement. Police officers, et cetera.

19 (Show of hands.)

20 MR. CRANE: Okay. That's several hands up here.
21 All right.

22 Now collectively, let me ask you all, is there any
23 one of you that has something about that relationship with
24 that close personal friend or relative that's in law
25 enforcement that would prevent you from being fair and

1 impartial to the defense in this case? I mean, could you all
2 set that relationship aside and be fair to the defense in
3 this case? Can everybody do that? Raise their hand now.
4 You with me? Okay.

5 So, if you found the defendant not guilty, you could
6 face that close personal friend or relative, in the event
7 that's what happened. Okay. I take it by your silence that
8 that would not present a problem for any of you that raised
9 your hand.

10 Is there anybody -- well, strike that. Let me make
11 sure. And you kind of talked about this a little bit,
12 Mr. Harris.

13 Nobody here would give a police officer a head start
14 in credibility just because they're a police officer, would
15 they? I mean, you'd want to gauge their testimony,
16 understanding they may be expert in various things in their
17 job, but wouldn't you all want to gauge the testimony of a
18 police officer the same as you would any other witness?

19 I don't know what to think about that reaction here.

20 Okay. First of all, Mr. Harris, you kind of -- you
21 said, "Now wait a minute, yeah, I've had some things go down.
22 And I didn't like that about the police. But, you know,
23 gosh, I wouldn't necessarily write off their testimony
24 because of it." Although you did think that you'd have
25 trouble being fair and impartial. That experience you talked

1 about did stand out in your mind; right?

2 VENIREPERSON HARRIS: Yes.

3 MR. CRANE: Okay. Now I'm going kind of with the
4 second thing you said. Am I making myself clear? The police
5 officer, he or she may have expertise in law enforcement, but
6 would you be able to gauge their testimony the same as you
7 would any other witness in this case? See what I'm saying?
8 I think everybody understands where I'm coming from. I take
9 it by your silence that you wouldn't give a police officer a
10 head start just 'cause they're a cop. You'd listen to them,
11 hear their testimony, gauge it fairly and impartially. I
12 take it -- is that okay with you, Mr. Harris, that concept?
13 I take it by your silence everybody's okay with that.

14 Just a show of hands again, has anybody, yourself,
15 close personal friends, or relatives been a victim of a
16 significant criminal offense? Yourself, close personal
17 friends, relatives. And I'm just looking for a show of hands
18 here.

19 (Show of hands.)

20 MR. CRANE: Okay. Looks like about three of you.
21 Okay. Yourself, close personal friend, relative.

22 Would -- let's see. Mr. -- is that Mr. Betts?

23 VENIREPERSON OHMERT: Ohmert.

24 MR. CRANE: Ohmert.

25 And you've been quiet back there, Mr., is it Runge?

1 VENIREPERSON RUNGE: Runge.

2 MR. CRANE: Runge. Number 44. And Miss Schupmann.
3 Whatever that incident was, would you be able to set that
4 incident aside and be fair to both the state and the defense
5 in this case?

6 Mr. Ohmert?

7 VENIREPERSON OHMERT: Yes.

8 MR. CRANE: Mr. Runge?

9 VENIREPERSON RUNGE: Yes.

10 MR. CRANE: Miss Schupmann.

11 VENIREPERSON SCHUPMANN: Yes.

12 MR. CRANE: You'd all be able to do that. Okay.

13 The -- how the police may have worked that -- and
14 you know, when I say "police," let's include that being
15 sheriff's department, highway patrol, FBI, whatever -- what
16 have you. Were you satisfied with the way they handled the
17 matter? If they were involved. You don't have any, "Golly,
18 they didn't do X, Y, and Z"? You're okay -- you don't have
19 any heartburn over that.

20 VENIREPERSON OHMERT: No.

21 VENIREPERSON RUNGE: No.

22 MR. CRANE: Okay.

23 I know you got the thing about the hunter.

24 VENIREPERSON SCHUPMANN: To a certain extent. Well,
25 there's another case too.

1 MR. CRANE: Okay. Okay. You two guys, though? You
2 told me about the hunting thing; right?

3 VENIREPERSON SCHUPMANN: Right.

4 MR. CRANE: Okay.

5 So I take it that you all could, other than
6 Miss Schupmann, is -- a little bit qualified there, could set
7 that experience aside and give the defendant a fair trial.
8 Am I correct on that?

9 VENIREPERSON OHMERT: Yes.

10 VENIREPERSON RUNGE: Yes.

11 VENIREPERSON SCHUPMANN: Yes.

12 MR. CRANE: Let me tell you a little bit about the
13 victim in this case. His name was Kent Heitholt.
14 H-e-i-t-h-o-l-t. Mr. Heitholt was a sports editor at the
15 Columbia Daily Tribune in the City of Columbia. And that's
16 our big paper in the City of Columbia. He was the sports
17 editor there. He was 48 years old on November 1st, 2001,
18 when he was murdered. He lived in Columbia with his wife
19 Deborah. And they have two kids, Kali Heitholt and Vince
20 Heitholt.

21 Now just telling you that much, does anybody go,
22 "Golly, I think I know that guy"? I take it by your silence
23 that doesn't ring a bell with anybody. Okay. And nor do
24 you -- does the family members that I've mentioned ring a
25 bell. Am I correct? Nobody says so? I take it by your

1 silence nobody knows.

2 Does anybody ever recall reading anything
3 Mr. Heitholt might have written about sports? I take it by
4 your silence nobody did.

5 Anybody here who is close personal friends or
6 relatives of someone who works or used to work at the
7 Columbia Daily Tribune in Columbia, Missouri? You were just
8 scratching. Okay. All right. Kind of like an auction. You
9 raise your hand, you might buy something. I take it by your
10 silence nobody does.

11 Anybody used to work at the Tribune yourself? No?

12 Media. The Judge talked to you a little bit about
13 that. I think Miss Schupmann, you're the only one that said
14 you heard anything; right?

15 VENIREPERSON SCHUPMANN: Yes.

16 MR. CRANE: Okay. Now, you all thought about this
17 for a little bit. Has anybody recalled, maybe on radio, TV,
18 newspaper, hearing anything about this case? Okay.

19 Just let me ask you: Doesn't everybody agree that
20 the decision as to whether or not the defendant is guilty or
21 innocent should be made pursuant to the rules, the law, the
22 evidence of a court trial. Doesn't everybody agree with
23 that? And that the decision should not be made by what we
24 read in the newspaper or hear on television or radio. I
25 mean, that's fundamental to the United States of America, is

1 it not? Decisions about whether somebody is guilty should be
2 made in the courtroom, after the evidence is all in. Does
3 everybody agree with that? I take it by your silence that
4 you do.

5 Another legal concept that might come up in this
6 case. Under Missouri law, this is what -- what we're talking
7 about here is acting in concert, or the concept of accomplice
8 liability. Under Missouri law, a person is responsible for
9 his own conduct, and he is also responsible for the conduct
10 of others, another person, in committing a crime, stay with
11 me on this, if he acts with them for the common purpose of
12 committing that crime or if, for the purpose of committing
13 that crime, he aids or encourages the other person in
14 committing it. You can tell that law was written by
15 attorneys. Does everybody -- did everybody get -- stay with
16 me on that one? The conduct of one person can be attributed
17 to another person if this person is aiding or encouraging and
18 acting in furtherance of the commission of the crime. Is
19 anybody not staying with me? And if you're not, that's okay.
20 Let me know. Okay.

21 For instance, here's kind of a classic hypothetical
22 or an example. You got a -- two guys go to do a bank
23 robbery. And they both know that there's going to be a
24 robbery going down. And one guy's the wheelman. And -- you
25 know, the get-away driver. And the other guy is going to go

1 in and stick 'em up and rob the bank; okay?

2 Under the concept of in concert or accomplice
3 liability, the guy pulls him up to the bank, and Bad Guy
4 Number 1 goes in and sticks him up and takes the money. And
5 then Bad Guy Number 1 runs back out, and Bad Guy Number 2,
6 the wheelman, drives off. Okay? They're both guilty of
7 robbery. You follow me? Now punishment may be a different
8 issue. Maybe the guy with the gun gets more punishment than
9 the guy that was in the car. That's not what we're talking
10 about. We're talking about get-away driver aided and
11 encouraged and acted in furtherance of the robbery. So he's
12 acting in concert with the one that actually went in and
13 stuck him up. You got it? You with me on that? Everybody
14 agree with that legal concept? Okay.

15 Take it a step further. There's also an offense
16 called felony murder. Felony murder is another form of
17 murder in the second degree. Felony murder -- let's take
18 that hypothetical about the bank. Get-away driver drives his
19 buddy to the bank; the buddy goes in, robs the bank, and
20 shoots one of the employees at the bank. Now maybe the
21 shooter could be charged and found guilty of murder in the
22 first degree or murder in the second degree, all right,
23 depending on the facts. But what about my get-away driver?
24 Now we've already said he's guilty of robbery; right? Acting
25 in concert? This crime of felony murder is -- states that

1 if, in the course of the commission of a felony, we got a
2 robbery, right, somebody dies as a result thereof, then they
3 can be charged with felony murder and the underlying offense
4 of robbery.

5 So the wheelman stayed outside. Maybe he knew or
6 maybe he didn't know that his buddy was going to go shoot the
7 bank teller. Doesn't matter. He was acting in concert to
8 commit robbery. Waiting for him to come back out. Be the
9 get-away driver. Right? And in the course of the commission
10 of that felony, somebody died. Get-away driver, guilty
11 felony murder. Murder second degree.

12 What do you think about that? Anybody going,
13 "Golly, that don't sound right"? Everybody okay with that
14 concept? You okay? You're thinking awful hard.

15 Does everybody think -- I mean, that's the law in
16 the State of Missouri as to that offense. Anybody have a
17 problem with that? Doesn't think they could follow that
18 concept?

19 What do you think? You okay with it? I don't think
20 I've -- Miss Moretto?

21 VENIREPERSON MORETTO: Yes.

22 MR. CRANE: How -- you're thinking hard.

23 VENIREPERSON MORETTO: I agree.

24 MR. CRANE: You agree you're thinking hard or you're
25 okay with that legal concept?

1 VENIREPERSON MORETTO: No, I agree with the legal
2 concept.

3 MR. CRANE: All right. All right. Let me move on
4 then.

5 Ladies and gentlemen, one of the state's witnesses
6 in this case is Charles Erickson. He goes by Chuck. Chuck
7 Erickson. He was also charged in this crime, along with the
8 defendant, Ryan Ferguson. And I'm going to tell you now, in
9 exchange for his testimony in this case, Mr. Erickson will
10 receive 25 years in prison. He has pled guilty, but will not
11 be sentenced until after this trial. Assuming that
12 Mr. Erickson honors his side of the plea agreement and
13 provides truthful testimony, he will receive a 25-year
14 sentence.

15 MR. ROGERS: Your Honor, I'm going to have to object
16 to the prosecutor endorsing the truthfulness of Erickson's
17 testimony. That's not for him to decide.

18 THE COURT: I -- would you repeat your question
19 again? Or are you making a statement, Mr. Crane?

20 MR. CRANE: I'm -- I was mirroring the terms of the
21 agreement. We can approach on this matter if you wish. I
22 don't think at this point you want me to repeat that
23 question, do you, Mr. Rogers?

24 MR. ROGERS: That's correct. I think you're right.

25 THE COURT: All right.

1

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2

Counsel approached the bench and the following

3

proceedings were held:

4

MR. CRANE: Judge, we had an understanding that --

5

the defense had filed a motion in limine, and we agreed, as I

6

understand it, that the state could not repeatedly talk about

7

the truthful nature of his testimony. I take it Mr. Rogers

8

would object. I think this is the juncture at which that

9

word is going to be used. The law, as we took up in our

10

motion, says that the state can't just say it over and over

11

and over.

12

MR. ROGERS: The problem here, Your Honor, is that

13

he is conditioning his question on the truthfulness of

14

Mr. Erickson's testimony. And there's no way that that's

15

appropriate. And it's not being given any context, other

16

than the prosecutor vouching for the truthfulness of the

17

testimony. He's talking about if his -- if he -- I believe

18

the question was: If he lives up to his part of the plea

19

agreement and gives truthful testimony, then he's going to

20

get a sentence of 25 years, I think is what you were next

21

going to say.

22

MR. CRANE: That's true. I'm talking to them about

23

their feelings on plea agreements.

24

MR. ROGERS: I think you can do that without -- I

25

think the state can talk to them about feelings on plea

1 agreements without vouching for the truthfulness of the
2 witness's testimony.

3 MR. CRANE: That's not vouching.

4 THE COURT: Just wait a minute. Let Mr. Rogers
5 finish.

6 MR. CRANE: Oh, I thought you were done.

7 MR. ROGERS: That's -- basically that's my
8 objection. I don't think there's any need or use or anything
9 except prejudice resulting from going into the purported
10 truthfulness of the testimony at this stage, where it's not
11 subject to any type of cross-examination and it has not been
12 subject to any cross-examination. So that's my objection.

13 THE COURT: The way it was -- the way the statement
14 was phrased, I believe that term was used once.

15 MR. ROGERS: Yes. I objected the first time it was
16 used.

17 THE COURT: Yes. You did object to it. And at this
18 point I'm going to overrule that objection, but will caution
19 the state not to repeat it and go on into it, other than --

20 MR. CRANE: Understood, Judge. Very good.

21 THE COURT: All right.

22 - - -

23 The following proceedings were held in open court:

24 MR. CRANE: Proceed, Your Honor?

25 THE COURT: You may proceed.

1 MR. CRANE: Okay.

2 In exchange for his testimony in this case,
3 Mr. Erickson will receive 25 years in prison. He's pled
4 guilty already, but he's not been sentenced. And that's not
5 going to happen until after this trial is over. Okay?

6 Assuming that Mr. Erickson honors his end of the
7 agreement and provides truthful testimony, he would receive a
8 25-year sentence in prison. And he'd get those 25 years,
9 whether you find the defendant in this case guilty or not.

10 Now at this stage I can't tell you a whole lot more
11 about the facts. But having heard just that much, is there
12 anybody who would refuse to listen to and weigh the
13 credibility of this witness I'm referring to because you feel
14 the state should not make plea bargains with the
15 understanding it will be in return for testimony? You see
16 what I'm saying? Is there anybody uncomfortable with that
17 notion? You know, "I don't like that idea. It doesn't
18 matter what they got. I don't want to hear that guy."

19 Yes, sir. Mr. --

20 VENIREPERSON MOORE: Moore.

21 MR. CRANE: -- Moore. Yeah.

22 VENIREPERSON MOORE: I have an objection with that.
23 If the law states that a sentence for a specific crime should
24 carry whatever the sentence may be, whether there's one, two,
25 three, or four defendants in it, I think they should all be

1 dealt the very same sentence. Because they all equally
2 committed the crime. Just because it makes the state's case
3 a little easier doesn't mean he's not just as guilty.

4 MR. CRANE: Well, now, that's true. I understand
5 your concept. And you know, we can take that back to the
6 get-away driver thing. I was really only talking about guilt
7 in that scenario, and really not punishment. Because they --
8 well, really, their actions differ. The get-away driver
9 drove the car. He's a bad guy. He shouldn't have been
10 involved in the robbery. Remember, I'm not saying that's
11 like the facts of this case necessarily. I'm just talking
12 about the law. But maybe the shooter ought to get more time.
13 Right?

14 VENIREPERSON MOORE: I would agree with that.

15 MR. CRANE: See, so those two guys did things that
16 are different factually, and maybe one ought to get this and
17 one ought to get that. In punishment. Right?

18 VENIREPERSON MOORE: Oh, without knowing any further
19 facts --

20 MR. CRANE: That's the thing. I can't give you an
21 opening statement. Can't put on any evidence.

22 VENIREPERSON MOORE: That's my feeling.

23 MR. CRANE: Well, I know. And I want to get real --
24 you also said you were concerned about your wife being by
25 herself too, didn't you?

1 VENIREPERSON MOORE: Yes.

2 MR. CRANE: But you're thinking that you don't like
3 the idea of a plea agreement, because everybody ought to get
4 the same thing if they did the same thing?

5 VENIREPERSON MOORE: Yes.

6 MR. CRANE: What if they didn't?

7 VENIREPERSON MOORE: What if they didn't what?

8 MR. CRANE: Do the same thing.

9 VENIREPERSON MOORE: Well, I'm not sure --

10 MR. CRANE: It's a snowflake; right?

11 VENIREPERSON MOORE: -- what the same thing is.

12 MR. CRANE: Exactly.

13 VENIREPERSON MOORE: That comes in degrees.

14 MR. CRANE: Okay. So you'd have to hear the facts.

15 VENIREPERSON MOORE: Yes.

16 MR. CRANE: Okay. Because somebody had an
17 agreement, the witness now is what I'm talking about, with
18 the state, would you not gauge them the same? Would you not
19 lend them credibility because of that agreement? See, that's
20 really what I'm asking.

21 VENIREPERSON MOORE: Somewhere I'd have to read it
22 in that he might be trying to save his own neck.

23 MR. CRANE: Okay. 25 years --

24 VENIREPERSON MOORE: Still involved in the same
25 crime.

1 MR. CRANE: Understood. Would that cause you to
2 have trouble fairly and impartially gauging the testimony of
3 that witness?

4 VENIREPERSON MOORE: I don't know.

5 MR. CRANE: Okay.

6 Miss Schupmann, would it be a problem?

7 THE COURT: Mr. Moore, I did not hear your answer,
8 sir.

9 VENIREPERSON MOORE: I said at this point I really
10 don't know --

11 THE COURT: All right.

12 VENIREPERSON MOORE: -- if it would or not.

13 THE COURT: Thank you.

14 MR. CRANE: Miss Schupmann, it would be a problem
15 for you?

16 VENIREPERSON SCHUPMANN: Yes.

17 MR. CRANE: You wouldn't be able to fairly and
18 impartially gauge the testimony of a witness who had -- was
19 testifying and had already pled guilty under an agreement
20 with the state.

21 VENIREPERSON SCHUPMANN: That's correct.

22 MR. CRANE: Okay.

23 Did you hear that, Judge?

24 THE COURT: Yes, I heard it, Mr. Crane.

25 MR. CRANE: Anybody else?

1 Yes, ma'am.

2 VENIREPERSON BRININGER: I think so too. Because
3 you don't know if the other guy's lying.

4 THE COURT: I'm sorry, Miss Brininger. You'll just
5 have to speak up a bit, all the way over to here and the
6 reporter -- if you can stand, it might -- you might project
7 your voice a little louder.

8 VENIREPERSON BRININGER: Well, you don't know if the
9 other guy's lying about, what, saving his butt, where he
10 would get shorter time.

11 MR. CRANE: So the question is then: Would you have
12 trouble fairly evaluating or listening to the testimony of
13 the guy who may be trying to save his butt --

14 VENIREPERSON BRININGER: Yeah.

15 MR. CRANE: -- as you call it.

16 VENIREPERSON BRININGER: Yes.

17 MR. CRANE: Okay. I'm not suggesting that's
18 necessarily what's going on, but that concept gives you
19 problems.

20 VENIREPERSON BRININGER: Yeah.

21 MR. CRANE: Okay. Thank you, ma'am.

22 Somebody else. Yeah. Mr. Straught -- I thought I
23 pronounced it right the first time, and then I can't get it
24 out. Straughter?

25 VENIREPERSON STRAUGHTER: That's close.

1 MR. CRANE: Yes, sir.

2 VENIREPERSON STRAUGHTER: Yeah, I have a problem.

3 MR. CRANE: I guess you better stand up.

4 VENIREPERSON STRAUGHTER: I guess so.

5 I would have a problem with that. Prior to you
6 making that statement that you had a witness that had --
7 going to get 25 years of his life, prior to that I had no
8 problem with trying to judge that young man there. But since
9 you made that statement, I do now.

10 MR. CRANE: Okay.

11 VENIREPERSON STRAUGHTER: Because I find it hard for
12 a person to give up 25 years of his life, lying, in behalf of
13 that young man. So I --

14 MR. CRANE: Oh, you're going the other way.

15 VENIREPERSON STRAUGHTER: Yeah. I would have a
16 problem with trying to make --

17 MR. CRANE: Okay. Well, wait a minute. Let me
18 ask -- let's stick with -- and you got an interesting concept
19 going.

20 First of all, the concept of the state entering into
21 an agreement with somebody that's committed a crime, a
22 murder, and then using them as a witness in exchange for
23 their testimony, and they're going for 25 years, we just
24 talked about that, well, first of all, would that cause
25 difficulty for you in terms of believing the witness?

1 VENIREPERSON STRAUGHTER: Yes.

2 MR. CRANE: Okay. It would. Such that you could
3 not be fair and impartial to that witness.

4 VENIREPERSON STRAUGHTER: To the witness --

5 MR. CRANE: The witness --

6 VENIREPERSON STRAUGHTER: -- who got the 25 years.

7 MR. CRANE: Yeah. Or are you talking about the
8 defendant?

9 VENIREPERSON STRAUGHTER: I'm talking about the
10 defendant.

11 MR. CRANE: Okay. All right. So, the fact that he
12 had that sentence, and, you know, we were talking about that
13 a minute ago, it's within the range, would make you have --
14 give him a head start, even though you don't know anything
15 about the case at this point.

16 VENIREPERSON STRAUGHTER: I know enough about the
17 case that that young man gave up 25 years of his life, to let
18 him get off.

19 MR. CRANE: We haven't even talked about the range
20 of punishment.

21 VENIREPERSON STRAUGHTER: You told me 25 years.

22 MR. CRANE: No, no, no. I just said that's what his
23 sentence would be. That's not the range. Maybe he could
24 have got more.

25 VENIREPERSON STRAUGHTER: But you told me that he

1 was going to get 25 years after this trial was over.

2 MR. CRANE: Correct. As part of the plea. Correct.
3 That's true. I see what you're saying. I see what you're
4 saying. That's a long time.

5 VENIREPERSON STRAUGHTER: That would prejudice me in
6 giving that man a fair chance.

7 MR. CRANE: Okay.

8 VENIREPERSON NORTON: So he pled guilty.

9 MR. CRANE: Let's see. That's Number 14,
10 Mr. Norton.

11 VENIREPERSON NORTON: He pled guilty. He was not
12 tried. He took a plea, is what you're saying. The other
13 person.

14 MR. CRANE: Correct.

15 VENIREPERSON NORTON: I just wanted to make that
16 clear.

17 MR. CRANE: Yeah. Everybody understood that; right?
18 Charles, Chuck, he goes by Chuck Erickson, took a plea.
19 Okay. And entered into this agreement. Okay.

20 Okay. Let me ask you all this collectively, because
21 I know we're -- this is just getting old. Everybody that
22 hasn't otherwise indicated, are you all going to be able to
23 gauge the testimony of this witness fairly and impartially,
24 other than those of you who have spoken up? You would be
25 able to gauge him fairly and impartially on -- for both

1 sides. Okay?

2 What Mr. -- we just talked about here with Mr. --
3 you know, I keep wanting you to call Slaughter, and it's
4 Straughter.

5 VENIREPERSON STRAUGHTER: Just call it Oscar. It's
6 easier.

7 MR. CRANE: Okay.

8 VENIREPERSON STRAUGHTER: Juror 50.

9 MR. CRANE: Is everybody going to be able to be fair
10 and impartial on both sides of this equation? The issue that
11 there's a plea bargain isn't going to cause, other than those
12 who have spoken up, isn't going to cause you problems in
13 fairly and impartially gauging his credibility. And the
14 issue of the sentence that we're talking about would also not
15 change your mind about his credibility. As you sit there
16 right now, you're going to gauge his credibility when he hits
17 the stand just like any other witness. Other than those of
18 you who have spoken up. Have I got that right? I take it by
19 your silence I have.

20 Yes, ma'am.

21 VENIREPERSON SUSAN GALLOWAY: I'm kind -- I'm kind
22 of feeling like --

23 THE COURT: Excuse me. Would you stand up, please,
24 so that I can see who you are.

25 MR. CRANE: And you are Miss --

1 VENIREPERSON SUSAN GALLOWAY: 28.

2 MR. CRANE: -- Galloway.

3 THE COURT: Juror 28. Thank you.

4 MR. CRANE: Yes, ma'am.

5 VENIREPERSON SUSAN GALLOWAY: I kind of got to agree
6 with that guy back there. That if this witness is taking 25
7 years of his life, I am assuming he's certainly guilty. And
8 if he's trying to say this other guy's guilty, I'm -- I'm
9 buying his story.

10 MR. CRANE: Okay. You raise an interesting point.
11 I can't get into that with you at this juncture, specifically
12 about the facts of this case and what the defense may be --

13 VENIREPERSON SUSAN GALLOWAY: So in other words --

14 MR. CRANE: -- but let me -- let me ask you this.
15 The idea -- you don't know -- I mean, I was going to talk in
16 a minute about the ranges of punishment. Every crime's got a
17 range of punishment. There's ranges of punishment on the
18 crimes that Mr. Erickson pled guilty to. He pled guilty, I
19 told you, to murder second, robbery first, and armed criminal
20 action. Each one of those offenses has a range. Okay? Do
21 you understand that he could have potentially received more
22 time than what he pled guilty to, or he could have received
23 less time. You agree with that concept?

24 VENIREPERSON SUSAN GALLOWAY: Yes.

25 MR. CRANE: Okay. And you don't know the facts of

1 the case right now, do you?

2 VENIREPERSON SUSAN GALLOWAY: No.

3 MR. CRANE: Okay. So have you already decided
4 whether or not Mr. Erickson is credible at this point? How
5 could you? You haven't heard the facts. Correct?

6 VENIREPERSON SUSAN GALLOWAY: Correct.

7 MR. CRANE: Okay. So not knowing any more than what
8 I told you about the agreement, would you be able to give
9 such a witness, as Mr. Erickson, a fair and impartial
10 evaluation as you would any other witness? Not knowing any
11 more than you do right now. I'm not saying 25 years isn't a
12 long time. I'm not saying that. But you don't know anything
13 about the facts; right?

14 VENIREPERSON SUSAN GALLOWAY: Right.

15 MR. CRANE: Would you be able to sit as a fair and
16 impartial juror and gauge his testimony just like you would
17 anybody else's? That's the question.

18 VENIREPERSON SUSAN GALLOWAY: I hope so.

19 THE COURT: I'm sorry?

20 VENIREPERSON SUSAN GALLOWAY: I hope so.

21 MR. CRANE: All right.

22 Everybody else okay with that? What I just asked

23 Miss --

24 THE COURT: Galloway.

25 MR. CRANE: -- Galloway? Anybody else?

1 You see, we talked about both sides of the equation?

2 Okay. All right.

3 I take it by your silence that everybody else can
4 give Charles Erickson, Chuck Erickson, a fair, other than
5 those of you who have spoken up, a fair and impartial
6 evaluation of his testimony. Not going to be in favor of the
7 defense or in favor of the state, as you sit here right now.
8 Correct?

9 There may be evidence of underage drinking in this
10 case. Is there anybody on the panel who, if you heard that
11 the defendant or anybody, any witness in this case, had been
12 drinking alcohol, you'd go, "Whoa, that's it, by golly.
13 That's enough for me. If he's drinking, under age, he's got
14 to be guilty." Anybody feel so strongly about that issue
15 that may arise that they'd go, "All right, hey, that's it for
16 me. That's all I got to hear"?

17 I mean, remember, this is a murder case. There'll
18 be a lot of issues to evaluate. Is anybody going to take
19 that and go, "Well, that's a big problem there"? I'm not
20 saying it's a great thing, to even encourage it, but you see
21 what I mean. I take it by your silence nobody would have
22 that attitude.

23 If the defendant was in a bar, an adult
24 establishment, drinking, same response. That's something
25 that you would take as part of the case and listen to it, but

1 not immediately make a decision. Based on that type of
2 conduct. I take it by your silence that you could be fair on
3 that issue.

4 Is there anyone who could not consider the testimony
5 of a witness who was to some degree intoxicated during the
6 events they describe? When they're on the stand. You see
7 what I'm saying? "Well, if they had been drinking, forget
8 it. You can't believe nothing." Anybody have that attitude?
9 Okay?

10 What are you guys laughing about? Did I say --

11 VENIREPERSON KELLY: It depends on how much they'd
12 been drinking.

13 MR. CRANE: Huh?

14 VENIREPERSON KELLY: It depends on how much they'd
15 been drinking.

16 MR. CRANE: It does. It depends on a lot of
17 factors, doesn't it? Right. Right. Okay. But you'd want
18 to know the facts.

19 VENIREPERSON KELLY: That's right.

20 MR. CRANE: Okay. So you'd -- is there anybody that
21 would just discount the testimony of somebody when they're
22 testifying they had been intoxicated to some degree? Did you
23 scratch? Did you scratch? I thought I saw your hand go up.

24 VENIREPERSON WILLIAM THOMAS: Me?

25 MR. CRANE: Yeah.

1 VENIREPERSON WILLIAM THOMAS: Scratch. Sorry.

2 MR. CRANE: Okay. That's all right. You can
3 scratch.

4 As the Court's told you and I told you, this case is
5 a murder case. During the trial there's going to be
6 photographs and items of evidence presented to the jury to
7 assist the jury in understanding the facts of this case.
8 Jurors will be asked to look closely at the photos of the
9 wounds of the victim. Is there anybody on the panel who does
10 not think that they could look at and evaluate those photos
11 and things? I take it by your silence everybody can do that.

12 Am I going too fast? Going too slow; right?

13 Anybody think they can't do that? Okay.

14 Is there anyone on the panel who, because of moral
15 or religious or personal feelings, just could not evaluate
16 that type of admittedly unpleasant evidence?

17 Miss Schupmann?

18 VENIREPERSON SCHUPMANN: Uh-huh.

19 MR. CRANE: You couldn't?

20 VENIREPERSON SCHUPMANN: That's correct.

21 MR. CRANE: That's noted, ma'am. Thank you.

22 Miss Schupmann said she could not.

23 Let me talk to you about what's referred to in some
24 circles as the CSI effect. It's Crime Scene Investigation or
25 Crime Scene Investigator. How many of you all have seen that

1 show?

2 (Show of hands.)

3 MR. CRANE: A lot of you? A lot of you? Okay.

4 There's a lot of TV shows that tell stories about solving
5 crimes by connecting forensic or physical evidence to the bad
6 guy. Some great looking detective or some voluptuous coroner
7 uses all the investigative equipment known to man, and some
8 that's not known to man. And the background music gets
9 louder and faster, and you know that that detective, actor,
10 is about to find some good stuff. And they always find the
11 bad guy's DNA or hair or the victim's cat fur or fingerprints
12 or whatever, and they solve that crime in an hour, with
13 commercials, don't they?

14 Does everybody agree that shows like CSI, and even
15 some news programs or movies, does anybody feel like that
16 those are accurate depictions of criminal investigations in
17 real life? And you know, don't let me -- I'm not trying to
18 make fun of you if you do. Don't get me wrong. Does anybody
19 feel like that, you know, "I know how to work a crime scene
20 because I watch TV"? Now come on now. I'm not trying to
21 make fun of you. Tell me what you think. You think you've
22 learned something from CSI? You think that's the way it is?
23 Let me know. Now, I really thought I'd get somebody saying,
24 "Yeah." Nobody. Okay.

25 Does everybody agree that shows like that are made

1 to get people to tune in and watch it for entertainment?
2 Does everybody agree with that? Anybody who think they're
3 kind of an expert in crime scene investigations because of
4 what they've seen on TV? Let me know. Okay.

5 Does anybody think that discovering forensic
6 evidence, and when I say "forensic evidence," you know,
7 blood, hair, DNA, what have you, is a relatively fast and
8 easy process? Anybody think that? Relatively fast -- I
9 mean, you know, we just talked about it on TV. I mean, wham,
10 bam, they get that thing run through the machine and there
11 are the guys -- you know, evidence is, and we go on down the
12 road. Okay. Does everybody recognize that's just on TV?

13 Does anybody here think -- now listen to me. Don't
14 give up on me. This is important. Does anybody here think
15 that, in this day and age, science, forensic science, will
16 solve every crime? You know, does anybody think, "Gosh, you
17 know, I sit around -- I watch TV, and, you know, really they
18 always solve this thing there at the crime scene or whatever.
19 Why waste gas and time driving around trying to interview
20 witnesses? Just wait around the scene, wait long enough,
21 you're going to find something. Throw it in the hopper and
22 it will come out telling you who the bad guy is." I take it
23 none of you feel that way about the realities of criminal
24 investigations.

25 Now don't let me browbeat you. You know, if you do

1 feel like that should be the case or is the case, please say
2 so. Because I'm going to tell you right now, I'm going to be
3 straight up, there is no physical evidence in this case that
4 the state will present that connects Ryan Ferguson to the
5 crime scene. We don't have physical evidence, hair, DNA,
6 fingerprints that connects Chuck Erickson to the crime scene.

7 Is there anyone who believes that if such evidence
8 is not presented by the prosecution, then you could not find
9 the defendant guilty? Everybody listening to me? I know
10 you're getting wore out. Does anybody believe that the state
11 is required to provide physical evidence under the law in
12 order for you to find the defendant guilty? Anybody think
13 that's a requirement?

14 Yes, sir. You are Mr. Headrick. Yes, sir,
15 Mr. Headrick.

16 VENIREPERSON HEADRICK: I think so.

17 MR. CRANE: So -- and I appreciate your candor. You
18 believe that regardless of what the other evidence in the
19 case may be, the state -- you would want and require the
20 state to provide some physical evidence, fingerprint, at the
21 scene.

22 VENIREPERSON HEADRICK: If by "evidence" you mean
23 somebody else's testimony? Then --

24 MR. CRANE: Yeah. That would not be physical
25 evidence. See, what -- I'm going back to crime scene -- you

1 know, crime scene --

2 VENIREPERSON HEADRICK: To me, there would have to
3 be evidence. I'm not going to say --

4 MR. CRANE: Well, no, now wait a minute. Now let's
5 make sure --

6 THE COURT: Mr. Headrick, would you mind standing up
7 so that we --

8 VENIREPERSON HEADRICK: Yes, ma'am.

9 THE COURT: -- can hear you and the court reporter.

10 VENIREPERSON HEADRICK: There would have -- there
11 would definitely have to be physical evidence for me --

12 MR. CRANE: All right. So --

13 VENIREPERSON HEADRICK: -- that they're guilty of
14 the crime.

15 MR. CRANE: -- if the state doesn't provide evidence
16 of fingerprints or DNA or hair or something along -- I won't
17 go back through all those, you know what I'm saying, you
18 wouldn't be able to find the defendant guilty.

19 VENIREPERSON HEADRICK: No. Hard proof. I need
20 evidence, yeah.

21 MR. CRANE: Okay. All right. Well, you need
22 evidence. You're saying --

23 VENIREPERSON HEADRICK: I need --

24 MR. CRANE: -- physical evidence.

25 VENIREPERSON HEADRICK: -- something that you can

1 see, something you can show me that says --

2 MR. CRANE: So a witness --

3 VENIREPERSON HEADRICK: -- that man did it. A
4 witness, I can't go off somebody's word, no.

5 MR. CRANE: Okay. Very good. Thank you, sir.
6 Anybody else feel the same -- what was it?
7 Headrick?

8 VENIREPERSON HEADRICK: Yes, sir.

9 MR. CRANE: -- Number 34? Anybody else on that same
10 line of questioning feels the same as Mr. Headrick? And I
11 appreciate your candor, sir. Thank you.
12 Miss Schupmann?

13 VENIREPERSON SCHUPMANN: Yes, I do.

14 MR. CRANE: That's noted. You would not be able --
15 VENIREPERSON SCHUPMANN: That's correct.

16 MR. CRANE: -- to convict, unless there was some
17 physical evidence.

18 VENIREPERSON SCHUPMANN: That's correct.

19 MR. CRANE: Everybody understands between "evidence"
20 and "physical evidence." Okay.

21 VENIREPERSON NORTON: Is a body considered physical
22 evidence?

23 MR. CRANE: Well, what we were talking about was
24 physical evidence that, for instance, the defendant was at
25 the scene type of thing.

1 VENIREPERSON NORTON: Okay.

2 MR. CRANE: Did you need me to follow up?

3 VENIREPERSON NORTON: No. That's fine.

4 MR. CRANE: Okay.

5 VENIREPERSON DECLUE: Yeah, I would have a problem
6 with that.

7 MR. CRANE: Mr. Declue?

8 VENIREPERSON DECLUE: Yes, sir. You're just going
9 on someone's hearsay. That's like someone saying, like, all
10 right, for instance, someone in the room would say something
11 bad about you. That don't make it true.

12 MR. CRANE: Well, goll, I'm glad of that.

13 VENIREPERSON DECLUE: You know what I'm saying?

14 MR. CRANE: Yeah, I know. You know, I'm really not
15 able to get into the facts much of this case at this stage.
16 It's not an issue of hearsay here. It -- there may be other
17 things. I hear the defense back there a little bit. There
18 may be other arguments about the state's case, but it would
19 not be hearsay. And remember what I told you about the
20 Charles Erickson agreement? He also pled guilty. He pled
21 guilty to the murder. You follow me? That's not hearsay.
22 See what I mean?

23 VENIREPERSON DECLUE: I understand. I'm sorry. I
24 didn't relate the two of them together.

25 MR. CRANE: Yeah. And I can't really give you a

1 whole lot. You see, I'm tiptoeing around. I can't give you
2 a whole lot, see? Okay.

3 Yeah.

4 VENIREPERSON PUND: Can you put it back into the
5 bank robber scenario?

6 THE COURT: Excuse me. Would you stand. I can't
7 see your number from here.

8 VENIREPERSON PUND: I just thought maybe he could
9 put it back into the bank robbery example.

10 MR. CRANE: Well, on the physical evidence thing?

11 VENIREPERSON PUND: Right. Your -- the driver
12 wasn't -- there's no physical evidence that the driver was
13 there, but we should go on other evidence.

14 MR. CRANE: You could. Yeah. If it's there.
15 Right. The question was: Would you require physical
16 evidence? Juror Number 34 said yes. Would you require
17 physical evidence before you could find him guilty? What do
18 you think? And I know -- you were trying to help me, weren't
19 you?

20 VENIREPERSON PUND: Right. I was.

21 MR. CRANE: I appreciate that. Is there -- is there
22 anybody -- do you -- but you're okay -- you could do that?

23 VENIREPERSON PUND: Right.

24 MR. CRANE: You would not -- okay. You understand
25 that's not an element of the charge.

1 VENIREPERSON PUND: Right.

2 MR. CRANE: Okay.

3 VENIREPERSON HEADRICK: I might -- I might have to
4 retract that then, because, I mean, if you consider maybe
5 there's ten people that actually saw him do it, I would
6 consider that physical evidence. If you didn't find a hair
7 or something --

8 MR. CRANE: Well, okay. I mean, it's not a numbers
9 game, as to how many people saw --

10 VENIREPERSON HEADRICK: So I guess I'm going to have
11 to retract that then, because I don't know -- you know what
12 I'm saying?

13 THE COURT: Mr. Headrick, would you stand up so that
14 everyone will be able to hear you?

15 VENIREPERSON HEADRICK: Yes, ma'am. I'm sorry. I'm
16 sorry.

17 THE COURT: I'm sorry that we don't have a mic for
18 you.

19 VENIREPERSON HEADRICK: Did you understand what I'm
20 saying?

21 MR. CRANE: Yeah. Would you require ten witnesses?

22 VENIREPERSON HEADRICK: No. What I'm saying is:
23 You know, since -- if it's -- if it's him and one other guy,
24 and there's another guy or maybe two guys -- you know, I
25 don't know all the details about those two guys. I don't

1 know what those guys, whether they like him, whether they're
2 just trying to get off because they did it, or whatever.

3 There's no physical evidence telling me that he did it. Now
4 if there's a crowd of people, that's a different --

5 MR. CRANE: What if there's not?

6 VENIREPERSON HEADRICK: -- that's a different story.

7 MR. CRANE: What if there's not?

8 VENIREPERSON HEADRICK: In that instance --

9 MR. ROGERS: Your Honor, I'd like to object. I
10 think we're --

11 THE COURT: Excuse me just a minute.

12 MR. ROGERS: I'm making an objection. I think
13 we're --

14 THE COURT: Hold on just a second.

15 MR. ROGERS: I think we're getting to the point
16 where we're seeking commitments from the juror, and I don't
17 think that's proper.

18 MR. CRANE: Yeah. All right. I'll back off of
19 that. Yeah.

20 THE COURT: You may withdraw that question.

21 MR. CRANE: Yeah. I'll withdraw that question.

22 Forget about that. Would you -- would your
23 feelings, as you sit there right now, obviously you would
24 really like to have some physical evidence at the scene.

25 VENIREPERSON HEADRICK: Yes.

1 MR. CRANE: Okay. And that would be something that
2 you would have grave concerns about if you didn't have it.

3 VENIREPERSON HEADRICK: What I'm saying: I don't
4 know the details. I don't know how many people were there.
5 I cannot say that at this point I have to have physical
6 evidence, no.

7 MR. CRANE: Okay. All right. Thanks. Appreciate
8 it.

9 Okay. Deliberation. In a murder one, in the
10 event -- we go through this case, and you're assessing the
11 elements of murder in the first degree. There's a particular
12 element in that called deliberation. The principal
13 difference between murder in the first degree and murder
14 second degree is that element of deliberation. And I expect
15 that you'll be instructed that deliberation means -- is
16 defined as cool reflection on the matter, the matter of
17 killing someone, for any period of time, no matter how brief.
18 That's the legal definition. Cool reflection on the matter,
19 for any period of time, no matter how brief. Okay?

20 Now, did some of you think, Well, gosh, I thought
21 murder in the first degree required planning. Go get gun,
22 buy ammo, get gas to burn up get-away car. You know.
23 Anybody think that? Planning seems to be something that
24 people can think of. But under the law, it's cool reflection
25 on the matter of killing somebody for any period of time no

1 matter how brief. Regardless of what you thought it might
2 be, is everybody okay with that as the legal definition?

3 Okay. I take it by your silence that you are.

4 Does anybody have any special training or interest
5 in the fields of psychology, psychiatry, or human behavior?
6 Nobody?

7 Yes. Okay. You're doing the nursing thing.

8 VENIREPERSON GIBBS: Yeah. I -- well, I took high
9 school classes in psychology and sociology.

10 MR. CRANE: Okay.

11 VENIREPERSON GIBBS: I don't know if that counts.

12 MR. CRANE: Sure. Could you set aside that -- not
13 completely. You know, nobody's saying you got to shut the
14 door on your past experiences, but would anything about that
15 keep you from being fair and impartial in this case?

16 VENIREPERSON GIBBS: Not that I can think of.

17 MR. CRANE: Okay. Are you willing, all of you,
18 willing to accept that psychologists may be mistaken in their
19 diagnosis or may differ in their opinions? Everybody okay
20 with that idea? That two psychologists may have a different
21 view on the same person. Okay?

22 Has anybody ever read any books by Dr. Elizabeth
23 Loftus? The defense has indicated they may call Dr. Loftus
24 in this case. Anybody read any books by her? Anybody ever
25 heard of Dr. Elizabeth Loftus? L-o-f-t-u-s.

1 A witness the state may call is Dr. Delaney Dean.
2 Has anybody heard of Dr. Dean? I take it by your silence
3 nobody's ever heard of those two psychologists.

4 If there are psychologists who testify during this
5 trial, will you all be willing to decide for yourself if
6 their opinions are correct or incorrect? You'd be able to do
7 that? Okay.

8 Would you be able to reject an opinion if you didn't
9 think it was right? Or are you going to go, "Well, a
10 psychologist said it; I got to go with that"? Okay.

11 Would you also be able to consider the testimony of
12 a psychologist as you would any other witness? Gauge their
13 testimony, listen to what they had to say, decide whether or
14 not you wanted to adopt it? I take it by your silence you
15 could all do that.

16 I want to talk to you about memory. A little bit
17 about memory. Stupid questions coming at you here now. It's
18 going to make me sound stupid, not you. Okay?

19 Could I see a show of hands of anybody who's ever
20 forgotten anything.

21 (Show of hands.)

22 MR. CRANE: Looks like about everybody's hand. You
23 forgot where you put your glasses. You forgot where you put
24 your purse. Do you -- most of you, that everyday stuff,
25 watch, glass, purse, try to put it in the same place when you

1 go to bed? And you do that so that the next morning it's
2 right there and you don't have to forget where it is and go
3 hunting it down. Okay? And sometimes you lose them.
4 Sometimes you can't find your glasses. And they're right
5 there on your face. Some of you don't wear glasses, but I'll
6 bet the people with glasses have maybe had that happen
7 before. Okay?

8 And when you find the thing you lost -- you forgot
9 where it was, and when you find it, you remember you put it
10 right there. Anybody had that experience? "Oh, man, that's
11 where I left the glasses, right there." Or "I had them on my
12 head. And I remembered when I found them." Everybody had
13 that experience? Again, I'm not going to make you raise your
14 hand. If you didn't raise your hand, if everybody's had that
15 type of experience... I take it by your silence you have.

16 Has anyone ever forgotten someone or something from
17 your past, and then something triggered your memory and you
18 remembered it again? Umm, you went to grade school with
19 Billy Bob. And you forgot about Billy Bob. And somebody
20 says, "You remember Billy Bob?" And you don't remember. And
21 then you get shown your yearbook. Or a photo. And there you
22 are, standing by Billy Bob. And you go, "Golly, that's the
23 guy. I remember him now." Anybody had that type of
24 experience? I take it by your silence that you have. You've
25 had that type of experience. In other words, you forgot

1 about Bill, but when you saw him again, you remembered. And
2 it was a true fact, that you and Billy Bob went to school. I
3 told you it was going to be kind of weird questions.
4 Everybody had that type of experience? Okay.

5 Is anyone unable to accept the idea that some people
6 can experience a terrible, traumatic event and consciously
7 put it out of their mind, and then later on remember it
8 again? It comes back to them. That bad thing.

9 Now I'm not necessarily asking, on that one, that
10 things -- the other ones, where it happens to everybody type
11 questions, this one I'm not asking, has it ever happened to
12 you, you understand, but -- and listen to the way I'm asking
13 that. Is anybody unable to accept the concept that somebody
14 can have something bad, traumatic, happen to them, and
15 consciously put it out of their memory, and then have it come
16 back to them? Nobody is unable to accept that type of
17 concept; correct? I mean, if you are, let me know. "Oh,
18 heck, that don't happen." Let me know.

19 Yes, sir.

20 VENIREPERSON WAECHTER: Yes, it does. It happened
21 to me.

22 MR. CRANE: Well, it does happen. I'm trying -- it
23 did happen to you.

24 VENIREPERSON WAECHTER: Yes.

25 MR. CRANE: And I'm -- again, I'm trying -- you

1 know, I don't know what bad experiences, maybe you were in
2 the army and, you know, something bad happened, something
3 like that. But something you didn't want to remember, and
4 then something made you think about it again.

5 You're saying --

6 VENIREPERSON WAECHTER: You want me to tell you?

7 MR. CRANE: No. No, I don't. Here's what I'm
8 saying. My question is: You accept that that can happen.

9 VENIREPERSON WAECHTER: Yes.

10 MR. CRANE: Okay.

11 And everybody else is okay with that concept as
12 well? Okay.

13 And I wasn't trying to cut you off.

14 VENIREPERSON WAECHTER: No. That's fine.

15 MR. CRANE: Okay. I appreciate that.

16 All right. I take it by your silence that everybody
17 is able to accept that.

18 Has anybody had a dream where you dreamed something
19 bad happened, or embarrassing, and you woke up and you went,
20 "Golly, I can't believe I said that to her," or "I can't
21 believe that I didn't get to that class and get that test
22 taken. How could I have blown off that class all last
23 semester?" Or "Why would I go to work naked? How come I did
24 that?" For a while you wake up and you think, "This is
25 terrible." And then you start to kind of wake up and you

1 realize, "Well, wait a minute. I must have gotten through
2 that class, because I've got this home and these kids, and
3 I've got to go to work. And I'm not even in school any
4 more." Or, you know, "Wait a minute. There's the clothes.
5 I got clothes. I didn't go in to work naked." Everybody had
6 that kind of experience? Think their dream for a little bit
7 was reality?

8 Let me ask it this way. Is there anybody in the
9 room who's ever had such a dream, that you thought was real,
10 but when you woke up, you went the rest of your life thinking
11 that what you dreamed was real? I take it by your silence
12 that no one, no one's had that experience. Did you
13 understand my question?

14 Ladies and gentlemen, is there anybody who has ever
15 told your friends, relatives, the police, that you murdered
16 somebody? I take it by your silence nobody's done that. Not
17 a murder necessarily, but told your friends, your parents,
18 and the police, "I murdered somebody." I take it by your
19 silence nobody's done that.

20 I also take it by your silence now that nobody has
21 murdered anybody. Am I safe at that? I take it by your
22 silence I am.

23 Ladies and gentlemen, after being selected as a
24 juror, you'll take an oath to follow the Court's
25 instructions. They'll give you -- they're given to you by

1 the Judge at the close of all the evidence. Again, they'll
2 tell you what the law is, applicable to this case in the
3 State of Missouri.

4 General question: Is there anybody here who's going
5 to be unable to follow the law, the Court's instructions,
6 because of personal beliefs that the law is misguided or
7 wrong or just shouldn't be written that way and "I'm not
8 going to use that law; I'm going to use my own." Is
9 everybody going to be able to follow the law? Accept what
10 the Court tells you the law is and follow it. I take it by
11 your silence you can all do that.

12 Motive. Still on this theme of following the law.
13 Does everybody understand that the law does not require the
14 prosecution to prove why the defendant committed the offense
15 for which he's charged. We talked about the physical
16 evidence thing a minute ago. And you hear about motive all
17 the time. "What was his motive?" Okay. Does everybody
18 understand that motive, why someone did it, may be an issue
19 that's discussed in a case, but it's not required on the
20 issue of proof beyond a reasonable doubt. Does anybody
21 think, "Well, gosh, it should be? I want to know why. And
22 if I don't know why, I can't fairly consider whether or not
23 he did it." Are you with me on that? Everybody okay with
24 that question? I take it by your silence you can follow the
25 law that motive is not required.

1 Is any member on the panel bothered by the fact that
2 jurors decide facts in a case? Even though both sides
3 disagree. That's going to happen in this case. Both sides
4 will disagree as to what those facts are. It's jurors who
5 make the decisions. Anybody bothered by that fact? "I just
6 don't want" -- we talked about that a little bit. "I don't
7 want to be having to decide that." In other words, if one
8 witness gets up and says, "The light was red at the time of
9 the crash," and that's not in this case, just giving you an
10 example, and another witness says, "No, at the time of the
11 crash the light was green," the jury decides what color that
12 light was. If it's an issue in the case. You follow me?
13 Anybody uncomfortable with that idea?

14 Anybody who thought of or discovered a pressing
15 physical or personal problem as I've droned on here with you
16 this morning that you want to tell us about that's going to
17 cause you problems being fair and impartial in this case?
18 Something you haven't thought of. Okay.

19 I asked you that last question so that we can be
20 assured, so that both sides can be assured that if you're a
21 juror on this case, your attention will be focussed fully on
22 the facts of this case. Because after it's over, if you're a
23 juror, and you go back into that deliberation room to decide
24 this case, you will be equipped only with what you've heard
25 and seen and the exhibits in the case. So it's very

1 important that you're all able to give your full, fair, and
2 impartial attention. Other than those that have mentioned
3 various things earlier, can the rest of you do that?

4 Ladies and gentlemen, I sure do appreciate you
5 bearing with me.

6 Let me ask my assistant if I've got any more
7 questions.

8 (Discussion off the record between Mr. Crane and
9 Mr. Knight.)

10 MR. CRANE: I did have another one, but I'm going to
11 quit.

12 Thank you.

13 THE COURT: Would counsel approach the bench just
14 briefly?

15 - - -

16 Counsel approached the bench and the following
17 proceedings were held:

18 THE COURT: I'm assuming you have quite a few
19 questions you want to ask this panel.

20 MR. ROGERS: Yes.

21 THE COURT: It is five minutes to 12. Would you
22 rather ask those questions all at one time? Or would you
23 want to start and maybe go 15, 20 minutes now, or half an
24 hour now, and then pick up after lunch?

25 MR. ROGERS: I wanted a break about an hour ago, but

1 whatever the Court --

2 THE COURT: Well, no, I'm --

3 MR. ROGERS: -- prefers.

4 THE COURT: -- I'm asking you.

5 MR. ROGERS: I would anticipate it will take at

6 least an hour, hour and a half. So we're not going to be

7 able to start at 12:30 with the second panel if we need them

8 anyway.

9 THE COURT: Well, no, we wouldn't be able to start

10 with that panel.

11 MR. ROGERS: But I would just as soon we get started

12 before we break.

13 THE COURT: Pardon?

14 MR. ROGERS: I would just as soon we get started

15 before we go on break.

16 THE COURT: Okay.

17 MR. ROGERS: We did have an earlier --

18 THE COURT: We did have an earlier break.

19 MR. CRANE: The earlier you break, the quicker they

20 can get back. What difference does it make?

21 MR. ROGERS: Let's break now.

22 THE COURT: That would be my inclination.

23 MR. ROGERS: I'm with you. I'm persuaded.

24 THE COURT: All right.

25 MR. ROGERS: Thank you.

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The following proceedings were held in open court:

THE COURT: Ladies and gentlemen, defense counsel has more than just a few questions to ask, as you might imagine. It's five minutes to 12. And what we were discussing is whether we should take a lunch break now, have you come back, say, in an hour, and conclude the questioning, or proceed at least through part of it. We've decided to take a lunch break, but not a very long one now.

The Court again reminds you of what you were told at the first recess of the Court. Until you retire to consider your verdict, you must not discuss this case among yourselves or with others, or permit anyone to discuss it in your hearing. You should not form or express any opinion about the case until it is finally given to you to decide. Do not read, view, or listen to any newspaper, radio, or television report of the trial.

I'm going to allow our bailiff here to instruct you about where you need to go when you come back. I will give you -- if you would come back about ten minutes to one, we'll take up at that time.

You may eat with whomever you choose or wherever you choose, but you may not discuss this case when you're in recess. And follow the Court's instructions.

So we will be in recess, but our bailiff here will

1 give you instructions about where to appear.

2 BAILIFF BOEDEKER: Just come back up to that room
3 when you come back in.

4 - - -

5 The following proceedings were held out of the presence
6 of the jury:

7 (Mr. Crane not present in the courtroom.)

8 THE COURT: If we could close the door when the
9 jurors leave. I want to just, before counsel -- did
10 Mr. Crane leave?

11 MR. ROGERS: Yeah. The state's gone.

12 MS. MARSDEN: I'll get him.

13 THE COURT: Would you get him?

14 I just wanted to give you some idea of people that
15 I'm going to excuse, that I think either have a hardship or
16 some other reason. Just so that, in tailoring your
17 questions, if you felt they should be excused for cause or
18 otherwise excused, you needn't go into that in such great
19 details. But we'll wait for Mr. Crane to come.

20 (Mr. Crane present in the courtroom.)

21 MR. CRANE: Sorry, Judge. I didn't know you --

22 THE COURT: I was just going to go over some
23 individuals that I intended to excuse for either hardship or
24 reasons that they'd stated. And I certainly will hear from
25 anyone who disagrees with that. And I thought it might

1 expedite things, particularly --

2 MR. CRANE: I wish I could get my peeps in here.

3 THE COURT: Your peeps?

4 MR. CRANE: Yeah.

5 THE COURT: Do you have your --

6 MR. CRANE: Hey, would you -- no, I'm kidding.

7 She's wanting to look at some strikes.

8 THE COURT: Well, I mean, they're not strikes. They

9 would be excuses. Although I probably won't excuse them

10 until the end of the jury.

11 Number 11 and 12. 15. Let's see. I put their

12 names.

13 MR. CRANE: Yeah. Bringer. What do you want?

14 Were you looking for their names?

15 THE COURT: No. I'm going on to furthers. I -- the

16 last I said was Declue, which was 15.

17 MR. CRANE: Yeah.

18 THE COURT: Thomas, who is Number --

19 MR. ROGERS: 29?

20 THE COURT: -- 29. Number 31, Mr. Black. Number

21 33, Miss McCullough.

22 MR. CRANE: Okay. Wait a minute. Black.

23 MR. ROGERS: I think we need to talk to her some

24 more.

25 THE COURT: Okay. That's fine.

1 MR. CRANE: Now wait a minute. Now wait a minute.
2 31 and 33?

3 THE COURT: 31 -- let's see. 31 -- let's see.
4 There was 29, 31. And then Mr. Rogers wanted to speak with
5 Miss McCullough more. I'm not saying they are excused.
6 Those are the ones I'm inclined to excuse. And I can tell
7 you --

8 MR. CRANE: I think she's going to ask if we agree
9 with any of these. If you don't, she's not going to kick
10 them.

11 MR. ROGERS: Basically what she's I think going to
12 tell us is: Don't waste time on these people if you can
13 avoid it.

14 THE COURT: Well, that was my basis. For example --
15 and I'll tell you, Miss McCullough was someone who said she
16 can't afford to work because she didn't get paid.

17 MR. ROGERS: Well, what she said was: She didn't
18 know whether or not she got paid.

19 MR. CRANE: Yeah, you know, Judge, I tell you,
20 there's several of them that --

21 THE COURT: Okay.

22 MR. CRANE: I'm with you. I'm with you.

23 THE COURT: I'm just telling the ones I'm inclined
24 to.

25 MR. CRANE: Yeah.

1 THE COURT: I'm not excusing them now. They will
2 all come back.

3 MR. ROGERS: Fair enough.

4 THE COURT: Let's see if there was some on the last
5 page of this that I thought I would be inclined to excuse.

6 Joan Bennett, who is Number --

7 MR. ROGERS: 43.

8 THE COURT: -- 43. She's the one that takes care of
9 the grandkid. Mr. Riney is gone. And Mr. Straughter,
10 S-t-r-a-u-g-h-t-e-r --

11 MR. CRANE: He's in a jam. You're talking hardship
12 with him.

13 THE COURT: With him with hardship. I'm just
14 telling you the ones I'm inclined to excuse.

15 MR. ROGERS: Your Honor, I'm not --

16 THE COURT: I'm not excusing --

17 MR. CRANE: Do you -- also, do you want, if there's
18 any of them that you want to let go now, do you want --

19 THE COURT: I don't -- I don't want to let them go
20 now.

21 MR. CRANE: Okay.

22 MR. ROGERS: And that tips the others off, so.

23 THE COURT: That's right. And there's no one whose
24 situation is critical. It's not like "My mother-in-law is
25 dying in the hospital, and I want to be there when she

1 breathes her last." There's no one that said something like
2 that.

3 MR. CRANE: I don't know. I might be able to push
4 that far on some of them.

5 THE COURT: Well, anyway. I just wanted to give you
6 that heads up. And we'll see you -- did I say ten to 1?

7 MR. CRANE: Very good, Judge.

8 THE COURT: All right.

9 MR. ROGERS: Thank you, Your Honor.

10 THE COURT: We'll see you at that time then.

11 We'll be in recess.

12 (Recess taken.)

13 - - -

14 The following proceedings were held out of the presence
15 of the jury:

16 THE COURT: State ready to proceed?

17 MR. CRANE: I'm sorry?

18 THE COURT: Did I wake you from your afternoon nap?

19 MR. CRANE: I was dreaming. Yeah, I'm ready, Judge.

20 THE COURT: Hopefully you don't think it's reality.

21 Is the defense ready to proceed?

22 MR. ROGERS: As long as I'm not naked. We're ready,
23 Your Honor.

24 THE COURT: You may return the jurors to the
25 courtroom, please.

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The following proceedings were held in the presence of
the jury:

THE COURT: Do we have everyone back?

BAILIFF BOEDEKER: I hope so.

THE COURT: Well, perhaps we should call their names
to make sure that we have them all.

Does the circuit clerk have the names of the jurors
that should be here?

CIRCUIT CLERK HOUSTON: I do.

THE COURT: Okay.

CIRCUIT CLERK HOUSTON: If I can find my list here.

(Roll call by Melba Houston, Circuit Clerk.)

THE COURT: Miss Schisler, you had indicated you
might call to see if there might be someone that your
daughter could stay with if you happened to be selected. Are
there some friends that she could stay with?

VENIREPERSON SCHISLER: Yes.

THE COURT: Thank you so much.

VENIREPERSON SCHISLER: Could I also add, though,
that -- I know you said this is supposed to only last a week.

THE COURT: Yes.

VENIREPERSON SCHISLER: But like on the 25th I have
to run my daughter to Louisville, Kentucky, for FFA.

THE COURT: You have to run her to where?

1 VENIREPERSON SCHISLER: To Kentucky, for FFA
2 national convention.

3 THE COURT: You will be able to do that.

4 VENIREPERSON SCHISLER: Okay.

5 THE COURT: Thank you.

6 Defense counsel may have questions for you.

7 MR. ROGERS: Thank you, Your Honor.

8 - - -

9 VOIR DIRE EXAMINATION

10 BY MR. ROGERS:

11 Good afternoon. It's been a while. Let me
12 reintroduce myself. My name is Charlie Rogers. And Jeremy
13 Weis, has the matching hairstyle, he and I practice law in
14 Kansas City with a firm called Wyrsh, Hobbs, and Mirakian.
15 Also representing Mr. Ferguson in this case is Kathryn
16 Benson, who practices law in Columbia with a firm called
17 Batek and Benson. And our client is Ryan Ferguson. Okay.
18 Also assisting us during this trial is Michelle Dorrance.
19 She is a paralegal with our law firm.

20 Now that you've seen us for it seems like a long
21 time, is there anybody here who thinks you know any of
22 Mr. Ferguson's defense team? I don't see any hands, so I'm
23 assuming that the answer is no.

24 Ryan Ferguson lives in Columbia, Missouri, with his
25 parents, who are also present in the courtroom. His father,

1 Bill Ferguson.

2 Would you stand, please.

3 And his mother, Leslie Ferguson. Bill is a real
4 estate agent; Leslie is a teacher, a reading specialist with
5 the Columbia school system.

6 Is there anybody who thinks you might know Ryan
7 Ferguson or any of his family? Okay. I don't see any hands,
8 so I assume once again the answer is no.

9 I'm going to ask a lot of questions. Some of them
10 may sound like questions you've heard from the Judge or from
11 the prosecutor. I'm not intending to be repetitious. And I
12 certainly don't intend to waste any time. But they are
13 questions that I think I need answers to, the way I'm going
14 to ask them, that I may not have heard when they were asked a
15 different way.

16 The other thing that I need to tell you is that in
17 many cases questions that I ask are things that would
18 normally be none of my business. And that you would have no
19 reason to tell me. But in this situation, we are picking 12
20 people who will decide whether or not Ryan Ferguson ever sees
21 the unfettered light of day again. And therefore, we have to
22 know as much as we can, to get the 12 people who are best for
23 this particular case. And so, therefore, I'm going to
24 apologize in advance if you think I'm being unduly intrusive.
25 I don't intend to be. But it's a serious job and it's a

1 serious matter, and we need the information to make the
2 choices that we have to make.

3 So basically I will assure you at that if you give
4 me good, accurate answers to my questions, I will not in any
5 way attempt to deceive or mislead or trick anybody.

6 And I also want to stress that there are no right
7 and wrong answers to these questions. A right answer is a
8 truthful answer. An answer that tells us information that we
9 can use. A wrong answer is an answer that does not tell us
10 what we need to know when it's there to be known. Okay?

11 Now, I said I wasn't going to be tricky or
12 deceitful, but I will start out the questioning with a quiz,
13 if you will. I used to have a teacher in high school who
14 used to come in on Monday morning and give a little pop quiz
15 to see if you were paying attention Friday -- in Friday
16 morning's class. And so this is a pop quiz to see if you
17 were paying attention, listening, and thinking about things
18 that you were told earlier today here in this courtroom.

19 And the question is: First of all, I'd like to see
20 a show of hands, how many people have a presumption right now
21 as to whether Ryan Ferguson is guilty or not guilty of the
22 murder of Kent Heitholt? How many have a presumption?

23 (One hand.)

24 MR. ROGERS: Mr. Straughter. You have a
25 presumption. What is your presumption?

1 VENIREPERSON STRAUGHTER: You asked me. I stood up.
2 Yes, I do.

3 MR. ROGERS: Yes. What is your presumption?

4 VENIREPERSON STRAUGHTER: That he's guilty.

5 MR. ROGERS: Okay. And that's because based on what
6 Mr. Crane told you about the plea bargain --

7 VENIREPERSON STRAUGHTER: Right.

8 MR. ROGERS: -- of the codefendant. Okay. So --
9 and you have already told us about that. And nothing that
10 you were told before that question was asked -- or after that
11 question has been asked has changed that in your mind. Is
12 that a fair statement?

13 VENIREPERSON STRAUGHTER: That's fair.

14 MR. ROGERS: Okay. Thank you.

15 Anybody else have a presumption? Okay. See, if I
16 were grading the pop quiz, I would be wondering whether you
17 were thinking about what Judge Roper told you or about what
18 Mr. Crane talked about, because they both told you that
19 Mr. Ferguson is presumed to be innocent. Okay? Everybody
20 remember that, now that I say it? See hands of people who
21 now remember hearing that.

22 (Show of hands.)

23 MR. ROGERS: Okay. All right. So when you heard
24 that, then it appears to me that maybe you weren't
25 internalizing that. You weren't thinking, Well, wait a

1 minute, if he's presumed to be innocent, and I'm here seeing
2 whether or not I'm going to be on the jury, maybe I should be
3 presuming him to be innocent. Okay? How many people, now
4 that I've said that, think that it is your job as jurors at
5 this stage of the trial to presume that Mr. Ferguson is
6 innocent?

7 (Show of hands.)

8 MR. ROGERS: Okay. And now I'm going to pick on
9 somebody who didn't raise his hand.

10 And since you are close, sir, Juror Number 4,
11 Mr. Clark, why not?

12 VENIREPERSON CLARK: I haven't heard all the facts
13 yet.

14 MR. ROGERS: Okay. And let me then go back to my
15 pop quiz and remind you of something that Mr. Crane stressed,
16 which is: You haven't heard, not only all the evidence, but
17 you haven't heard anything; correct?

18 VENIREPERSON CLARK: Yes.

19 MR. ROGERS: Okay. Mr. Ferguson is presumed to be
20 innocent throughout the jury. And it is the job of the jury
21 to -- as a juror, as an individual, and a jury as a group, to
22 keep that presumption and to take that presumption with them
23 into the jury room after they've heard all the facts and then
24 talk about the facts and see whether or not there has been
25 enough shown by the other side to overcome that presumption.

1 Do you understand that, sir? Are you agreeing with me on
2 that?

3 VENIREPERSON CLARK: Yes.

4 MR. ROGERS: Okay. So, given that, since you
5 haven't heard all the facts, in fact you haven't heard any of
6 the facts, would you now agree that it is your job to presume
7 that Mr. Ferguson is innocent?

8 VENIREPERSON CLARK: Yes.

9 MR. ROGERS: Okay. And are -- now that I've
10 explained it, are you doing it?

11 VENIREPERSON CLARK: To my knowledge, yes.

12 MR. ROGERS: Okay. Good enough. That's all you can
13 answer, is what you know. So, given that, you are now able
14 to give Mr. Ferguson the full benefit of the presumption of
15 innocence.

16 VENIREPERSON CLARK: Yes.

17 MR. ROGERS: Okay. Now that I have had my
18 conversation with Mr. Clark --

19 THE COURT: There is a hand.

20 MR. ROGERS: Oh, another hand.

21 VENIREPERSON KELLY: Could I have you scoot over
22 just a little bit? Thank you so much.

23 MR. ROGERS: Thank you. I've never been a preacher,
24 but this must be what it feels like.

25 All right. And just for the record, you're

1 Miss Kelly; is that correct?

2 VENIREPERSON KELLY: Yes.

3 MR. ROGERS: Number 42.

4 VENIREPERSON KELLY: Yes.

5 MR. ROGERS: Now that I've had my conversation with
6 Mr. Clark, I would again like to see a show of hands of those
7 people who are right now actively giving Mr. Ferguson the
8 benefit of the presumption of innocence.

9 (Show of hands.)

10 MR. ROGERS: Mr. Robinson, you didn't have your hand
11 up.

12 VENIREPERSON ROBINSON: I don't presume anything
13 until I find out something. I don't say he's guilty or not
14 guilty.

15 MR. ROGERS: And that's -- my whole point here is
16 that that sounds like a fair way to be. That is, in a sense,
17 impartial. And you heard the "words fair and impartial" a
18 lot. But in the context of this case and the criminal law
19 and the Constitution of the United States and the way it's
20 been developed in our justice system, when somebody is
21 accused of a crime, for a juror to be fair to that person,
22 that juror has to give them the benefit of the presumption of
23 innocence. And that means that juror has to presume that
24 they're innocent throughout the course of the trial. Before
25 they hear any evidence, while they're hearing the

1 prosecutor's evidence, while they're hearing the defense
2 evidence, while they're hearing the instructions of law from
3 the Judge, while the lawyers are making their closing
4 arguments. And then they go in the jury room and then they
5 decide whether the prosecution has overcome the presumption.
6 But the presumption has to be there from start to -- almost
7 to finish. Okay? Do you understand that?

8 VENIREPERSON ROBINSON: (Nodding head up and down.)

9 MR. ROGERS: You have to answer out loud. I'm
10 sorry.

11 VENIREPERSON ROBINSON: Yes.

12 MR. ROGERS: Because she can't take down a nod of
13 the head. And understanding that, are you having trouble
14 doing that?

15 VENIREPERSON ROBINSON: Yes.

16 MR. ROGERS: Okay. And why?

17 VENIREPERSON ROBINSON: I don't know. I just -- I
18 don't know the facts and I don't want to try to create
19 something in my head that shouldn't be there.

20 MR. ROGERS: Okay.

21 VENIREPERSON ROBINSON: So, until I know something
22 that's going on, I'm not going to presume anything.

23 MR. ROGERS: Okay.

24 VENIREPERSON ROBINSON: Or assume anything, I should
25 say.

1 MR. ROGERS: There's a difference between assuming
2 and presuming. Okay? Maybe that's the problem here.
3 Because I don't want you to assume anything. But I not only
4 want, but need and require you to presume that Mr. Ferguson
5 is innocent. And that is something in your head that should
6 be there. And must be there if you're going to do your duty
7 as a juror, in terms of the instruction Judge Roper has
8 already read to you, which you'll hear again at the end of
9 the case. And I'm kind of floundering here, wondering what I
10 can say to communicate that to you in a way that you will
11 accept it and internalize it and agree to do it. Answer me,
12 if you can.

13 VENIREPERSON ROBINSON: I guess I can accept it. I
14 mean --

15 MR. ROGERS: Okay. Would -- knowing that the Judge
16 has said that you have to do that, are you willing to do
17 that?

18 VENIREPERSON ROBINSON: Yes.

19 MR. ROGERS: Okay. So you understand it's not
20 something that shouldn't be in your head. It's not something
21 that makes you unfair. It's something that should be in your
22 head to make you fair.

23 VENIREPERSON ROBINSON: Okay.

24 MR. ROGERS: Okay. Fair enough.

25 And Mr. Brown. You didn't raise your hand either.

1 VENIREPERSON BROWN: Correct.

2 MR. ROGERS: Why was that?

3 VENIREPERSON BROWN: Well, I feel there's got to be
4 some reason why the young man was brought here. They just
5 don't pick a person off of a street, just an innocent person,
6 and just bring them in, say, "Well, I think we're going to
7 try you for this or that." So I got to believe there could
8 be just a smidgeon of guilt. I can listen to both sides of
9 the story and give an unbiased opinion about my feelings
10 toward that, but to give -- to say he is 100 percent
11 innocent, or guilty, either one, I could not say that at this
12 period of time.

13 MR. ROGERS: And once again, we may just be talking
14 about semantics, but... You're not required to conclude that
15 he is 100 percent guilty, but you are required to presume
16 that he is. And in fact, the Judge has told you, and
17 Mr. Crane I think said in almost the same words, that the
18 charge of an offense is not evidence. And it creates no
19 inference or presumption that any offense was even committed,
20 or that this defendant committed any offense.

21 Now, knowing that, and knowing that that's the law
22 that you would be sworn to follow as a juror, could you
23 follow that law?

24 VENIREPERSON BROWN: I could -- I could honestly say
25 that I think this man is 98 percent innocent right at this

1 moment, but there's got to be a reason that he was brought
2 here.

3 MR. ROGERS: Okay. But what I'm saying is: Having
4 been told that you cannot use that belief that you have as
5 any type of evidence, or to infer any guilt, can you set it
6 aside and give him the benefit of the presumption of
7 innocence in terms of what they have to prove to prove that
8 he's guilty?

9 VENIREPERSON BROWN: As far as to infer that there's
10 any guilt there, yeah, I could set that aside.

11 MR. ROGERS: Okay. Even the 2 percent.

12 VENIREPERSON BROWN: Uh-huh.

13 MR. ROGERS: So you can -- even though you're not
14 concluding that he's a hundred percent innocent, if you had
15 to vote right now, that's the way you'd have to vote, is not
16 guilty; right?

17 VENIREPERSON BROWN: Right now.

18 MR. ROGERS: Okay. And if you were not persuaded
19 beyond a reasonable doubt by evidence in court that he had
20 been proven guilty, that's the way you'd vote at the end of
21 the case too.

22 VENIREPERSON BROWN: After I heard both sides of the
23 story, I could give an honest opinion about it.

24 MR. ROGERS: Okay. Let me -- but the answer you
25 gave maybe didn't reflect the question I asked, so let me

1 clarify more. I'm not trying to pick on you, but this is
2 important stuff, as you know.

3 At the conclusion of the case, would the opinion
4 that you rendered, in the form of a verdict, be an opinion as
5 to whether or not you believed Mr. Ferguson was guilty or not
6 guilty, or would it be an opinion as to whether or not you
7 believed the state had proven its case beyond a reasonable
8 doubt?

9 VENIREPERSON BROWN: I would say that I could base
10 my opinion upon that there was no reason of doubt there
11 whatsoever. That he was guilty or innocent.

12 MR. ROGERS: But you understand that if there is a
13 reasonable doubt, what would your verdict be?

14 VENIREPERSON BROWN: If there was a doubt, he'd have
15 to be innocent.

16 MR. ROGERS: Okay. We're tracking finally. Okay.
17 And with that explanation, and having -- and I appreciate the
18 fact that you shared with me your concerns about he wasn't
19 picked at random to be here, but with that understanding, can
20 you, if selected on this jury, give Mr. Ferguson the benefit
21 of the presumption of innocence?

22 VENIREPERSON BROWN: Uh-huh.

23 MR. ROGERS: And are you doing that now, at this
24 stage, now that we've talked so much about it?

25 VENIREPERSON BROWN: I'm telling just like I told

1 you a while ago. Right now I feel 98 percent. I mean, I
2 can't say a hundred percent he's innocent right now. I'm
3 sorry. I just can't do that.

4 MR. ROGERS: All right.

5 VENIREPERSON BROWN: It's just like if you got a cop
6 gets a guy speeding down the highway, or there's just an
7 individual that's driving down the highway, and he picked him
8 just because "I want to pick him." Well, to me, if he got
9 the guy speeding down the highway, he's guilty of speeding.
10 You just don't pick a guy off the highway and say he's
11 innocent or guilty.

12 MR. ROGERS: We'll talk about credibility after a
13 while. Okay? But yeah. What I'm saying is -- what I'm
14 asking is: Are you now --

15 VENIREPERSON BROWN: I can set that aside.

16 MR. ROGERS: You can set that aside and use that
17 legal principle of the presumption of innocence to set that
18 aside and give Mr. Ferguson the presumption of innocence
19 right now and throughout the trial.

20 VENIREPERSON BROWN: Based upon what I hear, yes.

21 MR. ROGERS: Okay. Thank you.

22 All right. Now, let me see one more time a show of
23 hands on everybody who is right now, in this courtroom today,
24 giving Ryan Ferguson the full benefit of the presumption of
25 innocence.

1 (Show of hands.)

2 MR. ROGERS: Thank you.

3 Now, I'm having trouble seeing the entire courtroom.
4 Is there anybody other than Mr. Straughter who did not raise
5 their hand? Miss Delk? Did you raise your hand the last
6 time?

7 VENIREPERSON DELK: (Nodding head up and down.)

8 MR. ROGERS: Okay. I couldn't see it. Thank you.

9 THE COURT: Was that a yes?

10 VENIREPERSON DELK: Yes.

11 THE COURT: Thank you. She shook her head up and
12 down. I assume she meant yes.

13 MR. ROGERS: Thank you.

14 Okay. Now, talking about presumption of innocence,
15 we also necessarily talk about the burden of proof. And in
16 this case, the burden of proof is the highest burden known to
17 our justice system. And that is proof beyond a reasonable
18 doubt.

19 Is there anybody here who thinks that's too high a
20 burden to place on the prosecution, on the government, on the
21 State of Missouri, in a case like this? Where somebody's
22 dead. Don't you think we ought to cut it back a little? You
23 want to think about that? Okay. I see no hands. So I'm
24 assuming from that that everybody here not only is presuming
25 Mr. Ferguson to be innocent, but will also hold the state to

1 their burden of proof, beyond a reasonable doubt.

2 Now when Mr. Crane was talking about that, he talked
3 about elements of the offense. And I want to make something
4 clear. The state has the burden of proof, beyond a
5 reasonable doubt, of each and every element of the offense.
6 That's exactly correct. But that just proves that the
7 offense occurred. They also have the burden of proving
8 beyond a reasonable doubt that this kid right here committed
9 the offense.

10 And in that regard, if you have a reasonable doubt
11 as to something that bears on whether or not he committed the
12 offense, even though it may not be an element of the offense,
13 and even though they showed that the offense occurred, that
14 still would be a reasonable doubt touching upon the guilt of
15 the defendant, and you'd have a burden -- have the
16 responsibility of finding the defendant not guilty. Is there
17 anybody who doesn't understand that?

18 Let me shift gears a little bit here and ask an easy
19 question. How many of you know other people on the jury
20 panel from before you came to court today?

21 (Show of hands.)

22 MR. ROGERS: Okay. What I'm going to do is
23 basically ask who you know and where you know them from. And
24 if they've already said they know you, and where from, and
25 there's nothing more to add that you know somebody else, then

1 you can put your hands down.

2 We'll start with you, Mr. Brown. You're in the
3 first row here. Who do you know?

4 VENIREPERSON BROWN: Let's see. I know Roy Waechter
5 sitting on the end over here.

6 MR. ROGERS: Okay.

7 VENIREPERSON BROWN: That's the only one in the
8 first row that I know.

9 MR. ROGERS: Okay. Who else?

10 VENIREPERSON BROWN: Second row, I know Chris
11 Kaimann, setting over here.

12 MR. ROGERS: How do you know Mr. Waechter, first of
13 all?

14 VENIREPERSON BROWN: Well, he's been in business in
15 Troy for a long time and I've bought things from him in the
16 past.

17 MR. ROGERS: Okay. And how about Mr. Kaimann?

18 VENIREPERSON BROWN: Mr. Kaimann lives about two
19 miles from me.

20 MR. ROGERS: Okay. Who else?

21 VENIREPERSON BROWN: Mel Burkemper.

22 MR. ROGERS: How do you know Mr. Burkemper?

23 VENIREPERSON BROWN: Grew up with him. He lived
24 just -- in my same neighborhood.

25 MR. ROGERS: Okay.

1 VENIREPERSON BROWN: This next lady here was a
2 business acquaintance years ago. I dealt with her husband
3 and knew her through her husband.

4 MR. ROGERS: And for the record, the next lady is
5 Deborah Caviness; is that correct?

6 VENIREPERSON BROWN: That is correct.

7 MR. ROGERS: Okay.

8 VENIREPERSON BROWN: As a business person, I know
9 Mr. Norton. I haven't dealt with him, but I do know him. I
10 know Mr. Runge back there.

11 MR. ROGERS: And how do you know him?

12 VENIREPERSON BROWN: He lives in the same
13 neighborhood as I do.

14 MR. ROGERS: Okay.

15 VENIREPERSON BROWN: Back here in the back, I grew
16 up with her and their family, living in the same
17 neighborhood.

18 MR. ROGERS: Is that Mrs. Delk?

19 VENIREPERSON BROWN: Yes.

20 MR. ROGERS: All right.

21 VENIREPERSON BROWN: Who else knows me back here?

22 MR. ROGERS: All right.

23 VENIREPERSON BROWN: This lady over here, I've dealt
24 with her. Mark Krieg, sitting back here, I know him.

25 MR. ROGERS: When you say "this lady," you're

1 meaning Mrs. Fields?

2 THE COURT: I'm sorry? I can't hear whom you're
3 talking about. Pardon me. We can't hear the juror that
4 you're referring to. So we wouldn't know which one he knows.

5 MR. ROGERS: Okay. Mrs. Donna Fields? Is that who
6 you --

7 THE COURT: That was the one we missed. Juror
8 Number 52. Thank you.

9 VENIREPERSON BROWN: And Mr. Craig. I know him.
10 I've known him for many years. Lives in the same
11 neighborhood as I do also.

12 MR. ROGERS: All right. And I will now tell
13 everybody who Mr. Brown has identified, and it was convenient
14 to start with him, because he's in the business of knowing
15 people, you being an insurance agent and all; right? So, if
16 he's already talked about knowing you, you don't have to
17 raise your hand any more about that, unless there's something
18 you want -- think that needs to be clarified. Okay.

19 Anybody else on this front row over here who knows
20 somebody else here in the courtroom?

21 Yes, sir. Mr. Robinson.

22 VENIREPERSON ROBINSON: I know Tony Runge. Played
23 basketball against him in high school. I know Eldora Day. I
24 played ball with her son and that. We live in the same town.

25 MR. ROGERS: Okay. And does that pretty much sum it

1 up?

2 VENIREPERSON ROBINSON: (Nodding head up and down.)

3 MR. ROGERS: Anybody else in the front row?

4 Yes, sir.

5 VENIREPERSON GALES: Courtroom or jury?

6 MR. ROGERS: No. Let me get back to you in a little

7 bit, Mr. Gales. Mr. Clark had his hand up first.

8 VENIREPERSON GALES: I'm sorry.

9 MR. ROGERS: I -- the question was the jury panel.

10 VENIREPERSON GALES: That's what I thought.

11 MR. ROGERS: Okay.

12 VENIREPERSON CLARK: I know Mike Gaines. I think

13 he's Juror 51.

14 MR. ROGERS: Yes, he is. Mr. Gaines. And how do

15 you know each other?

16 VENIREPERSON CLARK: We went to church together.

17 MR. ROGERS: And what church is that?

18 VENIREPERSON CLARK: Baptist church.

19 MR. ROGERS: Okay. Now, Mr. Gales, you don't any of

20 the other prospective jurors?

21 VENIREPERSON GALES: No.

22 MR. ROGERS: But you do know other court personnel?

23 VENIREPERSON GALES: One.

24 MR. ROGERS: Okay. Fair enough.

25 Okay. Now front row on this side.

1 Yes. Miss Pund?

2 VENIREPERSON PUND: I know Chris Kaimann. We went
3 to school together. And Linda in the back.

4 MR. ROGERS: Linda Delk?

5 VENIREPERSON PUND: Just friends.

6 MR. ROGERS: Okay.

7 Yes, ma'am.

8 VENIREPERSON SCHUPMANN: I know Roy Waechter.

9 MR. ROGERS: Okay. And you -- other than the two
10 people, Mr. Waechter, who already mentioned knowing you --

11 VENIREPERSON WAECHTER: I really don't know.
12 They're talking about me, and I don't know them.

13 MR. ROGERS: Because you see people come in and out.
14 All right. Fair enough.

15 Okay. Second row over here. Anybody who has not
16 already been talked about as knowing somebody who knows
17 somebody?

18 Mr. Norton?

19 VENIREPERSON NORTON: I worked with Juror 41.

20 MR. ROGERS: Juror 41 is Mr. --

21 VENIREPERSON NORTON: Skirvin.

22 MR. ROGERS: -- Skirvin? Okay. And you don't work
23 together any more?

24 VENIREPERSON NORTON: No. No, sir.

25 MR. ROGERS: Thank you.

1 And Mr. Declue?

2 VENIREPERSON DECLUE: I know Juror 31. Just

3 friends.

4 MR. ROGERS: And that is the -- Mr. Black? Is that

5 correct?

6 VENIREPERSON DECLUE: Yes, sir.

7 MR. ROGERS: Okay. Thank you.

8 And Miss Caviness?

9 VENIREPERSON CAVINESS: Mark Krieg. Personal

10 friend.

11 MR. ROGERS: And that's Juror 40 behind you.

12 Yes, sir.

13 VENIREPERSON BURKEMPER: I know pretty well all the

14 people that Ron Brown mentioned, just because they're all in

15 the same community.

16 MR. ROGERS: Okay. You're Mr. Burkemper; correct?

17 VENIREPERSON BURKEMPER: (Nodding head up and down.)

18 MR. ROGERS: So the people who live in the same

19 neighborhood or community, you also know.

20 VENIREPERSON BURKEMPER: Right.

21 MR. ROGERS: Okay.

22 Anybody else on the second row over here? Second

23 row on this side?

24 Start here. Mr. Kaimann?

25 VENIREPERSON KAIMANN: Pretty well everybody that

1 Ron Brown mentioned.

2 MR. ROGERS: Okay. And Mr. Burkemper too; right?

3 VENIREPERSON KAIMANN: Yes.

4 MR. ROGERS: Fair enough.

5 Anybody else?

6 Yes, ma'am.

7 VENIREPERSON IEPPERT: Roy Waechter.

8 MR. ROGERS: And for the record, you're Carol
9 Ieppert?

10 VENIREPERSON IEPPERT: Ieppert.

11 MR. ROGERS: And you know Mr. Waechter.

12 VENIREPERSON IEPPERT: Yes.

13 MR. ROGERS: All right.

14 Mr. Gibbs?

15 VENIREPERSON GIBBS: I know John Skirvin and Doran
16 Black. We went to the same school.

17 MR. ROGERS: Miss Thomas?

18 VENIREPERSON LAURA THOMAS: I know William Daniel
19 Thomas. He's my son. And I go to church with Mr. Gaines.

20 MR. ROGERS: So mother and son team here? All
21 right. What church is that?

22 VENIREPERSON LAURA THOMAS: First Baptist Church.

23 MR. ROGERS: Okay. Thank you.

24 Third row here?

25 VENIREPERSON OHMERT: I know Charlie. We work

1 together.

2 MR. ROGERS: Mr. Ohmert?

3 VENIREPERSON OHMERT: Yes. I know Charlie.

4 MR. ROGERS: And when you say "Charlie," you mean

5 Mr. Stief sitting right next to you?

6 VENIREPERSON OHMERT: (Nodding head up and down.)

7 MR. ROGERS: Is that how you say your name, sir?

8 VENIREPERSON STIEF: Stief.

9 MR. ROGERS: Stief. I'm sorry.

10 Anybody else?

11 And Mr. Stief, do you know anybody else other than

12 Mr. --

13 VENIREPERSON STIEF: No.

14 MR. ROGERS: And yes, ma'am. Miss Galloway?

15 VENIREPERSON SUSAN GALLOWAY: I know Dale Galloway.

16 He's my husband.

17 MR. ROGERS: All right.

18 THE COURT: I'm going to have to ask you all to

19 stand up when you speak. It's real hard to hear you. Hard

20 for the court reporter. So if you're answering whom you

21 know, if you'll just stand and give your answers from a

22 standing position.

23 VENIREPERSON SUSAN GALLOWAY: I know Dale Galloway.

24 He's my husband.

25 MR. ROGERS: All right. We have a mother and a son

1 and we have husband and wife on the same panel.

2 Anybody else on that row?

3 Yes, sir.

4 VENIREPERSON WILLIAM THOMAS: I'm the son.

5 MR. ROGERS: You're the son. You're William Thomas.

6 You do know your mother. That's good to know.

7 The third row on this side.

8 Yes, sir. Mr. Moore.

9 VENIREPERSON MOORE: I've known Roy Waechter for

10 dealings with him 30 years ago, and my brother-in-law used to

11 work for him.

12 MR. ROGERS: Okay.

13 Now, back on the -- my left, your right, on the

14 fourth row. Anybody who hasn't already been talked about?

15 No hands. On my right side, anybody?

16 Yes, ma'am.

17 VENIREPERSON BENNETT: I know Roy Waechter.

18 MR. ROGERS: And you are Joan Bennett; correct?

19 VENIREPERSON BENNETT: Uh-huh.

20 MR. ROGERS: And how do you know Mr. Waechter?

21 VENIREPERSON BENNETT: Through his business.

22 MR. ROGERS: Okay. Once again, you're one of the

23 people -- you know him, but he doesn't know you.

24 VENIREPERSON BENNETT: Right.

25 MR. ROGERS: Fair enough.

1 And the back row. Anybody who hasn't already been
2 talked about? And I see no hands.

3 Now, here's the question. And it might be a little
4 bit different for those of you who know each other from going
5 to school together or working together and just being in the
6 same neighborhood, and people who go to the same church might
7 have a somewhat different twist on this question, and
8 certainly husband and wife or mother and son might have a
9 different twist on the same question, but the question is:
10 If you're on the jury with the person or people that you
11 know, is there anything about your relationship with those
12 people that may make you want to give more weight to their
13 views and opinions or less weight to their views and opinions
14 than you would to the views and opinions of a juror who's a
15 stranger to you?

16 First of all, I want to see a show of hands of
17 people who understand the question.

18 (Show of hands.)

19 MR. ROGERS: Okay.

20 That's a question Mr. Philipak doesn't understand.

21 VENIREPERSON PHILIPAK: Yeah. Just say it again. I
22 don't --

23 MR. ROGERS: Okay. That's why I asked, because it
24 gets convoluted.

25 If you were on the jury with somebody who you knew,

1 is there anything about that relationship which would make
2 you give more weight to their opinions, when you're talking
3 about having to decide a case, or less weight to their --

4 VENIREPERSON PHILIPAK: No.

5 MR. ROGERS: -- opinions than you would a stranger?

6 VENIREPERSON PHILIPAK: Would make no difference.

7 MR. ROGERS: Okay. Good enough. That's --

8 VENIREPERSON PHILIPAK: That's the answer you want;
9 right?

10 MR. ROGERS: That's -- well, I want a true answer,
11 and that sounds like it is. Okay. How's that?

12 Now, everybody else I assume understands the
13 question; right? Anybody not clear on that? Okay.

14 Is there anybody here who might think, Well, hey, if
15 I'm on the jury with my wife, I'm going to have to listen to
16 what she has to say or else I'm going to have to live with
17 this woman when I get home. And I'm looking at Mr. Galloway,
18 and he's shaking his head no. Is that a fair statement?
19 Okay.

20 Now, Mrs. Galloway, let me ask the converse to you.
21 Are you thinking that if you're on the jury with your
22 husband, that you might have to give a little more attention
23 to his opinions than you would somebody who's a stranger to
24 you, because of the fact that you're married and have been
25 married for a while?

1 VENIREPERSON SUSAN GALLOWAY: No, sir.

2 MR. ROGERS: You have to stand up. I'm sorry.

3 VENIREPERSON SUSAN GALLOWAY: I don't feel that way.

4 However, I would like to say that I don't feel like we can

5 both be on the jury because we have foster kids at home, and

6 the state has not approved anybody to watch them for us if we

7 were gone. And they have to stay in our town so they can go

8 to school.

9 MR. ROGERS: So what you're saying is one of you can

10 serve, but not both.

11 VENIREPERSON SUSAN GALLOWAY: Right.

12 MR. ROGERS: Okay. Thank you. I appreciate that.

13 And that's a question that had not occurred to me until you

14 stood up and said it. Thank you.

15 VENIREPERSON SUSAN GALLOWAY: We can both do it, but

16 the children need looking after.

17 MR. ROGERS: Okay. Fair enough. So we won't have

18 to worry about getting each other angry.

19 VENIREPERSON SUSAN GALLOWAY: Right.

20 MR. ROGERS: Okay.

21 Mr. Thomas, let me ask you the same question. If

22 you're on the jury with your mother, do you think you'd have

23 to give her opinion more weight than you would that of a

24 stranger? Or do you think you would give it more weight?

25 VENIREPERSON WILLIAM THOMAS: Yeah, I probably

1 would. I mean --

2 MR. ROGERS: And -- I mean, we've all been brought
3 up to listen to our mothers; right?

4 VENIREPERSON WILLIAM THOMAS: Right.

5 MR. ROGERS: And do you think that you would have
6 trouble arguing a position contrary to hers if you had a
7 different position and you were both on the jury?

8 VENIREPERSON WILLIAM THOMAS: No, I wouldn't have
9 trouble arguing. I would -- you always have that mother
10 voice stuff.

11 THE COURT: Could you stand up, Mr. Thomas?

12 MR. ROGERS: I'm sorry.

13 VENIREPERSON WILLIAM THOMAS: I wouldn't have
14 trouble arguing the point. I guess the voice would be in my
15 mind, as it's been all my life.

16 MR. ROGERS: But it would be, whether she was on the
17 jury or not.

18 VENIREPERSON WILLIAM THOMAS: Yeah, it would be
19 there.

20 MR. ROGERS: All right. Thank you.

21 How about you, Mrs. Thomas?

22 VENIREPERSON LAURA THOMAS: He's never shared an
23 opinion with me so far, so. When we do argue, and we --
24 about 50/50 with the wins. So I don't think it would --

25 MR. ROGERS: So you have some give and take going on

1 in the nonjury situation; is that what you're telling us?

2 VENIREPERSON LAURA THOMAS: Yes.

3 MR. ROGERS: Okay. But, of course, you're the one
4 that's always right, because you're his mom; right?

5 VENIREPERSON LAURA THOMAS: Yes.

6 MR. ROGERS: Is there anybody here who has such a
7 relationship with somebody else on the jury panel that it
8 might make it difficult for you to, in the give and take of
9 jury deliberations, treat their opinion the same way you
10 would treat the opinion of a juror who's a stranger? I see
11 no hands. I take it the answer is no.

12 Does anybody here belong to any group or
13 organization which has as its goal or reason for existing or
14 one of the things it does: Fighting crime? In other words,
15 a neighborhood watch group, a sheriff's auxiliary group,
16 anything like that? I don't see any hands.

17 Does anybody here belong to a group or organization
18 which is designed to help out people who are in trouble with
19 the law? Like a prison ministry kind of group or a -- I'll
20 just use that as an example. I'm having trouble thinking of
21 another one. Anybody belong to any organization like that?
22 Okay. I see no hands once again.

23 Has anybody on the jury panel had a college level
24 course or higher in psychology?

25 (Show of hands.)

1 MR. ROGERS: Okay. I see some hands.

2 Let me start in the front row with Miss Pund. You

3 -- if you're in the front row, you don't have to stand up. I

4 think that's the rule.

5 First of all, how long ago was that?

6 VENIREPERSON PUND: Five years ago.

7 MR. ROGERS: And where was it?

8 VENIREPERSON PUND: Webster University.

9 MR. ROGERS: And what was the name of the course?

10 VENIREPERSON PUND: Psychology 101 and child

11 psychology.

12 MR. ROGERS: Okay. During the class, did you study

13 how memories are formed and stored and retrieved?

14 VENIREPERSON PUND: I'm sure I did, but -- a little,

15 but I can't remember.

16 MR. ROGERS: Let me ask you this.

17 VENIREPERSON PUND: I got an A in the class.

18 MR. ROGERS: I'm sure you earned it. You didn't

19 make a conscious decision to forget everything you learned,

20 did you?

21 VENIREPERSON PUND: No.

22 MR. ROGERS: Okay. Fair enough. I know it was a

23 smart-aleck comment, but we still had to have an answer for

24 the record. And do you recall the name of Dr. Elizabeth

25 Loftus coming up during your studies?

1 VENIREPERSON PUND: No.

2 MR. ROGERS: Okay. All right.

3 Second row, anybody who had a college level?

4 Mr. Norton.

5 VENIREPERSON NORTON: Yeah. Psych 101. Basically

6 it was a general psych in college. The only thing I remember

7 about that was testing, and your mind during tests and

8 whatnot. I mean, it was a long time ago. I'm 40 years old.

9 I was 21, something like that. The only thing I remember was

10 results on how your mind would be for study. If you study

11 this way, you should test this way. Things of that nature.

12 But that wasn't my major or anything like that.

13 MR. ROGERS: So basically you took what you could

14 for practical use in other areas of academic endeavor.

15 VENIREPERSON NORTON: If you study drinking, take

16 your test drinking.

17 MR. ROGERS: I'm not going there.

18 VENIREPERSON NORTON: I just remembered that. I'm

19 sorry.

20 MR. ROGERS: And I'm not going to ask if that

21 applied during your student days either. But having said

22 that, is that the extent of what you remember? Correct?

23 VENIREPERSON NORTON: I don't remember much. No,

24 I'm kidding.

25 MR. ROGERS: Anybody else on the second row who's

1 had a college level or higher course of psychology? Okay.
2 This second row.
3 Yes, ma'am.
4 VENIREPERSON CARTER: Juror 20.
5 MR. ROGERS: There you are. Miss Carter; correct?
6 VENIREPERSON CARTER: Uh-huh.
7 MR. ROGERS: How long ago was that?
8 VENIREPERSON CARTER: It's been within the last five
9 years.
10 MR. ROGERS: And where was that?
11 VENIREPERSON CARTER: St. Charles Community College.
12 MR. ROGERS: And what was the course?
13 VENIREPERSON CARTER: It was introduction.
14 MR. ROGERS: Okay. Did you also have anything
15 dealing with memories and how they're encoded, stored,
16 retrieved?
17 VENIREPERSON CARTER: I don't remember either.
18 MR. ROGERS: Okay. Fair enough. Thank you.
19 Mr. Gibbs.
20 VENIREPERSON GIBBS: Well, the high school classes I
21 mentioned before were college credited. So I don't know if
22 that counts or not. And we did discuss the topics of memory
23 and stuff. I don't recall most of it, though.
24 MR. ROGERS: Do you recall the name of Dr. Loftus?
25 VENIREPERSON GIBBS: No.

1 MR. ROGERS: Okay. Thank you.

2 All right. Anybody else in the second row on either
3 side? Third row?

4 Yes, sir.

5 VENIREPERSON SEABAUGH: I took psychology 101, child
6 psychology, and probably abnormal psychology. That's about
7 all I remember.

8 MR. ROGERS: And you are Mr. Seabaugh?

9 VENIREPERSON SEABAUGH: Yes.

10 MR. ROGERS: Is that how you pronounce it?

11 VENIREPERSON SEABAUGH: Seabaugh.

12 MR. ROGERS: Seabaugh.

13 VENIREPERSON SEABAUGH: Yes.

14 MR. ROGERS: Thank you. And where was this? I'm
15 sorry. I'm not done. Thank you for telling me how to say
16 your name.

17 VENIREPERSON SEABAUGH: Montgomery, Alabama, at
18 Southern Christian University.

19 MR. ROGERS: All right. And did you study memory
20 and some of those things?

21 VENIREPERSON SEABAUGH: Probably, but I don't
22 remember a lot of it, so.

23 MR. ROGERS: Okay. Fair enough. Thank you.

24 Anybody else on the second row?

25 Yes, ma'am. Mrs. Galloway.

1 VENIREPERSON SUSAN GALLOWAY: I am in the process of
2 getting my Master's, so -- in counseling, so I have taken --

3 THE COURT: Miss Galloway, would you raise your
4 voice just a little bit. I know you're getting a Master's
5 degree. I heard that much.

6 VENIREPERSON SUSAN GALLOWAY: In counseling, at the
7 moment, so I have taken several classes.

8 MR. ROGERS: All right. And where are you getting
9 your Master's degree?

10 VENIREPERSON SUSAN GALLOWAY: Missouri Baptist
11 University.

12 MR. ROGERS: Where's that?

13 VENIREPERSON SUSAN GALLOWAY: I go to the extension
14 in Moscow Mills.

15 MR. ROGERS: Okay. I didn't know they had one.
16 Where's -- where's the main campus?

17 VENIREPERSON SUSAN GALLOWAY: Down off of Ballas.

18 MR. ROGERS: Okay. Thank you. In terms of the
19 memory, for the classes that you had that touched on memory,
20 how extensive has that been?

21 VENIREPERSON SUSAN GALLOWAY: Not very.

22 MR. ROGERS: And once again, have you -- do you
23 recall the name of Dr. Loftus coming up in any of these
24 classes?

25 VENIREPERSON SUSAN GALLOWAY: No.

1 MR. ROGERS: Thank you.

2 Anybody else on the third row over here? Third row

3 over here. No? Fourth row. My left. Your right.

4 Yes, ma'am.

5 VENIREPERSON KELLY: Took child -- or college

6 psychology.

7 MR. ROGERS: And you're Miss Kelly?

8 VENIREPERSON KELLY: Yes.

9 MR. ROGERS: And where was that?

10 VENIREPERSON KELLY: It was in Washington State.

11 MR. ROGERS: And do you recall -- at what

12 university?

13 VENIREPERSON KELLY: It was at a community college.

14 Green River Community College.

15 MR. ROGERS: Okay. Do you recall studying memory

16 and how it's --

17 VENIREPERSON KELLY: (Shaking head from side to

18 side.)

19 MR. ROGERS: -- encoded or retrieved or --

20 VENIREPERSON KELLY: No, sir.

21 MR. ROGERS: And do you recall the name Dr. Loftus?

22 VENIREPERSON KELLY: No, sir.

23 MR. ROGERS: Thank you.

24 All right. Right-hand side, fourth row.

25 Yes, sir. Mr. Runge?

1 VENIREPERSON RUNGE: Runge, yes, sir.

2 MR. ROGERS: Runge. I'm sorry.

3 VENIREPERSON RUNGE: I had two courses at Moberly
4 Area Junior College. That was back in '74 and '75.

5 MR. ROGERS: Okay.

6 VENIREPERSON RUNGE: So I don't remember much about
7 it.

8 MR. ROGERS: Does that -- do they have a campus
9 here?

10 VENIREPERSON RUNGE: No. That was in Moberly,
11 Missouri.

12 MR. ROGERS: In Moberly?

13 VENIREPERSON RUNGE: Yes.

14 MR. ROGERS: Okay. And once again, you don't recall
15 any of the details about what they may have taught about
16 then.

17 VENIREPERSON RUNGE: No.

18 MR. ROGERS: Thank you.

19 Anybody else on the fourth row over here? And the
20 back row on my left, your right.

21 Yes, sir. Mr. Gaines.

22 VENIREPERSON GAINES: I had several psychology,
23 social psychology, statistics, child behavior, 20 years ago,
24 Mid-America Nazarene College. I remembered enough to pass a
25 test and get a grade.

1 MR. ROGERS: That's over in my part of the country,
2 right, over in Olathe, Kansas?

3 VENIREPERSON GAINES: Right.

4 MR. ROGERS: And do you recall anything about the
5 subject of memory, as it was taught back then?

6 VENIREPERSON GAINES: Just enough to remember what
7 was going to be on the test.

8 MR. ROGERS: And once you took the test, you didn't
9 care to remember it any further?

10 VENIREPERSON GAINES: (Nodding head up and down.)

11 MR. ROGERS: All right. Thank you.

12 Okay. Is that everybody?

13 While we're sort of talking about memory, is there
14 anybody here who's ever been someplace and seen somebody you
15 thought you knew, and it turned out it wasn't that person?
16 In other words, mistaken a stranger for someone you knew?

17 I see a hand. Mr. Ohmert?

18 VENIREPERSON OHMERT: Yes.

19 MR. ROGERS: Tell me a little bit about that.

20 VENIREPERSON OHMERT: I guess I was -- about five or
21 six years ago I thought I was in a place, and I never had
22 been there before, and I thought I knew somebody. Turned out
23 that I just didn't know them.

24 MR. ROGERS: Just somebody who looked like somebody
25 you knew?

1 VENIREPERSON OHMERT: Yeah.

2 MR. ROGERS: Okay.

3 And I saw some other hands. I'm not going to detail
4 them, but let me ask the reverse of that question then. Has
5 anybody ever been someplace, and some stranger came up to you
6 and said, "Aren't you so and so?" And you're not so and so.

7 I see a nod of the head here from Mr. Gales.

8 VENIREPERSON GALES: Yes.

9 MR. ROGERS: And tell me about that.

10 VENIREPERSON GALES: You want to know the
11 particulars.

12 MR. ROGERS: Yeah, or just -- a particular incident.

13 VENIREPERSON GALES: They just asked me if I was
14 so-and-so, and I said no. And they said, "You look like
15 so-and-so." I said I wasn't.

16 MR. ROGERS: Fair enough.

17 Does anybody here have any quarrel with the
18 proposition that a witness who thinks they are being honest
19 and maybe being honest may be mistaken about identifying
20 somebody who they say as somebody who they saw some other
21 time? Anybody have any proposition -- any quarrel with the
22 notion that even though somebody may be telling the truth as
23 they perceive it, they could be wrong about whether or not
24 that's the person they saw? Does everybody agree that it is
25 something that is part of our common experience, that people

1 see people that they think are somebody else and they are
2 proven not?

3 (Show of hands.)

4 MR. ROGERS: Okay.

5 VENIREPERSON GAINES: I don't know that I completely
6 agree with that statement.

7 MR. ROGERS: Okay. And once again, you are
8 Mr. Gaines?

9 VENIREPERSON GAINES: Yes.

10 MR. ROGERS: You don't agree with the statement that
11 that's part of our common experience?

12 VENIREPERSON GAINES: I think that it can be part of
13 our common experience, but you haven't given us enough
14 information. If I know somebody very well, I'm not going to
15 mistake somebody else for them. But if I casually know
16 somebody, I may.

17 MR. ROGERS: Okay. Or how about strangers and
18 strangers?

19 VENIREPERSON GAINES: I don't know them, so it's
20 very easy to make that mistake.

21 MR. ROGERS: Okay. So you are basically agreeing
22 that mistaken identity happens, but as the familiarity with
23 the person is greater, the person that you know is greater,
24 the possibility of mistaking somebody for them might become
25 less.

1 VENIREPERSON GAINES: Yes.

2 MR. ROGERS: Okay. Thank you. That's based on your
3 common experience more than your studies at Mid-America
4 Nazarene University; correct?

5 VENIREPERSON GAINES: Yes.

6 MR. ROGERS: All right.

7 Mr. Waechter, you were telling us about a situation,
8 telling Mr. Crane about a situation where you had experienced
9 something unpleasant and had decided to put it out of your
10 mind, and then didn't remember it for a while?

11 VENIREPERSON WAECHTER: Yeah. I work construction.
12 We had a truck. And I picked it up at our location. Went
13 out to get the gas cap. It was off. On the truck. First
14 thing I thought: Somebody stole the gas.

15 MR. ROGERS: Uh-huh.

16 VENIREPERSON WAECHTER: A month later -- I had put
17 it out of mind. Somebody got the gas. A month later, the
18 truck did get stolen. Then I went back to the month before,
19 when I went out and the gas cap was gone. And I know, if the
20 truck was out of gas -- I always charge gas up about two
21 miles from where this truck was parked. I couldn't remember
22 stopping and putting gas in it. But if the truck was empty,
23 and somebody stole the gas, how did I get another 30 miles
24 closer to home without any gas? Trick was: Nobody stole the
25 gas. Somebody took the gas cap off and put gas in it, so

1 they presumably could get away with the truck.

2 But I took for granted that somebody stole the gas,
3 so put it out of my mind for at least three weeks. Two
4 weeks. When the truck got stolen, it reentered my mind,
5 "Hey, they didn't steel that gas. Somebody had to put gas in
6 it." Because I checked the records. I never put gas in the
7 truck.

8 MR. ROGERS: So --

9 VENIREPERSON WAECHTER: I do hope I'm not out of
10 line, if you follow what I'm saying.

11 MR. ROGERS: I think --

12 VENIREPERSON WAECHTER: The gas cap's gone.
13 Somebody took the gas. But two weeks later the truck
14 disappears. You stop and think, Well, if they stole the gas,
15 how did I drive 30 miles?

16 MR. ROGERS: And one assumes, when you got in the
17 truck to drive it back to your place of business, that you
18 looked at the gas gauge, it had gas in it.

19 VENIREPERSON WAECHTER: And it left my mind. I
20 never thought about it.

21 MR. ROGERS: And the fact that the gas cap had been
22 missing left your mind.

23 VENIREPERSON WAECHTER: Right.

24 MR. ROGERS: Okay. But it's not a matter of
25 later -- it's not a matter of you consciously deciding to

1 forget that the gas cap had been missing; correct?

2 VENIREPERSON WAECHTER: I think I forgot the
3 incident when it happened, because it really was a minor
4 incident. Some kid or somebody stole the gas.

5 MR. ROGERS: Not a matter of you deciding: "Well,
6 the gas cap's gone. I'm going to -- that's too horrible for
7 me to contemplate. I'm not going to think about it."

8 VENIREPERSON WAECHTER: Uh-huh.

9 MR. ROGERS: Right? Okay. And did you, I assume,
10 replace the gas cap at some time?

11 VENIREPERSON WAECHTER: I found the gas cap. It was
12 maybe 50 feet away from the truck.

13 MR. ROGERS: Okay.

14 VENIREPERSON WAECHTER: Somebody took the gas cap
15 and...

16 MR. ROGERS: All right. I see.

17 VENIREPERSON WAECHTER: Or they got spooked when
18 they was putting gas in it and they...

19 MR. ROGERS: Okay. Thank you. I was wondering what
20 that was about.

21 VENIREPERSON WAECHTER: That was it.

22 MR. ROGERS: Wasn't making a whole lot of sense to
23 me, but now that you've explained it.

24 Has anybody here ever been evaluated or treated by a
25 psychologist or a psychiatrist or some other person who is

1 like a mental health professional, a counselor, or something
2 like that? I'm not talking about going to a marriage
3 counselor. Something more than that.

4 You can put your hand down. You've been to a
5 counselor?

6 VENIREPERSON McCULLOUGH: Yes.

7 MR. ROGERS: Number 33?

8 VENIREPERSON McCULLOUGH: Yes.

9 MR. ROGERS: And you're Miss McCullough; is that
10 correct?

11 VENIREPERSON McCULLOUGH: Yeah. Mary McCullough.

12 THE COURT: Could you stand?

13 VENIREPERSON McCULLOUGH: Yes.

14 I don't really remember it. I was kind of young. I
15 was like 16. And I OD'd on Aleve. And I spent like --

16 MR. CRANE: You know, I'm sorry. I didn't --

17 THE COURT: You're going to have to --

18 MR. CRANE: You OD'd on what?

19 VENIREPERSON McCULLOUGH: Aleve.

20 MR. CRANE: Okay.

21 VENIREPERSON McCULLOUGH: And I spent a weekend in
22 the psych ward downtown St. -- no, at St. John's.

23 St. John's. And I was released. That was it.

24 MR. ROGERS: So you were basically treated for the,
25 I guess overdose is the way to put it, but the toxicant, too

1 much toxin, too much ibuprofen? Is that what the reason was?
2 VENIREPERSON McCULLOUGH: More or less.
3 MR. ROGERS: Okay. Thank you.
4 Anybody else?
5 Mr. Philipak?
6 VENIREPERSON PHILIPAK: Yeah. I just seen one one
7 time. That was it.
8 MR. ROGERS: And --
9 VENIREPERSON PHILIPAK: A psychiatrist.
10 MR. ROGERS: How old were you at the time?
11 VENIREPERSON PHILIPAK: About 38, 39, I guess.
12 MR. ROGERS: Okay. Thank you.
13 Anybody else?
14 Ma'am. I'll get your name in a minute. Janet
15 Brininger?
16 VENIREPERSON BRININGER: Yes.
17 MR. ROGERS: Yes.
18 VENIREPERSON BRININGER: I seen one for depression.
19 MR. CRANE: I'm sorry?
20 MR. ROGERS: She saw a mental health professional
21 for depression?
22 VENIREPERSON BRININGER: Yeah.
23 MR. CRANE: Thank you.
24 MR. ROGERS: And how long ago was that, ma'am?
25 VENIREPERSON BRININGER: About ten years.

1 MR. ROGERS: Okay. Thank you.

2 Anyone else?

3 Miss Delk?

4 VENIREPERSON DELK: Same here. I saw a counselor.

5 THE COURT: I'm sorry. You're going to have to
6 speak up. It's hard to hear you, ma'am.

7 VENIREPERSON DELK: I saw a psychologist and a
8 psychiatrist for depression after going through a divorce.

9 MR. ROGERS: And how long ago --

10 VENIREPERSON DELK: About ten years ago. Thirteen
11 years ago.

12 MR. ROGERS: Okay. Thank you.

13 Anybody else?

14 Yes, sir.

15 VENIREPERSON BLACK: I went to a counselor for
16 depression. Four -- four years ago.

17 MR. ROGERS: Thank you, sir.

18 Mr. Crane talked at some length about Charles
19 Erickson and his plea bargain and plea agreement. Is there
20 anybody here, other than Mr. Straughter, who's already made
21 it perfectly clear how he feels about this situation, is
22 there anybody here who would automatically believe a witness
23 who came in and said, "I did this crime, I've pled guilty to
24 it, I'm going to be sent to prison for it, and that's the guy
25 that did it with me"? Is there anybody, other than

1 Mr. Straughter, anybody who says, "Okay, this guy is going to
2 prison, and he says he did it; I'm going to believe who he
3 says he did it with"? I don't see any other hands. Okay.

4 Does that accurately describe your beliefs,
5 Mr. Straughter?

6 VENIREPERSON STRAUGHTER: You're pretty much on it.

7 MR. ROGERS: Okay. Thank you.

8 Yes. Mr. Norton.

9 VENIREPERSON NORTON: I just want to say that, I
10 don't know -- that doesn't help. I'm saying I could keep an
11 open mind. By using that little bit -- and I don't think
12 there's probably anyone sitting here that that did not
13 prejudice this man, when they used that in the preliminary of
14 talking about that. I think we're all saying, "Okay, we can
15 understand what you're saying as far as presuming innocence,"
16 but by stating that, from the git-go, that there's a
17 gentleman that testified to this, he's taking a plea, he --
18 you know, we've all heard he's copped a plea to save his own
19 skin. That does not -- I mean, it does not lend well.
20 That's all I am saying. And can we assume? Yes, we can --
21 not assume. Can we presume innocence? Yes. But in the
22 backs of several folks' minds, you feel that -- and that's
23 not a -- I don't even know if that should have been fair as
24 far as the opening statements, to be able to use that part.
25 It doesn't seem -- that's a prejudice with me against this

1 gentleman.

2 MR. ROGERS: And I appreciate that. I will tell you
3 that, quite frankly, I would rather find that out from
4 Mr. Straughter, for example, now, than find it out in what
5 are really the opening statements or during when the first
6 witness is called, down the line, when it's too late to do
7 anything about it. I agree. Certainly not a helpful fact to
8 the defense. But my -- my question really is: Is that --
9 the fact that you now have been given reason to believe that
10 that will be the testimony coming in from Charles Erickson,
11 does that mean we're wasting our time having the rest of the
12 trial? And you don't feel that way, I take it.

13 VENIREPERSON NORTON: No.

14 MR. ROGERS: Okay. Thank you, Mr. Norton. I do
15 appreciate your comments. And the situation had not escaped
16 me.

17 Let's talk about that a little bit.

18 First of all, is there anybody who hasn't already
19 said so who could never believe somebody who is testifying
20 for the prosecution in return for a plea agreement? Somebody
21 who says, "I did this crime, and here's what I'm getting, and
22 this person did it with me, and so you should find him
23 guilty." Anybody who would never believe such a witness?
24 Okay.

25 Now, while I've got you here, Mr. Norton, let me ask

1 you what kinds of evidence would you want to hear to be able
2 to decide whether or not to believe a witness who says, "I
3 did the crime, and Ryan Ferguson did it with me"?

4 MR. CRANE: Judge, I'm going to object to the form
5 of that question.

6 THE COURT: The objection is sustained to the form.
7 You may rephrase your question, Counsel.

8 MR. ROGERS: Let me ask it a different way then.

9 What would you look at in deciding the credibility
10 or the believability or the weight to be given to such
11 testimony?

12 MR. CRANE: Judge, I'm going to make the same
13 objection. The juror is being asked to speculate on facts
14 that he doesn't know about, at this stage of the trial.
15 Object to the form of the question.

16 MR. ROGERS: I thought it was responsive to the
17 speculation about facts that was introduced during the
18 state's voir dire, Your Honor.

19 THE COURT: You may ask how he judges credibility of
20 a witness.

21 MR. ROGERS: Okay.

22 THE COURT: Without getting into specifics that
23 maybe has not gone into -- or asking him for matters that
24 haven't been gone into.

25 MR. ROGERS: Let me do it that way.

1 In judging the testimony of any witness, I'll still
2 pick on you, Mr. Norton, because you've obviously given this
3 some thought, would you want to know the witness's ability to
4 observe things?

5 VENIREPERSON NORTON: Since we've all been given
6 some, I don't -- I would -- I don't want to say facts,
7 specific facts, but we've been given part of a puzzle here.
8 We've been told that there's part of the puzzle that is not
9 here. This is what we're going to have to use to make a
10 decision. If there is no hard evidence, as far as what we --
11 you discussed: Hair, nail, whatever, blood, blah, blah,
12 blah, that DNA, and that we are going specifically on another
13 human's testimony to decide the fate of another human, then
14 the scrutiny of that testimony of that witness, their
15 personality, their personality profile, their credibility as
16 far as other folks, folks that know them, is of paramount.
17 So, yes. It's humongous. I mean, to take that step, without
18 the other parts of the play, to take someone else's testimony
19 that possibly, someone mentioned earlier, to save their own
20 butt or whatever, their credibility as a person would be of
21 paramount.

22 MR. ROGERS: Okay. Thank you. I appreciate that.

23 Let me ask you, in that regard -- let me actually --
24 yeah, let me ask you while I got you here, Mr. Norton, in
25 terms of physical evidence, would you be interested in seeing

1 whether or not that person's testimony goes along with the
2 physical evidence that there is, or detracts from the
3 physical evidence? In other words, is it consistent or
4 inconsistent with physical evidence? Would that be important
5 to you?

6 VENIREPERSON NORTON: Yes.

7 MR. ROGERS: And if there were physical evidence
8 that was recovered, that did not match Charles Erickson or
9 Ryan Ferguson, would that be important to you?

10 VENIREPERSON NORTON: Yes, it would.

11 MR. ROGERS: Thank you.

12 And now that gets me to Mr. Headrick, because you're
13 the one who talked twice about physical evidence. And once
14 you said, "You need physical evidence," and then you seemed
15 to say, "But it really depends on what the other evidence
16 is." Is that a fair statement?

17 VENIREPERSON HEADRICK: Yes, sir.

18 MR. ROGERS: And let me ask you that. Would you be
19 able to use whatever physical evidence was presented in
20 assessing the believability and the weight and value to be
21 given to the testimonial evidence?

22 MR. CRANE: Judge, I'm going to object. I think
23 that seeks a commitment from the prospective juror. So I'll
24 make -- that's my objection. "Would he" --

25 MR. ROGERS: "Be able." The "be able" is what makes

1 it not a commitment. To use physical evidence in assessing
2 the believability of the testimonial evidence.

3 THE COURT: I'm going to overrule the objection.

4 You may answer the question, if you understand it,
5 sir.

6 VENIREPERSON HEADRICK: One more time.

7 MR. ROGERS: Would you be able to use whatever
8 physical evidence is presented in assessing the believability
9 or the weight or value of the testimonial evidence? You know
10 what testimonial evidence is? Things people say --

11 VENIREPERSON HEADRICK: Along with it or solely?

12 MR. ROGERS: No, not solely. Along with it.

13 VENIREPERSON HEADRICK: Yes.

14 MR. ROGERS: Okay. Thank you. And that's a very
15 good question.

16 Yes, sir. Mr. Harris?

17 VENIREPERSON HARRIS: I understand your questions
18 you're asking. By us being able to -- we were given a
19 statement by the prosecutor about having a witness who turned
20 state's witness -- or state's evidence, whatever. And that
21 in itself we could seem to believe. This man, he's pleaded
22 guilty. If he was there with the defendant, whatever. It
23 seems like that would be a cut-and-dried thing. But right
24 after that the prosecutor mentioned something about alcohol.
25 And whether or not this witness was drunk or what, I don't

1 know. But that's kind of confusing me on this.

2 MR. ROGERS: And I can't really talk about that.

3 VENIREPERSON HARRIS: I know you can't, and we can't
4 -- we haven't been given those facts. But for you to ask us,
5 "Can we believe this witness" --

6 MR. ROGERS: And I'm not asking you that. What I'm
7 asking you is: Can you weigh and judge --

8 VENIREPERSON HARRIS: Oh, sure.

9 MR. ROGERS: -- the testimony of this witness,
10 without automatically believing him or automatically
11 disbelieving him, but looking at it as evidence that has to
12 be looked at as part of the big picture. And there are
13 things that might tend to support --

14 VENIREPERSON HARRIS: Right. That's what I was
15 getting at. We didn't have any -- any -- anything at all.
16 We knew that he turned state's evidence, or whatever you want
17 to call it.

18 MR. ROGERS: That's what I'm trying to get to. I
19 think you and I seem to be on the same page, Mr. Harris.

20 Okay. Is there anybody here who could not consider
21 and weigh the testimony of a -- what do I want to call it? --
22 a codefendant, guilty pleading, cooperating with the
23 government, testifying witness, consider and evaluate their
24 testimony in light of all of the evidence in the case,
25 physical evidence, the testimonial evidence from other

1 witnesses, and in terms of your own life experiences and
2 common sense? Anybody who would automatically either accept
3 or reject the testimony of somebody who is -- has pleaded
4 guilty and is admitting their own involvement as conclusive
5 or anybody who would automatically reject such testimony?
6 Other than Mr. Straughter, who's already told us.

7 Mr. Straughter?

8 VENIREPERSON STRAUGHTER: The reason I was
9 prejudiced was because of the amount of years. If it had
10 been like two years, I could have maybe had a chance for him.
11 But he said 25 years. That's a life sentence.

12 MR. ROGERS: Well, let me, since you're there, talk
13 to you about -- don't you think it's compared to what? What
14 was he looking at if he didn't enter into the plea agreement?

15 VENIREPERSON STRAUGHTER: If he had two years or
16 maybe four or five years or something of that nature.

17 MR. ROGERS: I mean, if you're looking at a maximum
18 of five years, and you plead guilty for two years, that's an
19 incentive; right?

20 VENIREPERSON STRAUGHTER: Yeah.

21 MR. ROGERS: But if you're looking at a maximum of
22 life imprisonment, and you plead guilty for 25 years, that
23 might be an incentive too, don't you think?

24 VENIREPERSON STRAUGHTER: No.

25 MR. ROGERS: Okay.

1 VENIREPERSON STRAUGHTER: No.

2 MR. ROGERS: Fair enough.

3 VENIREPERSON HEADRICK: That, I think, what he's
4 talking about, is --

5 MR. ROGERS: Okay. Mr. Headrick.

6 VENIREPERSON HEADRICK: Yes, sir. That, I think, is
7 having a lot of bearing on people's opinions, just about the
8 questions that you're asking, because, you know, he's saying
9 that since -- and nobody's even said whether the witness
10 you're talking about is an accomplice or whether he's just
11 a -- you know, he was the guy that did it, and he's the
12 accomplice. You know, because it's -- it's causing -- it's
13 causing some interference there. And you can't give, you
14 know, you can't give details, so --

15 MR. ROGERS: Right.

16 VENIREPERSON HEADRICK: -- when he says that there's
17 a witness that is going to have a testimony against him,
18 well, if he was there and he saw it, or if he was an
19 accomplice and he's just trying to get in less trouble, or
20 maybe he's the one that did it and to get into less trouble
21 he's going to try to put the blame on somebody else. There's
22 too many -- you know. And he's already developed an opinion
23 because of that. So, I mean, you can't -- those questions
24 are too indirect, you know.

25 MR. ROGERS: Well, I go second, so I don't get -- or

1 third, actually, if you count the Judge. But I understand
2 what you're saying. And I don't know that there's anything I
3 can really do about it, except, like I say, make sure that
4 nobody here is just automatically saying, "Okay, the case is
5 over as far as I'm concerned," one way or the other. You're
6 not doing that, are you?

7 VENIREPERSON HEADRICK: No, I'm not.

8 MR. ROGERS: Okay. I appreciate it.

9 Let me follow up a little bit on what I was talking
10 about with Mr. Straughter, in terms of punishment. And the
11 reason I'm doing this is because Mr. Ferguson is charged with
12 more than one offense in this case. Just one dead guy, but
13 he's charged with first degree murder. And if the jury finds
14 him guilty of first degree murder, the jury will have to
15 assess the punishment, but they only have one choice. And
16 that choice is life in prison, with no possibility of parole.

17 But Mr. Crane also mentioned a second degree felony
18 murder. And if the jury were to find Mr. Ferguson guilty of
19 second degree felony murder, they would have to assess the
20 punishment there. And the range of punishment for second
21 degree felony murder is not less than 10 years and not more
22 than life in prison.

23 So, now my question is: Is there anybody here who,
24 if --

25 MR. CRANE: Can I just interrupt? Did you say 10 to

1 life?

2 MR. ROGERS: Yeah.

3 MR. CRANE: It's actually 10 to 30.

4 MR. ROGERS: That's true.

5 MR. CRANE: Or life.

6 MR. ROGERS: Exactly.

7 Let me clarify that. Not less than 10 years and not
8 more than 30 years, or life in prison. Okay?

9 And there's also a charge of robbery in the first
10 degree, which has a range of punishment like second degree
11 murder of not less than 10 years, nor more than 30 years, or
12 life in prison.

13 Now, the question is a hypothetical question,
14 because it's a question that hopefully will never really
15 happen. But if, hypothetically, you were on the jury and you
16 found Mr. Ferguson guilty of one or both of those offenses,
17 is there anybody here who could not consider the full range
18 of punishment?

19 Mr. Philipak?

20 VENIREPERSON PHILIPAK: I just don't -- I just can't
21 see giving him life -- I just -- that's hard for me to judge.
22 I don't -- to be truthful, this whole situation, I just don't
23 care much for it anyway. I just --

24 MR. ROGERS: You shared that with us earlier.

25 VENIREPERSON PHILIPAK: Well, I just want to make

1 sure. I mean, I just don't care for this kind of stuff, and
2 I just want to make sure. But anyway, just for me to give a
3 call on somebody's life, to be honestly reassured that I know
4 he did it or did not do it, I don't know. Benefit of the
5 doubt, but I --

6 MR. ROGERS: Okay. And let me follow that up,
7 because that's exactly why we have the burden of proof,
8 beyond a reasonable doubt, is so that jurors like you are not
9 put in the position of having to make these decisions and
10 live with a wrong decision if you don't hold the state to
11 their burden of proof. Right?

12 VENIREPERSON PHILIPAK: Okay.

13 MR. ROGERS: So knowing that that's the burden of
14 proof, beyond a reasonable doubt, you could follow those
15 instructions, couldn't you? I mean, it's not going --

16 VENIREPERSON PHILIPAK: Yes.

17 MR. ROGERS: -- to be easy.

18 VENIREPERSON PHILIPAK: Huh?

19 MR. ROGERS: Not that it would be easy.

20 VENIREPERSON PHILIPAK: No, not that it would be
21 easy; just...

22 MR. ROGERS: Let me ask you this.

23 VENIREPERSON PHILIPAK: Okay.

24 MR. ROGERS: If you were on trial, would you want a
25 jury of 12 people who thought it was easy to send somebody to

1 prison forever?

2 VENIREPERSON PHILIPAK: Well, no.

3 MR. ROGERS: Okay.

4 VENIREPERSON PHILIPAK: I guess I just hit the easy
5 button.

6 MR. ROGERS: Yeah. Right. Exactly.

7 VENIREPERSON PHILIPAK: What I'm just trying to get
8 across is: That I don't like this confrontation stuff. I
9 just don't, you know. I'm being totally clear.

10 MR. ROGERS: And quite frankly, I've chosen my
11 career, and you have not chosen a career as a juror.

12 VENIREPERSON PHILIPAK: That's true.

13 MR. ROGERS: Correct?

14 VENIREPERSON PHILIPAK: Uh-huh.

15 MR. ROGERS: And I understand that and I appreciate
16 you doing it.

17 VENIREPERSON PHILIPAK: Thank you.

18 MR. ROGERS: Let's go back to a memory kind of
19 question. Is there anybody here who's seen anything on
20 television or heard on the radio or read anything in
21 newspapers or magazines or wherever about so-called recovered
22 memories? Nobody?

23 VENIREPERSON LAURA THOMAS: Excuse me.

24 MR. ROGERS: Yes, ma'am. I'm sorry. Miss Thomas.

25 VENIREPERSON LAURA THOMAS: Do you mean that, under

1 hypnotism, someone remembers something that they couldn't
2 remember when they were not hypnotized? Is that what you're
3 referring to?

4 MR. ROGERS: That is an example that has been cited
5 by some people --

6 VENIREPERSON LAURA THOMAS: Okay.

7 MR. ROGERS: -- but that's not --

8 VENIREPERSON LAURA THOMAS: Yes, I have then.

9 MR. ROGERS: -- the only thing that I'm talking
10 about. You've heard of that.

11 VENIREPERSON LAURA THOMAS: Yes. Uh-huh.

12 MR. ROGERS: Okay. And how long ago was that, that
13 you read or heard or whatever?

14 VENIREPERSON LAURA THOMAS: Within the past year.

15 MR. ROGERS: Okay. Did you have an opinion as to
16 whether those memories were accurate or not, after you read
17 or heard whatever you read or heard?

18 VENIREPERSON LAURA THOMAS: No.

19 MR. ROGERS: Did the thing that you were listening
20 to or reading say that those were accurate or inaccurate?

21 VENIREPERSON LAURA THOMAS: They implied that they
22 were, yes.

23 MR. ROGERS: Were accurate?

24 VENIREPERSON LAURA THOMAS: (Nodding head up and
25 down.)

1 MR. ROGERS: Was it -- you didn't know whether to
2 accept that or not?

3 VENIREPERSON LAURA THOMAS: (Shaking head from side
4 to side.)

5 MR. ROGERS: Is that a fair statement?

6 VENIREPERSON LAURA THOMAS: Yes. Yes.

7 MR. ROGERS: Okay. And did you do any other reading
8 or research to follow up on that?

9 VENIREPERSON LAURA THOMAS: No.

10 MR. ROGERS: Thank you.

11 Anybody else who's had exposure to that notion of
12 so-called recovered memories?

13 Yes, sir.

14 VENIREPERSON STIEF: I think I seen a program on TV
15 about something like that, but I never thought much about it.

16 MR. ROGERS: And you're Mr. Stief.

17 VENIREPERSON STIEF: Correct.

18 MR. ROGERS: And did you form an opinion or do you
19 have an opinion as to whether such memories are accurate or
20 not?

21 VENIREPERSON STIEF: No. I never thought much about
22 it.

23 MR. ROGERS: Okay. Thank you.

24 VENIREPERSON STIEF: Just one of those programs,
25 watch it and turn it off.

1 MR. ROGERS: Okay. Fine.

2 Is there anyone here who believes that somebody can
3 deliberately choose not to remember something that they have
4 done while conscious and aware, and then will actually not
5 have a memory of it for years? I don't see any hands.

6 THE COURT: There is a hand, sir.

7 MR. ROGERS: I'm sorry.

8 THE COURT: In fact, two.

9 MR. ROGERS: Miss McCullough?

10 VENIREPERSON McCULLOUGH: I guess maybe.

11 THE COURT: You need to speak up, please.

12 VENIREPERSON McCULLOUGH: Maybe.

13 MR. ROGERS: Maybe? You believe that's at least a
14 possibility?

15 VENIREPERSON McCULLOUGH: Yeah. It could be.
16 Depending on what happened or whatever.

17 MR. ROGERS: Okay. That you can -- stand. I'm not
18 done with you yet. I'm sorry. In terms of actually saying,
19 "Well, I choose not to remember this," and then you really
20 don't remember it?

21 VENIREPERSON McCULLOUGH: Oh. You don't mean
22 like --

23 MR. ROGERS: I mean consciously choose.

24 VENIREPERSON McCULLOUGH: You don't mean like
25 blocking it out or something.

1 MR. ROGERS: Well, it's like by blocking it out by
2 choice. By an exercise of will.

3 VENIREPERSON McCULLOUGH: I don't know. I think if
4 it's traumatic enough maybe, but --

5 THE COURT: I'm sorry. I can't hear you. You
6 need --

7 VENIREPERSON McCULLOUGH: Maybe if it's traumatic
8 enough.

9 MR. ROGERS: Maybe you could?

10 VENIREPERSON McCULLOUGH: I guess, yeah.

11 MR. ROGERS: All right.

12 And I saw another hand. Miss Carter?

13 VENIREPERSON CARTER: Yes. I think it's possible.
14 We studied that in my psychiatric nursing class.

15 MR. ROGERS: Okay.

16 VENIREPERSON CARTER: That people can block those
17 memories out.

18 MR. ROGERS: Consciously choose to block a memory
19 out.

20 VENIREPERSON CARTER: Yes.

21 MR. ROGERS: And then would they be aware the next
22 day of having done that?

23 VENIREPERSON CARTER: Well, they might remember it
24 later on in time, you know.

25 MR. ROGERS: Well, I'm not --

1 (Counsel and venireperson talking at the same time.)

2 MR. CRANE: Well, no, let's let her finish her
3 answer.

4 MR. ROGERS: Thank you.

5 I'm sorry. Go ahead.

6 VENIREPERSON CARTER: Well, they might remember it
7 later on in life. Something might trigger it to where it
8 comes back to them.

9 MR. ROGERS: All right. Now, my question I guess is
10 focussed not about when they remember it, but when they
11 forget it. In other words, does it take time to successfully
12 block a memory, or can you do it with a single act of will,
13 or did you study that part of it?

14 VENIREPERSON CARTER: We studied it, but -- I think
15 it is possible.

16 MR. ROGERS: And how long ago was that class taught?

17 VENIREPERSON CARTER: Just a couple of years ago.

18 MR. ROGERS: Thank you.

19 Anybody else?

20 Yes.

21 VENIREPERSON GIBBS: Are you referring to repressed
22 memories or --

23 MR. ROGERS: I'm not referring to repressed memories
24 as I understand it. I don't claim to be an expert.

25 VENIREPERSON GIBBS: Okay.

1 MR. ROGERS: But a repressed memory, in my
2 understanding, is something that someone doesn't remember,
3 not because they consciously choose to disregard it, but
4 because of the trauma of the event itself, or the recurrence
5 of events. Something like that.

6 VENIREPERSON GIBBS: Okay.

7 MR. ROGERS: Is that what you're talking about?

8 VENIREPERSON GIBBS: Well, I was going to mention
9 that I've heard of repressed memories, if that's what
10 you're --

11 MR. ROGERS: Okay. And certainly that is the kind
12 of thing that Mrs. Thomas was talking about. A repressed
13 memory which was recovered under hypnosis or something.

14 Is that correct, Mrs. Thomas?

15 VENIREPERSON LAURA THOMAS: Yes.

16 MR. ROGERS: But now I'm talking about something
17 different, in terms of a memory which is consciously
18 repressed. If there is such a thing. And that doesn't make
19 -- even make sense, I don't think.

20 MR. CRANE: Well, Judge, I'm going to object to
21 whether or not he thinks that makes sense and also his
22 definition of repressed memory.

23 MR. ROGERS: A little late for the repressed memory
24 definition stuff.

25 MR. CRANE: Well, there's no question on the table.

1 He's going, "Well, it doesn't make sense to me and" --

2 THE COURT: Are you objecting?

3 MR. CRANE: There's no question.

4 THE COURT: Are you objecting to the answer that is
5 not responsive to a question? Is that --

6 MR. CRANE: If -- if -- I don't think that was --
7 with all due respect, I don't think Mr. Rogers' last series
8 of comments was a question. If it was, I'll object to the
9 form. I think it was a commentary.

10 THE COURT: All right. If you would just -- you may
11 rephrase your question, Counsel.

12 MR. ROGERS: That will be easier.

13 I'm still with you, Mr. Gibbs, a little bit. If
14 there is a distinction between repressed memories and
15 memories which are consciously put aside, okay, can you see
16 that kind of a distinction?

17 VENIREPERSON GIBBS: So you cannot -- are you saying
18 that you can or cannot consciously repress memories?

19 MR. ROGERS: I'm not saying; I'm asking, what you
20 think about that.

21 VENIREPERSON GIBBS: Well, I'm not sure. I'm not
22 a --

23 MR. ROGERS: Okay.

24 VENIREPERSON GIBBS: -- I'm not an expert, so.

25 MR. ROGERS: All right. Thank --

1 VENIREPERSON GIBBS: I don't know if you can or not.

2 MR. ROGERS: All right. Thanks.

3 Yes, sir. Mr. Ohmert?

4 VENIREPERSON OHMERT: I know if you happen to have a
5 little bit too much to drink, you can surely forget that.
6 And somebody tells you what you did, and you have no idea
7 that you did that.

8 MR. ROGERS: Okay.

9 VENIREPERSON OHMERT: That has happened to me.

10 MR. ROGERS: And that's --

11 (Laughter.)

12 VENIREPERSON OHMERT: It's happened to me.

13 MR. ROGERS: Okay. And that kind of thing, you
14 know, what's --

15 VENIREPERSON OHMERT: So is that -- is that
16 depressed or is that -- I mean, it's gone.

17 MR. ROGERS: But let me ask you this. Have you ever
18 had a situation where you were so drunk that you don't
19 remember what you did, and that when somebody tells you about
20 it later, you then can remember? Or is it just a memory
21 that's not --

22 VENIREPERSON OHMERT: It's gone. It's gone.

23 MR. ROGERS: All right. Thank you.

24 Okay. Easy question. Is there anybody here, other
25 than the people who have already said so, who themselves or a

1 close friend or family member works or have worked in the
2 field of law enforcement? I want to define the field of law
3 enforcement broadly to include ATF agents, FBI agents,
4 highway patrol officers, deputy sheriffs, sheriffs, local
5 police officers, and even security guards. Is that
6 everybody?

7 Okay. Mr. Philipak?

8 VENIREPERSON PHILIPAK: You asked who have and
9 has --

10 MR. ROGERS: You've already talked about --

11 VENIREPERSON PHILIPAK: No, I don't think I did.

12 MR. ROGERS: Okay. Go ahead. It's on your
13 questionnaire I guess, yeah.

14 VENIREPERSON PHILIPAK: I mean, he's retired now.

15 MR. ROGERS: Okay. And who is that?

16 VENIREPERSON PHILIPAK: His name was -- he was a
17 state patrolman. Don Bizelli.

18 MR. ROGERS: Okay.

19 VENIREPERSON PHILIPAK: He's my brother-in-law.

20 MR. ROGERS: Okay.

21 Others?

22 VENIREPERSON GIBBS: Does that include Coast Guard?

23 MR. ROGERS: No. Coast Guard is more like a
24 military service.

25 VENIREPERSON GIBBS: Okay.

1 MR. ROGERS: I'll get there. Although they do do
2 law enforcement.

3 VENIREPERSON GIBBS: Yeah.

4 (Counsel and venireperson talking at the same time.)

5 THE COURT: You can't both talk at the same time.

6 MR. ROGERS: Sorry, Your Honor.

7 THE COURT: Or we won't be able to get both of what
8 you're saying.

9 MR. ROGERS: Go ahead.

10 VENIREPERSON GIBBS: I was going to say, they do do
11 law enforcement.

12 MR. ROGERS: All right. And you have a close friend
13 who is in there or --

14 VENIREPERSON GIBBS: My father was, years ago.

15 MR. ROGERS: Okay. Thank you.

16 Yes, sir.

17 VENIREPERSON RUNGE: Tony Runge.

18 MR. ROGERS: Thank you.

19 VENIREPERSON RUNGE: I had a brother-in-law that was
20 a state patrolman. He's died a few years back with leukemia.
21 He's no longer alive. I've also got a nephew that's on the
22 St. Louis County police squad. And that's about it.

23 MR. ROGERS: Thank you.

24 VENIREPERSON RUNGE: Okay.

25 MR. ROGERS: Yes, sir.

1 VENIREPERSON MILLER: My brother's a detective down
2 in St. Charles city.

3 MR. ROGERS: And you're Kevin Miller?

4 VENIREPERSON MILLER: Yes.

5 MR. ROGERS: Thank you.

6 And Mr. Brown?

7 VENIREPERSON BROWN: I have a first cousin that's on
8 the St. Charles County police force. And I also know Don
9 Bizelli, who used to be a highway patrolman. And I've got
10 another cousin through marriage that is a law enforcement
11 officer right now with the City of Florissant.

12 MR. ROGERS: Okay. Thank you.

13 And Mr. Ohmert?

14 VENIREPERSON OHMERT: I have a son-in-law that's a
15 St. Louis policeman.

16 MR. ROGERS: Thank you.

17 Miss Moretto?

18 VENIREPERSON MORETTO: Yes. I have a nephew by
19 marriage that's a police officer over in Swansea, Illinois.
20 He's in Iraq right now.

21 MR. ROGERS: Okay. I assume he was also in the
22 national guard, or some type of military police?

23 VENIREPERSON MORETTO: Yeah. Army National Guard.

24 MR. ROGERS: Okay. Thank you.

25 THE COURT: You're Juror 38, are you, ma'am?

1 VENIREPERSON MORETTO: Yes.

2 THE COURT: Thank you.

3 MR. ROGERS: Yes, ma'am. Miss --

4 VENIREPERSON FIELDS: I have a cousin who's a police
5 officer in Jefferson County and a cousin by marriage who's a
6 lawyer in Arkansas.

7 MR. ROGERS: Okay. I don't think lawyers qualify as
8 law enforcement.

9 VENIREPERSON FIELDS: Oh, sorry.

10 MR. ROGERS: Even prosecutors. I don't know.

11 All right. Yes.

12 VENIREPERSON SCHUPMANN: I have a brother-in-law who
13 works for the Lincoln County Sheriff's Department.

14 MR. ROGERS: Despite your view of the Lincoln County
15 Sheriff's Department.

16 VENIREPERSON SCHUPMANN: Right.

17 MR. ROGERS: Okay.

18 Let me --

19 THE COURT: Mr. Rogers, there's a hand.

20 MR. ROGERS: I'm sorry. I missed a hand.

21 VENIREPERSON BETTS: I have a sister-in-law that
22 works down here, downstairs.

23 MR. ROGERS: And you're Debra --

24 VENIREPERSON BETTS: Helen Ellis-Mershon.

25 MR. ROGERS: I'm sorry? Her name?

1 VENIREPERSON BETTS: Helen Mershon. She works
2 downstairs.

3 MR. ROGERS: And you are Debra Betts; is that
4 correct?

5 VENIREPERSON BETTS: Yes.

6 MR. ROGERS: Thank you.

7 Okay. Let me address this question, first of all,
8 to those of you who have friends or relatives in law
9 enforcement. Is there anything about that relationship which
10 would lead you to give more weight or more believability to a
11 police officer's testimony than you would to the testimony of
12 another officer -- another witness, excuse me, who is not a
13 police officer?

14 Mr. Philipak?

15 VENIREPERSON PHILIPAK: I think it would. I mean,
16 I -- I would assume I -- I would believe a patrolman I guess
17 more, say, than -- you said the witness?

18 MR. ROGERS: Right.

19 VENIREPERSON PHILIPAK: Or witness. Yes.

20 MR. ROGERS: A lay witness? A civilian?

21 VENIREPERSON PHILIPAK: Yeah. A civilian compared
22 to, you know.

23 MR. ROGERS: Why's that?

24 VENIREPERSON PHILIPAK: I don't know. Just the way
25 I was brought up. You know, I always respected them. I

1 mean, I've never been in any trouble. I mean, nobody's
2 given -- you know what I mean. Nobody's given me any reason
3 to dislike them.

4 MR. ROGERS: Let me ask you this.

5 VENIREPERSON PHILIPAK: Okay.

6 MR. ROGERS: If one witness came in and said, in
7 Mr. Crane's example, the light was red, and that was a
8 civilian witness, and a police officer witness came in and
9 said the light was green, the police officer was just there,
10 was not involved in the accident, just happened to be there,
11 would you automatically believe the police officer?

12 VENIREPERSON PHILIPAK: Well, I guess not if you put
13 it that way. I mean -- I mean, that's -- then there you go.
14 I guess you got to weigh out the facts.

15 MR. ROGERS: Is what you're trying --

16 VENIREPERSON PHILIPAK: But that's -- I'm just --
17 yeah.

18 MR. ROGERS: Is what you're trying to say, that
19 police are trained, and they write reports and stuff, and so
20 you can use that training in --

21 VENIREPERSON PHILIPAK: I would hope so. I mean,
22 that's why we got them in there. I mean --

23 MR. ROGERS: Okay.

24 VENIREPERSON PHILIPAK: -- you'd hope they'd tell
25 the truth. I mean, I would assume.

1 MR. ROGERS: Okay. But you're not saying cops never
2 lie.

3 VENIREPERSON PHILIPAK: I never said they'd never
4 lie. I'm not saying that --

5 MR. ROGERS: And you're not saying --

6 VENIREPERSON PHILIPAK: I'm not saying I never lie
7 neither, but I --

8 MR. ROGERS: Exactly.

9 VENIREPERSON PHILIPAK: -- I mean --

10 MR. ROGERS: Fair enough.

11 VENIREPERSON PHILIPAK: -- I'd be lying.

12 MR. ROGERS: Exactly. That reminds me of a logic
13 problem I once heard, and we won't go there.

14 Anyone else who would tend to give more weight or
15 believability to a law enforcement officer's testimony than
16 to that of a lay witness, a civilian witness, just because
17 it's a law enforcement officer?

18 And Mr. Waechter?

19 VENIREPERSON WAECHTER: I think I would. They're
20 trained more. They're used to facing a problem and question
21 every day.

22 MR. ROGERS: Okay. Now, do you think they are more
23 honest, just because of their job?

24 VENIREPERSON WAECHTER: I'd trust them first.

25 MR. ROGERS: So you think --

1 VENIREPERSON WAECHTER: I'd lean towards them, I'd
2 say, yes.

3 MR. ROGERS: Okay. Just because they're police
4 officers?

5 VENIREPERSON WAECHTER: They got to like the job.

6 MR. ROGERS: Yeah, but that doesn't necessarily lead
7 to honesty. They might like the opportunities (inaudible).
8 I come from Kansas City, you know.

9 All right. Anybody else?

10 Yes, sir. Mr. Runge.

11 VENIREPERSON RUNGE: I might have to put more weight
12 on a police officer's testimony, especially if someone was,
13 say, admitting guilt to a murder, like you're saying this
14 witness may be, and they bring in a highway patrolman or
15 whomever, I think I would have a tendency to believe that
16 officer over that witness.

17 MR. ROGERS: Okay.

18 VENIREPERSON RUNGE: Because I trust and I hope that
19 that officer or -- would carry more honesty and clout. And
20 I'm not saying that they may be lying or not, but I
21 personally would take the officer's standpoint probably over
22 a witness that's already admitted guilt.

23 MR. ROGERS: Okay. Let's leave the "already
24 admitted guilt" out, and let's make them both sort of neutral
25 witnesses, just for sake of this question. Okay? Would you

1 then tend to, if all else was equal, tend to just believe the
2 police officer because it was a police officer?

3 VENIREPERSON RUNGE: If all was equal?

4 MR. ROGERS: Yeah. If all else was equal.

5 VENIREPERSON RUNGE: I would say probably I
6 wouldn't outweigh the officer's testimony over that other
7 person, no.

8 MR. ROGERS: Okay. Thank you.

9 MR. CRANE: Now wait a minute. What did you say?
10 You wouldn't outweigh it?

11 VENIREPERSON RUNGE: Well, I'm -- he was saying, if
12 they were equal, if you had a person here and an officer
13 setting there, testimony was the same thing, and I didn't
14 know -- how do I put this? If I didn't know that person was
15 not guilty, I think I could be very fair in judgment on that.

16 MR. ROGERS: Okay. In other words, you think -- let
17 me -- I don't want to put words in your mouth, but I want to
18 understand what I think you're saying. You're saying that if
19 all else is equal, and neither one of them is gaining
20 anything from whatever they're saying, that you would not
21 make a distinction as to whether it was a police officer or
22 not a police officer --

23 VENIREPERSON RUNGE: No.

24 MR. ROGERS: -- giving the testimony. Is that what
25 you're saying?

1 VENIREPERSON RUNGE: That is correct, yes.

2 MR. ROGERS: Okay. Thank you. That's what I
3 thought I heard. I wanted to make sure.

4 Let me ask this of everybody. Is there anybody here
5 who, in a situation where everything else was equal, talking
6 about testimony under oath, would give more believability to
7 a police officer than to somebody who wasn't a police
8 officer, just because it's a police officer talking?
9 Anybody? Okay.

10 Has anybody here ever testified and been
11 cross-examined, questioned by lawyer from the other side?

12 Okay. Start with Mr. Waechter. What kind of case
13 was that?

14 VENIREPERSON WAECHTER: Individuals were suing a
15 contractor for improper construction. I was subpoenaed as a
16 witness to testify my opinion.

17 MR. ROGERS: Okay. What? An expert --

18 VENIREPERSON WAECHTER: In other words, I was a
19 contractor.

20 MR. ROGERS: Okay.

21 VENIREPERSON WAECHTER: Whether the work was
22 satisfactory or not.

23 MR. ROGERS: Did you feel like the lawyer who
24 cross-examined you, the lawyer for the other side, treated
25 you fairly?

1 VENIREPERSON WAECHTER: There was a couple tricks,
2 but basically it was pretty fair.

3 MR. ROGERS: Okay. You say, "a couple of tricks."
4 Did you --

5 VENIREPERSON WAECHTER: Well --

6 MR. ROGERS: Did he tell you anything, I mean, that
7 wasn't true?

8 VENIREPERSON WAECHTER: No. The only thing I could
9 do -- the only thing I could do -- I was told the only thing
10 I could do is answer the question yes or no.

11 MR. ROGERS: Right.

12 VENIREPERSON WAECHTER: And he asked me -- the
13 defense attorney asked me if there was a crack in the man's
14 basement floor. The basement floor was cracked. I say yes.
15 But I couldn't repeat that everybody else's floor's got a
16 crack in it too. You know.

17 MR. ROGERS: Did the lawyer who called you as a
18 witness also --

19 VENIREPERSON WAECHTER: See. In fact, I asked him,
20 I said, "Do you have a crack in your basement floor?" And he
21 said, "Your Honor, the wrong one's asking questions."

22 MR. ROGERS: Okay. Fair enough. All right.

23 VENIREPERSON WAECHTER: Sorry about that, but
24 that --

25 MR. ROGERS: That's all right.

1 VENIREPERSON WAECHTER: -- that's what happened.

2 MR. ROGERS: Now let me ask a follow-up question
3 here, which is: If you're on this jury, and I'm
4 cross-examining some witness called by the prosecutor, and
5 you think I'm being unfair or tricky to that witness, are you
6 going to somehow hold that against Mr. Ferguson?

7 VENIREPERSON WAECHTER: No. To be honest, I'd
8 probably be in contempt of court, because if this -- I'd like
9 to repeat, if you block me in a corner, and I can't -- I got
10 to say yes or no, that's awful hard for me to do if there's
11 another part to it.

12 MR. ROGERS: All right.

13 VENIREPERSON WAECHTER: Sometimes there's an "if."

14 MR. ROGERS: Sometimes there's an if. Okay. Thank
15 you.

16 I saw another hand here.

17 VENIREPERSON IEPPERT: Carol Ieppert.

18 MR. ROGERS: Yes.

19 VENIREPERSON IEPPERT: Yes. It was a civil court.
20 Civil case.

21 MR. ROGERS: And you think you were treated fairly?

22 VENIREPERSON IEPPERT: Yes.

23 MR. ROGERS: And is there anything about that
24 experience which might make you hold it against Mr. Ferguson
25 if you don't like the way we cross-examine their witnesses?

1 VENIREPERSON IEPPERT: No.

2 MR. ROGERS: Okay. Thank you.

3 THE COURT: Was your answer no?

4 VENIREPERSON IEPPERT: No.

5 THE COURT: Okay. Thank you.

6 MR. ROGERS: I'm sorry. I am standing in your way
7 probably, Judge.

8 THE COURT: Well, no, I can see her; I just couldn't
9 hear her.

10 Mrs. Thomas, did you have your hand up?

11 VENIREPERSON LAURA THOMAS: Yes. Years ago I was a
12 vault teller in California, and we were robbed several times.
13 And I was a witness for each of those different -- different
14 times. And two out of three were good experiences; the other
15 one was a poor experience. But I don't use -- I wouldn't use
16 that in my life now.

17 MR. ROGERS: And you wouldn't hold it against
18 Mr. Ferguson.

19 VENIREPERSON LAURA THOMAS: No.

20 MR. ROGERS: Thank you.

21 Mr. Ohmert.

22 VENIREPERSON OHMERT: Yes. I was a witness called
23 in by the FBI on a murder trial.

24 THE COURT: Did you -- what kind of trial did you
25 say, sir?

1 VENIREPERSON OHMERT: Murder trial.

2 THE COURT: That's what I --

3 MR. ROGERS: In federal court?

4 VENIREPERSON OHMERT: Yes.

5 MR. ROGERS: And where was that?

6 VENIREPERSON OHMERT: It was actually held in

7 Columbia.

8 MR. CRANE: What's that?

9 VENIREPERSON OHMERT: Part of it was in Columbia,

10 and then another part was in Jeff City.

11 MR. ROGERS: Okay. And were you treated fairly by

12 the lawyers who cross-examined you?

13 VENIREPERSON OHMERT: Yes, I was.

14 MR. ROGERS: Is there anything about that experience

15 which you might somehow hold against Mr. Ferguson if you

16 don't like the way we cross-examine their witnesses?

17 VENIREPERSON OHMERT: No, I wouldn't hold it against

18 him, but I would hold it against you.

19 MR. ROGERS: Okay.

20 Okay. Mrs. Galloway.

21 VENIREPERSON SUSAN GALLOWAY: I worked for our

22 children's division for four years, and so at times I got

23 subpoenaed for my testimony.

24 MR. ROGERS: Okay. And were you ever cross-examined

25 in a way that you thought was unfair?

1 VENIREPERSON SUSAN GALLOWAY: No.

2 MR. ROGERS: Is there anything about having
3 testified during your work for the children's division that
4 would affect the way you would view Mr. Ferguson if you
5 didn't like the way we were treating the prosecutor's
6 witnesses?

7 VENIREPERSON SUSAN GALLOWAY: No.

8 MR. ROGERS: Thank you.

9 And Mr. Runge.

10 VENIREPERSON RUNGE: When I was 18 years old, I was
11 in an establishment that was selling liquor to minors. And
12 they were -- there was an undercover agent in that
13 establishment, and I had to come for state's witness against
14 that lady that owned the bar.

15 MR. ROGERS: Okay. And were you cross-examined by
16 her or --

17 VENIREPERSON RUNGE: I was cross-examined by both
18 the state lawyer and the -- her attorney.

19 MR. ROGERS: Okay. And did her attorney treat you
20 fairly?

21 VENIREPERSON RUNGE: I think so, yes.

22 MR. ROGERS: Is there anything about that that you
23 would hold against Mr. Ferguson if you don't like the way we
24 treat the state's witnesses in this case?

25 VENIREPERSON RUNGE: I don't believe so, no.

1 MR. ROGERS: Okay.

2 Anybody I've missed over here? Anybody over here?

3 Okay.

4 Now, is there anybody here who would expect Ryan
5 Ferguson to testify on his own defense and would somehow hold
6 it against him if he didn't? I don't see any hands.

7 Okay. Now I see one. Or was that just a stretch?

8 VENIREPERSON SKIRVIN: Yeah, because if he's
9 innocent, he ought to get up there and say something.

10 THE COURT: Excuse me. Are you Number 41?

11 VENIREPERSON SKIRVIN: Yeah.

12 THE COURT: Thank you, sir.

13 VENIREPERSON SKIRVIN: He needs to talk for himself.

14 MR. ROGERS: And I'm not now talking about as a bit
15 of tactical advice for his defense team, but as a matter of
16 law and the United States Constitution that we all live
17 under, even though you might want to hear from him, would
18 you, if he didn't testify, tend to believe that he must be
19 hiding something? Must be hiding his guilt with regard to
20 this case?

21 VENIREPERSON SKIRVIN: No. I would just think that
22 he would want to talk, you know.

23 THE COURT: You would just think that he was what?

24 VENIREPERSON SKIRVIN: He would just want to get up
25 there and get it off his chest.

1 THE COURT: All right.

2 MR. ROGERS: Okay. And can you think of any reason
3 why somebody who was accused of a serious crime like this,
4 who was not guilty, might still choose not to testify?

5 VENIREPERSON SKIRVIN: Nope.

6 MR. CRANE: Well, Judge, I'm going to object to that
7 question. That opens up some issues that -- can we approach
8 on that?

9 THE COURT: You may. I will tell you that the
10 juror's already answered the question.

11 MR. CRANE: Oh. I couldn't hear him. Well, sorry.

12 MR. ROGERS: He said no.

13 MR. CRANE: Oh, you said no? Well, okay. Forget
14 it. I guess I'll wait until you -- sorry. I couldn't hear
15 you there. Sorry.

16 MR. ROGERS: Mr. Skirvin, have you had any
17 experience speaking in front of groups?

18 VENIREPERSON SKIRVIN: No.

19 THE COURT: Would you stand, sir? Thank you.

20 VENIREPERSON SKIRVIN: No, I haven't.

21 MR. ROGERS: Okay. Other than right now, today.

22 VENIREPERSON SKIRVIN: Yes.

23 MR. ROGERS: So you couldn't tell me how somebody
24 would -- who didn't speak in front of groups might feel about
25 getting up and talking in front of a bunch of strangers?

1 VENIREPERSON SKIRVIN: Well, if my life was on the
2 line I would.

3 MR. ROGERS: No matter what?

4 VENIREPERSON SKIRVIN: Yeah. I believe so.

5 MR. ROGERS: You think everybody else is like that?

6 VENIREPERSON SKIRVIN: No, sir.

7 MR. ROGERS: Anybody else who shares
8 Mr. Skirvin's -- Mr. Robinson?

9 VENIREPERSON ROBINSON: I feel the same way. If you
10 have nothing to hide, why not speak?

11 MR. ROGERS: Okay.

12 VENIREPERSON ROBINSON: You're hiding something if
13 you don't want to talk.

14 MR. ROGERS: Let me ask you this. Do you have any
15 experience speaking in front of groups?

16 VENIREPERSON ROBINSON: No.

17 MR. ROGERS: Okay. I do it for a living. I -- this
18 is not an uncommon situation for me. But studies have shown
19 that fear of speaking in public is second of the fears that
20 people in the United States have. After snakes, I think.
21 And so people are sometimes really nervous about that.

22 Let me ask you another one. If Mr. Ferguson does
23 not testify, and if you were given an instruction from the
24 Judge that no inference of guilt or any inference of any kind
25 can be raised from the fact that he didn't testify, would you

1 be able to follow that instruction?

2 VENIREPERSON ROBINSON: Yes.

3 MR. ROGERS: Even though you think there must be
4 something being hid? You could still follow that
5 instruction.

6 VENIREPERSON ROBINSON: Yes.

7 MR. ROGERS: How about you, Mr. Skirvin? Could you
8 follow that instruction?

9 VENIREPERSON SKIRVIN: Yes.

10 MR. ROGERS: Okay.

11 And let's look at the other side of that coin. If
12 Mr. Ferguson decides to testify, how many people here would
13 tend to discount what he has to say because he's the person
14 who's on trial? He's got the most to lose of anybody in the
15 courtroom. He's got the only thing to win or lose of anybody
16 in the courtroom, personally. Anybody here who would tend to
17 discount Mr. Ferguson's testimony because he's the defendant?

18 Mr. Skirvin, that's a wiping of the brow; that's not
19 a hand? Okay. Is that correct?

20 VENIREPERSON SKIRVIN: Yeah.

21 MR. ROGERS: Okay.

22 How about you, Mr. Robinson? Would you tend to
23 disbelieve anything he said since he's the guy who's on
24 trial; he's the accused?

25 VENIREPERSON ROBINSON: No.

1 MR. ROGERS: Okay.

2 THE COURT: There's a hand over here, Mr. Rogers.

3 MR. ROGERS: Yes, sir. Mr. Moore.

4 VENIREPERSON MOORE: Yes. Just as I said earlier, I
5 think I would have -- I think the testimony would be suspect
6 if they had something to gain by it.

7 MR. ROGERS: That includes not only Mr. Ferguson, if
8 he chose to testify, but any other witness who's getting some
9 kind of deal? Is that a fair statement?

10 VENIREPERSON MOORE: Well, I don't know about
11 Mr. Ferguson's. I was thinking about the other codefendant.

12 MR. ROGERS: Okay. Let's talk about Mr. Ferguson
13 now, because, like I say, he is the person who is on trial.
14 The outcome of this trial determines whether he goes home to
15 his family or whether he goes to prison forever. Right?

16 VENIREPERSON MOORE: Sure.

17 MR. ROGERS: So if he were to testify, would you
18 think, Well, hey, I can't really give much believability to
19 what he says because he's the guy who's got it all riding on
20 the line.

21 VENIREPERSON MOORE: I understand your question. I
22 don't think I would be as suspect of his testimony as of the
23 other gentleman.

24 MR. ROGERS: I appreciate that. And my next -- I
25 got one more for you. Would you be able to judge his

1 testimony and weigh it and evaluate the truthfulness or
2 untruthfulness like you would that of other witnesses?

3 VENIREPERSON MOORE: Yes.

4 MR. ROGERS: Okay. Thank you.

5 Anybody else who has a response to that question?

6 Now let's talk about another kind of witness. And
7 that is a witness who may have been convicted of a crime
8 unrelated to those crimes charged against Mr. Ferguson. Is
9 there anybody here who could not consider the witness's
10 convictions of crimes in judging the believability of that
11 witness?

12 VENIREPERSON KELLY: I'm not sure --

13 MR. ROGERS: Okay.

14 VENIREPERSON KELLY: I'm not sure I understand the
15 question.

16 MR. ROGERS: Okay. And for the record, you are
17 Number 42, Miss Kelly; correct?

18 VENIREPERSON KELLY: Yes.

19 THE COURT: Would you stand, please, Miss Kelly.
20 Thank you.

21 MR. ROGERS: And you don't understand the question.

22 VENIREPERSON KELLY: No.

23 MR. ROGERS: Okay. If a witness were to testify,
24 and the witness were to tell you that he had been convicted
25 of various crimes, not related to the death of Kent Heitholt,

1 other crimes, could you consider his convictions in terms of
2 judging whether or not he's a believable person?

3 VENIREPERSON KELLY: Well, why would that person be
4 testifying if it's unrelated to this crime?

5 MR. ROGERS: Testifying about -- his convictions are
6 unrelated to his crime. Testifying about whatever he's
7 testifying about.

8 VENIREPERSON KELLY: If he's -- he was convicted of
9 another crime --

10 MR. ROGERS: Right.

11 VENIREPERSON KELLY: -- and he's testifying on
12 Mr. Ferguson's behalf, or --

13 MR. ROGERS: Or against. Either one.

14 VENIREPERSON KELLY: Either one? I would --

15 MR. ROGERS: And the question is: Could you
16 consider the fact that he had been convicted in determining
17 his believability?

18 VENIREPERSON KELLY: Yes.

19 MR. ROGERS: Okay. Would you necessarily disbelieve
20 him just because he's been convicted?

21 VENIREPERSON KELLY: No.

22 MR. ROGERS: Okay. But you wouldn't necessarily
23 believe him, just because he'd been --

24 VENIREPERSON KELLY: Well, I mean, it would depend
25 on what he's saying. But I wouldn't discount him just

1 because he was convicted of another crime.

2 MR. ROGERS: All right. And you wouldn't --
3 although you would not automatically believe him either.

4 VENIREPERSON KELLY: Right.

5 MR. ROGERS: Like anybody else.

6 VENIREPERSON KELLY: Right.

7 MR. ROGERS: Okay. Thank you.

8 All right. I have used way too much time. But I
9 have one more sort of easy question. Many of you marked on
10 your questionnaires that you had been on jury service before,
11 in other cases. And this is addressed to those people, or to
12 anybody who has been on jury service, but has not marked it
13 on their questionnaire. The question is: Were you the
14 foreman of the jury? Anybody here who has ever been a
15 foreman of a jury before? I see no hands.

16 Now, you've listened to me for a couple of hours
17 now. You listened to Mr. Crane a couple hours. You listened
18 to the Court for a while. Sometimes somebody's sitting there
19 saying, "Well, you know, there's something that these people
20 should probably know in deciding whether or not I want to be
21 on the -- whether or not I am going to be on this jury, but
22 they haven't asked me yet." Well, now I'm asking. Is there
23 anything that you think that we should know in deciding
24 whether or not you're on this particular jury? Speak now, or
25 forever hold your peace. Okay.

1 Miss McCullough?

2 VENIREPERSON McCULLOUGH: Yes.

3 MR. ROGERS: Did you indicate that you had -- did
4 not know whether or not your job would reimburse you for jury
5 duty?

6 VENIREPERSON McCULLOUGH: Yes.

7 MR. ROGERS: Do you have a union?

8 VENIREPERSON McCULLOUGH: No.

9 MR. ROGERS: Okay.

10 VENIREPERSON McCULLOUGH: I work at a temp agency.

11 THE COURT: I'm sorry. You need to stand.

12 VENIREPERSON McCULLOUGH: I work at a temp agency.

13 MR. ROGERS: Okay.

14 VENIREPERSON McCULLOUGH: So I don't know.

15 MR. ROGERS: All right. Thank you.

16 VENIREPERSON PHILIPAK: Right here. I mean, I
17 know -- I know where I work, they won't reimburse me for
18 being off.

19 MR. ROGERS: Right. And again, you mentioned that I
20 think earlier; is that correct?

21 VENIREPERSON PHILIPAK: I don't -- no. I think I
22 mentioned it in my questionnaire when they sent it to me. I
23 think. Heck, I don't know.

24 MR. ROGERS: I think --

25 VENIREPERSON PHILIPAK: I don't know what -- I don't

1 know what it said. No, I was kidding.

2 MR. ROGERS: And your wife is disabled and you're
3 the sole provider?

4 VENIREPERSON PHILIPAK: Yes. So you did read it,
5 huh? I didn't do it for nothing, did I?

6 MR. ROGERS: You're right.

7 Thank you.

8 VENIREPERSON PHILIPAK: You're welcome.

9 THE COURT: Ladies and gentlemen, thank you so much
10 for your attention. We are going to take a recess at this
11 time.

12 The Court again reminds you of what you were told at
13 the first recess of the Court. Until you retire to consider
14 your verdict, you must not discuss this case among yourselves
15 or with others, or permit anyone to discuss it in your
16 hearing. You should not form or express any opinion about
17 the case until it is finally given to you to decide. Do not
18 read, view, or listen to any newspaper, radio, or television
19 report of the trial.

20 We will take a recess. We will consider those
21 individuals who asked to be excused, as well as other
22 matters, and we will let you know just as soon as we can
23 whether you are finally excused or whether you are not
24 finally excused.

25 The jury may be in recess.

1 He knows I'm not a judge here.

2 Anyway, why don't we take up excuse -- people that
3 should be excused before we take up challenges for cause.
4 And I -- let me read out the ones that I now remember that I
5 should -- that I made notes to excuse. And you can let me
6 know -- did someone say something to me?

7 MR. ROGERS: No.

8 THE COURT: Okay. Number 3, Mr. Philipak, who
9 didn't get paid if he did not work.

10 MR. CRANE: No objection.

11 MR. ROGERS: No objection on him.

12 THE COURT: All right. He's Number 3.

13 MR. CRANE: Now wait a minute. Before I start
14 marking people off, Judge, if we're all -- does that mean --
15 he doesn't object, I don't object, does that mean he's gone?

16 THE COURT: Then he's excused.

17 MR. CRANE: Okay.

18 THE COURT: He's to be marked off. All right? Then
19 Number 5 has already been excused, with consent of counsel.
20 Mr. Orr, Number 8, is already excused, by agreement. And 9
21 has already been excused, before we took up court. I would
22 then tend excuse 11 and 12. Let me go one by one. Is there
23 an objection to Number 11?

24 MR. CRANE: No objection.

25 MR. ROGERS: No, Your Honor.

1 THE COURT: 11 is excused. What about 12?

2 MR. CRANE: No objection.

3 MR. ROGERS: No objection.

4 THE COURT: 12 is then excused. Then coming back to
5 the other side of the room, Mr. Declue, he is the one with
6 the 15-year-old son who has ADHD and bipolar disease and his
7 wife's out of town.

8 MR. CRANE: No objection.

9 MR. ROGERS: No objection.

10 THE COURT: All right. 15 is excused. Mr. Thomas
11 is the one that has an 8 and 9-year-old that he has to take
12 care of.

13 MR. CRANE: What's the number?

14 THE COURT: 29.

15 MR. ROGERS: No objection there, Your Honor, from
16 the defense. He's the guy whose mother's on the jury. And
17 he has --

18 MR. CRANE: Yeah. I remember him. I don't remember
19 him being in as bad a shape as --

20 THE COURT: His problem was is that his wife I think
21 left for work at 6 or 6:30 in the morning, and he had to take
22 the kids at 7:15 or something to the bus stop, and there was
23 no one --

24 MR. CRANE: Yeah, but he didn't -- I didn't remember
25 him indicating that there were no other options.

1 THE COURT: I think he did. I asked him that
2 specifically.

3 MR. CRANE: Okay. Well, that's -- neither -- I'm
4 not going to go against you, Judge, but I -- we would not
5 agree to Number 24 being -- 29, sorry --

6 THE COURT: 29 is the number.

7 MR. CRANE: -- being stricken for cause.

8 THE COURT: I'm going to -- I'm not going to strike
9 him for cause. I'm going to excuse 29. Number 30 has
10 already been excused because of his felony convictions.
11 Mr. Black, who is Number 31, is an individual who takes care
12 of a three-month-old baby Monday, Wednesday, and Friday, and
13 doesn't have anyone else to look after that child.

14 MR. CRANE: I would agree there.

15 MR. ROGERS: Would agree there too, Your Honor.

16 THE COURT: 31 then is excused. My next excuse was
17 Mary McCullough, who's not going to be paid if she doesn't
18 work. At least that's what she thought.

19 MR. ROGERS: And I asked her, Your Honor, and she
20 said she worked for a temp agency, so I know she won't. So I
21 do not object to that.

22 THE COURT: What about the state? 33,
23 Miss McCullough?

24 MR. CRANE: Okay. Yeah. We'll agree to that.

25 THE COURT: All right. 33 is excused. Let's see.

1 One that I didn't mention before, but I did look in my notes,
2 Miss Betts, is Number 37. She has a 14-year-old child, and
3 her husband travels, and he is to be in I guess Mount Vernon.
4 She mentioned he would not be here. If she were gone, there
5 would be no one to look -- not that a 14-year-old needs the
6 same kind of looking after that a three-month-old, but I sure
7 wouldn't want to leave a kid like that at home alone for a
8 week.

9 MR. ROGERS: It would be party central.

10 THE COURT: Yeah, it might be, or worse. And see --
11 she's Number 37. Does state have any objections to excusing
12 her?

13 MR. CRANE: I think she said she didn't have any
14 help with her 14-year-old boy.

15 THE COURT: Does the defense object?

16 MR. ROGERS: No, Your Honor.

17 THE COURT: 37 then is excused. Miss Bennett, who
18 takes care of the granddaughter. And everyone else in the
19 family works. She's Number 43.

20 MR. CRANE: I don't have -- let me -- I don't have
21 any problem with 43 being stricken.

22 THE COURT: The defense?

23 MR. ROGERS: No objection, Your Honor.

24 THE COURT: 43 is excused. And -- let's see.
25 Mr. Riney has already been excused. He is 46. He is one of

1 the bailiffs. And finally, but not -- was Mr. Straughter,
2 who might be, in fact, stricken for cause, but has also
3 talked about taking care of his disabled wife and being a
4 good househusband at home taking care of all the chores.
5 Does the state object?

6 MR. ROGERS: And the grandchildren.

7 MR. CRANE: Well, I liked -- I liked Mr. Straughter,
8 but. By God, he's my kind of guy. But I understand he did
9 say he didn't have any options. That was under my inquiry,
10 so.

11 THE COURT: All right. He will be excused.

12 MR. ROGERS: I have no objection, by the way, Your
13 Honor.

14 THE COURT: Okay. I suspected that you wouldn't.

15 Now let me tell the bailiff, marshals, which ones
16 can actually be excused now. And they can go home and not
17 have to come back, with thank-yous to those people. And some
18 of them may already be gone.

19 DEPUTY COURT MARSHAL WERNER: Okay.

20 THE COURT: 3, 5, 8, 9, 11, 12, 15, 29, 30, 31, 33,
21 37, 43, 46, and 50.

22 MR. CRANE: And now 36 is already gone.

23 THE COURT: Let's see. Did I --

24 MR. ROGERS: 36 was the one who didn't show up this
25 morning.

1 MR. CRANE: Yeah, just for the record, make sure she
2 mentioned --

3 THE COURT: 36 is absent. I'm not excusing 36. 36
4 may have the sheriff come after him.

5 MR. CRANE: There is no 36.

6 MR. ROGERS: 36 is downstairs now. That's my guess.

7 THE COURT: 36 came in?

8 MR. ROGERS: I don't know.

9 MR. CRANE: Is that the one that came in before the
10 other group? Anyway, there isn't a 36.

11 THE COURT: 36 is not in our group. She was the
12 only absent one that we showed in our group.

13 MR. ROGERS: I think it's a he. I think Jody's a
14 he.

15 THE COURT: Jody is a he? It is? Someone told me
16 it was a she. But -- whoever Jody is -- Jody may --

17 MR. ROGERS: Jody is Jody. You can see why Jody
18 didn't come. Jody has social anxiety disorder.

19 THE COURT: All right. So I'm going to permit our
20 bailiff to release these jurors finally. They don't have to
21 come back for anything.

22 Is the state ready to make any challenges for cause?

23 MR. CRANE: Yeah.

24 THE COURT: All right.

25 MR. CRANE: Go ahead with that, Judge?

1 THE COURT: Yes.

2 MR. CRANE: And just name them and not state my
3 basis?

4 THE COURT: State's challenges for cause should be
5 named by number, hopefully in numeric order, so I can follow
6 them.

7 MR. CRANE: All right.

8 THE COURT: And then we will come back to the
9 defense. And if the defense agrees with it, you needn't make
10 an argument. If the defense does not agree with it, then you
11 will have to make an argument.

12 So let me hear what the state's challenges for cause
13 are.

14 MR. CRANE: Okay. Number 2, Robinson.

15 THE COURT: All right.

16 MR. CRANE: He was emphatic --

17 THE COURT: You don't need to tell me why.

18 MR. CRANE: All right.

19 THE COURT: Just give me the number.

20 MR. CRANE: Number 2, Robinson.

21 THE COURT: All right.

22 MR. ROGERS: Agreed.

23 THE COURT: Okay.

24 MR. CRANE: So can we mark them off?

25 THE COURT: I will go through -- anyone that the

1 defense agrees to, you may assume that he is struck for
2 cause.

3 MR. CRANE: Okay.

4 THE COURT: Next one.

5 MR. CRANE: Number 14, Norton.

6 THE COURT: Robert Norton.

7 MR. ROGERS: I object to that, Your Honor.

8 THE COURT: Okay. We'll come back to Mr. Norton.
9 Go ahead.

10 MR. CRANE: Number -- oh. Number 16, Caviness.

11 THE COURT: All right.

12 MR. CRANE: That's a hardship. She indicated --

13 THE COURT: Yes. I realize that she said she needed
14 to go someplace this weekend. I didn't consider that as much
15 a hardship as leaving a 14-year-old alone for five days or
16 six days. But I'll -- if you want --

17 MR. CRANE: She said she wouldn't be back 'til
18 Monday on a business trip.

19 THE COURT: Yeah, I understand that.

20 MR. ROGERS: I'm going to take the Fifth on that
21 one, Judge.

22 THE COURT: All right. We can come back to that
23 one. Keep going.

24 MR. CRANE: Okay. Let me find that one again.
25 Let's see.

1 Number 22, Harris.

2 THE COURT: Yes. Keep going. Oh, well. Harris?

3 MR. ROGERS: I'm -- I would object to that, Your

4 Honor.

5 THE COURT: Okay. Keep going then.

6 MR. CRANE: What did you say?

7 THE COURT: He objects.

8 MR. ROGERS: I object to that.

9 MR. CRANE: Okay. 23, Gibbs.

10 THE COURT: Okay.

11 MR. ROGERS: We need to consult on that, Your Honor.

12 We'd object to that, Your Honor.

13 THE COURT: All right. There's an objection to 23.

14 Keep going.

15 MR. ROGERS: It's a group objection.

16 MR. CRANE: So we're going to come back to 23 too?

17 THE COURT: Yeah. You have to come back to 23.

18 MR. CRANE: Okay.

19 Okay. Let's see here. 34, Headrick.

20 MR. ROGERS: We object to that, Your Honor.

21 THE COURT: All right.

22 MR. CRANE: 35, Moore.

23 MR. ROGERS: We'd object to that also.

24 THE COURT: All right.

25 MR. CRANE: 52 --

1 THE COURT: Donna Fields?

2 MR. CRANE: -- Fields.

3 Wait, wait, wait a minute. Hang on a minute, Judge.

4 We're trying here. Hang on just a second.

5 Just --

6 (Pause.)

7 THE COURT: All right. Are you looking, Mr. Crane,

8 to see --

9 MR. CRANE: Yeah. I -- I think that -- okay. 52.

10 THE COURT: Donna Fields?

11 MR. CRANE: The last one, yeah.

12 THE COURT: Yes. And what is the defense position

13 on Donna Fields?

14 MR. ROGERS: I think we object to that too, Your

15 Honor.

16 THE COURT: All right.

17 I will mention that in the Galloways, evidently they

18 take care of kids that are placed with them from the state.

19 And they've tried to get someone to come in and give respite

20 care, and only one of them can go. I'm happy to excuse -- I

21 mean, if there's a challenge for cause to one or the other, I

22 don't know if the defense has one, I'll take it up. But I

23 wanted to make you aware that after it's said and done,

24 probably one of them is going to be released by the Court,

25 either Mr. or Mrs. Galloway. But that has nothing to do now.

1 And I understand the defendant may have a challenge for cause
2 to one of the two.

3 So, let me hear -- so as I understand it, the
4 defense does not object to 2 being stricken. Has no position
5 on 16.

6 MR. ROGERS: We'll agree to that, Your Honor.

7 THE COURT: You're agreeing to 16? 16 then would be
8 stricken. And you object to striking 14, 22, 23, 34, 35, and
9 52.

10 MR. CRANE: I thought -- oh, okay. I'm sorry. I'm
11 sorry.

12 THE COURT: So, you may have your say on those
13 jurors.

14 Number 14. Why is it that you wish to strike 14?

15 MR. CRANE: Okay.

16 THE COURT: That's Mr. Norton.

17 MR. CRANE: Yeah. Mr. Norton demonstrated severe
18 problems with the experience that he had today. He went on
19 for an extended period about how he was mistreated. And I'm
20 sure not saying that happened, but he was very upset. And it
21 was -- actually, I don't think it was responsive to a
22 question that I had asked. So, based on that, I think he
23 demonstrated an inability to be fair and impartial with
24 respect to his being involved with the judicial system. And,
25 you know, I mean, if we need to go back and look at the

1 record on that, he went on probably for several minutes about
2 his unpleasant experience.

3 THE COURT: You may be heard.

4 MR. ROGERS: None of that translates into him being
5 unfair to the state in this case. He was able to point out
6 that that was, in fact, the state -- the local authorities
7 and had nothing to do with Boone County. And Mr. Crane told
8 them what good guys the people in Boone County were. And
9 he -- I don't think he gave a single answer which
10 disqualifies him as a witness. I don't think the state is
11 entitled to a jury of people who think that all law
12 enforcement officers are always perfect.

13 THE COURT: I'm going to look at my notes. How's
14 that?

15 MR. ROGERS: Sounds great.

16 THE COURT: I note that he indicated he had failed
17 to appear for jury service. He was picked up by the sheriff.
18 He feels that he was treated like a criminal. Those were his
19 words, not mine. By that system. He had things to say in
20 other areas, but this is the point that the state is making,
21 that he --

22 MR. CRANE: Well, yeah, he did have things to say in
23 other areas. Obviously we think this was the most dramatic.
24 And I think that the Court, the trial judge in this case, has
25 the discretion to evaluate the demeanor and responsiveness of

1 that venireperson and assess their ability to be fair and
2 impartial.

3 THE COURT: I'm going to sustain the challenge for
4 cause to 14.

5 22.

6 MR. CRANE: Okay. Yeah. Just a minute. Let me
7 make -- 15 and 16 are gone, I believe you indicated, Judge.

8 THE COURT: Well --

9 MR. CRANE: Declue just -- or Caviness just went;
10 right, Charlie?

11 MR. ROGERS: Right. I just agreed to that.

12 MR. CRANE: Okay. 22.

13 THE COURT: Is Terry Harris.

14 MR. CRANE: Okay. He -- no work, no pay. He
15 indicated a -- and I recognize that there were times when
16 Mr. Harris went back and forth, but initially, in the
17 question about his experience with law enforcement, he said
18 he had a particularly bad experience when the police showed
19 up I think at his house, and it was the wrong place. He said
20 that that would, and I'm paraphrasing, that would -- is
21 something that he would have trouble setting aside and being
22 fair and impartial.

23 Now, just to be fair to the defense, I think he did
24 maybe get back up later and said something about, "Well, you
25 know, maybe that -- maybe I wouldn't have a problem with

1 that." He also, though, got into --

2 (Pause.)

3 Judge, it's my recollection he said something about
4 having problems with the plea agreement with the witness. He
5 indicated also that he has a court date, but that's -- that's
6 a week after this one.

7 THE COURT: He has one on the 24th.

8 MR. CRANE: That's not next week; right?

9 So I -- you know, I don't know. I could have
10 sworn -- I wasn't taking notes up there. I could have sworn
11 he said something about the plea agreement, is what's the
12 problem. But I guess if I can't document it, I'm out of luck
13 on that. He did talk about the police problem, and said he
14 couldn't be fair and impartial due to that experience. And
15 he also said no work, no pay.

16 MR. ROGERS: With regard to the no work, no pay,
17 Judge, if we're going to grant that one, I don't think we're
18 going to have a panel qualified out of both groups. But
19 having said that, with regard to the police experience, he
20 did say that the police came in and pinned him and his
21 fiancée to the wall, and they had the right address, but the
22 wrong town, I believe was his words.

23 THE COURT: True.

24 MR. ROGERS: But then he said, "I don't have
25 anything bad about the cops. I don't hate the cops." And he

1 said, if they were under oath, he would assume they were
2 telling the truth, which I thought made a bit of
3 disqualifying answer, until I was able to ask questions about
4 whether he would treat cops different from anybody else, and
5 I don't think he would. And so I think he is certainly a
6 qualified witness.

7 THE COURT: You mean a juror.

8 MR. ROGERS: Juror. Yes. Exactly what I mean.

9 THE COURT: You know, I've excused other people that
10 either said they were self -- and reported that they were
11 self-employed, and if they didn't work, they didn't get paid.
12 And for that reason, I feel I probably -- I missed that on
13 his -- I had notes that he did say he was self-employed and
14 didn't earn money. And if I excused some on that basis, I
15 feel that I need to at least excuse him on that basis. I
16 don't think I would strike him for cause, but I would excuse
17 him, as Number 22, to be excused. And I missed him.

18 23, who is Dustin Gibbs.

19 MR. CRANE: 23, Gibbs, on the Court's inquiry and on
20 mine, indicated that he had to take an exam I believe on
21 Thursday -- a week from -- next week, Thursday. Said that
22 this was some kind of a qualification for being an RN. That
23 it would be an extensive period before he could sit for the
24 exam again. That it was a major problem. If he missed it,
25 he had no other options. He generally demonstrated being

1 preoccupied with the need to take that examination.

2 THE COURT: And it was for a CNA, which is a
3 certified nursing assistant.

4 MR. CRANE: Yeah, it's a nurse thing, yeah.

5 THE COURT: Yeah.

6 MR. ROGERS: Your Honor, I don't think he said that
7 he had no options. I think what he said was that he was
8 scheduled to take it next Thursday. That he was required to
9 take it within 180 days of having become employed there. I
10 would note that on his questionnaire, he wasn't working
11 there. He listed his employment as being an Imo's delivery
12 driver.

13 THE COURT: He obviously has a new job.

14 MR. ROGERS: But what I'm trying to say is that he's
15 got some time to get the test. I'm sure they don't just give
16 it once every blue moon.

17 MR. CRANE: Our notes indicate that he said no other
18 options that he knows of. With respect to this exam and the
19 need to take it on Thursday.

20 THE COURT: All right. I'm overruling the challenge
21 to 23.

22 34. Mr. Headrick.

23 MR. CRANE: Headrick stated that he would require
24 the state to present physical evidence, you know, that was
25 the forensic evidence, for him to find the defendant guilty.

1 MR. ROGERS: I think he was pretty thoroughly
2 rehabilitated before I got up there. And I think once I
3 discussed with him and talked to him about using physical
4 evidence and all the evidence and weighing the testimony of
5 evidence, that he was certainly able to follow the law.

6 THE COURT: Challenge to 34 is sustained. I think
7 he was equivocal in his -- if you want to call it
8 rehabilitation.

9 35, Jack Moore.

10 MR. CRANE: He did not -- I mean, generally
11 speaking, without belaboring it, he didn't like the idea of a
12 plea bargain with the codefendant at all. He stated that on
13 the state's voir dire and the defense voir dire. Even though
14 I don't think Mr. Rogers was questioning him on that, he
15 stated that on his own. He also had great difficulty with
16 the idea of leaving his wife, who is somewhat of an invalid.
17 I remember hearing something about knees and she stove up
18 some kind of way or another, and that that would be a problem
19 to leave her for a week. But the main thing was, he -- he
20 repeatedly said he didn't like the idea of a deal with the
21 codefendant.

22 MR. ROGERS: Your Honor, he never said that he would
23 automatically reject the testimony just because there was a
24 deal given, or that he could not weigh and evaluate it. I
25 think it's certainly proper to have some questions about why

1 somebody who agrees to testify on behalf of the state and
2 admits their own guilt is doing so.

3 With regard to the wife situation, it's just -- I
4 think he sort of jokingly, in response to the Court's
5 question about whether his wife was disabled, he sort of
6 said, "Oh, she's just got some bad knees," or words to that
7 effect. He didn't claim that she was an invalid. And he
8 just would not feel comfortable leaving her alone, due to the
9 length of the time they've been married, and they've
10 apparently never been apart.

11 MR. CRANE: Judge, our records indicate, and, you
12 know, I don't have the Court's record in front of me, but
13 that he was asked by -- I asked him if his problem with a
14 plea agreement with the defendant would impair his ability to
15 be fair and impartial. And he said yes, he would have a
16 problem being fair and impartial, given that concept is in
17 this case.

18 THE COURT: 35 is struck for cause.

19 52. Donna Fields.

20 MR. CRANE: Okay. She said that she would have
21 problems sitting in judgment of a fellow person, human being.
22 I can't remember the exact type of creature, but it was a
23 person.

24 THE COURT: You're through, Mr. Crane?

25 MR. CRANE: Oh, I didn't hear what you said.

1 MR. ROGERS: Oh, I didn't know --

2 THE COURT: He didn't say anything.

3 MR. ROGERS: -- you were done.

4 MR. CRANE: Yeah, I'm done.

5 MR. ROGERS: Okay. She did specifically say that
6 she could do it. She said it would be difficult. I think
7 that describes maybe the ideal juror.

8 THE COURT: The word she used was "feels uneasy."

9 MR. CRANE: That's true. And what I did was
10 collectively, I think it was Number 3 and Number 12 and
11 Number 52, I believe I had a follow-up question: "All of you
12 feel like you wouldn't be able to sit in front of your fellow
13 human being. Anybody else feel that way?" Now if I didn't
14 go right at her again, I'll -- I won't argue that any more.

15 THE COURT: The challenge to 52 is overruled.

16 Does the defendant have any challenges for cause?

17 Well, let me -- let me look at my -- I have that 21
18 have either been excused, stricken, or absent. Is that what
19 you get?

20 MR. KNIGHT: I got 30 left.

21 THE COURT: You have 31?

22 MR. KNIGHT: 30 left.

23 MR. CRANE: Yeah. Yeah.

24 MR. ROGERS: That's what we get.

25 THE COURT: Is that --

1 MR. CRANE: Yeah.

2 THE COURT: So that's -- okay.

3 MR. ROGERS: There's the --

4 THE COURT: Well --

5 MR. CRANE: Gives us two alternates, if -- you know,
6 go ahead and do what you're going to do.

7 THE COURT: Well, I think you have to represent the
8 defendant in the way you feel you need to.

9 MR. CRANE: Absolutely.

10 THE COURT: And I would not in any way encourage you
11 to forego a challenge for cause because you want to get
12 everything out of this panel. I'm -- I want you to do what's
13 best for your client.

14 MR. ROGERS: Yeah. And I'll tell you, Your Honor,
15 there is a situation that you already brought to our
16 attention, which was with regard to the Galloways.

17 THE COURT: There is the Galloways.

18 MR. ROGERS: And there is a possible challenge for
19 cause with regard to Mrs. Galloway, Number 28.

20 THE COURT: Well --

21 MR. ROGERS: But --

22 MR. CRANE: Hey. What were you all saying on the
23 Galloways? They can't -- they said they couldn't take care
24 of the kids if they're both gone?

25 THE COURT: Evidently they --

1 MR. ROGERS: They have foster kids.

2 MR. CRANE: Okay.

3 MR. ROGERS: And they can't get anybody who's
4 certified to take the foster kids.

5 MR. CRANE: Okay. We'll go ahead and -- go ahead
6 make your strikes for cause, and we'll see what we got on
7 alternates. Go ahead and make your strikes for cause. I
8 mean, are you going to make any?

9 MR. ROGERS: Yeah. I'm going to make Mrs. Galloway,
10 Number 28.

11 THE COURT: Is that the only one?

12 MR. ROGERS: Yes.

13 THE COURT: All right.

14 MR. CRANE: Okay. Well, I -- can you just state --
15 okay. I'll object. What's your reason? Go ahead.

16 MR. ROGERS: Oh. First of all, I'd ask she be
17 excused for hardship, because neither -- either she or
18 Mr. Galloway has to be home to take care of the foster kids.
19 And she's the logical person, being the former children's
20 division worker.

21 MR. CRANE: All right. Okay. All right. And so
22 you're not going to strike Mr. Galloway for cause.

23 MR. ROGERS: Right. We're not going to strike
24 Mr. Galloway for cause.

25 MR. CRANE: Okay. We have no objection to

1 Miss Galloway, Number 28.

2 THE COURT: Susan Galloway is struck for cause. And
3 it really is hardship. It's more an excuse.

4 MR. ROGERS: It is more of a hardship. Exactly.
5 There was a cause, but we didn't need to state it.

6 MR. CRANE: It's going to be a hardship on
7 Miss Galloway. She's got to go home by herself.

8 THE COURT: I don't know how many kids she has. She
9 probably has to take care of them.

10 Is that -- does that conclude the --

11 MR. ROGERS: Let me --

12 THE COURT: And I want to make sure that we still
13 have the ones we had.

14 Do you have a yellow highlighter there that I
15 might --

16 CIRCUIT CLERK HOUSTON: I have a pink one.

17 THE COURT: I don't care what color, just as long as
18 I can -- I don't care if it's pink for breast cancer week or
19 whatever.

20 Let me tell you which ones I now have. Just so that
21 we'll all be on the same page. I show that Brown is still in
22 the group. Clark is still in the -- these are their last
23 names. Gales is still in the group. Waechter is still in
24 the group. Pund is still in the group. Stonebarger is still
25 in the group. Caviness --

1 MR. ROGERS: No. She's gone.

2 THE COURT: -- is struck. Burkemper is in the
3 group. Davenport. Kaimann. Carter. Ieppert. Gibbs was
4 one that had been a challenge for cause, I believe.

5 MR. ROGERS: Overruled.

6 THE COURT: And was overruled. Thomas. Laura
7 Thomas. Ohmert. Stief. Did he pronounce it Seabaugh?

8 MR. ROGERS: Seabaugh.

9 THE COURT: Seabaugh. Wubker. I don't remember him
10 saying anything.

11 MR. ROGERS: Very little.

12 THE COURT: Moretto. Dale Galloway. Krieg.

13 MR. CRANE: Oh, I just got lost. Wait a minute
14 here.

15 Headrick?

16 THE COURT: We're talking --

17 MR. CRANE: I didn't get them marked off.

18 THE COURT: No. These are people that are still on.

19 MR. CRANE: Yeah. No, I screwed up. I didn't have
20 34 and 35 marked off. Sorry to hold you up. I got -- I'm
21 with you. Sorry.

22 MR. ROGERS: You were making the correct rulings on
23 your own challenges? Is that what you're saying?

24 THE COURT: All right. So we're down -- have you
25 gotten Moretto, Galloway, and Krieg as still being on the

1 list?

2 MR. CRANE: Yeah.

3 THE COURT: Skirvin, Kelly, Runge, Schisler, Day,
4 Miller, Delk, Gaines, and Fields are the ones that I have
5 still in the running. Is that -- does counsel agree?

6 MR. ROGERS: That's the ones I have, Your Honor.

7 THE COURT: Okay. And that gives us a total of --

8 MR. ROGERS: 29.

9 THE COURT: How many?

10 MR. ROGERS: 29.

11 THE COURT: 29? Well, I must be mistaken then.

12 MR. CRANE: What did you have, Judge?

13 THE COURT: Well, I have more.

14 MR. KNIGHT: I've got 29.

15 THE COURT: You have 29. Maybe I -- let's see. You
16 have -- if we have -- if we have 28 people -- if we have 28,
17 we can get two alternates out of 28. Because we get six and
18 six. And the rule, the statute, reads that you get -- each
19 one get a challenge for every two alternates. It has always
20 been my policy, when trying cases, to give each attorney a
21 strike. You know, to take three and give each attorney a
22 strike. However, that's not what the statute says. The
23 statute, in 494, I believe it's 485, 495, gives you -- each
24 one one strike for every two alternates. And if we play by
25 those rules, which are the rules that everyone -- I mean, you

1 get two alternates out of 28 jurors.

2 MR. CRANE: Okay. And -- well, wait a minute. We
3 talked about this this morning. You're saying that you're
4 okay with going with two alternates instead of three.

5 THE COURT: I would go with two alternates. The
6 Court would. I would not go with one alternate.

7 MR. CRANE: Okay.

8 MR. ROGERS: I'm happy with two alternates.

9 MR. CRANE: And we can do that with this bunch.

10 THE COURT: We can do that with this bunch. Praise
11 the Lord. All right.

12 MR. CRANE: So all we need to know now is for sure
13 who the alternates are.

14 MR. KNIGHT: Yeah. We're striking through where?

15 THE COURT: Fields actually would be excess. So let
16 us -- gentlemen, the -- you will make your six strikes each
17 out of Jurors 1, 4, 6, 7, 10, 13, 14, 15 --

18 MR. KNIGHT: Wait. Whoops. No, no, no.

19 THE COURT: I'm sorry.

20 MR. ROGERS: Over my objection.

21 THE COURT: Oh, wait a minute. Let's see.

22 MR. KNIGHT: 10, 13, and 17.

23 THE COURT: Let me look and see. Mr. Norton is off.
24 I'm -- I'm having problems here. Just a second.

25 MR. CRANE: You're -- I did that a minute ago too.

1 Just because you didn't get anybody marked off, is what
2 throws you.

3 THE COURT: Well, no. I show him as off for cause.
4 I know what I did. 13, he's 14, 15, 16. So it would be 17,
5 and then 18, 19, 20, and 21. And that gives us 11 jurors
6 there; correct? And then we would go to 23, 24, 25, 26, 27,
7 28.

8 MR. CRANE: No. I had 28 gone.

9 THE COURT: I'm sorry. You did. I'm numbering them
10 consecutive.

11 All right. 28, 29, 30, 31. It would be 32.

12 MR. CRANE: Is in.

13 THE COURT: Is in.

14 MR. CRANE: Yeah.

15 THE COURT: Then to 38, 39, 40, and 41. That gives
16 us 21. 42, 44, and 45 would make up the original panel.
17 Miss Schisler is the last one on the regular panel. And then
18 47, 48, 49, and 50 would be the alternate panel. And each of
19 you may make --

20 MR. CRANE: No. 50's gone, Judge.

21 THE COURT: I'm sorry. 51.

22 MR. CRANE: Okay.

23 THE COURT: Okay.

24 MR. CRANE: So wait a minute. What are you going to
25 do with 52? Just officially.

1 THE COURT: 52 will be excused as excess, as long as
2 I know that no one has passed out and is sick by the time we
3 get all the jurors back in here. I'm not -- I'm not going to
4 release the excess.

5 MR. ROGERS: Your Honor, Mr. Gaines is the one
6 that's doing the online presentation.

7 MS. BENSON: For 80 people. They just went online.

8 MR. ROGERS: Tuesday morning or whenever it was.

9 THE COURT: I think it was Monday morning.

10 MR. ROGERS: Monday morning. Sometime inconsistent
11 with our --

12 THE COURT: With our trial.

13 MR. CRANE: Well, yeah, but, you know, Mr. Harris --
14 oh, he's gone?

15 MR. ROGERS: Yes.

16 MR. CRANE: I guess I'll shut up on that. Well,
17 wait a minute. No, hold it. Hold it. Here's an analogy.
18 Mr. Gibbs, he's not going to be able to be a nurse for
19 longer.

20 MR. ROGERS: Sure, he can. He's a nurse right now.

21 MR. CRANE: And the other guy, the other guy, other
22 people aren't going to hear some PowerPoint deal that he's
23 going to do, with all due respect to him. But, I mean, I
24 don't necessarily feel like there's any great difference
25 between Mr. Gibbs and Mr. Gaines, other than the idea that

1 Mr. Gibbs is in worse shape.

2 So to be consistent -- I mean, golly. The guy's not
3 going to be able to go on about his business. Got to take a
4 test. What did he say? Another 120 days to sit for it.

5 THE COURT: Well, he didn't know how long it would
6 be, but. I did not -- I really think that business issues
7 are things that people should have to deal with, unless
8 they're the sole provider of a family and they don't get --
9 they get zip if they don't work. I excuse those kind of
10 people. And I'm not going to --

11 MR. CRANE: Mr. Gaines is still going to get paid.

12 THE COURT: I'm not going to excuse Mr. Gaines. If
13 someone feels he ought to be taken off, you can take him off.
14 But I'm going to over -- you're officially moving to strike
15 him?

16 MR. ROGERS: I'm officially moving to excuse him.

17 MR. CRANE: Hey, what was his number again?
18 Kathryn?

19 MR. ROGERS: Number 51.

20 MR. CRANE: 51? Okay.

21 THE COURT: And I will show that defendant moves to
22 excuse Juror 51 for hardship. Motion is overruled.

23 I mean, he would be an alternate, if he were
24 serving. So if someone were really a nice person and didn't
25 care, they might agree, since he's an alternate, it would be

1 pretty annoying to have to set through the whole trial.

2 MR. ROGERS: Second alternate.

3 THE COURT: Yes, he would be a second alternate if
4 he serves. So, anyway --

5 MR. ROGERS: And you still got a strike to use on
6 Mrs. Fields anyway.

7 THE COURT: Well, Mrs. Fields is off.

8 MR. ROGERS: Well, not if we excuse him.

9 THE COURT: Oh. Okay.

10 MR. ROGERS: I'm still -- I'm making my pick with
11 you, Judge.

12 THE COURT: All I'm saying is: I will give the
13 state --

14 MR. CRANE: The opportunity to be benevolent? Is
15 that what you're saying?

16 MR. ROGERS: That's exactly --

17 THE COURT: A kinder, more gentle person. I'm not
18 suggesting you have to do that, Mr. Crane. I'm just saying,
19 he is --

20 MR. CRANE: Well, I tell you what. Can you -- can
21 you let me talk with my people about that? And we'll -- can
22 I just have a minute on that?

23 THE COURT: Sure. You can have five minutes. We'll
24 take a break.

25 MR. CRANE: It takes me a while to work up that

1 kinder, gentler -- all right.

2 THE COURT: Gentlemen. Just a second. We do have a
3 number of people waiting downstairs, some of whom are really
4 angry at having to be here and be here over three hours --

5 MR. CRANE: Okay. We'll get on it, Judge.

6 THE COURT: -- and wasting their time. Is it
7 agreeable that we tell them to be released and thank them for
8 coming?

9 MR. CRANE: I thought you were going to make sure
10 nobody fell out.

11 THE COURT: Well, I'm talking in this case. I'm not
12 releasing an -- an excess in this case. In this group.

13 MR. CRANE: I thought you weren't going to release
14 anybody, even in the next group, until --

15 THE COURT: Well, I'll be happy to keep them here.

16 MR. CRANE: Well, I -- whatever -- if you think
17 we're okay, we won't have to roll the dice.

18 MR. ROGERS: I just -- I don't see any reason to
19 keep them here.

20 MR. CRANE: Okay. That's fine.

21 THE COURT: You may release the second group.

22 DEPUTY COURT MARSHAL WERNER: Okay.

23 THE COURT: All right. And you'll get back in five
24 minutes, Mr. Crane?

25 MR. CRANE: Oh, golly. I sure --

1 THE COURT: No. On this one that you might be
2 kinder --

3 MR. CRANE: Oh, on the one. Yeah. Yeah. Yeah,
4 I'll run back in here.

5 THE COURT: Otherwise, no, I'll give you 20 minutes
6 to make your strikes.

7 MR. CRANE: Oh, okay. Yeah. I thought you were
8 saying I had five minutes for all --

9 THE COURT: No. You can have 20 minutes on each
10 side to make your strikes.

11 MR. CRANE: We'll be right back, Judge.

12 (Recess taken.)

13 - - -

14 The following proceedings were held out of the presence
15 of the jury:

16 MR. CRANE: I got a question for you. Charlie,
17 there you are. I thought that was you.

18 I've got a question, Judge. You're indicating that
19 two alternates, would be 47, 48, and one side gets to strike
20 one of them.

21 THE COURT: Wait a minute. Here we go. 47, 48, 49,
22 and 51, would be the panel.

23 MR. CRANE: Yeah.

24 THE COURT: And there's a strike -- each side gets
25 one strike, leaving two alternates. You want to look at the

1 statute?

2 MR. CRANE: So it's not like he gets to strike one
3 of either 47 or 48 and I get to strike one of 49 or 51. It
4 doesn't work that way.

5 THE COURT: No. But you make -- you make your first
6 strikes. And you can strike 47 or you can strike 49 and --
7 you can strike any one of the four. But the state goes
8 first. In other words, you could strike any one of 47, 48,
9 49, or 51. The state would make its strike. And then the
10 defendant --

11 MR. CRANE: Okay.

12 THE COURT: -- would come back and make his strike.

13 MR. CRANE: Okay.

14 THE COURT: Any one of the three that are left.

15 MR. CRANE: Okay.

16 THE COURT: He may make one strike.

17 MR. CRANE: All right. So, if we go up to 51 --

18 THE COURT: Yes.

19 MR. CRANE: -- I get a strike and the defense gets a
20 strike.

21 THE COURT: Yes.

22 MR. CRANE: From 47, 48, 49, or 51.

23 THE COURT: Correct.

24 MR. CRANE: Okay. I think I'm -- give me 30
25 seconds.

1 MR. ROGERS: Wait. Wait.

2 MR. CRANE: Give me 30 seconds. What? I'm right on
3 that; right?

4 MR. ROGERS: You're right on that, but you're coming
5 back with the answer about whether you're going to soften
6 your heart on Mr. Gaines?

7 MR. CRANE: That's what I'm doing right now. That's
8 what I'm doing right now.

9 (Mr. Crane left the courtroom and then returned.)

10 MR. CRANE: Got it.

11 THE COURT: Are you going to be a kind person?

12 MR. CRANE: No.

13 THE COURT: All right. You have 20 minutes from now
14 to make your strikes on our clerk's --

15 MR. CRANE: We can mark off Fields?

16 MR. ROGERS: Well, we'll wait until they survive --

17 MR. CRANE: Well, unless you tell me different,
18 Fields is gone.

19 THE COURT: Fields is not a part of the group unless
20 someone else falls over or calls and says, you know, someone
21 in the family --

22 MR. CRANE: How much time do I have?

23 THE COURT: You have until 10 minutes past 4.

24 MR. CRANE: 10 minutes past 4.

25 THE COURT: You have 20 minutes.

1 MR. CRANE: Very good, Judge.

2 (Attorneys left the courtroom.)

3 (Discussion between the Court and Venireperson James
4 Burlison omitted from Transcript.)

5 THE COURT: We'll be in recess.

6 (Recess taken.)

7 - - -

8 The following proceedings were held out of the presence
9 of the jury:

10 THE COURT: I want to make a record, gentlemen,
11 about who has struck whom, just so that I know. I show that
12 the state strikes Jurors 13, 18, 23, 27, 39, and 42 from the
13 main panel and Number 51 from the alternate panel. Is that
14 correct?

15 MR. CRANE: Yes.

16 THE COURT: All right. And the defense strikes
17 Jurors 6, 7, 10, 20, 38, and 45 from the main panel and
18 Number 49 from the alternate? Is that correct?

19 MR. ROGERS: That's correct, Your Honor.

20 THE COURT: All right.

21 MR. CRANE: So 47 and 48 are the alternates.

22 THE COURT: 47 is the first alternate, 48 is the
23 second alternate.

24 MR. CRANE: I just note, Judge, there's no line
25 through Fields. Was she not excused?

1 THE COURT: She is shown as excess.

2 MR. CRANE: Excess. Okay.

3 THE COURT: Excused. And so our jurors are 1, 4,
4 17, 19 and 21 on the first page, 24, 25 and 26, 32, 40 and 41
5 and 44 are on the main panel.

6 Is that -- does the state concur with that?

7 MR. CRANE: Yes.

8 THE COURT: And the defendant?

9 MR. ROGERS: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. ROGERS: And the alternates are --

12 THE COURT: Day.

13 MR. ROGERS: -- Day, 47, and Miller, 48?

14 THE COURT: Correct. In that order.

15 MR. ROGERS: In that order.

16 THE COURT: All right.

17 MR. CRANE: All right.

18 Judge, Mr. Rogers and I were talking. On their
19 admonishment reference reading anything, do you think that
20 covers like getting on the Internet?

21 THE COURT: I am going to be rather specific, if you
22 don't have an objection. I'm going to read -- I'm going to
23 do this as 300.04, paragraph 2, which is one of the recesses
24 that we take. And I'm going to tell them about: Do not
25 read, view, listen to any radio, television, or report of the

1 trial, or make any other inquiry or investigation into the
2 facts of this case, in any manner whatsoever, including, but
3 not limited to, Internet.

4 Now, I -- you know, it's a double-edged sword.
5 Because they might well say, "Well, goodness, this may well
6 be on the Internet. I never thought of that." I mean, if
7 they Google it, I can assure you it will be right there for
8 them to see. So I -- you know, I -- I mean, I will admonish
9 them in every strong way that I can. If you don't want me to
10 say "Internet," I won't say that.

11 MR. ROGERS: We do want you to say it, because
12 anybody who's going do it, it would occur to them anyway.
13 That's my view of the deal.

14 THE COURT: And they'll say, "Well, she didn't say
15 the Internet. I'm not reading a newspaper."

16 MR. CRANE: I agree with Mr. Rogers.

17 THE COURT: But, you know, I can tell you, you put
18 the name in, and it immediately will come up.

19 MR. CRANE: I'm in agreement with Mr. Rogers and the
20 Court.

21 THE COURT: Okay. If you're all in agreement, I
22 will add that little admonishment to that normal instruction
23 I give when we recess.

24 Are we ready to bring them in?

25 DEPUTY COURT MARSHAL WERNER: Yeah.

1 BAILIFF BOEDEKER: Yes, ma'am.

2 THE COURT: You may bring them in.

3 - - -

4 The following proceedings were held in the presence of
5 the jury:

6 (Roll call by Melba Houston, Circuit Clerk.)

7 THE COURT: Ladies and gentlemen, you are the lucky
8 ones. And we certainly appreciate the time you've spent
9 today and the time you will be spending next week.

10 Our marshal will give you instructions on
11 information that you need to know prior to reporting back to
12 the courthouse. And that will be on Sunday. But I want to
13 thank you again for your willingness to do this. And to do
14 it particularly in an area where you will be in another
15 county, away from your family and friends and work. And we
16 all appreciate it, both the state and the defense, as well as
17 the Court.

18 Hopefully we can return the favor. Although we've
19 never had anyone from your county come to Boone County, we
20 certainly have had other counties come to pick juries and
21 take them elsewhere.

22 The Court will remind you again of what you were
23 told at the first recess of this Court. Until you retire to
24 consider your verdict, you must not discuss this case among
25 yourselves or with others, or permit anyone to discuss it in

1 your hearing. You should not form or express any opinion
2 about the case until it is finally given to you to decide.
3 Do not read, view, or listen to any newspaper, radio, or
4 television report of the trial, or make any kind of
5 investigation on your own regarding the facts of this case,
6 by any means whatsoever, including, but not limited, to the
7 Internet.

8 Our marshal will indicate to you and has some
9 written materials for you, what you may and may not bring
10 when you report back to the courthouse.

11 In the unlikely event that something should happen
12 that none of us anticipate -- for example, we had a juror
13 whose wife had a blood clot and had to go to the hospital
14 this morning. And we had to excuse that juror. We don't
15 plan on things like -- happening like that, but sometimes
16 they do. And we will give you a number that immediately you
17 should contact as soon as you know if there's any kind of
18 problem at all, so that we can deal with that situation.

19 But again, I hope you have a good weekend. And we
20 will see you Monday morning.

21 I'm wondering, since they will come up on Sunday
22 evening, whether we will be able to start promptly at 8:30 on
23 Monday morning or whether we should wait until 9. Is there
24 any problem with having, first of all, having witnesses there
25 or having counsel there for opening statement at that time?

1 MR. CRANE: Start off opening statement at 8:30 as
2 far as I know would be fine with the state, Judge.

3 THE COURT: Well, we'll have instructions that the
4 jury would receive at that time, but -- you know, and we'd
5 swear the jury. But you'd be able to start at that time.

6 MR. CRANE: Yes, ma'am.

7 MR. ROGERS: Yes, Your Honor.

8 JUROR SKIRVIN: Can we drive up?

9 THE COURT: Sir?

10 JUROR SKIRVIN: Can we drive up?

11 THE COURT: No, you would not be able to drive up.
12 There will be transportation provided for you.

13 JUROR SKIRVIN: So in other words, we're limited to
14 a hotel.

15 THE COURT: Our marshal will explain all those
16 things for you.

17 VENIREPERSON SKIRVIN: I just -- I got one question.

18 THE COURT: And would you identify yourself, sir?

19 VENIREPERSON SKIRVIN: Oscar -- or John Skirvin.

20 THE COURT: Yes.

21 VENIREPERSON SKIRVIN: You know, I'm a single-income
22 family and ain't got enough money to live week from week
23 hardly. How am I supposed to pay my bills, going a hundred
24 miles away?

25 THE COURT: Sir.

1 single-income family.

2 MR. ROGERS: That's on his questionnaire.

3 THE COURT: That may have been on his questionnaire.

4 MS. BENSON: No, he said it as well.

5 THE COURT: I didn't -- I usually make a note of
6 those things. I'm glad you did. I could have the reporter
7 go back and look at it, just to make sure what he disclosed.
8 Let me see -- do you want to talk to defense counsel
9 privately?

10 MR. ROGERS: I do have that note also, Your Honor.

11 THE COURT: Pardon?

12 MR. CRANE: Well, yeah, I mean, it doesn't matter.
13 I'll give you, he might have said that. I mean, now he's
14 raising Cain. I mean, the question is: What are we going to
15 do?

16 MS. BENSON: Right.

17 MR. CRANE: I mean, first off, I'd just throw this
18 out there. You want to go with one alternate?

19 MR. ROGERS: I -- I think the Court is very
20 reluctant to do that.

21 THE COURT: I am very reluctant to go with one
22 alternate. Of course we've let the second panel to go. And
23 we've also let -- although perhaps we could --

24 MR. ROGERS: Let's --

25 THE COURT: -- we could get --

1 MR. CRANE: Why don't we just go back and get Gaines
2 or what's her name?

3 MR. ROGERS: Fields.

4 MR. CRANE: Fields? Can't run them down? They
5 might have read --

6 MR. ROGERS: That's what I would suggest.

7 MR. CRANE: -- viewed, listened to some news
8 broadcast of the thing.

9 MR. ROGERS: In the meantime?

10 MR. CRANE: I don't know. What about that?

11 THE COURT: Well, that might be an alternative, is
12 to find, if we can locate -- Miss Fields was excess. She was
13 an extra person.

14 MS. BENSON: Right.

15 THE COURT: And she's left the courthouse for sure?

16 BAILIFF BRISCOE: They're all gone.

17 MR. CRANE: Now let's just say we got those two back
18 here, though.

19 THE COURT: If you got those two back here, then --

20 MR. CRANE: You got to restrike alternates; right?

21 MR. ROGERS: Right. Well --

22 THE COURT: Yes.

23 MR. ROGERS: We would basically -- that would put
24 Miss Day on the regular jury, which would be okay with us.
25 We didn't choose to strike her from the alternate. And then,

1 if you wanted to strike Fields instead of Gaines, we could
2 get Gaines back.

3 MR. CRANE: Well, no, what I'm -- you got to get --
4 you got to get four of them -- you got to get two back and
5 then restrike; correct?

6 MR. ROGERS: You don't have to get -- I'm saying, we
7 would not want to restrike. If you wanted to strike one of
8 these -- this one instead of this one --

9 MR. CRANE: Oh. All right. Well, you'll let me do
10 that? Can we get away with that, Judge, you think, if he
11 lets me do it?

12 THE COURT: If the defendant is agreeable to
13 allowing the state to strike between Gaines and Fields --
14 that assumes that we can get both of these jurors back. And
15 I'm willing to wait here to see if we can locate them. And I
16 certainly -- is the bailiff going to see if we can find them?

17 BAILIFF BRISCOE: We'll see if we can get the
18 address where they're at.

19 MR. ROGERS: I've got the questionnaires here with
20 the --

21 MR. CRANE: All right. Can you give me a couple
22 minutes to think on it? I've put all my stuff up. I got my
23 notes here. I can --

24 MR. ROGERS: It seems better than having somebody as
25 angry as Mr. Skirvin appears to be.

1 MR. CRANE: I really -- I mean, I don't doubt he
2 said something, but he wasn't that adamant in -- during voir
3 dire.

4 MR. ROGERS: No, he wasn't.

5 THE COURT: I don't --

6 MR. CRANE: But let me --

7 THE COURT: -- know if Diana -- you know, I was
8 surprised that you didn't strike him, from what he said about
9 the defendant.

10 (Mr. Crane left the courtroom.)

11 MR. ROGERS: We thought they were going to.

12 THE COURT: Well, I was surprised to see him on
13 there, myself. For that reason. But I'm not the lawyer. I
14 don't try the lawsuit. I learned almost 30 years ago we
15 don't do that. You have to give it up.

16 MR. ROGERS: Exactly.

17 THE COURT: Well, I sort of --

18 CIRCUIT CLERK HOUSTON: They left so quickly. I
19 didn't --

20 THE COURT: -- thought they were going to -- well,
21 they were so happy to go. I sort of --

22 CIRCUIT CLERK HOUSTON: I didn't realize they were
23 gone already.

24 THE COURT: Well, I would have left the ones that
25 had been struck for cause and excused off -- right off, and

1 then kept the others, but...

2 Do we know where Miss Fields is and Mr. Gaines?

3 BAILIFF BRISCOE: They live in Moscow. That's about
4 four miles down the road. The other one lives in Troy.

5 THE COURT: All right.

6 BAILIFF BRISCOE: Nickel Holler.

7 THE COURT: And --

8 MR. ROGERS: You got their phone numbers?

9 BAILIFF BRISCOE: Yeah, I got them, but I don't know
10 whether they've got home yet or not.

11 THE COURT: Who lives in Troy?

12 BAILIFF BRISCOE: Gaines. Michael Gaines.

13 MS. BENSON: I have my cell phone right here. You
14 want to call them?

15 THE COURT: Who knows. They may go out and
16 celebrate that they're not on this jury and we may have to
17 find them in a local tavern.

18 BAILIFF BRISCOE: Gaines -- was Gaines the right
19 one?

20 MR. ROGERS: Gaines and Fields. And Moscow Mills
21 isn't --

22 BAILIFF BRISCOE: Four miles down the road.

23 MR. ROGERS: Probably time wise --

24 BAILIFF BRISCOE: Getting them back here --

25 MR. ROGERS: -- depending on where he lives in Troy

1 really.

2 THE COURT: Would it be possible to -- well,
3 Mr. Crane was going to go see --

4 MR. ROGERS: Which one he wanted to strike.

5 THE COURT: Well, I mean, maybe he could agree that
6 he would strike one and not the other, and we could get the
7 one back that he didn't want to strike.

8 MR. ROGERS: That's right.

9 THE COURT: And so we'd only have one coming back.

10 MR. ROGERS: That's -- that's what we agreed.

11 THE COURT: In which case I don't want you to call
12 both.

13 BAILIFF BRISCOE: Okay.

14 THE COURT: Let's see if he can come to an
15 agreement. And I understand it's the state's -- I mean, the
16 defense position that he can strike either one.

17 MR. ROGERS: Either.

18 (Mr. Crane present in the courtroom.)

19 MR. CRANE: Well, if you find Gaines, we'll take
20 him.

21 MR. ROGERS: You'll keep him and strike --

22 THE COURT: And leave Miss Fields off.

23 MR. CRANE: Yeah.

24 MR. ROGERS: Okay.

25 BAILIFF BRISCOE: Do you want me to try to

1 contact --

2 THE COURT: Would you try to contact Mr. Gaines? He
3 may have a few words for you.

4 MR. CRANE: You know, we tried to let him go once.

5 MR. ROGERS: Yeah, you did. You even used your
6 preemptory for him, after you refused to be a nice guy and
7 let him go.

8 MR. CRANE: I don't think I can tell him that now,
9 but.

10 CIRCUIT CLERK HOUSTON: Are we going to need a clean
11 sheet? Or can we work on your original?

12 THE COURT: We can work on the original.

13 MR. CRANE: And I'd like to just, for the record,
14 make sure that this is what we're doing here. There's no
15 objection, in fact was suggested by the defense, that the
16 state select between the last two jurors on the panel --

17 MR. ROGERS: Right.

18 MR. CRANE: -- would basically be what it is.
19 Correct?

20 MR. ROGERS: That is correct. And it seems to me
21 the only fair thing to do, since you would have had the
22 opportunity to make the strike, had we excused Mr. Skirvin
23 earlier.

24 THE COURT: Well, I'm looking for him on the list,
25 and he's disappeared. I probably have looked at it so

1 long --

2 MR. CRANE: I think he's Number 51.

3 MS. BENSON: 41.

4 THE COURT: 41?

5 MR. CRANE: Who? Skirvin?

6 THE COURT: Yeah.

7 MR. ROGERS: Skirvin is 41.

8 THE COURT: So it is agreeable then we would excuse

9 Mr. Skirvin, assuming that we can get -- we can get

10 Mr. Gaines back. And then we would move Eldora Day up to the

11 main panel. And she would be one of the 12.

12 MR. ROGERS: Right.

13 THE COURT: And the state is in agreement with that.

14 MR. CRANE: Wait a minute. Let me -- I forgot

15 about -- oh, yeah. Okay. That's the one --

16 THE COURT: She would move up. And then the two

17 alternates would be Kevin Miller and Michael Gaines.

18 MR. CRANE: Yeah. I mean, if we don't do that, we

19 either keep Skirvin or choose another panel.

20 MR. ROGERS: Yeah.

21 THE COURT: I think that would be the alternative,

22 is to have a panel come in tomorrow morning.

23 MR. ROGERS: I'd rather find Gaines, knowing that he

24 will be upset. He can afford to be upset.

25 (Recess taken.)

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The following proceedings were held out of the presence of the jury:

(Juror Gaines present in the courtroom.)

THE COURT: Mr. Gaines?

JUROR GAINES: Yes.

THE COURT: I bring you glad tidings. Probably not to you. Because of a circumstance that has arisen in the panel, we are going to have to ask you to serve in this case. And I realize that it is a hardship and a problem for you, but -- I wish that there was something else that I could do, but I can't.

Our marshal will give you instructions about where to appear and what you may or may not bring with you.

And I need to tell you that and remind you what we first discussed when we had a recess to begin with. Until you retire to consider your verdict, you must not discuss this case among yourselves, with others, or permit anyone to discuss it in your hearing. You should not form or express any opinion about the case until it is finally given to you to decide. Do not read, view, or listen to any newspaper, radio, or television report of the trial, or make any independent investigation of the facts of this case by any means whatsoever, including, but not limited to, anything on the Internet.

1 Again, I regret that we have to have you serve, and
2 I can't finally release you, but circumstances have arisen
3 that we just -- we need you to serve in this case.

4 And if you will go with our marshal, he'll give you
5 some information that he's giving the other jurors in the
6 assembly room. And we will see you in Columbia 8:30 on
7 Monday morning. But if you will retire with that.

8 JUROR GAINES: Is there anything that can change
9 that? This -- there's literally 80 people that I'm training.
10 We shut down a complete system last night. We're changing
11 over the complete system this weekend and starting up Monday
12 morning. And I've got 80 people across the country that are
13 waiting on me to train them Monday. This has been planned
14 for a month. I mean, this is not just a little thing. It's
15 major. It's a major company and it's a major deal. And I'm
16 the only one that can do it.

17 THE COURT: There is not anything that I can do.
18 I -- certainly you will have time between now and when you
19 report on Sunday, if there's some -- something that you can
20 do on your end, either to delay it a week, for example.

21 JUROR GAINES: Well, if I had done that, you know,
22 four hours ago, that was possible, but it's not possible now.

23 THE COURT: Well, I cannot excuse you.

24 JUROR GAINES: Okay.

25 (Juror Gaines excused from the courtroom.)

1 THE COURT: So the record is clear, we have excused
2 41, have allowed Miss Day to be on the main panel, and have
3 had Mr. Gaines as the second alternate. And I truly regret
4 it. I wish he had said something earlier about being able to
5 reschedule it, if he could. I mean, if he had even said
6 that, I certainly -- we would have given him time to go do
7 that. But he was as adamant as he was. And I feel
8 particularly badly since he's an alternate. There may be a
9 fight, in which case someone else will be off this panel. I
10 don't know. I wish I could do something else, but absent
11 calling in a whole new panel and starting tomorrow morning,
12 there's not a thing we can do.

13 Anything further for the state?

14 MR. CRANE: No, Your Honor.

15 THE COURT: Anything further for the defendant?

16 MR. ROGERS: No, Your Honor.

17 THE COURT: All right. We will then be in recess.
18 And we'll see you then bright and early. We'll be in the
19 courthouse early. I expect the state will have its
20 instructions. The defendant will have any instructions that
21 you may give. You're not required to give any at all, of
22 course, but if you have them that you're thinking about, let
23 us know.

24 MR. ROGERS: Okay. You want them Monday morning?

25 THE COURT: Monday morning would be good. I assume

1 you have them prepared.

2 MR. ROGERS: We will by then.

3 THE COURT: Okay. And the state will exchange any
4 instructions that it might have.

5 All right.

6 MR. ROGERS: We're in the big courtroom?

7 THE COURT: The ceremonial courtroom. And there
8 will be one camera in that courtroom.

9 MR. CRANE: There's one still, one video? Is that
10 the way it works?

11 THE COURT: I don't remember if there's a still
12 camera. There is a video camera.

13 MR. CRANE: But there can't be more than one still.
14 Isn't that the way it works?

15 THE COURT: Yes.

16 MR. ROGERS: All right. Fair enough.

17 THE COURT: With that understanding, we'll be in
18 recess.

19 MR. ROGERS: Thank you, Your Honor.

20 (Adjourned for the evening.)

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