

REPORTER'S RECORD  
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CAUSE NO. D-1-GV-04-001288

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STATE OF TEXAS, ) IN THE DISTRICT COURT  
ex rel. )  
ALLEN JONES, )  
Plaintiffs, )

VS. )

JANSSEN, LP, JANSSEN )  
PHARMACEUTICA, INC., ) TRAVIS COUNTY, TEXAS  
ORTHO-McNEIL )  
PHARMACEUTICAL, INC., )  
McNEIL CONSUMER & )  
SPECIALTY )  
PHARMACEUTICALS, JANSSEN )  
ORTHO, LLC, and )  
JOHNSON & JOHNSON, INC., )

Defendants.) 250TH JUDICIAL DISTRICT

\*\*\*\*\*

JURY VOIR DIRE

\*\*\*\*\*

On the 9th day of January, 2012, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable John K. Dietz,  
Judge presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

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## 1 PROCEEDINGS

2 JANUARY 9, 2012

3 THE COURT: This is Alice Choate. Hi,  
4 Ms. Choate.

5 THE WITNESS: Hello.

6 THE COURT: How are you?

7 VENIREPERSON CHOATE: Okay.

8 THE COURT: Tell me the situation.

9 VENIREPERSON CHOATE: My son-in-law, Ryan  
10 Sampson, my daughter's husband, is in the ICU at South  
11 Austin Medical Center.12 THE COURT: And what happened there? I'm  
13 sorry to hear that.14 VENIREPERSON CHOATE: He has extremely  
15 high blood pressure, and he had an episode at work.  
16 He's a chef. And he's been there ever since. He's been  
17 there ever since, I think, Friday.

18 THE COURT: Since Friday?

19 VENIREPERSON CHOATE: Uh-huh, and he's  
20 still there.21 THE COURT: And how would that affect you  
22 today? I mean, I'm sorry to hear this, and I wished it  
23 weren't this way, but how will this affect you if you  
24 were to sit here during jury selection?

25 VENIREPERSON CHOATE: Because of my

1 daughter.

2 THE COURT: Uh-huh.

3 VENIREPERSON CHOATE: She's having a  
4 really rough time, and I've spent the weekend with her.

5 THE COURT: Rough time emotionally?

6 VENIREPERSON CHOATE: Uh-huh.

7 THE COURT: Yeah.

8 VENIREPERSON CHOATE: And because he's --  
9 I just -- my mind won't be on what it's supposed to be.

10 THE COURT: Okay. Ms. Choate, I'm going  
11 to excuse you from service.

12 VENIREPERSON CHOATE: I brought this in  
13 case you need that. It's from the hospital.

14 THE COURT: No, I don't need that. Your  
15 word's good enough. So if you'll -- Stacey will take  
16 care of you if you need a letter or something like that.  
17 We'll go ahead and excuse you. And I hope he gets  
18 better.

19 VENIREPERSON CHOATE: Thank you.

20 THE COURT: There's nothing like losing  
21 weight, eating vegetables and taking medication that'll  
22 help.

23 VENIREPERSON CHOATE: Well, it's more than  
24 that. It's more than that. It's a pretty serious  
25 situation.

1 THE COURT: I'm sorry to hear that. Okay.  
2 Take care.

3 VENIREPERSON CHOATE: Uh-huh. Thank you.

4 *(Venireperson Choate exited courtroom)*

5 THE COURT: And Stacey, come back when  
6 you're finished there.

7 How many we got and how many we missing?

8 MS. ROSEN: I'm going to go find out right  
9 now.

10 THE COURT: Okay. Did I tell y'all about  
11 the two rounds of questioning rule?

12 MR. McCONNICO: No, sir.

13 THE COURT: I didn't think I did. In  
14 general, we don't examine ad infinitum. We get two  
15 rounds, direct, cross, redirect, to try to stop the  
16 bleeding, recross to try to inflict more wounds, and  
17 that's about it. So it doesn't go on like forever.  
18 Okay.

19 MS. ROSEN: We're waiting on 15 jurors.

20 THE COURT: On how many?

21 MS. ROSEN: Fifteen.

22 THE COURT: Fifteen?

23 MS. ROSEN: There's one who called and  
24 said he's getting close, so soon to be 14.

25 THE COURT: Okay. I'm going to wait until

1 9:30 and then we go at 9:30.

2 Plaintiff is State of Texas; is that  
3 right? Mr. Jacks, State of Texas?

4 MR. JACKS: State of Texas and Allen Jones  
5 are the plaintiffs.

6 THE COURT: And Allen or --

7 MR. SWEETEN: Allen, A double L e-n.

8 THE COURT: And Mr. McConnico, what -- who  
9 are y'all today?

10 MR. McCONNICO: Johnson & Johnson and  
11 Janssen Pharmaceuticals.

12 THE COURT: Now, somebody's headquartered  
13 in New Brunswick, New Jersey. Who's that?

14 MR. McCONNICO: That's Johnson & Johnson,  
15 Your Honor.

16 THE COURT: And then Janssen is --

17 MR. McCONNICO: We can just say Janssen  
18 is --

19 THE COURT: Janssen.

20 MR. McCONNICO: -- is just a division of  
21 Johnson & Johnson.

22 THE COURT: Aren't they in New York?

23 MR. McCONNICO: No, sir.

24 THE COURT: New Jersey?

25 MR. McCONNICO: Yes, sir.

1 THE COURT: So if we go "New York City,"  
2 will that be okay?

3 MR. McCONNICO: I'd leave off the city  
4 part, but New York sounds good.

5 THE COURT: New York.

6 MR. JACKS: And New Jersey.

7 THE COURT: Jersey, not New Jersey, just  
8 Jersey.

9 Get him. Tell me your last name.

10 MR. SWEETEN: Sweeten, S-w-e-e-t-e-n.

11 MR. McCONNICO: Judge, I think the right  
12 way to describe Janssen is one of the Johnson & Johnson  
13 companies. Instead of a division, we'd say it's one of  
14 the Johnson & Johnson companies, because it is a  
15 separate company.

16 *(Discussion off the record)*

17 *(Jury panel present)*

18 THE COURT: Good morning, ladies and  
19 gentlemen. My name is John Dietz and this is the 250th  
20 District Court. I would like to apologize. We summoned  
21 a lot of you, 85 to be exact. And as we get further  
22 into this jury examination, I think you will see why we  
23 have summoned so many. We were blessed with rain, but  
24 that occasioned everybody -- or many people being late,  
25 and we wanted to make sure that we had as much of the

1 panel as is possible.

2 I believe that you have already met Stacey  
3 Rosen, who is the court operations officer. And the  
4 court clerk is likewise Elizabeth Medina. Della  
5 Koehlmoos is seated in front of y'all, and she will be  
6 recording everything that is said today. She has the  
7 hardest job in the courtroom.

8 At this time I need to give you some  
9 instructions, and I'm going to ask that you all stand  
10 and raise your right hands for me, please.

11 *(The jury panel was sworn)*

12 THE COURT: I am required by the Supreme  
13 Court to read the following to you, so bear with me:  
14 Thank you for being here. We are here to select a jury,  
15 and 12 of you -- actually, it will be 13; we will have  
16 one alternate -- will be chosen for the jury. Even if  
17 you are not chosen for the jury, you are performing a  
18 valuable service that is your right and duty as a  
19 citizen of a free country.

20 Before we begin, turn off all cell phones  
21 or other electronic devices. Watch (demonstrating).  
22 Okay. If one goes off, it gets confiscated.

23 Do not communicate with anyone through an  
24 electronic device, no texting, no e-mailing, no nothing  
25 while we're in this courtroom. To do so will be

1 contempt of court. I just want to be up front with you.

2           During this trial, there will not be any  
3 communication by text message, e-mail message,  
4 chat room, blog or social networking sites like  
5 Facebook, Twitter or MySpace. And we're going to have a  
6 little bit further discussion a little bit later on.

7           I will give you a number where others may  
8 contact you in case of an emergency, and that number --  
9 we will repeat it -- is 854-9300. Since everybody has  
10 turned off your device, you don't have any way to write  
11 that down, so we'll post it.

12           Do not record or photograph any part of  
13 these court proceedings because it is prohibited by law.  
14 These rules are designed to guarantee a fair trial, and  
15 our law sets forth serious consequences if these rules  
16 are not followed. I trust that you understand and  
17 appreciate the importance of following these rules. And  
18 in accord with your oath and promise, I know you will do  
19 so.

20           The Supreme Court says that every juror  
21 must obey these instructions. You may be called into  
22 court to testify about a violation of these  
23 instructions. If you do not follow these instructions,  
24 you will be guilty of jury misconduct, and I might have  
25 to order a new trial and start this process over again.

1           One of the reasons that we're being so --  
2 about trying to get a fair trial is I entered the first  
3 order in this case in April of 2008, and in the 44  
4 intervening months, we have had innumerable hearings and  
5 work. What you will see before you today is the result  
6 of thousands and thousands of hours by everybody in this  
7 courtroom. And so what we're trying to do is to make  
8 sure that we do it one time and we do it correctly. And  
9 it's not only for them; it's also for the 29,000 other  
10 cases that we have queued up ready to be tried and that  
11 we want to just do it one time. So I hope you're not  
12 off-put if we seem kind of stern about it, but we're  
13 wanting to do this right the first time.

14           I want you to avoid looking like you're  
15 friendly with one side or another in this case. Do not  
16 mingle with or talk to the lawyers, the witnesses, the  
17 parties or anybody else involved in this case. You can  
18 exchange a casual greeting like hi, good morning, good  
19 evening, good-bye, that type of thing. Everybody seated  
20 inside here have to follow the same instructions, and so  
21 you will understand it if they're not overtly friendly.

22           Do not accept any favors from the lawyers,  
23 the witnesses, the parties or anyone else involved in  
24 this case. And do not do any favors for them, and this  
25 includes favors such as giving rides and food. We call

1 this the don't feed the attorneys rule. That was a  
2 joke. Y'all are supposed to laugh.

3 All right. Do not discuss this case with  
4 anyone, even your spouse or friend, either in person or  
5 by other means, including phone, text message, e-mail  
6 message, chat room, blog, social networking websites,  
7 such as Facebook, Twitter or MySpace. And do not allow  
8 anyone to discuss the case with you or in your hearing.  
9 If anyone tries to discuss the case with you, tell me  
10 immediately. We do not want you to be influenced by  
11 something other than the evidence admitted in this  
12 court.

13 The parties through their attorneys have  
14 the right to ask you questions about your background,  
15 your experience and your attitudes. They are not trying  
16 to meddle in your personal affairs. They are just  
17 trying to be thorough and trying to choose a jury which  
18 is free from any bias or prejudice in this particular  
19 case.

20 Remember that you took an oath that you  
21 will tell the truth, so be truthful when the lawyers ask  
22 you questions, and always give complete answers. If you  
23 do not answer a question that applies to you, this  
24 violates your oath. Sometimes a lawyer will ask a  
25 question of the whole panel instead of just one person.

1 If the question applies to you, simply raise your hand  
2 and keep it up until they call upon you.

3 Do y'all understand these instructions?  
4 And the Supreme Court says you're supposed to say yes.

5 *(Jury panel members responded "yes")*

6 THE COURT: Thank you. This is a civil  
7 case. It is styled the State of Texas versus Johnson &  
8 Johnson and one of their companies, Janssen  
9 Pharmaceuticals. Representing the plaintiff will be  
10 Mr. Tommy Jacks, Mr. Patrick Sweeten, among others.  
11 Representing Johnson & Johnson and Janssen is Mr. Steve  
12 McConnico. They will introduce their side and who's  
13 assisting them as we get further into it.

14 First thing, nothing that we say here in  
15 this proceeding during the jury selection, which is  
16 called voir dire, is regarded by evidence. What I say  
17 is not evidence and what the lawyers say is not  
18 evidence. There is only one place that you will receive  
19 evidence, and it is where a witness gets in this jury --  
20 in this witness box under oath and gives testimony. If  
21 you are privileged to serve upon this jury, you will be  
22 entitled to believe everything that this witness says.  
23 You don't have to believe a single thing the witness  
24 says or you can believe bits and pieces of it, but the  
25 only place that you receive evidence is here.

1                   Now, that doesn't mean we don't want you  
2 to not pay attention to either the lawyers or to the  
3 Court, but I just want you to know that what I say is  
4 not evidence. If for some reason, as an example, it  
5 looks like I really like Mr. McConnico but I don't like  
6 Mr. Jacks, I don't want that to influence you, because  
7 you will base your verdict as a juror on evidence and  
8 not whether the judge seems to like one side or another.  
9 Are we kind of clear about this?

10                   *(Jury panel members responded "yes")*

11                   THE COURT: I appreciate it. Thank you.  
12 So if I can, may I have the attorneys, starting with  
13 you, Mr. Jacks, to introduce yourselves and your clients  
14 at this time.

15                   MR. JACKS: Yes, Your Honor. One of the  
16 plaintiffs in this case is the State of Texas, but the  
17 plaintiff I represent in this case is Mr. Allen Jones.

18                   Allen would you stand, please? You'll  
19 hear more about his role later.

20                   I'll also introduce -- and I'm going to  
21 let Mr. Sweeten introduce his team. But Ms. Natalie  
22 Arbaugh is one of the attorneys in our office. On the  
23 second row, let's see, we've got Scott Thomas, Renee  
24 Skinner and my partner Tom Melsheimer. We are with the  
25 law firm of Fish & Richardson and we'll be representing

1 Mr. Jones in this case. Thank you.

2 THE COURT: Mr. Sweeten.

3 MR. SWEETEN: Thank you, Your Honor. My  
4 name is Patrick Sweeten, and I'm with the Civil Medicaid  
5 Fraud Division of the Texas Attorney General's Office.  
6 With me today is Cynthia O'Keefe, who is the deputy  
7 chief of our division. Also as the chief of our  
8 division, Mr. Raymond Winter. Along with us is Eugenia  
9 Krieg, who's also an attorney with the Civil Medicaid  
10 Fraud Division. We have Margaret Moore here, who is  
11 also with the division. And then representing the State  
12 of Texas is Margaret Hunt, who is with the Civil  
13 Medicaid Fraud Division as well.

14 THE COURT: Mr. McConnico.

15 MR. McCONNICO: Good morning. Again, I'm  
16 Steve McConnico, and I'm with an Austin law firm called  
17 Scott, Douglass & McConnico. And with me is Kennon  
18 Wooten. She's with our firm. John McDonald, he's with  
19 the firm of Locke Lord. And assisting him will be  
20 Ginger Appleberry also of the same firm. Here  
21 representing our client, our client representative of  
22 Johnson & Johnson and Janssen is Chris Thompson. And  
23 you will hear more about him and our companies as we go  
24 along. Thank you.

25 THE COURT: In a moment, the lawyers will

1 be talking to you about the case and asking you some  
2 questions, and we need some help from you in order to  
3 make the examination meaningful and effective and to  
4 ensure a fair trial. When you are called upon  
5 individually, give your name and your juror number. I  
6 believe it's the paddles that have been given to you or  
7 you can just simply hold it up.

8                   Speak up. Della, as well as I, are  
9 getting hard of hearing, and so if you would speak up,  
10 we'd appreciate it. Wait until the question is finished  
11 before starting your answers. If you're talking -- both  
12 talking at the same time, Della can't put it down.  
13 Listen to all the questions and answers, even if not  
14 directed to you, because this could bring to mind  
15 something that we need to know about that would bear  
16 upon your ability to serve as a juror.

17                   Be sure not to be reading newspapers,  
18 books or magazines while you're in the court, and  
19 electronic devices. And now I want my discussion about  
20 electronic devices. All across the United States and  
21 into our sister countries that use a similar type of  
22 legal system like England and Australia, the  
23 technological advances are really causing a lot of  
24 consternation within courts. And -- well, who all's  
25 doing it? Well, it turns out that it's judges,

1 attorneys are doing it, witnesses are doing it, parties  
2 are doing it, and jurors.

3           To give an example, there was a judge up  
4 east who met a lawyer in chambers during a divorce child  
5 custody case and then friended the lawyer on Facebook  
6 and where they commented on the case via Facebook. The  
7 wife in the divorce found out about the friendship after  
8 the case ended and complained, and the judge received a  
9 public reprimand from the state judicial conduct  
10 commission. Ya think?

11           Attorneys. There was an attorney who  
12 served on a jury, blogged about the case while he was on  
13 the attorney, and that attorney received a 45-day  
14 suspension from the practice of law, \$14,000 in legal  
15 fees, and finally lost his job.

16           A witness. I enjoy this. A witness was  
17 on the stand and while the judge was -- attention was  
18 diverted and was talking to the lawyers, the witness was  
19 busy texting his boss in the jury box. That resulted in  
20 a mistrial of that case.

21           Parties. A doctor who was being sued for  
22 medical malpractice was known by his nom de guerre,  
23 "Flea," and he was blogging about the trial, giving his  
24 impressions of the plaintiff's lawyer, whom he  
25 nicknamed -- I wish I kind of got the nickname, but

1 anyway -- and said that the jurors were dozing off.  
2 When he was on the stand, when the doctor took the  
3 stand, there was a Perry Mason moment, and the  
4 plaintiff's attorney said, "Are you the Flea?" And the  
5 doctor said indeed he was, and the case immediately  
6 settled.

7 Jurors. In March of this year -- in March  
8 of last year in Miami, a federal drug trial that had  
9 gone on eight weeks was declared a mistrial when the  
10 judge asked one juror "Are you doing Internet research?"  
11 And the juror said "Yes." And then eight other jurors  
12 raised their hand and said they were doing Internet  
13 research.

14 In England, a judge in a manslaughter case  
15 received a Google map of the alleged crime scene with a  
16 list of 37 detailed questions by the jury concerning  
17 that map. That was a mistrial.

18 In November of 2008, a juror decided --  
19 didn't know how to vote on the case and was conducting a  
20 Facebook poll as to how she should vote. She was  
21 dismissed from the jury.

22 And then in March -- and this is one of my  
23 favorites -- in Arkansas, a juror texted, "I just gave  
24 away \$12 million of someone else's money." I'm sorry.  
25 He tweeted "I just gave away \$12 million of somebody's

1 money." And now they're investigating, and that's going  
2 to be a mistrial.

3                   Why is it happening now? Because the  
4 technology that we've got is so integrated within our  
5 lives. I don't know about you, but I sit -- I sit at  
6 home with my iPad watching TV so I can figure out where  
7 I've seen these actors and actresses or looking at  
8 stuff. Everybody is doing it.

9                   Now, the problem is, is that when we come  
10 into this case -- let me see if I can find my -- I said  
11 that the only place that you'll receive evidence is from  
12 this witness stand. Well, if you're doing Internet  
13 research, you're not getting the evidence from the  
14 witness stand.

15                   Could somebody tell me -- is anybody here  
16 Internet savvy? Come on, this is Austin. The gentleman  
17 in -- I think you would be No. 11, and so that means  
18 your name is Mr. Koenig.

19                   VENIREPERSON KOENIG: Correct.

20                   THE COURT: Mr. Koenig, when you say  
21 you're Internet savvy, what does that mean?

22                   VENIREPERSON KOENIG: I get on the  
23 Internet all the time.

24                   THE COURT: You're on the Internet all the  
25 time. Could you tell me, Mr. Koenig, who checks to make

1 sure that that stuff on the Internet is correct?

2 VENIREPERSON KOENIG: Not everybody.

3 THE COURT: Not everybody. Well, I know  
4 you're going to do this, so I'm going to get it out of  
5 the way. When you go home tonight and you Google Judge  
6 John Dietz, the number two item that you will get is a  
7 website called the Injustice of Justice, and it's about  
8 me. And I must say, in all candor, it's not very  
9 flattering and it's not very complimentary. And it goes  
10 on for like 19 pages, if you really want to get into it.

11 Now, it's not so much that the person is  
12 saying this stuff, because they have the right under our  
13 laws to stand out in front of this courthouse and say  
14 that Judge John Dietz is an idiot, and not only that,  
15 he's not a very good judge, and he's just chock-full of  
16 injustice. But that's not the point. I'm not bringing  
17 it up because it's critical. What I'm bringing up is  
18 that if you use this as your research, you're missing a  
19 few little facts about the case, for instance, that he  
20 kidnapped his six-month-old child and fled to Mexico and  
21 was there for two years and is still facing federal and  
22 state kidnapping charges and that it took a great deal  
23 of effort to recover the child and get the child back  
24 out of Mexico back to Texas. And so that might be  
25 something that if -- you would want to read in order to

1 fairly understand it, and it's why we're concerned about  
2 people that are doing Internet research.

3                   So they did an article in the *New York*  
4 *Times* about this, and they said, well, this is a problem  
5 in New York courts and elsewhere. And it turned out  
6 that there were like 300 responses to this article, the  
7 comments. And the comments basically divided themselves  
8 into three groups. The first group represented by Dave  
9 of Brooklyn said, "Hey, simple solution here.  
10 Confiscate all the cell phones, pagers, cameras, Palm  
11 Pilots, Blackberries before the jurors enter the  
12 courtroom. Come on, is this really that difficult of a  
13 problem to solve?" With all due respect to Dave out of  
14 Brooklyn, we try not to confiscate your property without  
15 a good reason.

16                   So then another group is of the "Well, the  
17 legal system just has to figure out how to make this  
18 work." And that's represented by Jill from Ottawa who  
19 said, "Well, this is the new reality. The legal system  
20 will have to adjust. It can't just rely on the rules  
21 developed for jurors in medieval communities." And,  
22 well, I think she is on to something. I mean, we -- the  
23 legal system has to adjust to the times. We're just not  
24 really sure exactly what to do. And that's not exactly  
25 crystal clear.

1                   But then my favorite group was -- I'm  
2 going to call them "They are trying to hide the truth  
3 and we can't let them get away with it." And this is  
4 represented by Bill of Los Angeles who wrote, "If  
5 evidence and testimony provided by jurors in the  
6 courtroom is incomplete, I feel that any rational and  
7 responsible juror would seek out information on their  
8 own. And the object of any court proceeding is to  
9 ascertain the facts and arrive at a fair judgment using  
10 all the facts obtainable by any means available. If I'm  
11 ever called to sit on a jury, you had better believe  
12 that everything said will be recorded and photographed  
13 by me so I can take it home and do whatever research is  
14 required to unravel the case using due diligence."  
15 Whoa, Bill, we need to calm down here.

16                   Now, so what do the experts recommend that  
17 the courts do? The first thing they have recommended is  
18 that we revise jury instructions with specific language  
19 about electronic device usage, and so that was part of  
20 the instructions that I read to you and our Supreme  
21 Court has done it.

22                   They've asked that courts repeat the  
23 instructions at the start of the day and at the end of  
24 the day and at breaks. And so in general, you're going  
25 to hear me say, look, I know everybody's going to have

1 to get on their phone. They're going to have to contact  
2 their work, their loved ones. They're going to have to  
3 deal with the appointments, and you're going to be using  
4 them. And all I'm going to ask you to do is to refrain  
5 from blogging, tweeting, Facebooking about the trial,  
6 and then secondly, to refrain from doing Internet  
7 research.

8                   They suggest that we educate the jurors  
9 about the importance of a hearing in the case based only  
10 on the facts presented in court and reporting any  
11 outside research or text messages and to remind each  
12 other in the deliberation room if you're on the jury  
13 that they have decisions based only what is evidence in  
14 the case and to encourage jurors to think of the  
15 courtroom as a playing field where both sides have  
16 agreed to play by a set of prescribed rules, and one of  
17 those rules is that the party on trial will be judged  
18 only by a set of facts that both sides have the  
19 opportunity to examine and challenge, and make it clear  
20 that the violation of these rules is a violation of law  
21 for which punishment can be imposed. Make it important  
22 and be polite. I hope I've done that. So that's our  
23 discussion on electronic.

24                   Back to the questioning. If a question  
25 applies to you and you feel like you need to say

1 something -- you know what the number one fear in  
2 America is? I saw this on Oprah so I know it's true.  
3 The number one fear in America is speaking before a  
4 public group. You would rather stand out on a ledge and  
5 deal with heights rather than speaking. I'm here to  
6 encourage you that if a question applies to you, to go  
7 ahead because we need to know now and not later.

8                   It's customary to allow lawyers and  
9 paralegals to sit in the jury box during voir dire. And  
10 most important, if there is any reason why you feel that  
11 you cannot serve on this jury, we need to know about it  
12 now. If I were to excuse anyone after voir dire and  
13 then we may not have -- if -- sometimes people go,  
14 "Well, I just didn't want to bring that up, you know,  
15 Judge." But it's really become a big problem now. So  
16 I'm trying to encourage you, if there is some  
17 difficulty, whether it's of an economic nature that --  
18 pressures at the job, whether it's a physical nature,  
19 if, you know -- I happen to take a fair amount of  
20 medication -- if you're taking medication or you're  
21 undergoing medical treatment that jury service would  
22 interfere with.

23                   And it's probably fair for me to tell you  
24 that we have spent a bunch of time and honed this case  
25 down to where we think it's going to take four weeks

1 exactly. Holy cow, four weeks? I cannot tell you the  
2 amount of work that has gone in to get this case into  
3 four weeks, a great deal by lawyers on both sides. And  
4 we've got it streamlined. We've got it scheduled.  
5 We've got objectives to meet. We know where we're going  
6 to be on certain days. And in all fairness, I want you  
7 to know that it's going to be -- if you have the  
8 privilege to serve on this jury, it's going to be at  
9 least four weeks before the case is tendered to you for  
10 your deliberations.

11           So if there is an economic reason as to  
12 why jury service is inappropriate, we need to hear it.  
13 If there is some physical reason, medical reason of why  
14 jury service is inappropriate, we need to hear it. If  
15 you are like my grandfather who English was a second  
16 language and you're not sure that you're going to  
17 completely understand the proceedings, we need to hear  
18 about it.

19           Finally, you may not want to blurt this  
20 out with a room full of 84 or 85 strangers. And it may  
21 be something that you want to take up in the relative  
22 privacy of up here at the bench. You have the freedom,  
23 you have the right to say, "Judge, may we -- may I  
24 approach the bench?" And I will kill this microphone  
25 and we will talk a lot softer than I am right now, and

1 we will try to give you as much freedom from privacy and  
2 peering in as we can.

3                   Everybody understand it? Do we have a  
4 clear understanding, a clear deal that you'll bring it  
5 up now rather than later?

6                   *(Jury panel members responded "yes")*

7                   THE COURT: I appreciate it. Thank y'all.  
8 So now we begin voir dire examination. And Mr. Sweeten,  
9 are you first?

10                   MR. SWEETEN: Yes, Your Honor.

11                   THE COURT: Okay. I'm seeing a number  
12 there. Could you just -- wait a minute, I'm seeing two  
13 numbers there. If you wouldn't mind -- 57 and 80, and I  
14 see 3 and 4. Let me deal with 57 first, then 80, and  
15 then I'll come 3 and 4. Yes, ma'am?

16                   VENIREPERSON CAMP: If we have a problem  
17 about financially, you know, like I'm self-employed and  
18 spending a month doing nothing, do we talk about it now?  
19 I mean, are we supposed to --

20                   THE COURT: Yes, ma'am, we will. And  
21 probably what I'm going to do -- I beg your pardon. I  
22 don't have my list. Give me one second. Ms. Camp?

23                   VENIREPERSON CAMP: Yes.

24                   THE COURT: Probably what I'm going to do  
25 is ask everybody with a problem that I've just discussed

1 about, either financial, economic, physical, medical or  
2 some other reason, any other reason, to queue up and  
3 I'll take you one at a time. And so does that take care  
4 of 80 and 3 and 4 and the other numbers that are coming  
5 up? I see -- yes, sir. So why don't we do this.  
6 Everybody who has a reason, if you could queue up in the  
7 center where Della is right now. And then once I get  
8 that, I have further instructions.

9                   Now do y'all see why we summoned 85?  
10 All right. Everybody who is not in a queue-up line,  
11 y'all seated, y'all take a break. Y'all be back here  
12 20 minutes of, gosh, 11:00. Be back here at 10:40  
13 promptly. Respectfully, if you're seated, you're  
14 excused.

15                   And then let me start -- Della, I'm going  
16 to need you up here to relocate.

17                   Okay. Without hovering. Ms. Burton, come  
18 on up.

19                   VENIREPERSON BURTON: Good morning, Your  
20 Honor.

21                   THE COURT: Mr. McConnico, where -- there  
22 you go.

23                   MR. McCONNICO: Yes, sir.

24                   THE COURT: I lost sight of you.

25                   Ms. Burton, tell me what the situation is.

1                   VENIREPERSON BURTON: I am a self-employed  
2 message therapist. And I have two pending issues with  
3 the IRS, excuse me, that require that I pay them  
4 monthly. And if I don't work, I don't get paid.

5                   THE COURT: Okay. Any other questions of  
6 Ms. Burton? Thank you. We'll take it into  
7 consideration. I'll let you know the results of it in a  
8 bit.

9                   VENIREPERSON BURTON: Thank you. Should I  
10 just sit down or leave?

11                  THE COURT: You can come back at 10:40.

12                  VENIREPERSON BURTON: Thank you.

13                  THE COURT: No. 11, Mr. Koenig, come on  
14 up.

15                  VENIREPERSON KOENIG: Thank you, Your  
16 Honor.

17                  THE COURT: Mr. Koenig, what's your  
18 situation, sir?

19                  VENIREPERSON KOENIG: They're outsourcing  
20 my job at work. And if I miss one day of work, I'm  
21 going to be out the door. My employer has laid off 80  
22 people in the last couple months. My wife has just said  
23 surgery, back surgery, and she's been home for the last  
24 three weeks, no paycheck coming in. And I also have my  
25 in-laws who are in their nineties, and they rely on me

1 to help them all the time.

2 THE COURT: Anybody have questions of  
3 Mr. Koenig? Mr. Koenig, I appreciate it. I don't know  
4 what the results are. I'll visit with you a little bit  
5 later on. Thank you, sir.

6 VENIREPERSON KOENIG: Thank you.

7 THE COURT: Ms. Moretti, No. 4. Good  
8 morning.

9 VENIREPERSON MORETTI: Good morning, Your  
10 Honor.

11 THE COURT: What's up?

12 VENIREPERSON MORETTI: A few years ago my  
13 husband was sued here in Travis County in civil court  
14 and lost his case. And every since that experience, I  
15 no longer believe in the jury system.

16 THE COURT: I'm sorry?

17 VENIREPERSON MORETTI: I no longer believe  
18 in the jury system.

19 THE COURT: Uh-huh.

20 VENIREPERSON MORETTI: And for this  
21 reason, I ask your consideration to be excused.

22 THE COURT: Any questions of -- is  
23 it Moretti?

24 VENIREPERSON MORETTI: Moretti.

25 THE COURT: Of Ms. Moretti?

1 MR. McCONNICO: We do not have any at this  
2 point.

3 THE COURT: Okay. Thank you.

4 VENIREPERSON MORETTI: Am I excused?

5 THE COURT: I'm not sure yet. Let me get  
6 through all of this and then I'll let you know. I  
7 appreciate it.

8 VENIREPERSON MORETTI: Thank you, sir.

9 THE COURT: No. 2, Ms. Barbosa. Good  
10 morning.

11 VENIREPERSON BARBOSA: Good morning.

12 THE COURT: What's the situation,  
13 Ms. Barbosa?

14 VENIREPERSON BARBOSA: I'm a single  
15 parent, and I'm going to be missing this day of work. I  
16 can usually only take work -- when I have paid time off,  
17 but I usually save it until my son is sick. So this is  
18 the last of my days. Anything else I won't get paid  
19 for.

20 THE COURT: And where is it that you work?

21 VENIREPERSON BARBOSA: I work for a  
22 company called URS.

23 THE COURT: I'm sorry?

24 VENIREPERSON BARBOSA: URS.

25 THE COURT: And what is that?

1                   VENIREPERSON BARBOSA: We work for the  
2 tollways. We're contracted for the Texas Tollways.

3                   THE COURT: Okay. Mr. -- anybody have a  
4 question of Ms. Barbosa?

5                   MR. McCONNICO: We do not.

6                   MR. JACKS: No, Your Honor.

7                   THE COURT: Thank you. Ms. Barbosa, be  
8 back at 10:40.

9                   No. 17, Lemoine, come on up. Judith,  
10 what's the situation?

11                   VENIREPERSON LEMOINE: The situation -- I  
12 do small group instruction at an elementary school four  
13 days a week, two hours a day. And for four weeks, that  
14 means those students won't get any help because there's  
15 nobody to take my place. And I pick up my grandchildren  
16 from elementary school at 2:45. So there won't be  
17 anybody to pick them up for four weeks.

18                   THE COURT: Any questions of Ms. Lemoine?

19                   MR. SWEETEN: No questions here.

20                   MR. McCONNICO: No, ma'am.

21                   THE COURT: Be back. I don't know what  
22 the results of all this is until I get through it all.

23                   VENIREPERSON LEMOINE: All right. I  
24 appreciate your listening.

25                   THE COURT: Thank you.

1 VENIREPERSON LEMOINE: Thank you.

2 THE COURT: No. 32, Ms. Houston.

3 VENIREPERSON HOUSTON: Good morning.

4 THE COURT: Good morning, Ms. Houston.  
5 What's the situation?

6 VENIREPERSON HOUSTON: I work for the  
7 security downtown, Securitas USA, and I work in a  
8 building where a good portion of these kind folks are.  
9 I'm very fond of Steve McConnico.

10 THE COURT: And so --

11 VENIREPERSON HOUSTON: That doesn't allow  
12 me to judge fairly. I've received Christmas gifts and  
13 all types of nice things from a lot of these kind folks.

14 THE COURT: Well, he's embarrassed. And  
15 so I appreciate you bringing that up, Ms. Houston.

16 VENIREPERSON HOUSTON: Thank you.

17 THE COURT: Any questions, Mr. McConnico?

18 MR. McCONNICO: No.

19 MR. JACKS: No.

20 THE COURT: Thank you.

21 VENIREPERSON HOUSTON: Thank you.

22 THE COURT: Mr. Gonzalez.

23 VENIREPERSON GONZALEZ: Good morning, Your  
24 Honor.

25 THE COURT: Good morning. What's up?

1                   VENIREPERSON GONZALEZ: I'm struggling on  
2 every level that you mentioned, I mean, mentally,  
3 physically, medically, financially. I don't know which  
4 one you want to hear.

5                   THE COURT: The one that you think is the  
6 most important for me to hear. Is that 42,  
7 Mr. Gonzalez?

8                   VENIREPERSON GONZALEZ: Yes. I can't  
9 remember from one minute to the next. My short-term  
10 memory is so so bad. I need to see a doctor about it,  
11 but there's the financial end.

12                  THE COURT: And what's up with that  
13 financial end?

14                  VENIREPERSON GONZALEZ: Both my wife and I  
15 have chronic disease. My wife is home on oxygen. I've  
16 had diabetes for ten years. It's very difficult to  
17 control. Our medical costs are phenomenal.

18                  THE COURT: Okay. I think I've got  
19 enough. Anybody have any questions? Thank you,  
20 Mr. Gonzalez. If you'll be back until I get through all  
21 this. I'm not going to -- I don't know what the outcome  
22 is going to be. Thank you.

23                  VENIREPERSON GONZALEZ: Thank you.

24                  THE COURT: Mr. Burk, No. 80.

25                  VENIREPERSON BURK: Good morning, Judge.

1 THE COURT: Good morning.

2 VENIREPERSON BURK: Unbeknownst to me,  
3 when we submitted conflicts, my oldest daughter of two  
4 daughters is getting married Friday in a JP court. She  
5 just set the date. Her fiance is French. He's here on  
6 a tourist visa and applying for a change of status. So  
7 anyway, my wife and I would like to be present.

8 THE COURT: Any questions of Mr. Burk?

9 MR. McCONNICO: What time is that wedding,  
10 Mr. Burk?

11 VENIREPERSON BURK: They have the option  
12 of 8:30 in the morning or 1:30 in the afternoon, and I  
13 think they're going to go with the 1:30, but we could do  
14 whatever as far as that's concerned. It's only Friday.  
15 I mean, his visa expires on the 17th, which is Tuesday,  
16 so...

17 THE COURT: Mr. Burk, I don't know what  
18 the outcome is going to be.

19 VENIREPERSON BURK: Okay.

20 THE COURT: So I'll see you in a little  
21 bit.

22 VENIREPERSON BURK: All right. Thank you.

23 THE COURT: I appreciate it.

24 VENIREPERSON BURK: Should I put this on  
25 my seat?

1 THE COURT: Yeah, that's a good thing.  
2 41 is Mr. Becerra.

3 VENIREPERSON BECERRA: Good morning,  
4 Judge.

5 THE COURT: Good morning. How are you?

6 VENIREPERSON BECERRA: I'm doing well.

7 THE COURT: What's up?

8 VENIREPERSON BECERRA: The situation is  
9 I've got a loan that I still am paying off for law fees  
10 that I had last year, and I'm just getting back in the  
11 groove at work, and serving on jury duty would just  
12 throw everything off.

13 THE COURT: And could you tell us what  
14 kind of work you do?

15 VENIREPERSON BECERRA: I work at AAA News.  
16 It's a bookstore.

17 THE COURT: Okay. Any questions?

18 MR. McCONNICO: No questions.

19 THE COURT: Mr. Becerra, I don't know what  
20 the outcome is until I get through all this.

21 VENIREPERSON BECERRA: I understand.  
22 Thank you.

23 THE COURT: No. 81, Mr. Faulkner. Good  
24 morning.

25 VENIREPERSON MARK FAULKNER: Since filling

1 out the paperwork about the times, my daughter, who has  
2 cerebral palsy, has had circumstances that require her  
3 to move out of state, and her mother and I need to  
4 accompany her on the 17th, 18th and 19th of this month  
5 to do that.

6 THE COURT: Okay.

7 VENIREPERSON MARK FAULKNER: Other than  
8 that, I don't have any problem.

9 THE COURT: Any questions?

10 MR. McCONNICO: No questions.

11 MR. JACKS: None from us, Your Honor.

12 THE COURT: Mr. Faulkner, thank you for  
13 bringing this up, and I'll see what we can do.

14 Ms. Camp, you started all this.

15 VENIREPERSON CAMP: I know it. I'm sorry.  
16 I'm self-employed. My education is legal, but what I do  
17 is write books for a living. And I have a book that I  
18 have a contract for that's due in May. And basically it  
19 takes me a certain amount of time to write a book. And  
20 so a month gone means I couldn't possibly get it done in  
21 time for my contract, which would -- I mean, you know,  
22 they -- I would be in breach of my contract. But they  
23 also -- the publisher slots the books according to when  
24 we say we're going to get them done. So they would have  
25 a hole in their schedule and it would be a big thing,

1 and it would be -- I just couldn't get it done in time  
2 if I had to spend a month.

3 THE COURT: Any questions?

4 MR. SWEETEN: No questions, Judge.

5 MR. McCONNICO: We do not.

6 THE COURT: Ms. Camp, obviously I've got  
7 to work my way through and find out what the situation  
8 is and I'll let you know. Thank you.

9 VENIREPERSON CAMP: Okay. Thank you.

10 THE COURT: 52, Ms. McDaniel, come on up.

11 VENIREPERSON McDANIEL: Hi.

12 THE COURT: Good morning.

13 VENIREPERSON McDANIEL: Good morning. I  
14 work for a large technology company, and I --

15 THE REPORTER: Largest?

16 THE COURT: A large technology company.

17 VENIREPERSON McDANIEL: A large technology  
18 company. Four weeks is an extremely long time to be out  
19 of the office. I have a new role at my position. I  
20 have a huge presentation due at the beginning of  
21 February.

22 THE COURT: And what company do you work  
23 at?

24 VENIREPERSON McDANIEL: At AMD.

25 THE COURT: And what is it you do there?

1                   VENIREPERSON McDANIEL: I do channel  
2 marketing.

3                   THE COURT: Any questions by the lawyers?

4                   MR. McCONNICO: No questions.

5                   THE COURT: I appreciate it. Thank you,  
6 ma'am.

7                   VENIREPERSON McDANIEL: Thank you.

8                   THE COURT: Come on up, Mr. Spiegel.

9                   VENIREPERSON SPIEGEL: Yes, sir.

10                  THE COURT: What's the situation, Richard?

11                  VENIREPERSON SPIEGEL: I have a start-up  
12 company, and I'm the only employee. So it would be a  
13 challenge to not be running the company for four weeks.  
14 My wife only works two days a week. So there would be  
15 an economic impact.

16                  THE COURT: I understand. I've got to  
17 work my way and then we'll let you know.

18                  VENIREPERSON SPIEGEL: All right. Thanks.

19                  THE COURT: Come on up, Ms. Almond. Yes,  
20 ma'am?

21                  VENIREPERSON ALMOND: Yes, sir. I am out  
22 on bereavement leave.

23                  THE COURT: I'm sorry?

24                  VENIREPERSON ALMOND: I'm out on  
25 bereavement leave currently.

1 THE COURT: I'm sorry.

2 VENIREPERSON ALMOND: My mother-in-law  
3 died the 31st. And her husband is with my family now.  
4 He has dementia. He can't be left alone for too many  
5 hours at a time. I just don't feel like I'm emotionally  
6 prepared to possibly be on a jury for four weeks.

7 THE COURT: Anybody have any questions of  
8 Ms. Almond? Ms. Almond, I'm not sure what's going to be  
9 the result of this. I've got to work my way through a  
10 long line here, but thank you for bringing this up.

11 VENIREPERSON ALMOND: Thank you.

12 THE COURT: Mr. Busatta?

13 VENIREPERSON BUSATTA: Busatta.

14 THE COURT: Come on up.

15 VENIREPERSON BUSATTA: Good morning.

16 THE COURT: Good morning. What's up,  
17 Mr. Busatta?

18 VENIREPERSON BUSATTA: A couple of things.  
19 One is I'm a self-employed carpenter with not much work  
20 lately. And I have a couple of jobs lined up, and  
21 that's about all I've got right now. And another thing  
22 is I've been waiting for a month and a half for an  
23 appointment at the clinic, and I have it Wednesday. If  
24 it unfortunately turns out what it is, I might be  
25 needing to go back in more and more through the months.

1 I think I have a problem with my pancreas. I hope it's  
2 not what it seems to be by Internet research.

3 THE COURT: Well, let's all hope.

4 VENIREPERSON BUSATTA: I hope so.

5 THE COURT: Take care. And let me work my  
6 way through and I'll let you know.

7 VENIREPERSON BUSATTA: Thank you.

8 THE COURT: Thank you.

9 Ms. Brown. What's up, Amy?

10 VENIREPERSON AMY BROWN: I have two  
11 children I need to take care of in the afternoon, to  
12 pick up after school, four and a half and ten.

13 THE COURT: Anybody have any questions?

14 MR. McCONNICO: No.

15 THE COURT: Thank you for coming up. I'll  
16 let y'all know when I can.

17 No. 14 is Ms. McKinnon.

18 VENIREPERSON McKINNON: Yes, sir.

19 THE COURT: Judy, what's up?

20 VENIREPERSON McKINNON: My husband has a  
21 seizure disorder. We have two children that go to  
22 school, and he can't be at home alone with the kids  
23 after school. My job allows me to work the hours so  
24 that I'm there when the kids get home from school. And  
25 being that I am the only one that's able to work, it

1 would be a financial hardship on me to miss four weeks  
2 of work.

3 THE COURT: Judy, let me work my way  
4 through all this and I'll let you know.

5 VENIREPERSON McKINNON: Thank you.

6 THE COURT: 23, Ms. Mueller.

7 VENIREPERSON MUELLER: Your Honor, I  
8 practice in emergency medicine as a family nurse  
9 practitioner where I am compensated on a per-patient  
10 basis. It would be a severe financial hardship for me  
11 to miss four weeks of patient care as well as providing  
12 care in that department.

13 THE COURT: And Stephanie, where is it  
14 that you work?

15 VENIREPERSON MUELLER: CHRISTUS Santa  
16 Rosa.

17 THE COURT: And what is that?

18 VENIREPERSON MUELLER: It's an emergency  
19 room.

20 THE COURT: Anybody have any questions?

21 MR. SWEETEN: No questions.

22 MR. McCONNICO: No.

23 THE COURT: Thank you. I've got to see  
24 what happens at the end of this.

25 VENIREPERSON MUELLER: Okay.

1 THE COURT: Come on up. Prengler. Come  
2 on up, Ms. Prengler.

3 VENIREPERSON PRENGLER: I am  
4 self-employed. I'm a massage therapist. And it would  
5 be very hard for me to take that much time off. I  
6 have -- I work for myself. I don't -- you know, I don't  
7 have any other means of income. And I have a lot of  
8 elderly patients, so they're depending on me.

9 THE COURT: I might just hire you to come  
10 by here every day.

11 VENIREPERSON PRENGLER: About half of my  
12 clients are lawyers. I also have a 90-year-old father  
13 that I go visit a couple times a month in Dallas.

14 THE COURT: I've got to get through all  
15 this and sort it out. I'll let you know.

16 VENIREPERSON PRENGLER: Okay.

17 THE COURT: I appreciate it. Thank you.

18 VENIREPERSON PRENGLER: Just put this back  
19 where I --

20 THE COURT: Yes, ma'am.

21 VENIREPERSON PRENGLER: Okay.

22 THE COURT: 36, come on up. Hegedus?

23 VENIREPERSON HEGEDUS: Yes. Good morning.

24 THE COURT: Good morning.

25 VENIREPERSON HEGEDUS: This is one of

1 those things that I wasn't sure would come up later to  
2 be an issue, and that is that when I filled out the  
3 questionnaire that was sent in, I -- I'm a little  
4 uncomfortable. I knew one of the attorneys, although  
5 he's not in this room. He's not someone that I  
6 particularly care for or respect, so I don't know what  
7 that will play --

8 THE COURT: It would help us if we knew  
9 who that was. I know you don't want to get into it, but  
10 I've got to get --

11 VENIREPERSON HEGEDUS: Alan Waldrop.

12 THE COURT: Gotcha. And I'm looking for  
13 some guidance here. How would that affect you in terms  
14 of your service on this jury?

15 VENIREPERSON HEGEDUS: I think that I  
16 would have to work really hard to make sure that I  
17 trusted everything that came from that person. There's  
18 a lack of trust and respect there. So I certainly think  
19 I could work on that, but I just thought it was  
20 something that you should all know about.

21 THE COURT: Thank you. That's perfect.  
22 Any questions?

23 MR. McCONNICO: Ms. Hegedus, I thank you  
24 first for being so candid. He is going to appear on our  
25 side of the docket, and he is going to appear for

1 Johnson & Johnson. And he will be questioning one of  
2 the witnesses, and it will be a pretty important  
3 witness. And so Mr. Waldrop is going to be trying to  
4 make points for our side.

5 VENIREPERSON HEGEDUS: I understand that.  
6 And I know him well enough to know how good he'll be.

7 MR. McCONNICO: Right. How will that  
8 affect your judgment of the points he's trying to make?

9 VENIREPERSON HEGEDUS: That's tough to say  
10 without having more information. I'm a reasonable  
11 person. I think that I can take the facts as they are  
12 given. I just wanted you guys to know that.

13 MR. McCONNICO: Right.

14 THE COURT: Here's what we're trying to  
15 parse.

16 VENIREPERSON HEGEDUS: I -- yeah.

17 THE COURT: And what we're trying to parse  
18 is, because Waldrop is going to come in and question a  
19 witness, are they going to -- are they going to have to  
20 show something a little bit extra because --

21 VENIREPERSON HEGEDUS: No, I don't believe  
22 that. No. I just thought you guys should know that.

23 MR. McCONNICO: Thank you so much.

24 THE COURT: I appreciate it.

25 MR. McCONNICO: I appreciate it very much.

1                   VENIREPERSON HEGEDUS: All right. Thank  
2 you.

3                   THE COURT: Mr. Siegel, come on up.

4                   VENIREPERSON SIEGEL: Your Honor, I wanted  
5 to bring to your attention that I have a medical lap  
6 band implanted that requires a special diet and  
7 infrequent -- or irregular, you know, eating schedule  
8 that prevents me from sitting for long periods of time  
9 and keeping my energy levels up.

10                  THE COURT: Okay. And David, give me just  
11 a tad more detail about this.

12                  VENIREPERSON SIEGEL: Yeah. I recently  
13 had a fill, which requires me to have, you know, softer  
14 special foods. And because I cannot eat a lot of volume  
15 at a time, it requires me to eat more frequently, every  
16 two to three hours.

17                  THE COURT: Every two to three hours.  
18 Okay. Anybody have any questions for David?

19                  MR. McCONNICO: We do not.

20                  THE COURT: Thank you for bringing this  
21 up.

22                  VENIREPERSON SIEGEL: Thank you, sir.

23                  THE COURT: Appreciate it.

24                  Ms. Meston, come on up. What's up?

25                  VENIREPERSON MESTON: I'm not sure this is

1 relevant, but I feel I should disclose it. I know  
2 Mr. McConnico, and I've also --

3 THE COURT: Is that a good know or a bad  
4 know?

5 VENIREPERSON MESTON: Well, I'm fond of  
6 Mr. McConnico. I've also served as a consultant to most  
7 of the major pharmaceutical companies over the past  
8 14 years, and I'm pretty sure Johnson & Johnson has been  
9 one of mine.

10 THE COURT: Anybody want to ask any  
11 questions? Mr. Jacks?

12 MR. JACKS: You're married to Tom  
13 Albright?

14 VENIREPERSON MESTON: Yes, I am.

15 MR. JACKS: Who was managing partner of  
16 Mr. McConnico's firm --

17 VENIREPERSON MESTON: Yes.

18 MR. JACKS: -- for years?

19 VENIREPERSON MESTON: Yes.

20 MR. JACKS: Of whom I'm fond of, by the  
21 way.

22 VENIREPERSON MESTON: Thank you.

23 MR. JACKS: But not in this case. Would  
24 you have difficulty, because of the relationship that  
25 you and your husband have and have had over the years

1 with Mr. McConnico, feel that this is the right case for  
2 you to be a juror in?

3 VENIREPERSON MESTON: Well, I try to  
4 maintain, you know, neutrality, but I think that my bias  
5 is actually more regarding my work with the  
6 pharmaceutical companies.

7 MR. JACKS: You -- would it be fair to say  
8 that if a party is a pharmaceutical company, you might  
9 tend to lean more in their favor than --

10 VENIREPERSON MESTON: No.

11 MR. JACKS: -- in the other direction?

12 VENIREPERSON MESTON: No.

13 MR. JACKS: The other way?

14 VENIREPERSON MESTON: Yes.

15 MR. JACKS: And that would be McConnico's  
16 problem, right?

17 VENIREPERSON MESTON: So I think both of  
18 you have a problem with me. It might.

19 THE COURT: So -- well -- okay. So let me  
20 see. I need to kind of reach a little bit of certainty  
21 here. Are you -- as you sit here now, are you inclined  
22 toward one side or another side?

23 VENIREPERSON MESTON: It really depends on  
24 the case. I -- I don't know. I have somewhat of a  
25 negative bias against the greater moral interest of the

1 pharmaceutical industry, having worked many years with  
2 them, but --

3 THE COURT: Okay. I think we got it. So  
4 Cindy, let me -- I don't know the results of all this.  
5 I've got to work my way through it.

6 VENIREPERSON MESTON: Okay.

7 THE COURT: So thank you for bringing this  
8 up.

9 VENIREPERSON MESTON: Okay. Thank you.

10 THE COURT: I need to see your number.

11 VENIREPERSON VEITH: 13.

12 THE COURT: What's up, Jason?

13 VENIREPERSON VEITH: I'm a commissioned  
14 sales rep. I only work on commission.

15 THE COURT: And what is it that you sell?

16 VENIREPERSON VEITH: Sunglasses, Jonathan  
17 Paul Eyewear.

18 THE COURT: And as a result of that, if  
19 you're not working, you're not making money?

20 VENIREPERSON VEITH: Any money. And  
21 30 days would kill me.

22 THE COURT: Any questions of Mr. Veith?

23 MR. SWEETEN: No questions.

24 MR. JACKS: None, Your Honor.

25 THE COURT: Thank you. I'll let you know

1 as soon as I get through all this.

2 VENIREPERSON VEITH: Okay. Thank you.

3 THE COURT: 68, Mr. Hernandez. Good  
4 morning.

5 VENIREPERSON HERNANDEZ: Good morning.

6 THE COURT: What's up, Mr. Hernandez?

7 VENIREPERSON HERNANDEZ: I'm not feeling  
8 well. I'm taking anxiety medicine, and I'm feeling real  
9 dizzy right now and shaky.

10 THE COURT: Well, why don't you go get  
11 some water and kind of sit down and relax and let us  
12 worry about all this, and I'll get back with you.

13 VENIREPERSON HERNANDEZ: Okay.

14 THE COURT: I appreciate it.

15 No. 22, Steve Baggs. Come on up, Stephen.

16 VENIREPERSON BAGGS: Good morning, Judge.

17 THE COURT: What's up, Stephen?

18 VENIREPERSON BAGGS: Judge, I don't think  
19 I can -- well, I believe I cannot render a fair and  
20 impartial judgment as long as it involves the Attorney  
21 General.

22 THE COURT: And if you just give me just a  
23 tiny bit of background.

24 VENIREPERSON BAGGS: They tried to indict  
25 me on a criminal case I was working and the indictment

1 failed, but as a result of the pursuit of an indictment,  
2 I was sued in two different federal courts, and I spent  
3 ten years in federal courts.

4 THE COURT: Stephen, I know this sounds  
5 kind of dumb, but I've got to ask the question.

6 VENIREPERSON BAGGS: Yes, sir.

7 THE COURT: So how would that affect you  
8 were you to sit in this case?

9 VENIREPERSON BAGGS: Just about anything  
10 they do affects me, Judge. It took ten years off my  
11 life and lots of money.

12 THE COURT: Any questions?

13 MR. McCONNICO: Mr. Baggs?

14 VENIREPERSON BAGGS: Yes, sir.

15 MR. McCONNICO: That came out of the  
16 Dan Morales tobacco case?

17 VENIREPERSON BAGGS: Yes, it did.

18 MR. McCONNICO: And you understand that's  
19 a different attorney general and that was years ago?

20 VENIREPERSON BAGGS: I understand, yes,  
21 sir.

22 MR. McCONNICO: And those facts and what  
23 involved you -- and I appreciate you being so candid  
24 with us -- but are completely different from the facts  
25 we're going to deal with here today. Do you think you

1 can judge our case on our facts and put what happened  
2 with Mr. Morales in the tobacco case behind you?

3 VENIREPERSON BAGGS: It wasn't the tobacco  
4 case.

5 MR. McCONNICO: It wasn't?

6 VENIREPERSON BAGGS: No. It was a  
7 criminal case.

8 MR. McCONNICO: Criminal case. But do you  
9 think you can put that with Mr. Morales behind you,  
10 because this is a different attorney general, different  
11 facts, and judge our case on these facts?

12 VENIREPERSON BAGGS: Well, sir, I've spent  
13 about nine years as a bailiff, and I understand the  
14 court proceedings very well.

15 MR. McCONNICO: Yes, sir.

16 VENIREPERSON BAGGS: But I -- in this  
17 case, if I can't be fair to both sides, that's a  
18 problem.

19 MR. McCONNICO: I appreciate it.

20 THE COURT: Thank you.

21 VENIREPERSON BAGGS: Thank you.

22 THE COURT: Stephen, once I work my way  
23 through all of this, I'll let everybody know.

24 VENIREPERSON BAGGS: Appreciate it.

25 Thanks, Judge.

1 THE COURT: That's a cause.

2 83, come on up. This is Pamela Brown.

3 Ms. Brown, what's up?

4 VENIREPERSON PAMELA BROWN: I'm not sure  
5 if this is valid, but I'm 14 weeks pregnant, and I've  
6 just been going through a lot of really bad pregnancy  
7 sickness, and I have to take Zofran frequently, and it's  
8 just -- I don't have the stamina. And I work overnight,  
9 so that would inhibit me. And I've already gone down in  
10 my hours at work because I just can't work anywhere.

11 THE COURT: And Pam, where do you work?

12 VENIREPERSON PAMELA BROWN: At St. David's  
13 Rehab Hospital. I'm a nurse.

14 THE COURT: Having the time of your life?

15 VENIREPERSON PAMELA BROWN: It's pretty  
16 miserable.

17 THE COURT: The good news is, is that  
18 in -- at the end of the term, you will be exceedingly  
19 happy. So...

20 VENIREPERSON PAMELA BROWN: Well, they say  
21 it should be almost over, and I'm thinking, okay,  
22 well...

23 THE COURT: Any day now. So let us work  
24 our way through it, and I'll let everybody know. Thank  
25 you.

1 Michael, come on up.

2 VENIREPERSON HADLEY: Good morning, sir.

3 THE COURT: Good morning.

4 VENIREPERSON HADLEY: I have a -- somewhat  
5 a minor problem. I'd like to offer a solution first.  
6 The solution is I'd like to postpone my jury duty until  
7 after May 4th. The reason why is the problem is after  
8 about five and a half months of being unemployed, I got  
9 hired by the State of Texas as a Texas work advisor, one  
10 which requires a training which will begin on  
11 January 30th. And with a brief intermission, it will  
12 conclude on May 4th. And I feel if I miss the beginning  
13 of the training --

14 THE COURT: Yeah, right after you got a --  
15 after you've just gotten a job. I got the picture.

16 VENIREPERSON HADLEY: Okay.

17 THE COURT: Mike, I don't know what's the  
18 outcome of all this. Let me work my way through it and  
19 I'll let everybody know.

20 VENIREPERSON HADLEY: Yes, sir.

21 THE COURT: I appreciate it. Thank you.

22 VENIREPERSON HADLEY: All right. You're  
23 welcome, sir.

24 THE COURT: No. 84, Mary Ramirez. Howdy.

25 VENIREPERSON RAMIREZ: Good morning. A

1 couple things. I do have a financial hardship. I've  
2 gotten back to work the last three months and got the  
3 bills under control, and a disruption would -- any  
4 income disruption would cause a problem. But the bigger  
5 reason is I work for an 80-year-old Alzheimer's patient,  
6 and I think the disruption with her care would be a  
7 bigger burden to them than the financial burden would be  
8 to me.

9 THE COURT: I got it.

10 VENIREPERSON RAMIREZ: All right.  
11 Anything else?

12 THE COURT: No, ma'am. Go take a break.  
13 I'll see you back at 11:00.

14 VENIREPERSON RAMIREZ: Okay.

15 THE COURT: Sara. Is it Facundo?

16 VENIREPERSON FACUNDO: Yes.

17 THE COURT: What's up?

18 VENIREPERSON FACUNDO: I'm an hourly  
19 employee at a clothing store, and I'm scared if my  
20 availability changes I may lose my job. I also don't  
21 have a Texas driver's license. I have a California  
22 driver's license. I don't know if that affects  
23 anything.

24 THE COURT: Anybody have any questions for  
25 Sara?

1 MR. McCONNICO: No questions.

2 THE COURT: Let me work my way through all  
3 this and I'll let you know.

4 VENIREPERSON FACUNDO: Okay. Thank you.

5 THE COURT: Thank you. No. 8 is  
6 Ms. Brand.

7 VENIREPERSON BRAND: Good morning, sir.

8 THE COURT: Good morning. What's up?

9 VENIREPERSON BRAND: I am an adjunct  
10 instructor at ACC, and I start my semester on the 17th.  
11 And missing the first three to four weeks of class I  
12 feel like would create a lot of instability in my  
13 classes, not to mention an economic hardship because we  
14 get paid by credit. So I haven't been paid since  
15 December 15th and I wouldn't get paid until --

16 THE COURT: What do you teach?

17 VENIREPERSON BRAND: English.

18 THE COURT: We want you out of here  
19 because we don't talk all that good. All righty.

20 VENIREPERSON BRAND: Well.

21 THE COURT: Ms. Brand, let me work my way  
22 through all this and see where I'm at, and I'll let  
23 everybody know.

24 VENIREPERSON BRAND: Okay. Can I step out  
25 and take a break?

1 THE COURT: Yeah.

2 VENIREPERSON BRAND: Okay.

3 THE COURT: 49, Mr. Lombardi.

4 VENIREPERSON LOMBARDI: Good morning, Your  
5 Honor.

6 THE COURT: What's up?

7 VENIREPERSON LOMBARDI: A four-week trial  
8 would present an economic hardship on me. I'm currently  
9 working about 50 to 60 hours a week at my current job.  
10 And I'm also doing contract work, which amounts to about  
11 20 hours a week.

12 THE COURT: When do you sleep?

13 VENIREPERSON LOMBARDI: Not much.

14 THE COURT: And so what is it you do, Tom?

15 VENIREPERSON LOMBARDI: I'm currently a  
16 project manager for an electronics recycling company.  
17 We were just acquired by a Fortune 150 company.

18 THE COURT: For who?

19 VENIREPERSON LOMBARDI: Avnet,  
20 Incorporated.

21 THE COURT: Uh-huh.

22 VENIREPERSON LOMBARDI: So all that said,  
23 my job is coming under scrutiny right now, which means I  
24 have to perform. I'm also doing contract work on the  
25 side to make sure that if somebody falls through --

1 THE COURT: Right. You're covered in case  
2 it doesn't.

3 VENIREPERSON LOMBARDI: Yes, sir.

4 THE COURT: So, Thomas, let me work my way  
5 through all this and see what the situation is, and I'll  
6 get back to you.

7 VENIREPERSON LOMBARDI: Thank you.

8 THE COURT: Take a break. Come back in  
9 about ten, 15 minutes.

10 VENIREPERSON LOMBARDI: Sure.

11 THE COURT: No. 39, Karen.

12 VENIREPERSON CLOWDUS: Hello, Your Honor.  
13 It's medical.

14 THE COURT: Oh, I'm sorry. And what's the  
15 situation?

16 VENIREPERSON CLOWDUS: Well, we're not  
17 sure right now. I'm on a lot of painkillers, and I have  
18 an MRI set up this week. And the doctor's  
19 appointment --

20 THE COURT: Where are you having the pain?

21 VENIREPERSON CLOWDUS: Well, they're  
22 thinking probably rheumatoid arthritis or something.  
23 It's all over. It was a challenge just for me to get up  
24 here today, sir.

25 THE COURT: All righty. And --

1                   VENIREPERSON CLOWDUS: I hope we get an  
2 answer soon.

3                   THE COURT: I hope you do, too, because  
4 there is just nothing more miserable.

5                   VENIREPERSON CLOWDUS: I can't stand  
6 sitting here.

7                   THE COURT: I got it. So Karen, let me  
8 work my way through this long line and see what my  
9 situation is, and I'll let everybody know. Thanks.

10                  VENIREPERSON CLOWDUS: I've served before,  
11 and I've been called before. I don't mind doing it. I  
12 just can't this time.

13                  THE COURT: I got you.

14                  No. 24, Dasari. Uma, what's up?

15                  VENIREPERSON DASARI: Yes, sir. I work as  
16 a contractor. And I'm not sure if I'm not there for  
17 four weeks, what will happen.

18                  THE COURT: And what is it that you do as  
19 a contractor?

20                  VENIREPERSON DASARI: I work for Texas  
21 Interior Eligibility Redesign as an application tester.

22                  THE COURT: Okay.

23                  THE REPORTER: Can you say it again? And  
24 speak into the microphone so that I can hear you.

25                  VENIREPERSON DASARI: Okay. It's a TIERS

1 testing application. It's Integrated Eligibility and  
2 Redesign System. I test for that application.

3 THE COURT: Anybody have any questions for  
4 Ms. Dasari?

5 MR. SWEETEN: No questions, Your Honor.

6 THE COURT: Let me work my way through and  
7 I'll let everybody know.

8 The next one is No. 62, Ms. England.

9 VENIREPERSON ENGLAND: Good morning.

10 THE COURT: Howdy.

11 VENIREPERSON ENGLAND: How are you?

12 THE COURT: Pretty keen. What's up?

13 VENIREPERSON ENGLAND: I'm one of those  
14 social media people you love. I lost my work contract  
15 after I responded to this summons, and I am currently  
16 unemployed. I have no income. I'm in the midst of a  
17 job search. I have two employers wanting to interview  
18 me this week. And not to get too personal, but I'm  
19 behind on my mortgage and my credit card bills.

20 THE COURT: Got it.

21 VENIREPERSON ENGLAND: So I'm in  
22 reasonably dire financial shape.

23 THE COURT: Let me see what we can do  
24 here. Take a break. Come back in about ten minutes,  
25 15 minutes. Let me work my way through the line, and

1 I'll let you know.

2 VENIREPERSON ENGLAND: Thank you.

3 THE COURT: Thanks.

4 Mr. Dobbins, what's up?

5 VENIREPERSON DOBBINS: I'm self-employed.

6 And my dad got laid off recently, so I'm also trying to  
7 help my parents out.

8 THE COURT: And what is it, Stephen, that  
9 you do?

10 VENIREPERSON DOBBINS: I do software  
11 development, coding.

12 THE COURT: Anybody have any questions for  
13 Stephen?

14 MR. McCONNICO: No.

15 MR. JACKS: No questions, Judge.

16 THE COURT: Thank you.

17 53. Come on up, Paul.

18 VENIREPERSON FINDELL: Good morning.

19 THE COURT: Howdy. What's the situation?

20 VENIREPERSON FINDELL: I've got about a  
21 hundred students that are going to expect me to start  
22 classes next week there at Austin Community College.

23 THE COURT: They would be popping  
24 champagne corks, woo-hoo. What do you teach, Paul?

25 VENIREPERSON FINDELL: Human physiology.

1                   THE COURT:  So I took human -- I was  
2 trying to escape the usual course of biology and stuff,  
3 and so I stupidly took human physiology.  And then I did  
4 not realize the amount of detail that I had to know,  
5 like the glomerular filtration rate --

6                   VENIREPERSON FINDELL:  Oh, yeah.

7                   THE COURT:  -- for the average adult male,  
8 and so I flunked it my first time, but I passed it my  
9 second.

10                  VENIREPERSON FINDELL:  Well, I've got some  
11 students who took it with me last semester and flunked  
12 it, and they're looking forward to taking it with me  
13 again this semester.

14                  THE COURT:  Guyton I think is the book.

15                  VENIREPERSON FINDELL:  Medical Physiology  
16 Guyton?

17                  THE COURT:  Yeah.

18                  VENIREPERSON FINDELL:  That's the book I  
19 used in my graduate physiology courses.

20                  THE COURT:  Yeah.  Well, it kicked my  
21 butt.  So I would encourage these guys to do what we  
22 can, Paul.  Let me work my way through, and I'll let you  
23 know.

24                  No. 46.  Randy, come on up.

25                  VENIREPERSON MARFIN:  Thank you.

1 THE COURT: How are you?

2 VENIREPERSON MARFIN: Good. I've got to  
3 get surgery on the 17th and the 18th. The 17th is to  
4 remove a basal cell carcinoma, and then the 18th is the  
5 reconstructive surgery associated with it.

6 THE COURT: Bet you're concentrating on  
7 that.

8 VENIREPERSON MARFIN: Yes.

9 THE COURT: All righty. Randy, I don't  
10 know what the outcome of this. I've got to work my way  
11 and see what my situation is.

12 VENIREPERSON MARFIN: Okay.

13 THE COURT: Thank you for bringing this to  
14 our attention.

15 No. 15, Sonya. Sonya, come on up.

16 VENIREPERSON PATTERSON: Good morning.

17 THE COURT: Hi. What's the situation,  
18 Sonya?

19 VENIREPERSON PATTERSON: I'm currently not  
20 working, looking for employment. And I had an interview  
21 last week, and they asked me my availability date, and I  
22 told them I could not commit to anything until after the  
23 3rd of next month.

24 THE COURT: Anybody have any questions for  
25 Sonya?

1 MR. SWEETEN: No questions.

2 MR. McCONNICO: No questions. Thank you.

3 THE COURT: No. 60 is Thomas. Come on up.

4 VENIREPERSON KEATING: Good morning.

5 THE COURT: Good morning. What's the  
6 situation, Thomas?

7 VENIREPERSON KEATING: I'm an independent  
8 contractor. If I were on the jury, I wouldn't make any  
9 money at all. It would be very hard for me to pay  
10 bills.

11 THE COURT: And what is it you  
12 independently do?

13 VENIREPERSON KEATING: I work for a small  
14 work. We do some business consulting and some business  
15 evaluation.

16 THE COURT: Anybody have any questions for  
17 Thomas?

18 MR. McCONNICO: We do not. Thank you.

19 MR. JACKS: No questions. Thank you.

20 THE COURT: 16, Danny. Is it Urcelay?

21 VENIREPERSON URCELAY: Urcelay, yes.

22 THE COURT: What's up?

23 VENIREPERSON URCELAY: I work for the  
24 Medicaid Program, and I know at least some of the people  
25 on the questionnaire.

1 THE COURT: And because you work for the  
2 Medicaid, how would that affect you if you sat on this  
3 jury?

4 VENIREPERSON URCELAY: I guess that makes  
5 me biased.

6 THE COURT: Well, okay. Now, I'm not  
7 being smart alecky.

8 VENIREPERSON URCELAY: I understand that.

9 THE COURT: But "I guess that makes me  
10 biased" almost sounds like I am biased but not quite.

11 VENIREPERSON URCELAY: Then, yes, I am  
12 biased.

13 THE COURT: I appreciate it. Thank you.  
14 Were you -- tell me your number again.

15 VENIREPERSON URCELAY: 16.

16 THE COURT: I got you. Thank you. That  
17 was a cause. Thank you. Danny, let me work my way  
18 through all this and see where I'm at, and I'll let you  
19 know.

20 VENIREPERSON URCELAY: So I have to stay  
21 here?

22 THE COURT: Yeah.

23 VENIREPERSON URCELAY: Okay.

24 THE COURT: Until I get my way through all  
25 this.

1 VENIREPERSON URCELAY: Okay.

2 THE COURT: 58, Allerton. Ms. Allerton,  
3 come on up.

4 VENIREPERSON ALLERTON: Hi. I'm the only  
5 source of income, and I have a daughter who's 16 at  
6 home.

7 THE COURT: And what is it you do, Jo?

8 VENIREPERSON ALLERTON: I work for a  
9 pediatric dentist.

10 THE COURT: And how old is your daughter  
11 again?

12 VENIREPERSON ALLERTON: 16.

13 THE COURT: You're not old enough to have  
14 a 16-year-old daughter.

15 VENIREPERSON ALLERTON: Thank you.

16 THE COURT: Is she driving yet?

17 VENIREPERSON ALLERTON: No, not yet.

18 THE COURT: Oh, don't let her drive.

19 Okay. Let me work my way through all of this and let  
20 you know.

21 VENIREPERSON ALLERTON: Okay. Thank you.

22 THE COURT: Thanks.

23 Mr. Brown, come on up. What's up?

24 VENIREPERSON DAVID BROWN: Good morning,  
25 Your Honor. I have an economic hardship. I'm supposed

1 to be moving this week, and I have to go to a  
2 real estate closing for my new home tomorrow. I'm going  
3 to be moving, and I will also become the guardian of my  
4 niece who is moving here from Annapolis, Maryland. I  
5 have to vacate my premises by the 14th where I currently  
6 am.

7 THE COURT: Anybody have any questions for  
8 David? Let me work my way through all this and I'll let  
9 y'all know.

10 VENIREPERSON DAVID BROWN: Thank you.

11 THE COURT: I appreciate it.

12 Is it Lin?

13 VENIREPERSON LIN: Chih-Jen Lin.

14 THE COURT: Chih?

15 VENIREPERSON LIN: Chih-Jen Lin, yes.

16 THE COURT: And what's the situation,  
17 Chih?

18 VENIREPERSON LIN: Judge, I have two  
19 reasons. One is English is my second language. So if  
20 witness has a heavy southern draw, I'm not sure I can  
21 fully understand. I may lose some. The second thing is  
22 I personally have a bias against pharmaceutical company,  
23 so I'm not sure I could be an unbiased juror in this  
24 case.

25 THE COURT: Chih, respectfully, what I'm

1 trying to do is to figure out whether you're -- where  
2 you are on this situation. When you say you have a bias  
3 against the pharmaceutical, how would that -- how would  
4 that affect you if you served on this jury?

5 VENIREPERSON LIN: My pre -- my pre-notion  
6 may prevent me to be an unbiased juror.

7 THE COURT: Okay. And the only quarrel I  
8 have is that when you say it may, it sounds like it  
9 does, but I need you to say it will.

10 VENIREPERSON LIN: I am certain I will.

11 THE COURT: I got you. And tell me again  
12 your number.

13 VENIREPERSON LIN: 76.

14 THE COURT: I appreciate it. Thank you.  
15 That's for cause. And let me -- take a break. Let me  
16 work my way through all this, and I'll let everybody  
17 know.

18 VENIREPERSON LIN: Okay.

19 THE COURT: Thank you.

20 No. 34, Ms. Pond. Come on up, Ms. Pond.

21 VENIREPERSON POND: When you said better  
22 to bring something up rather than later --

23 THE COURT: Uh-huh.

24 VENIREPERSON POND: -- I just wanted to  
25 let you know that I had fallen on December 26th, hurt my

1 back, hit my head, and didn't go for a CT scan. The  
2 doctor didn't want me to have any more CT scans if  
3 possible. And so I'm asymptomatic. I have been. I've  
4 been monitoring, looking for any symptoms.

5 THE COURT: Yeah, they're waiting for you  
6 to have a headache or something.

7 VENIREPERSON POND: So just in case, I  
8 just wanted to let you know --

9 THE COURT: Okay.

10 VENIREPERSON POND: -- if something  
11 happened. I don't know how that affects --

12 THE COURT: How are you feeling this  
13 morning?

14 VENIREPERSON POND: Fine.

15 THE COURT: Okay. Thanks.

16 VENIREPERSON POND: Just aches and pains,  
17 but...

18 THE COURT: Gotcha.

19 VENIREPERSON POND: But if something  
20 happened, how does that work? If something happened and  
21 I had to go and get a CT scan or --

22 THE COURT: We'll cross that bridge if we  
23 reach it --

24 VENIREPERSON POND: Okay. All right.  
25 Thanks.

1 THE COURT: -- God forbid. Thanks.

2 No. 27, Jennifer.

3 VENIREPERSON PARMERTER: My husband in  
4 two weeks will be leaving for Japan for ten days. I  
5 have a 14 and a 12-year-old at home. My daughter only  
6 goes to school half day. She's in training. And she  
7 does not have -- school transportation is not provided.  
8 In addition, I work 26 hours every weekend as an urgent  
9 care nurse. So I'm not sure how I would swing a  
10 four-week -- a four-week trial.

11 THE COURT: Anybody have any questions for  
12 Jennifer?

13 MR. SWEETEN: No questions, Your Honor.

14 MR. McCONNICO: No.

15 THE COURT: Thanks. I'll let you know.

16 No. 28, Margaret.

17 VENIREPERSON SWEARINGEN: I have multiple  
18 speaking engagements booked through March with flights  
19 already booked weekly through the end of February.

20 THE COURT: And what is it that you speak  
21 upon?

22 VENIREPERSON SWEARINGEN: I would have to  
23 cancel a lot of flights and --

24 THE COURT: I'm sorry. What do you speak  
25 upon? What do you speak?



1 a couple issues. One, I have a 21-month-old in daycare.  
2 I'm the primary person taking him to and from daycare,  
3 usually between 8:30 and 9:00, picking him up around  
4 3:30. I understand these hours are outside of that, so  
5 my husband would have to take time off work to go get  
6 him. My husband's actually home with him today because  
7 he's sick and couldn't go, so my husband had to take a  
8 day off work for me to be here. And also, I'm a  
9 contract lobbyist. If I'm not doing work for my  
10 clients, independent -- you know, I do independent --  
11 then --

12 THE COURT: Hopefully most of those guys  
13 are out of town, aren't they?

14 VENIREPERSON LUCAS: Yeah, but I'm  
15 informed that interim studies may start again pretty  
16 soon, so... And then also, along those lines, I have  
17 clients --

18 THE COURT: For whom do you lobby?

19 VENIREPERSON LUCAS: I have clients who  
20 have business before HHSC. And I know, based on that  
21 questionnaire, that HHSC is in some way involved.

22 THE COURT: And so I need you to  
23 affirmatively tell us how that would affect you. I'm  
24 not being critical.

25 VENIREPERSON LUCAS: Right. No, no. No,

1 I understand. I don't know what the nature of their  
2 involvement in the case is, but I would certainly hate  
3 to be put in a position where I'm making a negative  
4 judgment or vote against them because I don't want that  
5 to negatively impact my clients in my business with  
6 them.

7 THE COURT: Mr. McConnico, questions?

8 MR. McCONNICO: Yes. HHSC does supervise  
9 Medicaid, and Medicaid is at issue in this case.  
10 They're saying my client caused them to overpay a lot of  
11 money. They want a lot of money back from my client for  
12 the HHSC. Would that make it very difficult for you to  
13 vote against the HHSC and the State?

14 VENIREPERSON LUCAS: I mean, my clients  
15 have Medicaid issues against HHSC, too.

16 MR. McCONNICO: Well --

17 VENIREPERSON LUCAS: I don't know.

18 MR. McCONNICO: All right.

19 VENIREPERSON LUCAS: I just want to be --  
20 I mean, I will do my best to be fair and impartial,  
21 but --

22 THE COURT: Okay. Thank you.

23 Michelle Carroll, come on up.

24 VENIREPERSON CARROLL: Hi, Your Honor.

25 THE COURT: Hi.



1 questions for Donna? Thank you.

2 VENIREPERSON GODWIN: Thank you.

3 THE COURT: 63, Mr. Heatwole.

4 VENIREPERSON HEATWOLE: Hey, you're good,  
5 first shot. Most folks don't make it on the first run.  
6 I'm still waiting to hear back from HR as far as the  
7 four weeks go in paying. I'm the sole provider, family  
8 of four, living check to check basically. So if they  
9 pay, I'm good to go. If they don't, then I'll pretty  
10 much lose everything. So...

11 THE COURT: Got it. Let me figure this  
12 all out.

13 VENIREPERSON HEATWOLE: I mean, I'm just  
14 waiting on a call back. Obviously, my phone's off.

15 THE COURT: Take a little break while --  
16 take about a ten-minute break because we've got to --  
17 it's going to take us ten minutes to work our way  
18 through all this.

19 VENIREPERSON HEATWOLE: Sure. Thank you.

20 THE COURT: Guys, I need to stand up, and  
21 I want to walk back into my office. Y'all come with me.

22 Ladies and gentlemen, we're going to -- we  
23 and the heavenly hosts here are going to retire to my  
24 office. If y'all want to stand up and kind of take a  
25 wiggle break, feel free to do that. You don't have to

1 stay seated. And we'll be back probably in about ten  
2 minutes.

3 *(Recess taken)*

4 THE COURT: We're going to have ten  
5 minutes of minor chaos, and then there will be the calm  
6 before the storm. So here's what I'm going to do, is  
7 I'm going to call out juror names. When I call your  
8 name out, as quietly as possible, exit. You will then  
9 see Stacey, the court operations officer, or Elizabeth,  
10 the court clerk, because you will probably need a letter  
11 for your employer to show where you've been today. So  
12 when I call your name, exit quietly. Now, there will be  
13 some names that I do not call. You have the privilege  
14 of staying -- sticking around for a little bit more as  
15 we proceed carefully to the next stage, which will  
16 resume again at 1:30.

17 All right. No. 1, Sara. No. 2,  
18 Christina. No. 3, Sandra. No. 4, Marilyn. No. 7,  
19 Michael. No. 8, Anja. No. 11, Richard. No. 13, Jason.  
20 No. 14, Judy. No. 15, Sonya. No. 16, Danny. No. 17,  
21 Judith. No. 22 is Stephen. No. 23 is Stephanie.  
22 No. 24, Uma. No. 25, Shannon. No. 27, Jennifer.  
23 No. 28, Ms. Swearingen. No. 32, Ms. Houston. No. 35,  
24 Ms. Almond.

25 *(Bench discussion as follows:)*

1 THE COURT: Am I -- I need two sets of  
2 eyes looking here. And on -- I struck 36, did I not?

3 MR. McCONNICO: Yes.

4 THE COURT: I got some kind of -- she  
5 knew --

6 MR. McCONNICO: Alan.

7 THE COURT: Right. Got it. Thank you.

8 *(End of bench discussion)*

9 THE COURT: No. 36, Barbara. No. 37,  
10 Mr. Busatta. No. 38, Ms. Godwin. No. 39, Ms. Clowdus.  
11 No. 41, Mr. Becerra. No. 42, Mr. Gonzalez. No. 46,  
12 Randy. No. 47, David. No. 48, Richard. No. 49 is  
13 Thomas Lombardi. No. 52 is Sofia McDaniel. 53 is Paul  
14 Findell. Mr. Findell, be kind on those students who are  
15 taking you for a second time. No. 54, Stephen Dobbins.  
16 No. 56, Amy Brown. No. 57, Candace Camp. No. 58,  
17 Ms. Allerton. No. 59, Mr. Brown. No. 60, Mr. Keating.  
18 Ms. -- 62, Ms. England. No. 68, Mr. Hernandez. I need  
19 to double-check on 74.

20 *(Discussion at bench as follows:)*

21 THE COURT: 74 is excused?

22 MR. McCONNICO: She is.

23 THE COURT: I got it.

24 *(End of bench discussion)*

25 THE COURT: 74, Michelle Carroll. 75,

1 Alice Choate. 76, Chih-Jen Lin. 78, Marilyn Prengler.  
2 81, Mark Faulkner. 82, Cindy Meston. 83, Pamela Brown.  
3 84, Mary Ann Ramirez.

4 To the remainder: We now go to our second  
5 stage where the attorneys actually conduct the  
6 voir dire. We will be finished today with the jury  
7 selection. Please return and be in your seats by 1:30.

8 I'm going to excuse everybody. Leave your  
9 paddles. Remember your number. Come back and be in  
10 your seats ready to go at 1:30. Thank y'all. Everyone  
11 else, not jurors, stay seated.

12 Tommy, Patrick, Steve, may I see y'all in  
13 my office?

14 *(Lunch recess taken)*

15 THE COURT: Mr. Sweeten, are you ready to  
16 begin your voir dire?

17 MR. SWEETEN: Yes, Your Honor.

18 THE COURT: Thank you.

19 MR. SWEETEN: Good afternoon, ladies and  
20 gentlemen. My name is Patrick Sweeten, and I'm an  
21 attorney representing the State of Texas. This is a  
22 fraud case brought by the Civil Medicaid Fraud Division  
23 of the Texas Attorney General's Office against Janssen  
24 Pharmaceutica and Johnson & Johnson. The State of Texas  
25 alleges that these drug companies illegally marketed a

1 powerful antipsychotic drug to the Texas Medicaid  
2 system. The State alleges these corporations illegally  
3 promoted the drug Risperdal for uses for which it wasn't  
4 approved and for purposes for which it wasn't indicated,  
5 including populations such as children. Risperdal is a  
6 drug that the State of Texas spent over \$500 million to  
7 reimburse from 1994 through 2008.

8                   With that in mind, I'm going to be  
9 visiting with you today as are a number of other  
10 attorneys that will follow. And we're going to be  
11 asking you questions about your experiences that relate  
12 to certain issues that may come up in the trial of this  
13 case. This process is called voir dire. And it is a  
14 time for the attorneys to talk to you to make sure that  
15 we're able to seat a jury that's unbiased to the facts  
16 of this case and the issues you'll be asked to decide.

17                   Before I begin asking you questions about  
18 you, let me tell you a little about myself. I am --  
19 I've been with the Attorney General's Office since 2007.  
20 I'm a native Texan. I'm from College Station. I  
21 attended UT Austin law school in San Antonio and  
22 Chicago. I practiced in -- practiced law in Illinois at  
23 a private law firm for ten years. And then in 2007, I  
24 was offered the opportunity to return to Texas and the  
25 opportunity to work for the Texas Attorney General's

1 Office. I -- at that time I moved back with my wife and  
2 my three children, and I've been working on this case  
3 since that time.

4 I know that there are a number of you --  
5 and as Judge Dietz alluded to earlier, there are a  
6 number of you who may not feel comfortable talking in a  
7 private setting about issues that may come up in this  
8 case. I want to tell you a couple of things that I  
9 think will make this process go better. The first is  
10 that there are no right or wrong answers to the  
11 questions that we'll be asking you today. This is --  
12 we're going to be asking you questions about your own  
13 personal opinions, and you're the only expert on those.  
14 The second thing is if -- also as Judge Dietz said, if  
15 we get into a matter that you don't feel disclosing --  
16 you don't feel like disclosing in a public setting like  
17 this, we can take the matter before Judge Dietz at a  
18 later time and discuss it then.

19 This process of voir dire is important.  
20 It's important to the parties of this case. And the  
21 lawyers will be talking with you about these issues to  
22 make sure that we're able to impanel a jury that is  
23 neutral to the issues that you'll be asked to decide.

24 With that in mind, I want to tell you a  
25 little, first, about where I work, which is the Texas

1 Attorney General's Office. Our mission at the Texas  
2 Attorney General's Office is to act as the attorneys for  
3 the State of Texas. Individual matters are brought to  
4 our office. We review them, and we make a determination  
5 as to whether or not we believe there's merit to a given  
6 case. And in the event we do, we file a lawsuit on  
7 behalf of the citizens of the state.

8           There are a number of divisions in our  
9 office that I want to talk to you about. Some you may  
10 have heard of. One is the Consumer Protection Division,  
11 which investigates fraudulent business practices, but  
12 there are other divisions. We have the Child Support  
13 Division, the tort litigation section, bankruptcy, tax,  
14 antitrust, law enforcement and environmental section.  
15 This case does not involve any of those specific  
16 divisions, however. Instead, this case involves the  
17 Civil Medicaid Fraud Division of the Attorney General's  
18 Office. Our mission at the Civil Medicaid Fraud  
19 Division is to act as a watch dog for the Texas Medicaid  
20 system and to investigate fraud upon the Texas Medicaid  
21 system.

22           Now, I want to go ahead and tender some  
23 questions to the panel. And when I do so, if you would  
24 just make sure that you hold your placard up long  
25 enough, depending on -- if you have an affirmative

1 answer to my question, if you would hold the placard up  
2 long enough to where we can take down the numbers, and  
3 then we may have some follow-up questions with you --  
4 for you at a later time.

5 I want to ask the members of the panel,  
6 are there any of you who have had any dealings with the  
7 Texas Attorney General's Office or any of the divisions  
8 that I just named or any others? If so, would you raise  
9 your placard.

10 Okay. Juror No. 30, have you had some  
11 interaction with our office?

12 VENIREPERSON PAEZ: I think so. We were  
13 involved with an adoption case.

14 MR. SWEETEN: Okay.

15 VENIREPERSON PAEZ: And the assistant  
16 district attorney was the one who came and did all the  
17 mediation. Well, she was in the meetings with the  
18 mediation.

19 MR. SWEETEN: Okay.

20 VENIREPERSON PAEZ: I don't remember names  
21 or anything, but we had mediation with the parents of  
22 the children.

23 MR. SWEETEN: Okay. And let me ask you:  
24 Is -- did the fact you had those dealings with the AG's  
25 office -- did that cause you to -- will that cause you

1 to look at the facts of this case one way or the other?

2 VENIREPERSON PAEZ: No.

3 MR. SWEETEN: Okay. And I --

4 Ms. Ramirez-Byrnes, you also raised your placard. Okay.  
5 You've had dealings with the Attorney General's Office?

6 VENIREPERSON RAMIREZ-BYRNES: Yes. I work  
7 for the State, and we deal with the Child Support  
8 Division.

9 MR. SWEETEN: Okay. And have you -- have  
10 your interactions with the AG's office been  
11 satisfactory?

12 VENIREPERSON RAMIREZ-BYRNES: Sure.

13 MR. SWEETEN: Okay. You have no issues  
14 one way or the other with the office?

15 VENIREPERSON RAMIREZ-BYRNES: Huh-uh.

16 MR. SWEETEN: Is there anyone else? Okay.

17 VENIREPERSON FERGUSON: I work for the  
18 Railroad Commission of Texas, so our attorneys deal with  
19 the Attorney General's Office.

20 MR. SWEETEN: Okay. And you're  
21 Mr. Ferguson, right?

22 VENIREPERSON FERGUSON: Yes, David  
23 Ferguson. And we refer our dealings over to the  
24 Attorney General's Office and we have them solve them.

25 MR. SWEETEN: Okay. Are there any

1 interactions that you've had with the AG's office that  
2 would leave one of the parties to start ahead of  
3 another?

4 VENIREPERSON FERGUSON: No.

5 MR. SWEETEN: You think you can be fair  
6 based upon the fact you know you've had some  
7 interactions with our office?

8 VENIREPERSON FERGUSON: Yes.

9 MR. SWEETEN: Anybody else that I didn't  
10 get?

11 I want to talk about another aspect of our  
12 office, and that is that the attorney general in Texas  
13 is an elected official. And as most of you probably  
14 know, the attorney general of this state is Greg Abbott.  
15 The -- some of you may know General Abbott. You may  
16 have seen him speak. You may have seen him on  
17 television. I've already asked you about the  
18 feelings -- any interactions you've had with our  
19 division, but I want to ask you, is there anybody here  
20 who has a business or personal relationship with  
21 Mr. Abbott? Anyone? Okay. Is there anyone here who  
22 has difficulty with the fact that the attorney general  
23 in Texas is an elected official?

24 Now, I know all of us have our own  
25 political beliefs, and I'm not going to -- some of you

1 probably have voted for General Abbott; others of you  
2 have not. I'm not going to ask you that today. But  
3 what I want to ask you is: Is there anyone here who has  
4 such strong personal political opinions about General  
5 Abbott that it may cause them to start -- or because the  
6 Office of the Attorney General is representing one of  
7 the parties, do you think one of the parties would start  
8 either ahead or behind the other party? Anyone with  
9 really strong political opinions either way about  
10 General Abbott?

11                   Okay. Let me also ask you, is there  
12 anyone here who knows any of the current employees of  
13 the Attorney General's Office? Now, we've already --  
14 oh, yes, ma'am.

15                   VENIREPERSON RAMIREZ-BYRNES: I work with  
16 them regularly, so yes.

17                   MR. SWEETEN: Okay. And who specifically?

18                   VENIREPERSON RAMIREZ-BYRNES: Kim Howell,  
19 Carla Rodriguez. There's a list, a short list. They're  
20 all in the Child Support Division.

21                   MR. SWEETEN: Okay. All right. Thank  
22 you. Now, I've already introduced members of the Civil  
23 Medicaid Fraud Division that will be a part of the trial  
24 of this case, and I want to introduce you to members of  
25 the trial team. This is Cynthia O'Keefe, who, again, is

1 the chief of the division who will be trying this case  
2 along with me. And Eugenia Krieg is also up here, and  
3 she'll be part of the trial team as well.

4           This is a case that I've been working on  
5 for four years, and -- but it's -- it precedes me  
6 arriving at the Attorney General's Office. In fact,  
7 this case has been going on several years before that, I  
8 think since 2005. We have worked in this case -- one of  
9 the unique facets about this case is that the attorney  
10 general is working with the relator in this case, who is  
11 Allen Jones. And Allen Jones was introduced to you  
12 earlier. Mr. Jones -- another term for a relator in  
13 this case is a whistle-blower. And a whistle-blower is  
14 someone who finds out -- who discovers fraud or  
15 information about a fraud and brings the information to  
16 the Attorney General's Office for us to review.

17           I'm going to tell you a little something  
18 about Mr. Jones. He was an investigator at the Office  
19 of Inspector General in the state of Pennsylvania.  
20 During the course of his investigations, he discovered  
21 that -- he discovered payments made from Janssen  
22 Pharmaceutica to certain Pennsylvania state officials.  
23 His investigation led him to discover additional  
24 payments made to Texas state officials, and he brought  
25 the information about that fraud to our office. We

1 investigated the fraud. After a year of investigation,  
2 we proceeded with a lawsuit of this case.

3 Now, I want to tell you that we've been  
4 working hand in hand since this case was brought to us  
5 with the attorneys for Mr. Jones. And the attorneys in  
6 this case are the law firm of Fish & Richardson. And I  
7 want to first ask, is there anyone here who's either  
8 been represented or been on the other side of litigation  
9 with the law firm of Fish & Richardson?

10 Okay. You are Mr. Witek?

11 VENIREPERSON WITEK: Mr. Witek.

12 MR. SWEETEN: Mr. Witek, can you tell me  
13 about that interaction as long as it's not too personal?

14 VENIREPERSON WITEK: Yeah, no problem.  
15 I'm a lawyer with AMD, worked at Wilson Sonsini for  
16 a while, was opposite Fish & Richardson for a while.  
17 One of the professors at UT, Mark Lemley, a very close  
18 personal friend of mine, worked at Fish & Richardson for  
19 years.

20 MR. SWEETEN: Thank you for your answer.  
21 Is there anyone else here who's had any dealings with  
22 the Fish & Richardson law firm?

23 There are some specific -- there are some  
24 attorneys here that were already introduced to you, and  
25 I want to ask you specifically about those attorneys, if

1 you've had any interaction with them or if you've met  
2 them on any prior occasion. And you've already been  
3 introduced to Mr. Tom Melsheimer, who's sitting on the  
4 front row. Is there anyone here who knows  
5 Mr. Melsheimer? Anyone here who's heard of him? Okay.

6 Also, you've met Mr. Jacks very briefly.  
7 Tommy Jacks is an attorney here from Austin. I think  
8 he's a long-time Austin resident. Is there anyone here  
9 who's had any dealings with Mr. Jacks?

10 Another attorney with Fish & Richardson is  
11 Natalie Arbaugh. And Ms. Arbaugh, is there anyone here  
12 who's had any dealings with her?

13 As part of -- in working on this case, the  
14 State Attorney General's office has worked with the Fish  
15 & Richardson law firm. We have investigated this claim.  
16 We've reviewed the documents that have been produced in  
17 discovery in this case. We've taken depositions in this  
18 case. And we'll be working together as a trial team in  
19 trying this case.

20 Is there anyone here who has any problem  
21 with the fact that the Fish & Richardson law firm is the  
22 attorneys -- are the attorneys for the relator in this  
23 case and will be working with the State? Any issues  
24 with that partnership?

25 Okay. As I've said, Tommy Jacks will be

1 working also on this case. And he -- I'm going to turn  
2 this over for him to have the opportunity to ask you  
3 follow-up questions regarding answers that you provided  
4 on your questionnaire. Once again, I want to thank you  
5 for your time and attention, and I'll turn you to  
6 Mr. Jacks.

7 MR. JACKS: Good afternoon, everyone.  
8 Welcome back. I am Tommy Jacks. I -- there's not a lot  
9 to tell about me. I've been practicing law in Austin  
10 for I think 37 or so years of the 40 years that I've  
11 been a lawyer. Grew up in Waco, came here in 1968 to  
12 start law school. And except for a brief misguided  
13 stint on the east coast for three years following law  
14 school, I have been here ever since.

15 I -- this is our time when we get to --  
16 and the only time during the trial of this case until  
17 the end of it when we get to actually talk with you.  
18 That is, the rest of the trial, we might talk to you,  
19 but you can't talk to us. And so this is our  
20 opportunity to find out some things about you and for  
21 you to find out some things about this case that will  
22 help both of us to make decisions.

23 I -- you've heard about the case. You've  
24 heard what it's about. I can tell you a thing or two  
25 that it's not about. This is not a case about whether

1 the drug Risperdal is a good drug or a bad drug.  
2 There's no claim in this case, as there is in some  
3 lawsuits, that Risperdal is a bad drug that never should  
4 have been on the market. That's not what this case is  
5 about.

6           As Mr. Sweeten has told you, this case is  
7 about fraud, Medicaid fraud. And in the case of  
8 Risperdal, the State's allegations -- I'm not going to  
9 go into them in any detail with you now, but basically  
10 boil down to claims that this drug was overhyped,  
11 overpromoted and overpriced and that the state Medicaid  
12 Program was damaged because of the way this drug was  
13 marketed over a period of many years.

14           Now, my colleague, Steve McConnico, who  
15 I've known for decades, is going to be here in a minute,  
16 and he's going to tell you that we've got it all balled  
17 up, that none of that is so. And so what does that  
18 mean? It means, we've got to prove it. And that's what  
19 we'll be setting about to do for those of you who end up  
20 being jurors on this case, come tomorrow.

21           Now, I'd like to clear the air about one  
22 thing, and that is this business of your opinions, and  
23 particularly your negative opinions, because you were  
24 asked to express them in the questionnaires that you  
25 filled out. Y'all remember some of those questions. I

1 mean, for example, you were asked if you had negative  
2 opinions about pharmaceutical companies, about  
3 whistle-blower lawsuits, about lawsuits in general,  
4 about how the Medicaid Program is run. What am I  
5 leaving out? The -- and you all collectively were  
6 chockfull of opinions, some of them negative on those  
7 subjects.

8                   How many, in fact, of you -- let's just --  
9 I'm going to ask you to raise your hands for a minute --  
10 said that you were among those who had some negative  
11 opinions about pharmaceutical companies? Would you  
12 raise your hand? Keep them up. How many of you said --  
13 keep those hands up loud and proud. How many of you  
14 said you had some negative opinions about lawsuits?  
15 Let's see yours. How many said you had problems with  
16 damages in lawsuits? Let's see those. Keep them up,  
17 please. Keep them up. In fact, if you find that you  
18 have multiple opinions, feel free to raise both hands.  
19 How about the -- this business of whistle-blowers?  
20 Anybody -- does that get any more hands up? What am  
21 I -- FDA. Some of y'all had problems with the FDA.

22                   Now, let me see the hands of those of you  
23 who didn't raise your hands in response to any of those  
24 questions. Now, I count about maybe five. What does  
25 that tell us? What it tells us is that if you were

1 disqualified from jury service because of your negative  
2 opinions, there is no way on earth we can seat a jury in  
3 this case. It takes 12 of you at least to be on a jury.  
4 And that tells us that your negative opinions may or may  
5 not matter and may or may not disqualify you from jury  
6 service. And that's what we're going to find out some  
7 things about right now by talking with one another.

8 Mr. Ferguson?

9 VENIREPERSON FERGUSON: Yes, sir.

10 MR. JACKS: I think I remember you served  
11 on a criminal jury. Is that right?

12 VENIREPERSON FERGUSON: Yes, sir.

13 MR. JACKS: Do you remember what the crime  
14 was that the defendant in that case was charged with?

15 VENIREPERSON FERGUSON: Driving while  
16 intoxicated.

17 MR. JACKS: All right. Now, I would  
18 imagine that even before you were seated as a juror in  
19 that case, you might have had some negative opinions  
20 about folks who drive while intoxicated, did you?

21 VENIREPERSON FERGUSON: Yes, sir.

22 MR. JACKS: Did you go through a jury  
23 selection process, something like this?

24 VENIREPERSON FERGUSON: I did. I was  
25 18 years old. I was called to be a -- come for jury

1 selection, and I was chosen to be on the jury. It was  
2 myself and 11 other women. So I was chosen as the  
3 foreman at 18 years old. I had no idea what I was  
4 doing, but I did do the best I could to communicate with  
5 the judge and perform my duties, and I thought it was a  
6 great experience.

7 MR. JACKS: I'm 66 years old, and I've  
8 never gotten to serve on a jury. So you had one upped  
9 me by the time you were barely old enough to vote. Now,  
10 during that jury selection process, were you cautioned  
11 that if you were selected on the jury, you would have to  
12 base your verdict not on the fact that you had negative  
13 opinions about folks who drive while intoxicated, but on  
14 the evidence that you heard?

15 VENIREPERSON FERGUSON: Yes, sir.

16 MR. JACKS: Did you do it?

17 VENIREPERSON FERGUSON: I did.

18 MR. JACKS: All right. In fact, in that  
19 case, was the defendant found guilty?

20 VENIREPERSON FERGUSON: It was a hung  
21 jury.

22 MR. JACKS: All right. Now, on your  
23 questionnaire in this case, you expressed a negative  
24 opinion about pharmaceutical companies; is that right?

25 VENIREPERSON FERGUSON: Yes, sir.

1 MR. JACKS: In this case -- and you're the  
2 only person in this courtroom who can answer this. In  
3 this case, do you feel that you could, as you did when  
4 you were 18 years old, base your verdict, if you're  
5 chosen as a juror in this case, on the evidence, on the  
6 legal principles the judge instructs you to consider,  
7 and on nothing more?

8 VENIREPERSON FERGUSON: Yes, sir.

9 MR. JACKS: Others of you expressed  
10 negative opinions about pharmaceutical companies. May I  
11 see your placards again? All right. Let me start --  
12 I'm going to take this row by row if that's all right.  
13 And we -- let's see.

14 Mr. Durney, you were one who expressed  
15 some thoughts about pharmaceutical companies. Do you  
16 remember what they were?

17 VENIREPERSON DURNEY: I'm not sure I was,  
18 but my feelings on insurance companies is they're trying  
19 to improve drugs to make money, not necessarily to  
20 improve health.

21 MR. JACKS: All right. Now, in connection  
22 with this conversation we're having, if you were chosen  
23 as a juror in this case, could you base your verdict on  
24 the evidence as it comes in, on the law as given to you  
25 by the judge, and not on opinions that you might have

1 had before coming to this court?

2 VENIREPERSON DURNEY: Yes, I can.

3 MR. JACKS: Thank you, sir. Ms. Wong, did  
4 you raise your placard just now?

5 VENIREPERSON WONG: Yes.

6 MR. JACKS: And did you express some  
7 opinions related to pharmaceutical companies?

8 VENIREPERSON WONG: Yes. I think I pretty  
9 much have the same feeling as Juror No. 5.

10 MR. JACKS: As Mr. Durney?

11 VENIREPERSON WONG: Yes.

12 MR. JACKS: And do you feel in your heart  
13 of hearts -- and again, you're the only one who can tell  
14 us this -- if you're chosen as a juror in this case, you  
15 can base your verdict as a juror on the evidence that  
16 you hear in this court and on the laws given to you by  
17 the judge, and not on opinions you might hold about drug  
18 companies?

19 VENIREPERSON WONG: Maybe.

20 MR. JACKS: All right. Well, let's  
21 explore that maybe. What is it about pharmaceutical  
22 companies that bugs you?

23 VENIREPERSON WONG: I guess it's just the  
24 big business and the -- they really go for more of the  
25 money and not necessarily putting money into perhaps

1 other venues or options.

2 MR. JACKS: Uh-huh. Now, if you were to  
3 serve as a juror in this case -- do you feel that way  
4 about all big companies or just big pharmaceutical  
5 companies?

6 VENIREPERSON WONG: I guess most big  
7 companies.

8 MR. JACKS: Okay.

9 VENIREPERSON WONG: I wouldn't say that  
10 was necessarily all they were going for, but in general,  
11 yes.

12 MR. JACKS: Have you yourself or anyone  
13 close to you ever had a particular experience with a  
14 pharmaceutical company that was very upsetting to you or  
15 that really scarred you in some way?

16 VENIREPERSON WONG: No.

17 MR. JACKS: These are general opinions,  
18 not something that's based on a personal wrong that's  
19 been done to you by a big company?

20 VENIREPERSON WONG: That's correct.

21 MR. JACKS: All right. If -- do you  
22 believe that if you're chosen as a juror, you'd want to  
23 see a trial in which both sides had a fair shake?

24 VENIREPERSON WONG: Yes.

25 MR. JACKS: If you were chosen as a juror

1 in this case, do you think you could do that?

2 VENIREPERSON WONG: Probably, possibly. I  
3 mean, I'm not really a logical kind of person, so I  
4 couldn't say for sure.

5 MR. JACKS: All right. Well, I'm going to  
6 let you think more about that, and we might come back to  
7 you later. Thank you. Other placards, any on the first  
8 row? The second row?

9 THE COURT: Excuse me, Mr. Jacks. Let me  
10 get a line of sight for Ms. Wong and so I can have a  
11 discussion.

12 Ms. Wong, one of my roles is to ensure  
13 both sides that we have a jury which is free from any  
14 inclination in this case. So -- and I say this  
15 respectfully. When Mr. Jacks asked you, well, if you  
16 were chosen, do you think you could do that, that is,  
17 give everybody a fair shake, you said "probably,  
18 possibly." And the reason that that caught my attention  
19 is that almost sounds like yes, but not quite. And I --  
20 it still leaves me -- because it's -- it --  
21 respectfully, it equivocates a little bit. It doesn't  
22 tell me, yes, I will, Judge. And it doesn't quite say,  
23 no, really, I won't. And I believe I have to force you,  
24 respectfully, into either telling me -- and again, as  
25 every attorney has said in this, it's not really --

1 there are no right answers; there are no wrong answers.  
2 We just care what you think. But I've got to be able to  
3 sit there and, to Mr. Jacks and Mr. McConnico and to  
4 Mr. Sweeten, I've got to look and say, you've got a jury  
5 which is not inclined one way or another toward anybody.  
6 And so respectfully, may I ask you, does anybody start  
7 out behind or ahead in this case were you to have the  
8 privilege to serve on the jury?

9 VENIREPERSON WONG: Probably, yes.

10 THE COURT: Okay. Now, see --

11 VENIREPERSON WONG: Okay. Then yes.

12 THE COURT: All right. Now, again, I want  
13 to emphasize, I do not want to put words in your mouth,  
14 because you're the one that is in the best position to  
15 tell me what you think. And whatever you think, you're  
16 entitled to what you think. And so I'm not being  
17 critical or not worrying about that. I just want to  
18 know, without equivocation, does anybody start out ahead  
19 or behind, either side?

20 VENIREPERSON WONG: Yes.

21 THE COURT: And when you say yes, would  
22 you tell me what you're meaning?

23 VENIREPERSON WONG: I would probably be  
24 more favorable to the State versus the pharmaceutical  
25 company.

1 THE COURT: Okay. So -- and if you don't  
2 mind -- this is kind of like going to the dentist where  
3 they go just a little bit more. When you say probably,  
4 if I were to ask you, "Ms. Wong, will you consider only  
5 the evidence that you hear from this witness stand and  
6 nothing else?" are you still going to be inclined  
7 however slightly for the State and disinclined however  
8 slightly for Johnson & Johnson and Janssen  
9 Pharmaceutical?

10 VENIREPERSON WONG: I could try. But like  
11 I said, as a human being, I think emotions encircle  
12 everything regardless. I may say -- I'm not necessarily  
13 into logic as much, but yes, I would try. I understand  
14 that both would have to present their case.

15 THE COURT: Okay. And now, respectfully,  
16 could I just see Mr. Jacks and Mr. McConnico here just a  
17 second?

18 *(Discussion at the bench off the record)*

19 MR. JACKS: Thank you, Ms. Wong.

20 On the second row, I believe Mr. Ihlefeld.

21 VENIREPERSON IHLEFELD: Yes, sir.

22 MR. JACKS: I believe you were one who had  
23 some opinions about pharmaceuticals. Is that correct?

24 VENIREPERSON IHLEFELD: Yes, sir.

25 MR. JACKS: And if I -- I believe I also

1 recall that you, like Mr. Ferguson, have served on a  
2 criminal jury before. Is that right?

3 VENIREPERSON IHLEFELD: Yes, sir.

4 MR. JACKS: What was the charge in the  
5 case in which you were a juror on?

6 VENIREPERSON IHLEFELD: It was a  
7 molestation, an older guy with a younger girl.

8 MR. JACKS: All right. And I don't have  
9 any doubt that that's something about which you had  
10 negative opinions walking into the courtroom before you  
11 were ever selected as a juror; is that right?

12 VENIREPERSON IHLEFELD: Yes, sir.

13 MR. JACKS: And the case in which you were  
14 a juror, did you feel that the defendant got a fair  
15 trial?

16 VENIREPERSON IHLEFELD: No.

17 MR. JACKS: In what way?

18 VENIREPERSON IHLEFELD: Well, I just -- he  
19 was -- he was retarded. I don't know what the political  
20 correct word for that now is. But I think he was  
21 railroaded pretty much into admitting -- I was the only  
22 juror in there that really opposed to it. But after  
23 four or five days of talking, discussing, asking,  
24 you know, the judge for information and everything, it  
25 changed my mind on it.

1 MR. JACKS: All right.

2 VENIREPERSON IHLEFELD: And actually, what  
3 happened after all that happened, the last day of our  
4 deliberation, he actually -- they pleaded out.

5 MR. JACKS: All right.

6 VENIREPERSON IHLEFELD: So we didn't  
7 really have to do anything after all that.

8 MR. JACKS: All right. Did you feel that  
9 you yourself abided by the Court's instructions to base  
10 your service as a juror in that case on the evidence you  
11 heard in the courtroom and the Court's instructions  
12 about the law?

13 VENIREPERSON IHLEFELD: Yes, sir.

14 MR. JACKS: Not based on your biases or  
15 prejudices?

16 VENIREPERSON IHLEFELD: No, sir.

17 MR. JACKS: Do you think that -- and I  
18 believe you're one who thought that you had concerns  
19 about the expense of pharmaceutical products. Is that  
20 right?

21 VENIREPERSON IHLEFELD: Yes, sir.

22 MR. JACKS: If you were chosen as a juror  
23 in this case, do you believe that you could do as you  
24 did when you were a criminal juror and base your verdict  
25 on the evidence and the law and not on your opinions

1 about the price of prescription drugs?

2 VENIREPERSON IHLEFELD: Yes, sir.

3 MR. JACKS: Thank you, sir.

4 VENIREPERSON IHLEFELD: Uh-huh.

5 MR. JACKS: Ms. Jackson?

6 VENIREPERSON JACKSON: Yes, sir.

7 MR. JACKS: You are one who has expressed  
8 an opinion about the prescription drugs or you have an  
9 opinion about that or about pharmaceutical companies.

10 VENIREPERSON JACKSON: It's been a while  
11 since I did the questionnaire.

12 MR. JACKS: All right.

13 VENIREPERSON JACKSON: But as far as  
14 pharmaceuticals, I take a lot of medications now, and I  
15 don't have any, you know, opinion about pharmaceuticals  
16 per se. Mine would be in the arena of the doctor. So I  
17 don't know how --

18 MR. JACKS: Okay. And you understand  
19 there aren't any doctors who are either bringing this  
20 suit or being sued, right?

21 VENIREPERSON JACKSON: Exactly.

22 MR. JACKS: May I trust that any opinions  
23 you might have about doctors would not affect your  
24 service as a juror if you were chosen as a juror in this  
25 case?

1                   VENIREPERSON JACKSON: It would not.

2                   MR. JACKS: Thank you, ma'am. May we go  
3 to the third row, please? Is there -- did we get any --  
4 yes, I think Ms. Pond, you are one, if I remember right,  
5 who expressed an opinion about pharmaceutical companies.

6                   VENIREPERSON POND: I can see both sides.  
7 So sometimes that's a little difficult to be able to see  
8 both sides, both opinions, but I do feel, generally  
9 speaking, that pharmaceuticals just have too much power  
10 within our medical system --

11                  MR. JACKS: All right.

12                  VENIREPERSON POND: -- and use lobbying  
13 power and money to sway us toward western style medicine  
14 other than bringing in other alternative type medicines,  
15 and I think it's all for profit.

16                  MR. JACKS: All right. In -- now, you too  
17 have served as a criminal juror, if I remember right,  
18 haven't you?

19                  VENIREPERSON POND: Civil and criminal.

20                  MR. JACKS: Civil and criminal. What was  
21 the crime in the criminal case in which you served?

22                  VENIREPERSON POND: The criminal case? A  
23 young man stole some merchandise.

24                  MR. JACKS: All right. You're not in  
25 favor of that, are you?

1                   VENIREPERSON POND: No.

2                   MR. JACKS: All right. In this case, if  
3 instructed by Judge Dietz to base your verdict on the  
4 evidence presented in this court, the law as presented  
5 to you by the judge, and not on general opinions you  
6 might hold about the things you've just discussed, could  
7 you do it?

8                   VENIREPERSON POND: To the best of my  
9 ability, yes, sir.

10                  MR. JACKS: All right. Let's see. Next  
11 row, fourth row. Excuse me while I check my cheat  
12 sheet. You're Mr. Williams; is that right?

13                  VENIREPERSON WILLIAMS: That's correct.

14                  MR. JACKS: And Mr. Williams, I believe  
15 that you too are someone who has an opinion or opinions  
16 about pharmaceutical companies; is that right?

17                  VENIREPERSON WILLIAMS: I expressed one,  
18 and that one opinion was I believe that they keep --  
19 have kept drug prices artificially high --

20                  MR. JACKS: All right.

21                  VENIREPERSON WILLIAMS: -- for an extended  
22 period of time.

23                  MR. JACKS: And when you say that, what do  
24 you mean? How so?

25                  VENIREPERSON WILLIAMS: I believe that

1 some of the popular drugs are kept at a rate that does  
2 not represent just recouping their investment for  
3 amortizing the other drugs in their system. So they  
4 find a money winner and they stay with it for a longer  
5 period of time and push that particular drug.

6 MR. JACKS: All right. Now, this is not  
7 the part of the trial where we are trying to sell any  
8 soap or persuade you to any view about the evidence. I  
9 will tell you, so that you can know what the case is  
10 about, that one of the State's contentions in this case  
11 is that the price the State paid for Risperdal was  
12 excessive in relation to the benefits and safety it  
13 offered as compared to other less expensive drugs.

14 Now, knowing that, if you were chosen as a  
15 juror in this case -- and again, you, Mr. Charles  
16 Williams, are the only person who can tell us the answer  
17 to this.

18 VENIREPERSON WILLIAMS: Uh-huh.

19 MR. JACKS: Would you follow the judge's  
20 instructions and base your verdict on the evidence you  
21 heard and on the law as given to you by the judge?

22 VENIREPERSON WILLIAMS: Absolutely.

23 MR. JACKS: All right, sir. Thank you.  
24 Let's see. Anyone else on four who raised their placard  
25 in response to this one? And then let's see. Let's go

1 to the fifth row. Anyone there who answered the  
2 questionnaire reflecting an opinion about pharmaceutical  
3 drugs? And Mr. Woodall, are you one who did that?

4 VENIREPERSON WOODALL: Yes, sir.

5 MR. JACKS: And if I recall your  
6 questionnaire, you had some opinions that were similar  
7 in some ways to Ms. Ponds about the lobbying power of  
8 pharmaceutical companies. Do I remember that correctly?

9 VENIREPERSON WOODALL: I think so. It's  
10 been a while.

11 MR. JACKS: All right. Well, in any  
12 event, tell us what your opinions are about  
13 pharmaceutical companies and we'll work from there.

14 VENIREPERSON WOODALL: I guess my main  
15 thing is that I feel like it's wrong for the  
16 pharmaceutical companies to market directly to the  
17 public. I think that's between the person and their  
18 doctor. You know, we get lots and lots and lots of  
19 commercials, and I mean everywhere. And that's not for  
20 me to say; that's for my doctor to say. I don't think  
21 it should sway.

22 MR. JACKS: Those commercials where they  
23 talk real fast at the end to tell you the bad stuff?

24 VENIREPERSON WOODALL: Right, all the ways  
25 you're going to die and stuff.

1 MR. JACKS: Well, let me -- and again,  
2 this is not the time of the trial to talk about the  
3 evidence except to this extent. I'll represent to you  
4 that, to my knowledge, I don't believe there will be any  
5 evidence in this case that the drug Risperdal was  
6 advertised in that way. Now, knowing that, is there  
7 anything about your opinions about pharmaceutical  
8 companies that would interfere with your being a fair  
9 and impartial juror if you were chosen to serve?

10 VENIREPERSON WOODALL: No, sir.

11 MR. JACKS: Thank you. Okay. Now we get  
12 down to row number six. And let's start on this side.  
13 Raise your placard. And Mr. Heatwole, I'm going to --  
14 please don't be insulted by this, but I'm going to move  
15 past you for a second. And the -- well, let me just ask  
16 you: If you were chosen as a juror in this case, is  
17 there anything about your opinions about pharmaceutical  
18 companies that would keep you from being a fair and  
19 impartial juror?

20 VENIREPERSON HEATWOLE: No.

21 MR. JACKS: Thank you, sir. And then  
22 you're Mr. Doose?

23 VENIREPERSON DOOSE: That is correct.

24 MR. JACKS: Mr. Doose, you too expressed  
25 some opinions on your questionnaire, I believe, and part

1 of it was the same as Mr. Woodall about too many  
2 commercials. Is that right?

3 VENIREPERSON DOOSE: That is correct.

4 MR. JACKS: And then I think you also had  
5 something about executive pay or CEO pay.

6 VENIREPERSON DOOSE: Yeah, the bonuses for  
7 the CEOs are outrageous, especially when the companies  
8 are laying off people and the CEO is getting thousands  
9 of dollars in profits as a bonus.

10 MR. JACKS: All right.

11 VENIREPERSON DOOSE: Although I do believe  
12 synthetic drugs do improve the quality of life for a lot  
13 of people.

14 MR. JACKS: All right. So you've got some  
15 opinions that are -- someone might think is negative  
16 about pharmaceutical companies as far as their executive  
17 pay is concerned and some that are positive insofar as  
18 their drugs being helpful to some; is that fair?

19 VENIREPERSON DOOSE: That's correct.

20 MR. JACKS: Well, I don't believe there's  
21 going to be evidence in this trial about executive  
22 compensation. If that's the case, is there anything  
23 else about your opinions concerning pharmaceutical  
24 companies that would keep you from serving as a fair and  
25 impartial juror if you were chosen to serve?

1 VENIREPERSON DOOSE: No, there isn't.

2 MR. JACKS: Thank you, sir. Okay. And  
3 then let's jump across the aisle on row six. And  
4 Ms. Moore?

5 VENIREPERSON LORI MOORE: Yes.

6 MR. JACKS: And you too had opinions.  
7 Y'all are chockfull of opinions. But your opinions had  
8 to do I think again with cost of the drugs. Is that  
9 right?

10 VENIREPERSON LORI MOORE: That's correct.

11 MR. JACKS: And you've heard my  
12 conversation with Mr. Williams about evidence that I  
13 anticipate might be introduced in this case. Question:  
14 Do you believe in your heart of hearts that if you were  
15 chosen to serve as a juror in this case, that you could  
16 follow the instructions of Judge Dietz to base your  
17 verdict on the evidence and on the law as he gives it to  
18 you, not on your opinions about pharmaceutical drug  
19 prices?

20 VENIREPERSON LORI MOORE: Absolutely.

21 MR. JACKS: Thank you, ma'am. And  
22 Mrs. Faulkner. And Ms. Faulkner, you also, I believe,  
23 had some concerns about the expense of pharmaceutical  
24 drugs; is that right?

25 VENIREPERSON DORSI FAULKNER: Yes, sir.

1 MR. JACKS: Similar to those others have  
2 expressed or different?

3 VENIREPERSON DORSI FAULKNER: And also the  
4 availability. I believe there are drugs that the  
5 pharmaceutical companies have -- have made and could be  
6 made -- the public could have for less money, but that  
7 they choose to have certain drugs and for financial  
8 reasons also.

9 MR. JACKS: Now, Ms. Faulkner, while you  
10 and I are talking, there's something else I've got to  
11 ask you about.

12 VENIREPERSON DORSI FAULKNER: Absolutely.

13 MR. JACKS: Do you know what it is?

14 VENIREPERSON DORSI FAULKNER: No.

15 MR. JACKS: It has to do with this man  
16 over here. Mr. McConnico has been the lawyer for you  
17 and/or your husband; is that right?

18 VENIREPERSON DORSI FAULKNER: That's  
19 correct.

20 MR. JACKS: Do a good job?

21 VENIREPERSON DORSI FAULKNER: Did a great  
22 job.

23 MR. JACKS: I wouldn't have doubted it. I  
24 need to ask you whether the fact that Steve McConnico is  
25 going to be lead counsel for the defendants in this case

1 and the fact that he has helped you and your family as a  
2 lawyer might give him an edge in this case.

3 VENIREPERSON DORSI FAULKNER: No. I  
4 respect him very much, but I also will do my best to be  
5 fair and listen to everything.

6 MR. JACKS: All right. This may just be  
7 me, but it always bothers me a little bit when I hear  
8 someone say they'd do their best. Let me ask you this  
9 question --

10 VENIREPERSON DORSI FAULKNER: Sure.

11 MR. JACKS: -- and you tell me the answer.  
12 If -- if you were listening to the lawyers on both sides  
13 explain their views of the case and they were telling  
14 you different things about the evidence, would you have  
15 any more of a tendency to believe Mr. McConnico and what  
16 he was telling you than lawyers on this side of the  
17 courtroom?

18 VENIREPERSON DORSI FAULKNER: No.

19 MR. JACKS: All right. Thank you. We --  
20 have we caught everybody on the pharmaceutical company  
21 question on row six before we move to row seven? Yes.

22 Let's see. Mr. Roberts. Mr. Roberts,  
23 in -- I'm trying to find -- you had some -- I always got  
24 really bad marks in penmanship, and you and I could be  
25 soul brothers in that way because I had a little trouble

1 reading your answer. Tell me, what was your concern  
2 about pharmaceutical companies?

3 VENIREPERSON ROBERTS: The main thrust of  
4 mine was that the new version of drugs that treat minor  
5 differences that are too powerful for what they are  
6 marketed for and causing more problems than what they're  
7 actually helping and minor ones being downplayed in  
8 favor of the larger more powerful ones.

9 MR. JACKS: Okay. So concern about  
10 powerful drugs being used to treat relatively minor  
11 illnesses or conditions and it causing more problems  
12 than they cure. Did I sum it up?

13 VENIREPERSON ROBERTS: Yeah.

14 MR. JACKS: All right. Now, there's a lot  
15 of evidence in this case, and I know a lot about most of  
16 it, but I don't know everything about all of it, so I'm  
17 not going to represent to you that there won't be any  
18 evidence in this case that could bear on your concern.  
19 Let's assume that there is or that there might be. What  
20 I need to know is the same thing we've asked some of  
21 these other folks, and that is, if you were chosen as a  
22 juror in this case, could you base your verdict not on  
23 these concerns, legitimate concerns, but concerns you've  
24 got as opposed to the evidence that comes from this  
25 witness box, the exhibits and Judge Dietz's instructions

1 about the law. Could you do that?

2 VENIREPERSON ROBERTS: Yes.

3 MR. JACKS: Thank you, sir. Mr. Burk?

4 VENIREPERSON BURK: Yes, sir.

5 MR. JACKS: You also had some thoughts  
6 about the pharmaceutical companies, the profit motive,  
7 need for more regulation. But instead of me saying it,  
8 why don't you say it.

9 VENIREPERSON BURK: Well, I -- you know,  
10 none of us, nor do I, have any way to prove a lot of  
11 what we think, but I have some extremely strong bias  
12 against pharmaceutical companies. I question their  
13 ethics, their motivation for money and greed, the lobby.  
14 Unfortunately, so many of our institutions in this  
15 country are motivated by greed.

16 MR. JACKS: All right.

17 VENIREPERSON BURK: Having said that, I  
18 mean, I could be more specific. There are drugs that  
19 are helpful to people that could be made generic much  
20 sooner. Anyway, I won't go into more detail about that.  
21 That pretty much sums it up. Having said that, I  
22 believe that I have the responsibility, both personally  
23 and to the Court and to the parties involved, to base  
24 any decision as a juror on the evidence only. And I'm  
25 not trying to be slippery here in this response;

1 however, I know what my bias is. And kind of like the  
2 lady over here, I'll do my best to keep it out of the  
3 way. I mean, I will work consciously to keep my bias  
4 out of the way, but I know it's there, and I cannot do  
5 anything about the fact that that bias is there.

6 MR. JACKS: All right.

7 THE COURT: Mr. Jacks, may I have a line  
8 of sight with Mr. Burk?

9 MR. JACKS: I was moving already, Your  
10 Honor.

11 THE COURT: Thank you.

12 Mr. Burk, we have a very strong current in  
13 Texas. I was reviewing the constitution that was  
14 promulgated March the 2nd, 1836 when we became a  
15 republic, that -- even with all the population growth  
16 we've had in those 175 years, 176 years soon to be, we  
17 still have it, and that is, we're entitled to our  
18 opinions. We're free to speak about things. The  
19 government's not free to restrict our freedom to speak.  
20 And so I want you to understand that I have no quarrel  
21 with the opinions that you hold. You're entitled as a  
22 citizen to have those. The question is, is that in  
23 this -- in this time -- and you can carry those into the  
24 ballot box. You can carry them just about your person  
25 everywhere you go. But in this situation, you're being

1 called upon to give public service by way of being a  
2 juror. And it's my personal belief, after sitting here  
3 for 21 years, having juries come and go, that nobody  
4 gets into that jury box wanting to be a bad juror. But  
5 my question to you is, is that given your beliefs, are  
6 you an appropriate juror for this case? Now, I'm not  
7 saying -- that doesn't disqualify -- I mean, we have a  
8 contract case upstairs. We have a child custody case.  
9 We have several criminal cases that you might be an  
10 appropriate juror for anyone or a number of those cases.  
11 But are you an appropriate juror for this case,  
12 respectfully?

13 VENIREPERSON BURK: I would have to say  
14 yes.

15 THE COURT: Thank you.

16 MR. JACKS: Mr. Truxillo?

17 VENIREPERSON TRUXILLO: Yes.

18 MR. JACKS: I believe on your  
19 questionnaire, you also had something to say about  
20 pharmaceutical companies, and it was about big pharms  
21 being -- or good things and not good things about  
22 pharmaceutical companies. Did I remember that right?

23 VENIREPERSON TRUXILLO: I think that's  
24 right. Your memory would be better than mine. I don't  
25 have the form in front of me.

1 MR. JACKS: Right. Well, do you feel that  
2 way?

3 VENIREPERSON TRUXILLO: Yes, I do feel  
4 that way.

5 MR. JACKS: Tell me in your own words how  
6 you feel, please, sir.

7 VENIREPERSON TRUXILLO: There are good and  
8 bad things about the pharmaceutical industry, just like  
9 there are good and bad things about the automobile  
10 industry, just like there are good and bad things about  
11 the oil industry. They provide a needed service to  
12 society. They do a lot of things well. They do some  
13 things not very well and sometimes have more influence  
14 on legislation than we'd like, but it's -- I believe  
15 that we get the quality of legislation that we vote for  
16 and that I can't inordinately blame pharmaceutical  
17 companies, oil companies, automobile companies, anybody,  
18 for trying to influence legislation the way that's  
19 positive to their business.

20 MR. JACKS: All right.

21 VENIREPERSON TRUXILLO: So that's a mixed  
22 bag, but that's the way I feel about it.

23 MR. JACKS: All right. If you are coming  
24 into the jury box because you're chosen as a juror in  
25 this case, can you leave your mixed bag outside the

1 door --

2 VENIREPERSON TRUXILLO: Sure.

3 MR. JACKS: -- and base your verdict on  
4 the evidence and the law?

5 VENIREPERSON TRUXILLO: Yes.

6 MR. JACKS: Thank you, sir.

7 Have I missed anyone who, whether you  
8 expressed it on your questionnaire or not, has opinions  
9 about pharmaceutical companies that you think you should  
10 share right now? Yes, ma'am. And you know -- is it  
11 Ms. Pavlas?

12 VENIREPERSON PAVLAS: Yes.

13 MR. JACKS: And I believe you and your  
14 husband both have worked and do work for pharmaceutical  
15 companies; is that right?

16 VENIREPERSON PAVLAS: Yes. I'm sorry.  
17 When we first began this discussion, I thought you were  
18 asking if anyone had specifically negative opinions  
19 about pharmaceutical companies, so I did not raise my  
20 number. But yes, my husband and I both work for  
21 pharmaceutical companies and have worked for a number of  
22 years.

23 MR. JACKS: All right. So tell me about  
24 your opinions about pharmaceutical companies, please.

25 VENIREPERSON PAVLAS: I -- I believe that

1 pharmaceutical companies, some are good and some are a  
2 little lost, and so I believe that I could take the  
3 information presented during this case and make a  
4 determination about the facts based on the law versus my  
5 general opinion about pharmaceuticals.

6 MR. JACKS: All right. Would you  
7 characterize your opinions of pharmaceutical companies  
8 as generally positive or generally negative?

9 VENIREPERSON PAVLAS: This may sound crazy  
10 because it's my own industry, but I'd say pretty  
11 neutral.

12 MR. JACKS: All right. Can you imagine  
13 why I would be concerned about your being on the jury?

14 VENIREPERSON PAVLAS: Yes. I was rather  
15 surprised it took this long for you to talk to me.

16 MR. JACKS: I promise you, I was going to  
17 get to you.

18 VENIREPERSON PAVLAS: I figured you would.

19 MR. JACKS: If -- if you were chosen on  
20 this jury, can Allen Jones and Margaret Hunt  
21 representing the State of Texas trust that the  
22 pharmaceutical companies on the other side have no  
23 advantage with you?

24 VENIREPERSON PAVLAS: I would say yes.

25 MR. JACKS: Thank you.

1                   VENIREPERSON PAVLAS: You're welcome.

2                   MR. JACKS: Have we covered that one  
3 thoroughly?

4                   VENIREPERSON BURK: I hope so.

5                   MR. JACKS: I tried a case down the street  
6 in federal court not too long ago and our judge, after a  
7 lawyer had gone on and on said, "Lawyer, not only have  
8 you beat the dead horse, you've buried it and covered it  
9 up with concrete and cars are speeding by." So we'll  
10 leave that alone.

11                   Now, I need to ask you whether any of you  
12 think you have heard or read or know or been told  
13 anything about this lawsuit. Okay. I see four.  
14 All right. Let's start, Mr. Crook, with you. And let  
15 me ask you, if you would, please, sir, first to tell us  
16 what source of information you think you might have  
17 read, heard or been told something about this lawsuit.

18                   VENIREPERSON CROOK: Today's  
19 *American-Statesman*. It was on the front of the paper.

20                   MR. JACKS: All right. Who else knows  
21 anything about an *American-Statesman* story concerning  
22 this lawsuit? All right. Mr. Williams does.  
23 Mr. Truxillo does. Ms. Wong does. Ms. Moore does.  
24 Ms. Faulkner does. Now, can we ask that the rest of you  
25 don't, when you get your first break, go pick up the

1 paper and see what you missed? Can we have a deal?

2 All right. Now, for each of you -- and  
3 I'm going to ask each of you this one at a time. Is  
4 there anything about what you read in the newspaper that  
5 you believe would affect your ability, if chosen, to  
6 serve fairly and impartially in this trial and base your  
7 verdict on the evidence and the instructions from the  
8 Court? Could you do that, Mr. Crook?

9 VENIREPERSON CROOK: The newspaper says  
10 they've already lost this case twice in other states.

11 MR. JACKS: All right. Let me do this,  
12 please, sir.

13 VENIREPERSON CROOK: I'd be somewhat  
14 influenced by that.

15 MR. JACKS: Let me ask you, Mr. Crook,  
16 before you put anything further -- there are other folks  
17 that haven't read anything about this. I believe we'll  
18 at a later time perhaps visit with you about this with  
19 the judge. Is that all right with you, sir?

20 VENIREPERSON CROOK: That's fine.

21 MR. JACKS: Thank you, sir. Mr. Williams?

22 VENIREPERSON WILLIAMS: Yes, sir.

23 MR. JACKS: I'm not going to ask you what  
24 the story said. I'm going to ask you whether, if you  
25 were chosen as a juror in this case, if you could base

1 your verdict on what you see and hear in the  
2 courtroom --

3 VENIREPERSON WILLIAMS: I could.

4 MR. JACKS: -- and not on what you read in  
5 some newspaper?

6 VENIREPERSON WILLIAMS: I read two  
7 columns. I glanced over and saw the general -- or Judge  
8 Dietz's name, and I said I probably shouldn't be reading  
9 this and put the paper down.

10 MR. JACKS: Good for you. You get a gold  
11 star. Thank you, sir.

12 MR. SWEETEN: The next placard who --  
13 Mr. Truxillo?

14 VENIREPERSON TRUXILLO: Very similar to  
15 that one. I read far enough down to see the judge's  
16 name and the Court and I thought, oops, I shouldn't be  
17 reading this.

18 MR. JACKS: All right. Another gold star.  
19 Come across, Ms. Moore.

20 VENIREPERSON LORI MOORE: Like both of  
21 them, I saw it outside on the way back. I read the  
22 title of it and I read pharmaceutical, and I went "I  
23 probably shouldn't read any more."

24 MR. JACKS: All right. You guys are  
25 getting the hang of this. Thank you.

1 Ms. Faulkner, did you raise yours?

2 VENIREPERSON DORSI FAULKNER: I did. I  
3 skimmed it like I do most of the things. I didn't read  
4 the whole article.

5 MR. JACKS: Okay.

6 VENIREPERSON DORSI FAULKNER: But again,  
7 at the end I saw the judge's name and decided I might  
8 get in trouble for reading it, so I put it down.

9 MR. JACKS: All right. And I think y'all  
10 have gotten the idea by now that the one person in this  
11 room you don't want to get in trouble with is Judge  
12 Dietz. We all clear on that? All right. Anyone else?

13 THE COURT: Unfortunately, you've crossed  
14 the line, Mr. Jacks.

15 MR. JACKS: More than once, I'm afraid.  
16 All right. Is there anyone else who has read, heard or  
17 been told anything about this particular lawsuit?  
18 Ms. Wong?

19 VENIREPERSON WONG: I heard about the  
20 *Statesman* article. I did not read it.

21 MR. JACKS: Okay.

22 THE COURT: Anyone else? Has anyone  
23 gotten on the Internet and tried to Google this --  
24 anything about this lawsuit? You know you're not  
25 supposed to now, but might you have done that before you

1 came here? Any --

2 VENIREPERSON HANSEN: (Raised placard).

3 MR. JACKS: All right. Now, true  
4 confession time. Mr. Hansen, without telling me what  
5 you read, tell me what you did.

6 VENIREPERSON HANSEN: So I got the  
7 questionnaire actually at work and I was sitting down  
8 there, and I'm like, "Okay. I'm just going to get this,  
9 you know, out of the way real quickly." And I didn't  
10 actually look to find out -- it was like three pages.  
11 And I'm like after the second page in, I'm like "How  
12 long does this thing go?" And so I -- my typical  
13 curious self, I'm like, okay, I figured out enough that  
14 I think I know this is something about the attorney  
15 general and some pharmaceutical company. So honestly, I  
16 did look at Google a little bit, although I did not  
17 spend a huge amount of time, and I didn't actually find  
18 very much.

19 MR. JACKS: Okay.

20 VENIREPERSON HANSEN: I just -- just  
21 like -- I was like, I was curious, and just looking  
22 around, what on earth is this all about. And I didn't  
23 really find very much.

24 MR. JACKS: If -- if you were chosen as a  
25 juror in this case, Mr. Hansen, is there anything about

1 what you've read or saw while on the Internet that would  
2 interfere with your ability to base your verdict as a  
3 juror on the evidence as it comes in in this courtroom  
4 and the law as you're instructed about it by Judge  
5 Dietz?

6 VENIREPERSON HANSEN: No. I didn't find  
7 anything actually, to be honest with you. I just went  
8 looking for a little bit and couldn't figure out what it  
9 was all about.

10 MR. JACKS: All right.

11 VENIREPERSON HANSEN: Gave up after a few  
12 minutes.

13 MR. JACKS: Okay.

14 VENIREPERSON HANSEN: So I didn't really  
15 see anything.

16 MR. JACKS: There, confession's good for  
17 the soul. That was great. Thank you.

18 Anyone else who's poked around on the  
19 Internet or anywhere else trying to find out anything  
20 about this case? And let me -- y'all remember at the  
21 end of your questionnaire, there was this long list of  
22 names of individuals? Did any of you, you know, try to  
23 Google, Facebook, Twitter, any of that, about any of  
24 those people, trying to figure out anything about them?

25 I need to -- we have established that

1 Ms. Faulkner and Mr. McConnico know one another. Is  
2 there anyone else on the panel that believes you know  
3 Steve McConnico? The name of Mr. McConnico's firm is  
4 Scott, Douglass & McConnico. Is there anyone who thinks  
5 you know the names or know any of the lawyers or other  
6 employees of that law firm? Their offices are down at  
7 Sixth and Congress, One American Center.

8                   Some other lawyers from that firm who will  
9 participate in the trial -- now, you've met Ms. Kennon  
10 Wooten, and you -- but you haven't met some others.  
11 Steve Wingard is another lawyer with the firm working on  
12 this case. I've seen Sam Johnson's name on e-mails.  
13 Drew -- Steve, help me on Drew's last name and how to  
14 pronounce it.

15                   MR. McCONNICO: Maczko.

16                   MR. JACKS: Drew Maczko, Asher Griffin.  
17 Do those names ring any bells with anyone? You've heard  
18 about also the Locke Lord firm. It's a firm -- the  
19 lawyers I think will, for the most part, be here from  
20 that firm up in Dallas. But Mr. Alan Waldrop is an  
21 Austin lawyer, formally a judge here on the Austin Court  
22 of Appeals who will be participating in this trial.  
23 Anyone believe you know anything about Mr. Waldrop?

24                   Another lawyer and another former judge  
25 who will we anticipate appear as a witness in this case

1 is Scott Brister. And he is formerly a member of the  
2 Texas Supreme Court. Anyone recognize Judge -- now  
3 Mr. Brister's name or believe you might know him? Also,  
4 in their office, John Schwartz has done some work on  
5 this case. Anyone know Mr. Schwartz?

6 Is there anyone who's ever worked for or  
7 had any dealings with the Johnson & Johnson company,  
8 other than buying their stuff, that company or any of  
9 the many subsidiary companies that are part of that  
10 group of companies? Yes, Ms. Pavlas?

11 VENIREPERSON: I interviewed for a job  
12 with Johnson & Johnson with the Ethicon Division.

13 MR. JACKS: Okay. Anyone else? Anyone  
14 who, apart from Ms. Pavlas -- yes, Ms. Pond.

15 VENIREPERSON POND: Yes. Is the -- the  
16 name of the foundation --

17 MR. JACKS: The Robert Wood Johnson  
18 Foundation.

19 VENIREPERSON POND: Yes. I had worked --  
20 I had been a recipient -- I worked for a nonprofit that  
21 had been a recipient to a grant.

22 MR. JACKS: Okay. Then that's something  
23 we should find out more about because I will represent  
24 to you that there will be evidence in this case about  
25 the Robert Wood Johnson Foundation. Can you tell me a

1 little bit more about the grant?

2 VENIREPERSON POND: That's why I was  
3 conflicted with pharmaceuticals. That was my other side  
4 of the picture that I can see, because I was very  
5 impressed with the Robert Wood Johnson Foundation.

6 MR. JACKS: All right. And what was the  
7 nature of the grant, Ms. Pond?

8 VENIREPERSON POND: It was to develop a  
9 volunteer training program and manual for people that go  
10 into nursing homes and volunteer to visit nursing homes,  
11 members of nursing homes, called Compassionate  
12 Companions.

13 MR. JACKS: And about how long ago did you  
14 do that?

15 VENIREPERSON POND: That was something  
16 like 1998.

17 MR. JACKS: All right. Have you since had  
18 any dealings with the Robert Wood Johnson Foundation?

19 VENIREPERSON POND: No.

20 MR. JACKS: And you said you were  
21 impressed with the dealings you had with them on that  
22 occasion. Is that the only time you've had dealings  
23 with them?

24 VENIREPERSON POND: Yes.

25 MR. JACKS: The -- if there is evidence

1 concerning the Robert Wood Johnson Foundation in this  
2 case, not all of it flattering, would you, because of  
3 your experience, have any concerns about your ability as  
4 a juror to take that evidence and assess it on its  
5 merits as opposed to your own personal experience?

6 VENIREPERSON POND: I would be shocked,  
7 but I would be able to I think be very objective.

8 MR. JACKS: All right. Do you think that  
9 if there were disputed evidence about their role in the  
10 facts of this case, that you might be more inclined to  
11 believe their side of it than the other side?

12 VENIREPERSON POND: I would probably start  
13 out with a pleasant disposition toward them, but I would  
14 listen to the facts and look at the facts.

15 MR. JACKS: Fair enough. Anyone else have  
16 any dealings or had any dealings with either the Robert  
17 Wood Johnson Foundation or any of the Johnson & Johnson  
18 companies?

19 Yes, Mr. Burk.

20 VENIREPERSON BURK: I don't know if this  
21 is relevant or not. You can tell me. I have a personal  
22 acquaintance with a woman that I've known most of my  
23 life who was a personal assistant for one of or maybe  
24 the major manufacturer of the Johnson & Johnson family  
25 estate. I don't know anything there that would

1 prejudice me one way or the other.

2 MR. JACKS: All right. And can you help  
3 me a little more in understanding -- first of all, who  
4 is your friend, please?

5 VENIREPERSON BURK: My friend's name is  
6 Kathy Cody Anderson.

7 MR. JACKS: Okay. And can you --

8 VENIREPERSON BURK: Her married name is  
9 Anderson. Her maiden name is Cody.

10 MR. JACKS: And can you help me understand  
11 a little bit more about what she did exactly in  
12 connection with that estate?

13 VENIREPERSON BURK: I don't know a lot  
14 about it. I just know that she was very close to this  
15 gentleman. I'm not even certain his name. I can guess,  
16 but it's been a long time ago.

17 MR. JACKS: Sure.

18 VENIREPERSON BURK: She's still  
19 living, lives in San Antonio. And just in the interest  
20 of disclosure, I wanted to say that because I don't know  
21 if it's an issue or not.

22 MR. JACKS: Thank you, sir. Is there  
23 anything about that association that would influence you  
24 at all one way or the other?

25 VENIREPERSON BURK: No, none whatsoever.

1 MR. JACKS: Thank you, sir. Anyone else?

2 THE COURT: Mr. Jacks, you about ready to  
3 wrap up?

4 MR. JACKS: I'm about ready to wrap up  
5 with my group questions, Your Honor. I've got some  
6 individual questions.

7 THE COURT: Thanks.

8 MR. JACKS: Thank you, Your Honor. If  
9 you'll excuse me for a minute.

10 THE COURT: Why don't we do this. Why  
11 don't we take our ten-minute afternoon break. If you  
12 will put your placards where you're seated and so that  
13 when you come back you sit in the same spot, that would  
14 be a big help. Remember our cautions about Internet  
15 research and all that. And so see you back in ten  
16 minutes promptly. Thank you.

17 *(Jury panel not present)*

18 THE COURT: With your individual questions  
19 you're about to wrap up like after 3:00? Because I've  
20 got to get McConnico started in order to get him through  
21 and everybody in the box by 4:45.

22 MR. SWEETEN: And we're coming back at  
23 3:00?

24 THE COURT: We're coming back about five  
25 after 3:00.

1 MR. McCONNICO: We've really got to think  
2 about how we're going to handle, you know, the thing  
3 about the *Austin American-Statesman* and losing the two  
4 cases. And it might be just a basis for a mistrial. I  
5 don't know if that's what I want to raise. That could  
6 never get into -- you know, we can talk about the law on  
7 that, but saying that you've lost --

8 THE COURT: Yeah, I know, I know.

9 MR. McCONNICO: I know. That could be  
10 quite --

11 THE COURT: But the ball's in your court.  
12 You say the word and watch what -- you'll be surprised  
13 at what I say.

14 MR. McCONNICO: Let me talk to my client.

15 *(Recess taken)*

16 THE COURT: Mr. Crook.

17 VENIREPERSON CROOK: Yes, sir.

18 THE COURT: If somebody came up to you  
19 while we were on break and said, "Let me tell you  
20 something that you don't know about the  
21 pharmaceutical -- about Johnson & Johnson," what would  
22 you say, based on your experience here today?

23 VENIREPERSON CROOK: Probably inclined to  
24 say, "I'm not supposed to hear that right now."

25 THE COURT: Ta-da. Correct. And so

1 there's no question that if somebody approached us and  
2 said, "Well, let me tell you about the case,  
3 Ms. Faulkner," you would say, "No."

4 All right. So I'm at the gym this morning  
5 at quarter to 6:00 and somebody comes up to me and they  
6 said, "Well, I hear you've got a big case today." And I  
7 went, "How do you know this?" And they said, "It's in  
8 the *Statesman*." And I went, "Oh, oh. Oh." So I went,  
9 "Oh, horrible," because I knew we were going to hit this  
10 situation.

11 What's in the *Statesman*, respectfully, is  
12 no different than somebody coming up and telling you a  
13 little bit about the case that you don't know. I mean,  
14 we don't know the reporter, we don't know -- and that  
15 kind of stuff. And so -- I'm trying to do this without  
16 really probing deeply, Mr. Crook, respectfully. So what  
17 I'm wanting to know, other than Mr. Crook, will y'all be  
18 able to disregard that? And if the answer is "yes,"  
19 great. If the answer is "no," upon your oath, since  
20 y'all have said we want to do this right and we've  
21 really kind of invested a lot of time today, "No, I'm  
22 going to have a problem with that." And if that's the  
23 answer, that's okay. I just need to know. Are you  
24 going to disregard it or are you going to keep thinking  
25 about it?

1                   So everybody who's raised their hand --  
2 everybody that's seen the paper, raise your hand and  
3 keep your hands up. I'll be back with you. Remind me  
4 to come back to you.

5                   So those of you who have got your hands  
6 up, if you're going to disregard it, lower your hands.  
7 And Mr. Crook, that's you. You're going to continue to  
8 remember because there were some things that you're  
9 going to remember.

10                  All right. How can I help you.

11                  VENIREPERSON FERGUSON: I was just going  
12 to say because of Mr. Crook's --

13                  THE COURT: Whoa, whoa, whoa, whoa. Be  
14 careful what we say. Because of Mr. Crook's --

15                  VENIREPERSON FERGUSON: His comment, which  
16 I wasn't privy to --

17                  THE COURT: Yeah.

18                  VENIREPERSON FERGUSON: -- prior to his  
19 comment, that comment I would rather have not known.  
20 And not meaning that I still can't look at the evidence  
21 and facts. It's just that maybe now the opposite side  
22 will have to prove a little harder if I had not known  
23 that.

24                  THE COURT: All righty. There's a -- I  
25 ought not to say this. Having heard something, it's

1 kind of hard to unhear something, is what you're telling  
2 me.

3 VENIREPERSON FERGUSON: Definitely.

4 THE COURT: All right. And so now,  
5 Mr. Ferguson, respectfully, I'm going to probe and I --  
6 of you. You heard something. And we've already had the  
7 discussion about if somebody came up and talked to you.  
8 I need a definitive word. Are you going to be able to  
9 disregard what you heard and everybody starts upon the  
10 same plane? Or are you telling me, "No, Judge, I'm  
11 inalterably altered, and having heard that, I cannot do  
12 that; I cannot fulfill my oath to disregard it"?

13 VENIREPERSON FERGUSON: I cannot fulfill  
14 my oath to disregard it.

15 THE COURT: I appreciate your answer. So  
16 everybody else that's lowered their hand, is that --  
17 your answer is -- I want to make sure we have this  
18 contract -- that I can disregard both what was in the  
19 paper and, we like Mr. Crook, but I want to -- you can  
20 disregard what Mr. Crook said the paper said? Is that  
21 our understanding?

22 *(Jury panel members responded "yes")*

23 THE COURT: Anybody whose -- it's not  
24 their understanding?

25 VENIREPERSON MISSELHORN: It still sticks

1 in the back of my mind, you know, what he said.

2 THE COURT: All righty.

3 VENIREPERSON MISSELHORN: And I've got a  
4 couple other things that are in my mind, but I don't  
5 know whether to say it in public. May I approach the  
6 bench?

7 THE COURT: Yeah, that might be nice.

8 *(Discussion at bench as follows:)*

9 THE COURT: I'm sorry, what was your  
10 number again?

11 VENIREPERSON MISSELHORN: 18.

12 THE COURT: Mr. -- is it Mr. Misselhorn?

13 VENIREPERSON MISSELHORN: Yes, sir.

14 THE COURT: Mr. Misselhorn, what's on your  
15 mind?

16 VENIREPERSON MISSELHORN: Why is this not  
17 being tried as a criminal case?

18 THE COURT: Because there's not a criminal  
19 law that applies.

20 VENIREPERSON MISSELHORN: There's not a  
21 criminal law.

22 THE COURT: Right.

23 VENIREPERSON MISSELHORN: Oh, okay. I was  
24 just curious whether they couldn't prove it and that's  
25 why they were going that way or what the deal was.

1 THE COURT: No, there's -- I am not aware  
2 of any law in the Texas Penal Code that applies.

3 VENIREPERSON MISSELHORN: I see.

4 THE COURT: What else is on your mind?

5 VENIREPERSON MISSELHORN: That would be it  
6 I guess for the moment, unless something else comes up.

7 THE COURT: Okay. So now, if I can kind  
8 of poke around a little bit.

9 VENIREPERSON MISSELHORN: Sure.

10 THE COURT: That business about -- I need  
11 you to definitively say, Geez, I heard that, but,  
12 you know, I'm going to disregard it" or "I'm not." And  
13 I don't care what your answer is.

14 VENIREPERSON MISSELHORN: Yeah, it's still  
15 going to be in the back of my mind because, you know --

16 THE COURT: Well, what's the consequence  
17 of it being in the back of your mind? What does that  
18 mean that Mr. McConnico's going to have to do or not do?

19 VENIREPERSON MISSELHORN: If we go into  
20 the jury room and we get hung or -- I don't know whether  
21 there's such a thing as a hung jury in this or not. But  
22 you know, they've already been -- what he said, so --

23 THE COURT: Uh-huh. Well --

24 VENIREPERSON MISSELHORN: I'm kind of in  
25 between a rock and a hard place here.

1                   THE COURT: Well, I've got to -- okay.  
2       McConnico, when you get really uncomfortable, just shout  
3       it out. I have no idea what's been done anywhere else  
4       other than right here. And I don't know what kind of  
5       case they had. I don't know whether it was the same  
6       facts, different facts, you know, and so I just don't  
7       know. So it's kind of hard for me to say it is or it  
8       isn't, and -- but the one thing I do know for damn sure  
9       is that the reporter doesn't know either.

10                   VENIREPERSON MISSELHORN: Yeah.

11                   THE COURT: But if -- you know, I've got  
12       to look at -- to be honest, I've got to look at  
13       Mr. McConnico and say, Mr. Misselhorn, "He's fine. He's  
14       good. You're not going to have to overcome something."  
15       But if I can't say that to him, I need to say it to him  
16       one way or another right now, and so the only one that  
17       can tell me that is you.

18                   VENIREPERSON MISSELHORN: It's back to  
19       I guess I can overcome it. I can't make any promises.  
20       You know, I'm just --

21                   THE COURT: Okay. Well, that --

22                   VENIREPERSON MISSELHORN: Just to be  
23       honest with you.

24                   THE COURT: No, no, no. That's -- I  
25       appreciate that kind of candor.

1 VENIREPERSON MISSELHORN: Yeah.

2 THE COURT: So I got my answer. I  
3 appreciate it. Can you give us just a second to talk up  
4 here?

5 VENIREPERSON MISSELHORN: Sure.

6 THE COURT: Thank you, sir.

7 *(Venireperson Misselhorn returned to seat)*

8 THE COURT: Okay. 40 is gone. 18 is  
9 gone. Now, let me make sure of everything. So  
10 Mr. McConnico --

11 MR. McCONNICO: Judge, what about 12,  
12 Ferguson, who said he couldn't get it out of his mind?

13 THE COURT: 12 is gone. Okay. So now,  
14 Mr. McConnico, are you requesting any other relief?

15 MR. McCONNICO: Well, Judge, I think we  
16 are requesting a mistrial. I think this panel has  
17 been --

18 THE COURT: Request for mistrial is denied  
19 at this time.

20 MR. JACKS: I have a request, Your Honor  
21 and that is may we get on the record the juror names and  
22 numbers of those who lowered their paddles indicating  
23 they would follow your instruction? Because I think  
24 those are not on the record.

25 THE COURT: Yeah. Yeah, we'll get a jury

1 in the box sometime about 10:00, 11:00 o'clock tonight.

2 *(End of bench discussion)*

3 THE COURT: One last thing I've got to do.  
4 Not Mr. Crook, not Mr. Ferguson, not Mr. Misselhorn.  
5 There were others who had raised their hands, and I  
6 asked if you were going to be able to disregard and you  
7 lowered your hands. Would you be so kind as to hold up  
8 your placards with the numbers on them until I call them  
9 out? And so I'm seeing jurors numbers 43, 66, 69 and  
10 70. Did I miss anybody? And you lowered your paddles  
11 indicating that you would be able to disregard what was  
12 in the newspaper, what was said in court. Got it?  
13 All right. Got it. Now, I need a time out to let her  
14 get back out there.

15 All right. Mr. Jacks?

16 MR. JACKS: Yes, Your Honor.

17 THE COURT: Five, ten more minutes?

18 MR. JACKS: Less than that, Your Honor.

19 THE COURT: Okay. Great.

20 MR. JACKS: Thank you.

21 THE COURT: You don't mind if I stare at  
22 my watch, do you?

23 MR. JACKS: Not a bit, Your Honor. You  
24 don't mind if I turn my back to you, do you?

25 THE COURT: No, not a bit.

1 MR. JACKS: Thank you, Your Honor.

2 Mr. Durney, when I was going through the  
3 list earlier of all the things that people had indicated  
4 some negative opinions about, one of those had to do  
5 with whistle-blower lawsuits. Do you remember that?

6 VENIREPERSON DURNEY: Yes.

7 MR. JACKS: And I'm -- I didn't see this,  
8 so I can't vouch for it, but I'm told that you might  
9 have started to raise your paddle.

10 VENIREPERSON DURNEY: Well, I was under  
11 the impression that you were going to stick your paddle  
12 up and then leave it.

13 MR. JACKS: Right.

14 VENIREPERSON DURNEY: And then I actually  
15 dropped it and said, "No, no, I've got to put it up." I  
16 don't have a problem with whistle-blower lawsuits.

17 MR. JACKS: All right. Thank you, sir.  
18 Is there anyone who does, after having heard what you've  
19 heard, who thinks that you have any opinions about  
20 whistle-blower lawsuits that would interfere with your  
21 ability to be fair and impartial in this case? If so,  
22 would you please raise your paddle? I don't see any  
23 paddles.

24 And one other question for you,  
25 Mr. Durney. Your prior employer was CNI. Can you tell

1 me what that is and what you did, please, sir?

2 VENIREPERSON DURNEY: It's a maquiladora  
3 down in Acuna making automotive parts.

4 MR. JACKS: All right. And your job with  
5 that company was?

6 VENIREPERSON DURNEY: I was vice president  
7 of manufacturing for Mexican operations.

8 MR. JACKS: All right, sir. You also had  
9 indicated that you -- on the question about limitations  
10 on damages, there were three choices, strongly agree,  
11 tend to agree, disagree. Do you remember that question  
12 on your questionnaire?

13 VENIREPERSON DURNEY: Yes, sir, I do.

14 MR. JACKS: And I believe you were one who  
15 strongly agreed with the idea of placing limitations on  
16 damages.

17 VENIREPERSON DURNEY: Okay.

18 MR. JACKS: Did I --

19 VENIREPERSON DURNEY: Yes.

20 MR. JACKS: -- recall that right?

21 VENIREPERSON DURNEY: Yes.

22 MR. JACKS: Question: Do you have that  
23 opinion about fraud suits; that is, that if fraud is  
24 proven, that there should be a limitation upon the  
25 damages that the one who's defrauded could recover?

1                   VENIREPERSON DURNEY: Okay. In response,  
2 I have worked automotive, and I have seen punitive  
3 damages. I have a problem with punitive damages that  
4 will destroy a company.

5                   MR. JACKS: All right. If there's -- if  
6 you're involved in a case where there are not punitive  
7 damages that would --

8                   VENIREPERSON DURNEY: Can I expand on  
9 that?

10                  MR. JACKS: Yes, sir.

11                  VENIREPERSON DURNEY: If you're talking  
12 fraud, put them in jail.

13                  MR. JACKS: All right. I think I've got  
14 what I need on that subject.

15                  VENIREPERSON DURNEY: Okay.

16                  MR. JACKS: Last question: You have a  
17 family member who has been -- has a diagnosis that has  
18 been treated with medications, mental health  
19 medications; is that correct, sir?

20                  VENIREPERSON DURNEY: Yes. I've got a son  
21 that's bipolar.

22                  MR. JACKS: All right. And is there -- do  
23 you have detailed information about what medications  
24 your son has taken over time and with what results? Is  
25 that something you're really knowledgeable about?

1                   VENIREPERSON DURNEY: I'm not really  
2 knowledgeable about it, but I am aware that he is an  
3 effective human being when he is on medications, and he  
4 is not effective when he's off medications.

5                   MR. JACKS: Okay, sir. Thank you. Is  
6 there anything about your personal experience with your  
7 son that would influence you as a juror in this case as  
8 far as you know, sir?

9                   VENIREPERSON DURNEY: No, not as far as I  
10 know. In other words, I will be able to listen to the  
11 evidence and make a decision based on the evidence.

12                  MR. JACKS: Great. Thank you, sir. I  
13 appreciate it, Mr. Durney.

14                  Your Honor, that concludes my questions  
15 for the panel.

16                  Thank you all for your patience. Thank  
17 you all very much.

18                  MR. McCONNICO: Good afternoon. I'm going  
19 to move a little quicker. It's not because this isn't  
20 important. It is very important, but you've been here a  
21 long time, so I'm going to try to speed up a little bit.

22                  Again, my name is Steve McConnico. I'm  
23 very appreciative of y'all being here. We're looking  
24 for 12 people to decide a very important case. I'm  
25 proudly representing Johnson & Johnson, one of their

1 subsidiaries named Janssen Pharmaceutical. You were  
2 kind enough to fill out this jury questionnaire for us,  
3 so I thought I should fill out one for you. But don't  
4 worry. I'm not going to go all the way through it. But  
5 it was kind of interesting filling it out because I kind  
6 of felt -- I learned a little bit about what y'all are  
7 doing.

8                   First, they said, do you have any  
9 connection with the drug business? I really didn't  
10 think I did. Then I remembered I have a father who's a  
11 pharmacist, had a small town drug store in East Texas.  
12 I had a brother who's a pharmacist, followed my father.  
13 I've been practicing law for 36 years. Fortunately, I  
14 don't have any children that have the problems we're  
15 going to be talking about, but it was interesting to go  
16 through this. I'm not going to repeat what everyone  
17 else has said because you've been very honest and candid  
18 with us, and I'm appreciative of that.

19                   What do I think the case is about? The  
20 company I'm representing, Janssen, and Mr. McDonald's  
21 representing, the other people with us, started in the  
22 1800s, started with two brothers, started in New Jersey.  
23 I suspect many of you are very familiar with their  
24 products, especially mothers that had young children.  
25 Now, the product that's at -- what we're talking about

1 here today is a product called Risperdal or Risperdal.  
2 And it's what's called an antipsychotic, and it's to  
3 treat psychosis. And psychosis is where people really  
4 cannot connect with reality. They see visions. They  
5 hear voices that are not real voices. But the visions  
6 they see that are not real visions are as real to them  
7 as me looking at you or hearing my voice. They're not  
8 connected with reality.

9                   So there were drugs that were developed  
10 back in the '60s and '70s and the '80s called  
11 antipsychotics to treat this. And the psychosis that  
12 most people are familiar with is schizophrenia. And  
13 these drugs were successful and they helped, but they  
14 had some really serious side effects. So the doctors  
15 and scientists kept working, trying to make better  
16 drugs, and they did, and they came along with the group  
17 of drugs called second generation antipsychotics. And  
18 Risperdal is one of those drugs.

19                   Now, what you heard from this side is that  
20 this case is about the State paid too much money because  
21 that second generation drug wasn't any better than the  
22 earlier drug. The doctors that actually treat these  
23 people are going to tell you that's false. These drugs  
24 are better. The scientists that actually test these  
25 drugs, that have run study after study, not just a few

1 studies, but a lot of studies, are going to say the  
2 second generation are much better, including Risperdal,  
3 because the first generation, although they helped  
4 people immensely, made them to where they could  
5 function, they had some serious side effects. They had  
6 a side effect where you'd have movement disorders and  
7 you could not move as well. You would have involuntary  
8 twitching of the mouth, the head. Your eyes would roll  
9 back.

10           The second generation like Risperdal did  
11 not have those side effects that were serious. The  
12 first generation -- if you're a schizophrenic, there are  
13 positive symptoms of schizophrenia, there are negative  
14 symptoms. The negative symptoms take away any type of  
15 ambition or motivation. Adults that have it don't want  
16 to go to work, don't want to be with their families,  
17 don't want to be with their friends. Adolescents don't  
18 want to go to school. The second generation, like  
19 Risperdal, helped those negative symptoms. Did they  
20 cost more? They did cost more. Did they have a  
21 tremendous benefit? They had a tremendous benefit.  
22 That's our side of the story. So I think at the end of  
23 the day, that's what this case is going to really boil  
24 down to.

25           Now, Ms. Pavlas, you were wondering why

1 no one ever got to you because you're in the business of  
2 selling these drugs. I'm just going to get to you right  
3 at the first because this is probably something you know  
4 quite a bit about. Have you ever dealt with these  
5 antipsychotic drugs?

6 VENIREPERSON PAVLAS: I worked on a  
7 contract for Eli Lilly where I was in the neuroscience  
8 division that promoted Cymbalta, which is an  
9 antidepressant. And my partners at the time promoted  
10 Zyprexa and Symbyax, which is also in this class.

11 MR. McCONNICO: Right. And that's in this  
12 class. They're second generation. You realize those  
13 drugs had benefits. They also had risks, am I correct?

14 VENIREPERSON PAVLAS: Yes.

15 MR. McCONNICO: Because the drugs that you  
16 normally promote, do they have benefits and risks?

17 VENIREPERSON PAVLAS: Yes.

18 MR. McCONNICO: We're going to -- there's  
19 going to be testimony in this case about giving drugs  
20 off label. Do you know what that means?

21 VENIREPERSON PAVLAS: Yes.

22 MR. McCONNICO: What does that mean to  
23 you?

24 VENIREPERSON PAVLAS: Using a drug off  
25 label is where a doctor chooses to use a medication for

1 which it is not directly indicated by the FDA.

2 MR. McCONNICO: Is there anything against  
3 the law for a doctor to do that?

4 VENIREPERSON PAVLAS: No.

5 MR. McCONNICO: Is that frequently done?

6 VENIREPERSON PAVLAS: Very frequently.

7 MR. McCONNICO: And who makes that  
8 decision?

9 VENIREPERSON PAVLAS: It's based on a  
10 physician's clinical decision.

11 MR. McCONNICO: Okay. In giving drugs,  
12 does the pharmaceutical company, like Janssen, are they  
13 the ones that decide I'm going to give either Zyprexa or  
14 Risperdal to this patient or is that the doctor's  
15 decision?

16 VENIREPERSON PAVLAS: The doctor's.

17 MR. McCONNICO: Okay. Many times in  
18 giving the drugs you are familiar with, did they try  
19 several drugs before they found the one that was right  
20 for the right patient?

21 VENIREPERSON PAVLAS: Yes.

22 MR. McCONNICO: Can you have drugs where  
23 people have exactly the same symptoms, but one drug  
24 might work with someone that has that symptom and  
25 another drug might work with someone else?

1                   VENIREPERSON PAVLAS: I'd say that that's  
2 the most common in my experience in the neuroscience  
3 drugs.

4                   MR. McCONNICO: And why is that?

5                   VENIREPERSON PAVLAS: I don't know.

6                   MR. McCONNICO: We're all different. We  
7 can agree on that.

8                   VENIREPERSON PAVLAS: Yes.

9                   MR. McCONNICO: Okay. And Ms. Moore,  
10 there was a statement on your information sheet that you  
11 had worked in a psychiatric ward or some part of a  
12 clinic. Will you tell us about that?

13                   VENIREPERSON LORI MOORE: It was called  
14 the Oaks Treatment Center. It was part of the Brown  
15 Schools. It was a residential facility for level six  
16 kids who were behavioral, had different kinds of  
17 psychiatric problems. There's a medical unit in there.  
18 There was a behavioral unit. And I dispensed medication  
19 back then. This was in the mid '90s when they allowed  
20 non-licensed people to dispense.

21                   MR. McCONNICO: Right. Were you --

22                   THE COURT: Steve, excuse me a second.  
23 May I interrupt?

24                   MR. McCONNICO: Yes, sir.

25                   THE COURT: I have a technical problem.

1 I've got you back at 15:40. We're back.

2 Thanks.

3 Thank you, Steve.

4 MR. McCONNICO: Yes, sir.

5 Ms. Moore, you were telling us that when  
6 you were there at the Brown School, you were working in  
7 the psychiatric unit, am I correct?

8 VENIREPERSON LORI MOORE: Correct.

9 MR. McCONNICO: And you were working with  
10 adolescents?

11 VENIREPERSON LORI MOORE: Correct.

12 THE COURT: And at this point in time,  
13 were some of these adolescents being given antipsychotic  
14 drugs?

15 VENIREPERSON LORI MOORE: Yes.

16 MR. McCONNICO: Okay. Were they some of  
17 the drugs we had on that information sheet, Risperdal,  
18 Zyprexa, Abilify?

19 VENIREPERSON LORI MOORE: Yes.

20 MR. McCONNICO: Geodone?

21 VENIREPERSON LORI MOORE: Yes.

22 MR. McCONNICO: And you were able to give  
23 the drugs to the children or the adolescents?

24 VENIREPERSON LORI MOORE: Correct, at that  
25 time.

1 MR. McCONNICO: What type of -- were these  
2 children who had schizophrenia?

3 VENIREPERSON LORI MOORE: I didn't work  
4 with any directly. I take that back. We had one. I  
5 had one --

6 MR. McCONNICO: Okay.

7 VENIREPERSON LORI MOORE: -- over the  
8 course of three years.

9 MR. McCONNICO: And how would you define  
10 schizophrenia?

11 VENIREPERSON LORI MOORE: Loss of reality,  
12 paranoia.

13 MR. McCONNICO: They didn't trust people?

14 VENIREPERSON LORI MOORE: Right.

15 MR. McCONNICO: Did you find it to be a  
16 very serious, disabling illness?

17 VENIREPERSON LORI MOORE: Absolutely.

18 MR. McCONNICO: The -- Ms. Wise, I'm going  
19 to have a few questions for you. And you're No. 20.  
20 You work at the Texas Environmental Commission, correct?

21 VENIREPERSON WISE: Yes.

22 MR. McCONNICO: Quality Commission?

23 VENIREPERSON WISE: Yes.

24 MR. McCONNICO: All right. So in working  
25 with the government, what you responded to, you were

1 saying that sometimes people that lobby that get  
2 involved in the governmental process can somewhat  
3 corrupt it?

4 VENIREPERSON WISE: Yes, sir.

5 MR. McCONNICO: And you've heard about  
6 this, and there's an allegation against my -- the people  
7 I'm representing that they corrupted the process. Do  
8 you understand that?

9 VENIREPERSON WISE: Yes, sir.

10 MR. McCONNICO: Is there anything about  
11 that that concerns you?

12 VENIREPERSON WISE: Well, not that -- now  
13 that we're at this stage, no. I mean, I do know that  
14 there are certainly influences all along the way, having  
15 worked in a state government where all the -- all the  
16 managers are elected -- I mean, not elected, but  
17 appointed by the elected officials, and so there's  
18 obviously a lot of influence on the staff.

19 MR. McCONNICO: Okay.

20 VENIREPERSON WISE: And so the question on  
21 the questionnaire was, are there politics involved?  
22 There's politics involved in everything.

23 MR. McCONNICO: Is there anything that  
24 you've heard so far that concerns you about that in this  
25 case?

1 VENIREPERSON WISE: No.

2 MR. McCONNICO: No. I appreciate that.

3 Ms. Jackson, you also work for the State  
4 of Texas, and you work in Health and Human Services,  
5 right?

6 VENIREPERSON JACKSON: Yes, sir.

7 MR. McCONNICO: Now, that is a little bit  
8 more involved in this than where Ms. Wise works. I  
9 mean, they're kind of right front and center of what  
10 we're talking about. Do you understand that?

11 VENIREPERSON JACKSON: Yes, sir.

12 MR. McCONNICO: Do you work with Medicaid  
13 there?

14 VENIREPERSON JACKSON: No, sir.

15 MR. McCONNICO: You work mainly with the  
16 child support groups.

17 VENIREPERSON JACKSON: I'm indirectly -- I  
18 don't work -- I'm a purchaser.

19 MR. McCONNICO: Okay.

20 VENIREPERSON JACKSON: So we purchase  
21 client services.

22 MR. McCONNICO: Okay. The people that are  
23 suing the folks that I'm representing here are -- it  
24 really is the State of Texas, who's your employer. You  
25 understand that?

1                   VENIREPERSON JACKSON: Yes, sir.

2                   MR. McCONNICO: And it involves things  
3 that arise out of Texas Health and Human Services  
4 Commission. Do you understand that?

5                   VENIREPERSON JACKSON: Yes, sir.

6                   MR. McCONNICO: Does any of that bother  
7 you?

8                   VENIREPERSON JACKSON: No, sir.

9                   MR. McCONNICO: Okay. I appreciate it.

10                  All right. Now, Ms. Pond, you've been  
11 kind enough to tell us -- to visit with us earlier about  
12 some answers and questions that the other side had. And  
13 the answers about the drug companies, you said that you  
14 really in many ways had a -- you distrusted the drug  
15 companies to a degree. Would you tell me about that?

16                  VENIREPERSON POND: Well, just knowing --  
17 having -- I was -- I worked for a Fortune 200 company,  
18 which had nothing to do with pharmaceuticals, but in a  
19 big corporation, you know that there are pressures to  
20 meet that quarterly investment goal that the  
21 institutional investors require, and there's a lot of  
22 pressure, and so I can understand that. So I know just  
23 human nature, there is that pressure on corporations to  
24 meet their financial goals. And so I think sometimes  
25 pharmaceuticals have -- have gone in that direction with

1 their costs. And I understand research and development.  
2 So I see both sides of it.

3 MR. McCONNICO: Right.

4 VENIREPERSON POND: But I do have a basic  
5 distrust. I have a -- with the whole studies, seeing  
6 that people now have to lower their cholesterol and the  
7 only way they can do that is to take this medication.  
8 And I knew someone who worked for a pharmaceutical  
9 company, then became a doctor of natural medicine, and  
10 he said, watch, this is coming, then it came. Now the  
11 only way to get your cholesterol down is to take that  
12 medicine.

13 MR. McCONNICO: All right.

14 VENIREPERSON POND: So I distrust, yes.

15 MR. McCONNICO: And this is a distrust  
16 that you've kind of developed by really studying this  
17 and thinking about this for some time, am I correct?

18 VENIREPERSON POND: Yes, sir.

19 MR. McCONNICO: And you've thought about  
20 it fairly seriously?

21 VENIREPERSON POND: Yes, sir.

22 MR. McCONNICO: So is it fair that you  
23 have what is a strong distrust? Is that a fair thing to  
24 say?

25 VENIREPERSON POND: Yes, but then I -- I

1 guess what's difficult with me in myself is that I can  
2 see -- I can see like the whole picture, which is kind  
3 of not so good sometimes. It would be easier to be  
4 black and white.

5 MR. McCONNICO: Well, I appreciate that.  
6 And something you said I think is important because I am  
7 representing a for-profit corporation. Does everyone  
8 understand that? I mean, does anyone think just because  
9 we're in the business to make a profit, that makes us  
10 wrong? If there is, just let me know, because a lot of  
11 this is going to be a criticism that we're trying to  
12 make a profit. And we were trying to make a profit,  
13 because if we don't make a profit, we don't stay in  
14 business. And we're trying to make money to develop  
15 other drugs. And sometimes if you develop a drug, other  
16 drugs, they can benefit and help people. Does anyone  
17 disagree with that? Thank you.

18 Now, Ms. Pond, getting back to that, all I  
19 want to know is -- and I understand you said the  
20 distrust, but am I starting off on an even playing field  
21 with the other side because you do have this distrust of  
22 pharmaceutical companies?

23 VENIREPERSON POND: Can you repeat the  
24 question?

25 MR. McCONNICO: Yes. We need to -- it's

1 kind of like starting off a foot race. We need to start  
2 off at the same place. They don't need a head start.  
3 Are we starting off at the same place? Are we on a  
4 level playing field?

5 VENIREPERSON POND: I would say yes, in my  
6 mind.

7 MR. McCONNICO: Okay. Thank you.

8 Mr. Williams, you said that you thought  
9 that drug prices are artificially high. Would you tell  
10 me a little bit more about that? And that's No. 43.

11 VENIREPERSON WILLIAMS: That's correct.

12 MR. McCONNICO: Yes, sir.

13 VENIREPERSON WILLIAMS: It's my impression  
14 in watching the drug prices based upon other  
15 commodities. And I realize the drug business is  
16 different than Boeing and airplanes or space or military  
17 equipment. But I also know that you amortize your  
18 investment or your R&D across the drugs that make it and  
19 try to capture your cost there. Well, it seems  
20 unreasonable, for instance, that the price of drugs  
21 still stay at eight to ten to 30 dollars a pill for some  
22 of the pills being sold millions across the country.

23 MR. McCONNICO: Well, that's going to go  
24 to one of the allegations in this lawsuit, because as  
25 you heard when they started, they're saying that they

1 are going to allege that we're selling these drugs at  
2 too high a price.

3 VENIREPERSON WILLIAMS: Correct.

4 MR. McCONNICO: Do you already have an  
5 opinion on that?

6 VENIREPERSON WILLIAMS: Not on yours.

7 MR. McCONNICO: Not on mine. You've got  
8 to wait and hear the evidence. But you think overall  
9 drugs companies are selling drugs at too high a price?

10 VENIREPERSON WILLIAMS: I did say that,  
11 yes.

12 MR. McCONNICO: And obviously, this is  
13 something that you've thought about quite a while and  
14 got a fairly good conviction about; is that fair to say?

15 VENIREPERSON WILLIAMS: That's my opinion.

16 MR. McCONNICO: Yes, sir.

17 VENIREPERSON WILLIAMS: Whether I have a  
18 strong conviction you would go out there and charge the  
19 hill for it, no, that's not necessarily it, but I do  
20 have -- that's my opinion.

21 MR. McCONNICO: I appreciate it. Thank  
22 you.

23 Ms. Wong, I'm going to come back to you,  
24 and -- I think what you were saying is that it would be  
25 difficult for you to give a drug company a fair shake.

1 I heard you say that. Am I misquoting you?

2 VENIREPERSON WONG: I guess it depends  
3 what you mean by fair. I mean, I don't know what you're  
4 going to present or what exactly this case is, so I  
5 can't say which way I would go. But I would say that --  
6 I mean, I guess that I understand that you don't have to  
7 prove necessarily that -- I guess that you didn't do  
8 anything wrong. You just have to prove that the State's  
9 case is not as strong, I guess.

10 MR. McCONNICO: Okay. You've come in and  
11 said that there were -- you had some concerns about drug  
12 companies and felt like they were not always -- just  
13 tell me what your concerns are.

14 VENIREPERSON WONG: I don't have like  
15 strong feelings. I believe drug companies perhaps -- I  
16 mean, I understand you are in business and you want to  
17 make money, but as with any big business, you control a  
18 large -- control the flow of what is being sold and what  
19 gets developed and not developed, so I guess I have  
20 concerns with what everybody else basically does too in  
21 regards to pharmaceuticals.

22 MR. McCONNICO: Okay. Thank you.

23 Mr. Burk, I'm going to ask you some more  
24 questions. And Mr. 66, you were raising up?

25 VENIREPERSON TRUXILLO: Yeah. There was

1 an issue that came up. I don't know whether I flagged  
2 it on my questionnaire or not, but I do have a problem  
3 with drug pricing, and it has to do with about three,  
4 four, five years ago when the drug companies got a law  
5 through the U.S. Congress that basically made it illegal  
6 for Medicaid to go out and comparison price shop for  
7 cheaper sources when drugs were selling for three or  
8 four or five times as much in the United States as they  
9 were selling for in Canada. Individuals were going to  
10 Canada to pick up drugs. Basically, the drug companies  
11 got a law passed to shut that off, and I just was more  
12 than a little bit irate at that. It just seemed like  
13 manipulating a law to maintain a monopoly.

14 MR. McCONNICO: Okay. Does anyone else  
15 have anything like that that comes to mind? And is  
16 it -- tell me your name again.

17 VENIREPERSON TRUXILLO: Truxillo.

18 MR. McCONNICO: Truxillo. I was having a  
19 hard time just looking at how to pronounce it. Thank  
20 you.

21 VENIREPERSON TRUXILLO: Yeah.

22 MR. McCONNICO: Anything else on that line  
23 that bothers you regarding drug companies?

24 VENIREPERSON TRUXILLO: That was the main  
25 one. That sort of pattern runs all through our

1 governmental system, you know, but that was the most  
2 flagrant one that I had seen in quite sometime.

3 MR. McCONNICO: Well, part of this case is  
4 going to be that the State of Texas paid too much money  
5 for the drug here, Risperdal. Our defense is that was  
6 their choice. They paid it because the drug works. But  
7 based upon what you have just said, do you think -- are  
8 you coming to this with some preconception or bias about  
9 drug pricing?

10 VENIREPERSON TRUXILLO: Yeah.

11 MR. McCONNICO: And how would you rate  
12 your bias?

13 VENIREPERSON TRUXILLO: I'm not sure how  
14 to give you a simple answer to that question other than  
15 the one that I just gave you, that it's -- that the drug  
16 companies have gotten very good at gaming the system so  
17 that the legislatures basically give them the prices  
18 they want to get for their products.

19 THE COURT: Okay. Time out. I need a  
20 line of sight here. May I get you to stand up so I can  
21 see you?

22 VENIREPERSON TRUXILLO: Oh, yes, sir.  
23 Yes, sir.

24 THE COURT: Thanks. Okay. Here's the  
25 deal. No one ever imagines they would be in court.

1 No one ever imagines it. It's one of the disconnects  
2 between -- we sit here and we have approximately 40,000  
3 visitors to the courthouse each year. People flow  
4 through here all the time.

5 VENIREPERSON TRUXILLO: Uh-huh.

6 THE COURT: But we would not want a  
7 system, if I were trying a case, whether it was  
8 something where I was defending myself or I was  
9 prosecuting myself, where we have a jury who had already  
10 had strong opinions about the case before they had heard  
11 anything. Nobody wants a justice system like that.

12 VENIREPERSON TRUXILLO: Right.

13 THE COURT: What they want is something  
14 where people are open to both sides --

15 VENIREPERSON TRUXILLO: Uh-huh.

16 THE COURT: -- and will consider the  
17 evidence. Now, when people get up, we know --  
18 psychologists tell us that we make initial judgments  
19 within the first 15 seconds, and we kind of like  
20 somebody, we kind of not like somebody, we're kind of  
21 neutral to somebody, and then that colors everything  
22 that happens thereafter. So when somebody gets up here,  
23 you might look at them and you say, "Well, they don't  
24 look like they know what they're talking about," and you  
25 might disregard it, or you might look at them and go,

1 "Gosh, they look pretty smart. I really like what  
2 they're saying." You're free to do that once you're in  
3 the box. But before you get to that box, we've got to  
4 know that you're open to both sides. And it was  
5 sounding to me like, respectfully, Mr. -- I want to call  
6 it Truxillo, but you say it's Truxillo?

7 VENIREPERSON TRUXILLO: Either way.

8 THE COURT: Mr. Truxillo, it sounds like  
9 you're not that way, respectfully. And that's okay.  
10 But it just sounds like you're not that way.

11 VENIREPERSON TRUXILLO: I had not realized  
12 that this case had a component that was hinging on the  
13 price of drugs involved.

14 THE COURT: Right.

15 VENIREPERSON TRUXILLO: When I saw the  
16 headlines on the morning paper, that's when I put it  
17 down and stopped, so...

18 THE COURT: Thank you, by the way. Well,  
19 I think now that you know that -- I mean, that's what,  
20 in essence, there's going to be a portion -- I can't say  
21 how much because I'm not quite all sure how this is  
22 going to turn out.

23 VENIREPERSON TRUXILLO: Uh-huh.

24 THE COURT: But Mr. McConnico is saying he  
25 believes a portion of it is going to be. Knowing that a

1 portion of it is going to be involving drug pricing, are  
2 you an appropriate juror for this jury?

3 VENIREPERSON TRUXILLO: I can tell you I  
4 can try to be. It's my duty as a citizen to try to be.

5 THE COURT: Yes, sir. And I want you to  
6 know I appreciate that, but I've got to have something  
7 better than I'm going to try, because if it works out at  
8 the end of the day after four weeks, "You know, I tried  
9 my best, but I just still feel the same like I did -- as  
10 I did on that very first day," then where are we?

11 VENIREPERSON TRUXILLO: My charge as a  
12 juror is to listen to the evidence presented and to  
13 listen to your directions, and that is what I will do my  
14 damndest to do. Is that a yes to your ear?

15 THE COURT: No, it wasn't.

16 VENIREPERSON TRUXILLO: Okay. Sorry.

17 THE COURT: And respectfully, I've got to  
18 tell you, I've got to be indefatigable about this. I  
19 have to continue to press on this. I need an  
20 unequivocal, "You know, I'm okay. McConnico is starting  
21 at the same position that Mr. Jacks and Mr. Sweeten are  
22 starting at," or "McConnico, you know, as skillful and  
23 sweet as he is, he's starting behind," or "He's starting  
24 ahead." I've got to have you tell me which way it is.

25 VENIREPERSON TRUXILLO: The answer is yes,

1 because my concern has to do with global scale, national  
2 scale issues, not with the facts that have to do with  
3 this case at all. Is that -- this case is very  
4 specific, and I expect the evidence to be very specific.  
5 And so my decision will be based specifically on what I  
6 see.

7 THE COURT: And --

8 VENIREPERSON TRUXILLO: I'm a scientist  
9 and my background says focus on the issues involved.

10 THE COURT: Right. Okay. And now that  
11 sounded good, and I just -- I'm going to ask one more  
12 time.

13 VENIREPERSON TRUXILLO: Yes, sir.

14 THE COURT: And so if this is a microcosm  
15 of a -- on a micro scale of a macro problem, are you  
16 going to let your attitudes regarding the macro problem  
17 influence your decision in the micro problem we've got  
18 here?

19 VENIREPERSON TRUXILLO: No.

20 THE COURT: I saw you shaking your head.  
21 I need --

22 VENIREPERSON TRUXILLO: You said am I  
23 going to let my -- you said am I going to let my biases  
24 influence on it, and I said, no, I'm not going to let my  
25 biases influence me.

1 THE COURT: Thank you so much. And I  
2 apologize if that was too stringent.

3 VENIREPERSON TRUXILLO: No, sir.

4 THE COURT: Okay.

5 MR. McCONNICO: And I also appreciate very  
6 much your candor. Let me add a couple of things.

7 VENIREPERSON TRUXILLO: Yes, sir.

8 MR. McCONNICO: This is going to be on the  
9 macro level.

10 VENIREPERSON TRUXILLO: Okay.

11 MR. McCONNICO: This is going to be  
12 evidence on the macro level. There will be evidence  
13 that -- they're going to allege that we were doing this  
14 nationally, this was a national plan, this was something  
15 looking at some points in times even like an  
16 international operation. That's going to come in. It's  
17 not going to be very fact specific that it was this  
18 widget and this is how much this particular widget cost  
19 out in Del Valle. They're going to say this was all one  
20 big national operation and sometimes international.  
21 It's going to be a macro level type information that's  
22 going to be given to the jury in this case. It's going  
23 to be public policy issues that are going to be given to  
24 the jury in this case. It's not going to be a very  
25 scientific right through the eye of the needle, some of

1 the evidence. Does that change things?

2 VENIREPERSON TRUXILLO: It makes it more  
3 difficult. In all honesty, it makes it more difficult.

4 MR. McCONNICO: That's all we're asking.  
5 How does it make it more difficult?

6 VENIREPERSON TRUXILLO: Because, as I've  
7 said, my concern is with the more global issues, the one  
8 specifically that I listed earlier where we passed a law  
9 just three, four, five years ago that said Medicaid  
10 cannot price shop basically. It said that you have to  
11 pay -- if a drug costs a certain amount, you pay the  
12 price, period. That's the only part of our economy  
13 where you can't price shop.

14 MR. McCONNICO: And you realize that this  
15 does involve what Medicaid pays for drugs?

16 VENIREPERSON TRUXILLO: Yes, sir. That  
17 bothers me.

18 MR. McCONNICO: Okay. It bothers you  
19 because what you've seen previously with the Medicaid,  
20 as you've said, the way the law was set up?

21 VENIREPERSON TRUXILLO: Yes.

22 MR. McCONNICO: Does that bother you,  
23 then, weigh against us starting off at the same point in  
24 the case that we're about to start?

25 THE COURT: Can I see the attorneys over

1 in the corner?

2 *(Discussion off the record)*

3 MR. McCONNICO: I'll just go back.

4 Because of what happened, where do we start on that?

5 That's all I need to know. Do we start at the same  
6 point now that you know this --

7 VENIREPERSON TRUXILLO: Yes, sir.

8 MR. McCONNICO: -- that this does involve  
9 macro issues?

10 VENIREPERSON TRUXILLO: You -- you're  
11 asking me to -- I'm not sure how to give you a better  
12 answer than what I've already said. I know that's a  
13 very long set of answers, but I can't give you a better  
14 answer than what I've already done. You've just said  
15 you're getting into the macro scale issues.

16 MR. McCONNICO: Yes, sir.

17 VENIREPERSON TRUXILLO: Those are really  
18 big issues that bother me a lot.

19 MR. McCONNICO: Okay. Thank you very  
20 much. I appreciate it.

21 Mr. Burk, I want to -- I know there were  
22 some questions asked of you earlier. It's No. 80. When  
23 you filled out your little questionnaire, it was asked,  
24 "Do you have any negative opinions about pharmaceutical  
25 companies?" "Yes, huge." "And if yes, please explain."

1 "Pharmaceutical companies have enormous self interest,  
2 i.e., greed," and you capitalized greed. And as you've  
3 told us, you have some pretty strong feelings about  
4 this, am I correct?

5 VENIREPERSON BURK: That's correct.

6 MR. McCONNICO: And do those feelings that  
7 are -- are they strongly held?

8 VENIREPERSON BURK: Are they?

9 MR. McCONNICO: Yes, sir, in your  
10 position.

11 VENIREPERSON BURK: Yes.

12 MR. McCONNICO: And have you held them for  
13 quite a while?

14 VENIREPERSON BURK: Yes.

15 MR. McCONNICO: Will they be a bias  
16 against the people I'm representing in this lawsuit?

17 VENIREPERSON BURK: Well, I made an  
18 assessment based on the judge's question to me at the  
19 end. I know myself to be an extraordinarily analytical  
20 person, have a lot of integrity. I'm fair. And I  
21 judged -- I made an evaluation or a judgment of myself  
22 that I was capable of being objective if I were a juror  
23 about evidence presented -- presented in the case  
24 outside of the biases and opinions that I've already  
25 stated.

1 MR. McCONNICO: Yes, sir. But let's just  
2 be clear. You do bring some strong bias into this  
3 courtroom with you?

4 VENIREPERSON BURK: Sure.

5 MR. McCONNICO: You bring some strong  
6 opinions with you?

7 VENIREPERSON BURK: Yes.

8 MR. McCONNICO: And those biases are not  
9 in favor of the pharmaceutical companies that I  
10 represent. They are against the pharmaceutical  
11 companies I represent.

12 VENIREPERSON BURK: That's correct.

13 MR. McCONNICO: Okay. The -- do you feel  
14 like the pharmaceutical companies that I -- and I  
15 represent Johnson & Johnson, which I'm obviously very  
16 proud to represent, but they are not in any way a small  
17 pharmaceutical company. They are a large pharmaceutical  
18 company.

19 VENIREPERSON BURK: I understand.

20 MR. McCONNICO: And do the biases include  
21 the client that I represent?

22 VENIREPERSON BURK: Well, you may recall  
23 that I mentioned that I have an acquaintance who is a  
24 personal assistant to a gentleman. Those give me a bias  
25 that is favorable of the company. I know what he did

1 for her.

2 MR. McCONNICO: Yes, sir. And I  
3 appreciate that. Okay. That said, I am representing a  
4 very large pharmaceutical company. Do the biases run to  
5 that pharmaceutical company? That's all I'm asking.

6 VENIREPERSON BURK: I'm telling you that I  
7 have both pro and con biases, preconceived opinions  
8 about the company, yes.

9 MR. McCONNICO: And I appreciate that.  
10 Thank you very much. And everyone that's been -- and  
11 that's all we can ask for, that y'all be honest and  
12 candid with us, and I appreciate the honesty and candor.  
13 Thank you.

14 Is it Ms. Ramirez-Byrne?

15 VENIREPERSON RAMIREZ-BYRNES: It is  
16 Byrnes.

17 MR. McCONNICO: Byrnes. You -- and that's  
18 No. 33. You work also at the THHSC, correct?

19 VENIREPERSON RAMIREZ-BYRNES: HHSC, yes.

20 MR. McCONNICO: HHSC. And how long have  
21 you worked there?

22 VENIREPERSON RAMIREZ-BYRNES: At HHSC?

23 MR. McCONNICO: Yes, ma'am.

24 VENIREPERSON RAMIREZ-BYRNES: HHSC -- our  
25 agency folded into HHSC sometime around 2004, 2005.

1 MR. McCONNICO: Okay. And what agency  
2 were you with before that?

3 VENIREPERSON RAMIREZ-BYRNES: The  
4 Department of Human Services.

5 MR. McCONNICO: Okay. And your husband  
6 also works at the agency?

7 VENIREPERSON RAMIREZ-BYRNES: That's  
8 correct.

9 MR. McCONNICO: Is he -- and he has an  
10 office -- he's the assistant deputy commissioner or --

11 VENIREPERSON RAMIREZ-BYRNES: He's an  
12 associate commissioner.

13 MR. McCONNICO: Associate commissioner.  
14 And what do you do there at the agency?

15 VENIREPERSON RAMIREZ-BYRNES: I'm an  
16 operations officer in eligibility services.

17 MR. McCONNICO: Do you work with Medicaid?

18 VENIREPERSON RAMIREZ-BYRNES: Yes, I do.

19 MR. McCONNICO: And does your husband work  
20 with Medicaid?

21 VENIREPERSON RAMIREZ-BYRNES: Yes. He has  
22 like -- he's over the quality control and quality  
23 assurance, more dealing with policy and eligibility over  
24 all the programs that we administer, including Medicaid.

25 MR. McCONNICO: And you realize that

1 what's really at issue here is Texas Medicaid saying  
2 they paid too much for certain medications and they want  
3 that money back basically. You understand that's what  
4 we're here having this lawsuit over?

5 VENIREPERSON RAMIREZ-BYRNES: Yes, sir.

6 MR. McCONNICO: Do you feel like with the  
7 people that you work with and what y'all do with  
8 Medicaid, that that might present some conflict for you?

9 VENIREPERSON RAMIREZ-BYRNES: You know, I  
10 don't know enough about what's -- what the lawsuit is  
11 about and what's going to happen to be able to answer  
12 that. I can tell you what I do related to Medicaid.

13 MR. McCONNICO: Okay.

14 VENIREPERSON RAMIREZ-BYRNES: Our office  
15 oversees the field operations offices statewide, and  
16 they're the ones that -- you know, it's related to  
17 Medicaid. They determine eligibility for Medicaid, both  
18 for children and adults and persons with disability and  
19 the elderly. We -- I also work on projects,  
20 implementing regulations and laws that have been passed  
21 regarding Medicaid. I also do a lot of audit -- I do  
22 all the audit work for our area. And I get involved in  
23 the payment side, which I think that's probably more of  
24 what this is related to. I get involved in the payment  
25 side, you know, where we look at what Medicaid has paid

1 for versus -- you know, in comparison to what they were  
2 eligible for, you know, the correct eligibility programs  
3 and what is being paid out.

4 MR. McCONNICO: And I appreciate that,  
5 because it will involve that. And if the State is  
6 successful in their position, hundreds -- they're going  
7 to ask for hundreds of millions of dollars to be paid  
8 back to the State for Medicaid payments. So they're  
9 going to be asking that that money be paid back to your  
10 employer for really money that came out of your  
11 department.

12 VENIREPERSON RAMIREZ-BYRNES: Okay.

13 MR. McCONNICO: Okay. Now, that, are you  
14 going to -- does that present any conflict for you,  
15 because you're going to have to say, if you find for our  
16 side of the case that we're correct, no, the State of  
17 Texas and the state Medicaid does not deserve to get  
18 that money back or will not get that money back?

19 VENIREPERSON RAMIREZ-BYRNES: To be  
20 completely honest with you, I prefer not to serve on a  
21 jury where the agency is involved just because I am  
22 employed there and I work with them. But if I'm chosen,  
23 then it's not an issue. It would not be an issue.

24 MR. McCONNICO: Now, why do you not --  
25 would you not be as comfortable serving on this jury as



1 like it.

2 MR. McCONNICO: Okay.

3 VENIREPERSON RAMIREZ-BYRNES: But to be  
4 honest with you, I'm used to people criticizing our  
5 agency.

6 MR. McCONNICO: I understand. I'm used to  
7 people criticizing my profession. So it happens. With  
8 that said, if you think there's a better jury for you to  
9 serve on, because this -- your agency where you work and  
10 where your husband works, I'm just -- is going to be  
11 front and center in this, just let us know.

12 VENIREPERSON RAMIREZ-BYRNES: Like I said,  
13 I would prefer not to. But I understand that, you know,  
14 you have a limited number of people to pick from, and if  
15 I'm chosen, I believe that I can put that aside.

16 MR. McCONNICO: Okay. Thank you. It's  
17 already been -- from the get go, the first time that the  
18 State of Texas attorney Mr. Sweeten got up here, I think  
19 the message came across to you that this case is a  
20 little bit different than other lawsuits because this is  
21 our state that's bringing the lawsuit. This is Texas.  
22 I've lived here for 61, close to 62 years, and I'm very,  
23 very proud of our state, as many of you are. But it's  
24 not two companies suing -- one company suing another  
25 company. It's not individuals suing other individuals.

1 This is the State of Texas actually bringing the  
2 lawsuit. And so someone sometimes will say, "Well,  
3 because the State's bringing the lawsuit, I'm going to  
4 give a little deference to that, because it is the  
5 State." Does anyone feel that way? Just let me know.  
6 There's nothing wrong with that. Okay. Let's start  
7 over here. And again, your number, please, sir?

8 VENIREPERSON HANSEN: 44.

9 MR. McCONNICO: And you're Mr. Hansen?

10 VENIREPERSON HANSEN: Yes.

11 MR. McCONNICO: Mr. Hansen, tell me your  
12 thoughts.

13 VENIREPERSON HANSEN: Well, I -- you  
14 would -- you would hope that in a situation where it was  
15 the State, that no one individual was being motivated by  
16 greed or -- you know, in other words, no one individual  
17 is going to benefit from this. The State, I believe --  
18 you know, the attorneys that are representing the State  
19 aren't going to get this money personally. There's no  
20 personal gain from the State or -- you know, at least  
21 the attorneys or anything like that. There's no  
22 individual plaintiff that's going to get this money.  
23 It's the State trying to do the right thing. I would --  
24 I would give more weight -- if this was an individual  
25 coming in and saying, "Oh, I think that they charged me

1 too much money and I want to sue and get money," you  
2 sometimes look at that and you say, "Well, you really  
3 can't trust them." But I would give more credence to  
4 the State. I would say, yeah, the State I believe is  
5 trying to do what is right for the people. I would hope  
6 that the State would be doing what they think is right  
7 for the people. And maybe -- maybe it's just a little  
8 naive. I know there's a lot of negative people out  
9 there. I try to believe that most of the people that  
10 work for the State try to do a good job. They try to  
11 represent the people fairly. I'm sure there's a few  
12 people out there that don't, but I think they're the  
13 minority. I think most people in the State try to do  
14 the right thing, and they do the job because they want  
15 to do the job and they want to do a good job. And if  
16 they're bringing this suit, I think that they're -- they  
17 think it's in the best interest of the people.

18 MR. McCONNICO: For the people of the  
19 whole state?

20 VENIREPERSON HANSEN: For the people of  
21 the whole state.

22 MR. McCONNICO: So it's for the people --  
23 for the State as an entity and for the entirety of the  
24 state, they've decided this is what's best?

25 VENIREPERSON HANSEN: Yes. Yes. I would

1 believe that the attorney general would be doing that  
2 for what's best for the people as a whole.

3 MR. McCONNICO: Okay. Y'all have heard  
4 Mr. Hansen say that. Does anyone else feel the same  
5 way? If you do, just let me know.

6 Okay. Mr. Hansen, because of that, you  
7 think probably that this lawsuit -- the State has been  
8 pretty careful before they ever brought the lawsuit and  
9 they brought it for a good reason?

10 VENIREPERSON HANSEN: Yes, I believe  
11 that's an accurate statement.

12 MR. McCONNICO: So you -- at this point in  
13 time, you have a conviction that the State probably, by  
14 bringing this lawsuit, is bringing a good lawsuit that  
15 has a good basis, a good foundation, and they're  
16 bringing it for the right reasons?

17 VENIREPERSON HANSEN: That is what I  
18 believe, yes.

19 MR. McCONNICO: So at this point, you do  
20 have some bias in favor of the State?

21 VENIREPERSON HANSEN: Yes, unfortunately I  
22 do.

23 MR. McCONNICO: Okay. Thank you very  
24 much.

25 Again, does anyone else feel that? And I

1 really appreciate the honesty, and that's all we're  
2 asking for. But does anyone else have those same  
3 feelings?

4 VENIREPERSON HEATWOLE: Most definitely.

5 MR. McCONNICO: Okay. No. 63. And that's  
6 Mr. Heatwole, right?

7 VENIREPERSON HEATWOLE: Yes.

8 MR. McCONNICO: Thank you, sir. And I'm  
9 not ignoring you in any way, but the judge for some  
10 reason -- it's 4:15 -- wants me to work through this  
11 really quick. I can see him looking at the back of my  
12 head.

13 Okay. Now, somebody said this earlier,  
14 and I think it was His Honor. He said in real life  
15 people form first impressions very quickly. And that is  
16 what happens in real life. People do form first  
17 impressions pretty quickly. As you've seen, I'm not  
18 going to get to go first in this case. I'm going to go  
19 second. So consequently, you're going to form some  
20 impressions before I get up. And somebody said -- had  
21 written down in their information sheet -- it might be  
22 somebody that's already gone -- you know, everything  
23 that happens to me in my life goes to me making up my  
24 decision. And that is true, they will. But one thing  
25 I've got to ask for is that you let the time pass and

1 you be patient, because the other side is going to be  
2 able to put on their evidence before I get to put on my  
3 evidence, and just to be patient and not make up your  
4 mind until I can put on the evidence on our side, that  
5 Mr. McDonald and I are going to be putting on. Can  
6 everyone do that?

7           Mr. Ferguson, there were some questions  
8 for you earlier, and you were a jury foreperson. Who  
9 had -- in your case, who had to prove their case while  
10 y'all were trying that case? Who had the burden to  
11 prove the case?

12           VENIREPERSON FERGUSON: Both sides.

13           MR. McCONNICO: Did one side -- if it was  
14 a criminal case, somebody's heard this -- and I think  
15 Ms. Pond's been on a jury. You've heard about  
16 preponderance of the evidence. And preponderance of the  
17 evidence is whoever brings the lawsuit, whether it's the  
18 State, whether it's anyone, they've got the burden to  
19 prove their side of the case. Do y'all understand that?

20           Okay. Now, Mr. Ferguson, why do you think  
21 the person who brings the lawsuit has the burden to  
22 prove their side of the case?

23           VENIREPERSON FERGUSON: Well, because, I  
24 mean, it's an accusation. I mean, you're looking for  
25 facts. You're looking for evidence. You are having

1 to -- you never should go into a court case presuming  
2 one side over the other side. So in my situation, it  
3 would always be based on facts and evidence. And so  
4 those -- both those parties, officer involved and the  
5 person that was under the influence potentially, had to  
6 both prove that the person was actually under the  
7 influence.

8 MR. McCONNICO: Yeah. So everyone  
9 understands that the person or the entity or whatever it  
10 is that brings the lawsuit has the burden to prove it.  
11 Does anyone think -- do y'all understand that? Does  
12 anyone think that that's unfair? Thank you. One  
13 second.

14 I'm going to -- I'm going to sit down.  
15 And before I do, I've got one last question. Is there  
16 anything that either side has not said, anything in your  
17 stomach, in your heart, anywhere that says, "Look, these  
18 lawyers need to know this. This might not be the best  
19 jury for me to serve on"? And if there is, just let me  
20 know. Does anybody feel that way? All right. I  
21 appreciate your -- yes, ma'am, 45, Ms. Pavlas.

22 VENIREPERSON PAVLAS: Sorry. I may  
23 already be out of the running, but there's one of the  
24 witnesses that I mentioned on my questionnaire that I do  
25 have previous knowledge of.

1 MR. McCONNICO: And who was that?

2 VENIREPERSON PAVLAS: Dr. Guadalupe  
3 Zamora, Pete Zamora.

4 MR. McCONNICO: And you worked with him at  
5 one point in time?

6 VENIREPERSON PAVLAS: He was a client of  
7 mine and a current client of my husband's.

8 MR. McCONNICO: Do you think there's  
9 anything about that relationship that would interfere  
10 with your service here as a juror?

11 VENIREPERSON PAVLAS: I don't think so.

12 MR. McCONNICO: And when you say he is a  
13 client, you and your husband are drug reps; that's a  
14 doctor that you call upon?

15 VENIREPERSON PAVLAS: Exactly.

16 MR. McCONNICO: All right. And you're  
17 not -- if you call upon them, you're saying these are  
18 the new drugs that we have; these are potential drugs  
19 that you can give your patients. You probably leave him  
20 articles. You might even sometimes give him free  
21 samples.

22 VENIREPERSON PAVLAS: Correct.

23 MR. McCONNICO: Is that the extent of the  
24 relationship?

25 VENIREPERSON PAVLAS: Yes.

1 MR. McCONNICO: Okay. Thank you very  
2 much, Ms. Pavlas.

3 Okay. Anyone else? Yes, sir. I -- and  
4 don't worry. We've already talked, and I'm not ignoring  
5 you in any way, but I think we've -- so we'll just hold  
6 that.

7 MR. CROOK: I've just kind of got a -- I  
8 suppose a preconceived notion as far as the reason --

9 THE COURT: Mr. Crook, respectfully, we've  
10 got enough. I hope you understand, and I'll talk to you  
11 in a little bit about it.

12 MR. McCONNICO: Okay.

13 THE COURT: Thank you.

14 MR. McCONNICO: Thank you, Mr. Crook.

15 Anybody else have any feeling that this  
16 might not be the best jury for them to serve on? With  
17 that, I appreciate very much your attention. I look  
18 forward to working with the 12 people that are going to  
19 be up here in this jury box. Thank you.

20 THE COURT: Let's take a break. At 4:40  
21 be back where you're sitting. I appreciate it. Thank  
22 you, ladies and gentlemen.

23 *(The jury panel exited courtroom)*

24 THE COURT: May I see the lawyers up here,  
25 please? Steve, may I see you up here, please?

1 MR. McCONNICO: Thank you, Your Honor.

2 THE COURT: Okay. I'm ready to receive  
3 your challenges, if any.

4 MR. JACKS: None here.

5 MR. McCONNICO: We have some. Let me get  
6 my list.

7 *(Discussion off the record)*

8 MR. McCONNICO: Ready to roll.

9 THE COURT: Okay. My specific query is  
10 you've got a challenge for cause upon whom, if anyone?

11 MR. McCONNICO: You want us to start or do  
12 y'all want --

13 MR. MELSHEIMER: We don't have any.

14 MR. McCONNICO: You don't have any? Okay.  
15 First, 44, Mr. Hansen, you know, he said he could not be  
16 fair against the State -- against us with the State  
17 involved.

18 MR. McCONNICO: He said there's no way he  
19 could be fair to us, that simple.

20 THE COURT: I've got that.

21 MR. McCONNICO: And 66, which is  
22 Mr. Truxillo, he said once you got -- he was so  
23 concerned about these macro issues. Once he realized  
24 those were involved, he couldn't be fair. Then No. 80,  
25 Mr. Burk, had some very strong convictions. He would

1 say that he could put them aside.

2 THE COURT: Stephen, you've got to pretend  
3 I was here and listening to it and reading it on my  
4 screen, so I know what he said.

5 MR. McCONNICO: Okay. And  
6 Ms. Ramirez-Byrnes.

7 MR. MELSHEIMER: What number is that,  
8 Steve?

9 MR. McCONNICO: 33.

10 THE COURT: And what in particular about  
11 33?

12 MR. McCONNICO: It would be real hard for  
13 her to -- she said she would be very uncomfortable  
14 ruling against the State of Texas on something that's  
15 dealing with Medicaid, Health and Human Services,  
16 because of her connection.

17 THE COURT: Any others?

18 MR. McCONNICO: I think 43.

19 THE COURT: I think 43 almost sounds like  
20 43, but not quite.

21 MR. McCONNICO: Judge, 12, 40 and 18 are  
22 out, right?

23 THE COURT: No. I -- I'll answer that  
24 after I get my answer to are you claiming on 43 or not?

25 MR. McCONNICO: I will claim the 43.

1 THE COURT: And what is your objection?  
2 What do you find to have been cause worthy on  
3 Mr. Williams?

4 MR. McCONNICO: I think that his --  
5 applying his theory of cost in something he did at  
6 Boeing to this, and he is very convinced that that's the  
7 way that you should charge and make money in profits,  
8 and he said that's the economic lens he sees everything  
9 through and he will see this through on what should be  
10 profitable and not. He's made up his mind.

11 THE COURT: Any others?

12 MR. McCONNICO: That's it.

13 THE COURT: The challenge for cause is  
14 granted on 44, 66, and 80. I repeat, 44, 66, and 80.  
15 Challenge for cause is denied on 33 and 43. We are now  
16 at 24. Each side has six strikes. I would appreciate  
17 y'all returning those in 15 minutes. See y'all.

18 MR. MELSHEIMER: Thank you, Judge.

19 *(Recess taken)*

20 THE COURT: Now that you're here,  
21 Mr. McConnico wants to make a motion.

22 MR. MELSHEIMER: Okay.

23 THE COURT: He wants a couple extra  
24 preemptory strikes.

25 MR. McCONNICO: Judge, as a result of the

1 Court's refusal to allow us to strike for cause Jurors  
2 33 and 43, we're going to exhaust our preemptory  
3 challenges where we can strike. And so consequently,  
4 the objectionable panelists who are going to remain on  
5 the jury are 21 and 55 once we have used our last  
6 preemptory strike.

7 THE COURT: I'm going to remain mute at  
8 this time. And so what are you requesting? You just  
9 wanted to inform me of that?

10 MR. McCONNICO: Yes, sir.

11 THE COURT: Okay. I appreciate it.  
12 Anything else that you wanted to tell me?

13 MR. McCONNICO: Now, if you'll allow us to  
14 have our strikes for cause against those, 33 and 43,  
15 that's solved.

16 THE COURT: Give me just one second.  
17 Okey-dokey. Did y'all all turn in your lists?

18 MR. McCONNICO: Yes, sir. I just turned  
19 ours in.

20 THE COURT: Don't hand it to me. Okay.  
21 And I will need everybody to exit the jury box.

22 MR. McCONNICO: And I will just state for  
23 the record we gave notice of that before we knew the  
24 other side's preemptory strikes.

25 THE COURT: When you've got it, let me

1 look at it before we call it out.

2 *(Jury panel present)*

3 THE COURT: Could I get a reasonable  
4 number over here, like less than this?

5 Ladies and gentlemen, I will now call the  
6 names of the 12 persons who will serve as jurors in this  
7 case. As your name is called, please take a seat in the  
8 jury box. Jennifer Jirak, Melinda Foster, Craig -- is  
9 it Ihlefeld?

10 VENIREPERSON IHLEFELD: Ihlefeld.

11 THE COURT: Ihlefeld. Charlotte Jackson,  
12 Rosalinda Paez. Is it Jatan Naik?

13 VENIREPERSON NAIK: Yes.

14 THE COURT: John -- is it Cearley? Eric  
15 Woodall, Dwayne Moore, Alan Doose, Zheng Luo, Courtney  
16 Kadura.

17 To those of you with big smiles on your  
18 faces, you will be paid for your jury service today.  
19 The check is in the mail. If you need a letter for your  
20 employer, Stacey Rosen, the court operations officer,  
21 will meet you outside and will arrange. If you have  
22 received a parking ticket for an expired meter -- notice  
23 I didn't say parking in a handicapped zone, don't park  
24 here zone, a number of things. But if you've received a  
25 parking ticket, we will take care of that. If you would

1 like to stay and observe the trial, you may do so, but  
2 you are free to leave.

3 *(Jury panel was excused)*

4 THE COURT: Ladies and gentlemen, you have  
5 been chosen to serve on this jury. And because of the  
6 oath that you have taken and your selection for the  
7 jury, you've become officials of this court and active  
8 participants.

9 Stacey, you have a set of instructions for  
10 them?

11 A lot of these instructions I have  
12 previously given you, and so we're going to -- instead  
13 of -- because of the lateness of the hour, instead of  
14 going through, there's the same cell phone and Internet  
15 research, don't blog instruction we've talked about at  
16 some length. There's likewise not to mingle with anyone  
17 not connected with -- don't mingle with anybody  
18 connected with this case. Stick pretty much to  
19 yourself. If anybody tries to contact you, make sure  
20 you report it to me at once. Don't accept any favors  
21 from anybody. Don't discuss the case with anyone.

22 You know, I can well imagine -- my wife is  
23 an attorney. So every night, the first bit of business  
24 when we go home is, "Well, what'd you do today?" "Well,  
25 you should hear what I did today. What'd you do?" Same

1 thing. And so I know there's a little bit of wiggle  
2 room when we say don't discuss. But when it gets down  
3 to where y'all start receiving evidence, you just -- you  
4 need to be able to kind of shunt this "They've told me I  
5 can't talk about it, but today we heard about this and  
6 this and this and this and this and this." They won't  
7 like it. So as best you can, as well as you can, just  
8 say, "I've been instructed not to talk about it. How  
9 was your day, dear?"

10 Don't discuss the case with anybody, not  
11 with other jurors. Sometimes we've had situations where  
12 jurors have start -- you know, you'll get -- break up in  
13 small groups and you'll go, "Well, what'd you think of  
14 that last witness?" "Well, I didn't think much of  
15 them." "Well, what'd you think of that one?" "Well, I  
16 thought they were really good." You can't have those  
17 conversations until all of y'all are present in the jury  
18 at the same time. So if that gets to be a problem, I'd  
19 like to know about it, sooner rather than later.

20 Do not investigate this case on your own.  
21 I think we've talked about that, pretty importantly.  
22 And in general, sometimes we have people that have  
23 expertise. As an example, if you were computer literate  
24 and this case were about computers, if you were in the  
25 jury room going, "Well, you know, I know a lot about

1 computers, and what that witness just said is not  
2 right," we can't have sharing of your own stuff because  
3 it hasn't come from the witness stand. And so you kind  
4 of -- if you have any type of special expertise that we  
5 tap into it, you've kind of got to keep that to  
6 yourself. Does that make sense?

7                   We're going to give you notepads. You can  
8 take notes. You can doodle, whatever it is you want to  
9 do. It's just that at the end of the day -- I used to  
10 be a lot more liberal about this, but now the Supreme  
11 Court has passed these rules and we've got to kind of  
12 follow them. So Stacey will be picking things up. If  
13 you've got any problems, deal with Stacey. She has a  
14 two-year-old.

15                   MS. ROSEN: Uh-huh.

16                   THE COURT: She will be two in six days.  
17 So she'll be off for a day or two or three, and there  
18 will be a substitute bailiff. But if y'all have any  
19 questions or any problems, talk with her and then she'll  
20 relay it to me and I'll work through her.

21                   Y'all kind of go into isolation right now.  
22 I will not be able to come in and chat with you. No one  
23 should be able to chat with you. It should be just the  
24 jury. If anybody violates that other than Stacey, let  
25 me know. The rest of the time, all of us, myself

1 included, will be going "Hi," "Good-bye," Hello," and  
2 that's about it. Everybody understand these  
3 instructions? Make sure you keep this plastic copy near  
4 and dear to you in case anything goes on.

5 I think I talked to y'all about what our  
6 schedule is going to be, and so we're a little bit late.  
7 And so unless there's any other questions, I'm going to  
8 excuse y'all, and I will see you shortly before  
9 9:00 o'clock tomorrow morning. Thank you so much.

10 No, you gather up in the jury room and  
11 then we have to escort you in because you might get  
12 lost. That's a joke. All right. Y'all are excused.  
13 I'll see you tomorrow morning. Thank you.

14 *(Jury not present)*

15 THE COURT: Okay. I want the attorneys.  
16 You've got 15 minutes first. You've got 15 minutes.  
17 Today is Monday evening. Remember we talked about after  
18 court we were going to do our law stuff.

19 MR. McCONNICO: Today.

20 THE COURT: Court's in recess. Feel free  
21 to stay or leave or whatever you want to do. Tempus  
22 fugit.

23 *(Recess was taken)*

24 THE COURT: All ready. I'm back. I'm  
25 ready. Let's go.

1 MS. TIMMS: All right. Your Honor, my  
2 name is Cynthia Timms for the defendants. And when we  
3 object on behalf of the defendants throughout this  
4 trial, we will be objecting for all of the defendants.  
5 And so that'll be true throughout this trial.

6 I am going to have handed to you a chart  
7 of our objections that we have filed to their exhibits  
8 that they have identified that they are going to use  
9 thus far. We have several overriding -- we have several  
10 overriding objections that run throughout the  
11 plaintiffs' exhibits. Those objections are spelled out  
12 also in our prehearing submission filed on November 7th  
13 to which we would refer the Court.

14 Our first overriding objection is --

15 THE COURT: Okay. Yeah. Do you have that  
16 in writing?

17 MS. TIMMS: The --

18 THE COURT: Do you have it in writing?

19 MS. TIMMS: I'm sorry. Are you asking  
20 about the objections that we have --

21 THE COURT: Yeah.

22 MS. TIMMS: -- right now? Yes, we have it  
23 coming.

24 THE COURT: No, I beg your pardon. Is the  
25 objection in writing?

1 MS. TIMMS: Our objections are in writing?

2 THE COURT: Okay. So I don't need you to  
3 tell me what it is. So other than the 300 exhibits, how  
4 many exhibits are y'all admitting? Mr. Jacks?  
5 Somebody. I need a spark. Approximately.  
6 Specifically.

7 MR. JACKS: I don't know. But I mean, the  
8 300 ought to get us --

9 THE COURT: Tell you what. Everything but  
10 these 300 are admitted? Do I have -- everything but  
11 these 300 are admitted? Okay. I just need somebody to  
12 shake -- give me like a bobble head.

13 MR. JACKS: Yes.

14 THE COURT: All right. Now, do not cheat  
15 one of those in. So be assiduous until I rule on these  
16 300.

17 MR. JACKS: Understood.

18 THE COURT: Okay. I'm going to have to  
19 look at it. I'm not going to do it realtime right now,  
20 because in the 15 minutes -- actually, the nine minutes  
21 you've got left, we can't go through it all. So I will  
22 rule on them and give you a ruling before they admit  
23 them.

24 MS. TIMMS: On those exhibits as they are  
25 introduced?

1 THE COURT: On the plaintiffs' -- you have  
2 objected to plaintiffs' 300 exhibits.

3 MS. TIMMS: Yes.

4 THE COURT: I'm going to rule on those  
5 objections to the 300.

6 MS. TIMMS: As they come in?

7 THE COURT: Before they come in.

8 MS. TIMMS: All right. Can I -- can I  
9 take one minute to point out the problems with the call  
10 notes, which are approximately by volume, half of what  
11 they have submitted to the Court in terms of  
12 designations? The problems with the call notes is that  
13 by our count right now, they're up to 12,000 pages.

14 THE COURT: Okay.

15 MS. TIMMS: And the problem is -- and I've  
16 brought some examples here. This is -- this is from  
17 their list. This, for example, is a call note that  
18 they've designated. It is blank. They are trying to  
19 base TMFPA violations on that blank call note.

20 THE COURT: Out of sight.

21 MS. TIMMS: What?

22 THE COURT: Out of sight. You should save  
23 this for your directed verdict motion.

24 MS. TIMMS: Well, I'm sure that -- I'm  
25 sure that we will, but as an evidentiary matter, we do

1 not believe that that is relevant to anything. As the  
2 second one, the problem with the reliability, these --  
3 some of these notes -- this -- for example, this one,  
4 the call occurred in December, and then the notes were  
5 not recorded until --

6 THE COURT: Okay. I've got to ask a  
7 question. How many of these do you have?

8 MS. TIMMS: Four.

9 THE COURT: Four.

10 MS. TIMMS: Yes.

11 THE COURT: All right.

12 MS. TIMMS: Just as examples.

13 THE COURT: And of your precious time of  
14 which there's now eight minutes remaining, you want to  
15 use it on these four?

16 MS. TIMMS: I'll hand you two at once.  
17 One is an example of a -- of a doctor in which they're  
18 trying to be -- they're trying to hold us as a TMFPA  
19 violation for what the doctor said to us. And then the  
20 fourth one is that what the doctor said -- or you cannot  
21 tell from the fourth one who said what, whether it was  
22 the doctor talking to us or whether it was us talking to  
23 the doctor.

24 THE COURT: Okay. I need to punch pause  
25 here. Would we be able to look at your chart, your 300

1 chart, and figure out which ones these are?

2 MS. TIMMS: As far as those four call  
3 notes?

4 THE COURT: Right.

5 MS. TIMMS: I believe those are part of  
6 very lengthy compilations. Those are just four  
7 examples.

8 THE COURT: That sounds like no.

9 MS. TIMMS: I think the answer is no, not  
10 from our chart.

11 THE COURT: I think that sounds like -- "I  
12 think the answer is no" sounds almost like no, but not  
13 quite.

14 MS. TIMMS: Some of them, they've  
15 identified the numbers, and other ones, it's just a --  
16 it's a compilation.

17 THE COURT: Okay. Tell you what. Take  
18 these back --

19 MS. TIMMS: All right.

20 THE COURT: -- and figure out where on the  
21 chart they go, because I can't figure it out, and I  
22 don't have enough information to figure it out. And so  
23 re-urge that when you've figured it out. What else you  
24 got in your seven more minutes?

25 MS. TIMMS: Well, I'm going to hand the

1 podium over to someone else to object to the  
2 depositions.

3 MS. APPLEBERRY: Your Honor, my name is  
4 Ginger Appleberry, and I just want to talk with you a  
5 little bit about some depositions that they're intending  
6 to play tomorrow. And I've provided you an order and  
7 then the excerpts of the depositions of Steve Shon and  
8 Thomas Anderson. The majority of defendants' --

9 THE COURT: Okay. I need you to stop  
10 talking because I cannot read and talk. My cognitive  
11 control doesn't allow me to do that. So I'm going to  
12 read as much as I can in the seven remaining minutes.

13 MS. APPLEBERRY: Well --

14 THE COURT: Have a seat back over there.  
15 Thank you.

16 So what on these 31 pages are you most  
17 concerned about?

18 MS. APPLEBERRY: Well, Your Honor, many  
19 of -- the majority of the objections --

20 THE COURT: Time out. You're going to  
21 have to give me specific information or I'm going to  
22 move my attention to someplace else, because I can't  
23 deal with the generalities. So what is it that you want  
24 me to pay more attention to? You've handed me 30  
25 some-odd pages. Now, what is it that you want me to

1 look at?

2 MS. APPLEBERRY: On Pages 21 and 22, I  
3 believe some of the questioning involves improper  
4 hypotheticals where they're asking the witness to  
5 generally give an opinion on what -- the objectivity of  
6 researchers kind of in a vacuum.

7 THE COURT: Give me a second. I'm not  
8 sure, when you say an improper hypothetical, what rule  
9 of evidence you're referring to.

10 MS. APPLEBERRY: Well, it's irrelevant for  
11 purposes of --

12 THE COURT: Well, see, you didn't tell me  
13 that you have a relevance objection. Is it 701? Is it  
14 702? Is it 401? 402?

15 MS. APPLEBERRY: On those specific pages,  
16 it's 401, 402.

17 THE COURT: And why do you believe that  
18 this does not make a fact that is of consequence more  
19 probable or less probable by the -- by the hypothetical  
20 posed in the answer given?

21 MS. APPLEBERRY: I can't imagine what fact  
22 would be more -- what probative value it would have,  
23 because they're asking generally if he thinks the  
24 objectivity of researchers could have been influenced by  
25 research grants without any specifics for what type of

1 research grant, what type of research they were  
2 conducting, where it came from.

3 THE COURT: Okay. Now let me review it.

4 Do you have a copy of the CV of this  
5 Thomas Anderson? Or can you tell me succinctly who he  
6 is and what he's qualified to do?

7 MS. APPLEBERRY: He was the executive  
8 director of the brand team during Risperdal launch in  
9 1994. His CV is actually one of the exhibits they want  
10 to admit into evidence.

11 THE COURT: He was the executive director  
12 of the granting?

13 MS. APPLEBERRY: No, I'm sorry, of the  
14 brand team.

15 THE COURT: Of the branding?

16 MS. APPLEBERRY: He helped launch the drug  
17 in 1994.

18 THE COURT: Okay. That sounds like a  
19 marketing person as opposed to a chemist or a  
20 pharmacist.

21 MS. APPLEBERRY: Yes, absolutely. Yes,  
22 Your Honor. He's not a scientist.

23 THE COURT: Okay. The objections that are  
24 contained on Page 21 as to one -- the question, "Had you  
25 heard of Dr. Rush?"

1                   Answer, "Vaguely."

2                   "Okay. Had you heard about him in your  
3 job at Janssen as opposed to other jobs?"

4                   "The only time I would have heard his name  
5 was at Janssen."

6                   "Would it raise any questions in your mind  
7 about the objectivity of medical researchers who stated  
8 in a request for funding from a drug company that we are  
9 committed to helping Janssen succeed in its efforts to  
10 increase its market share and visibility in the payor  
11 provider consumer communities?"

12                   "It -- it would concern me, yes."

13                   The objection to that question and answer  
14 is sustained.

15                   MS. APPLEBERRY: Thank you, Your Honor.

16                   MR. JACKS: May I ask --

17                   THE COURT: No. Time out. I've ruled and  
18 I'm moving on.

19                   "Would it concern you if those same  
20 medical researchers spoke of allowing Janssen to achieve  
21 its more broad strategic" -- "strategies of building  
22 brand loyalty and commitment?"

23                   "Yes."

24                   Objection's overruled.

25                   On Page 22, what did you specifically

1 object to? At line 108? Or 108 --

2 MS. APPLEBERRY: Yeah, starting at 108  
3 and -- 110. And in this situation, he's talking about  
4 the --

5 THE COURT: I can read that. The  
6 objections that are stated on Page 22 are overruled with  
7 respect to those questions. Anything else?

8 MS. APPLEBERRY: Your Honor, I think I may  
9 need to sit down because we're running out of time.

10 THE COURT: Okay. Sounds great.

11 MR. WINGARD: Your Honor, if there's some  
12 confusion back here, it's probably our fault. We're  
13 trying to understand if the Court ruled that all the  
14 exhibits except the 300 that were under consideration --

15 THE COURT: That was my ruling.

16 MR. WINGARD: That they're in evidence  
17 now?

18 THE COURT: They're in evidence now.

19 MS. APPLEBERRY: Your Honor, I think we're  
20 all a little bit confused. I think the 300 exhibits  
21 that we submitted to you were the ones plaintiffs intend  
22 to admit into evidence, not their universe of --

23 THE COURT: Okay. Here's what I think I  
24 had a colloquy with Mr. Jacks and that side about. Do  
25 you have a set of documents -- of exhibits other than

1 these 300? I believe they represented they did. I then  
2 responded those exhibits are admitted, these are not  
3 until I rule on them. And so I believe at this  
4 particular time that that set of documents that are not  
5 of these 300 are admitted into evidence, and I will work  
6 my way through and try to figure out these 300.

7 MR. WINGARD: I think this is where the  
8 disconnect is, and it's our fault for probably making  
9 this more confusing to the Court than we should have.  
10 The parties tried to focus the 1500 exhibits that were  
11 marked by plaintiffs as potential trial exhibits -- they  
12 tried to focus on those 300 exhibits that were likely to  
13 come into evidence first. And so we set aside the 1200,  
14 not to bother the Court with things that may never come  
15 into evidence, and we focused on the -- these 300  
16 exhibits. And the defendants asserted objections to the  
17 first group of exhibits that might be offered or  
18 introduced into evidence, and those were the ones that  
19 we wanted the Court to rule on this evening. The other  
20 1200, we have asserted objections to them, but the  
21 plaintiffs have not yet indicated they're going to offer  
22 those.

23 THE COURT: All right. Have you been in  
24 Court all day?

25 MR. WINGARD: Your Honor, I have not.

1 THE COURT: Whoops. Okay. I can't talk  
2 to you then.

3 Who has been in court on this side all  
4 day?

5 MR. McCONNICO: I have, Your Honor.

6 THE COURT: What have I been doing today?

7 MR. McCONNICO: You've been working very  
8 hard, Your Honor.

9 THE COURT: All right. And so do we  
10 really think that in 15 minutes I can review 300  
11 documents? So the question is -- no. So when am I  
12 going to review those?

13 MR. JACKS: I thought I understood, and  
14 I'm -- and Ginger, please tell me if I've got this  
15 wrong. I thought that these were objections that were  
16 being submitted for the record, but without argument,  
17 they fell under that category of objections that the  
18 defendants did not express --

19 THE COURT: That's useful information.  
20 That wasn't conveyed to me.

21 MR. JACKS: Am I correct about that?

22 MS. APPLEBERRY: Yes, he's correct, Your  
23 Honor.

24 THE COURT: Okay. So I will review them,  
25 and I will have an answer for you first thing bright and

1 shiny in the morning. Okay. Give me one second.

2 I have a question for the defense  
3 regarding defendants' objections to plaintiffs' 300  
4 exhibits. I have a spreadsheet which has a key that  
5 says RHLF403. So I figured out 403 as being Texas Rule  
6 of Evidence 403. LF --

7 MS. APPLEBERRY: It's lack of foundation.  
8 Your Honor, there should be a code for you in the  
9 footer.

10 THE COURT: Yeah. I don't know why I have  
11 not been able to see -- read through 30 pages in this  
12 time. I don't know why I haven't been able to, but the  
13 fact is I haven't been able to. So lack of foundation.

14 MS. APPLEBERRY: Yes, Your Honor.

15 THE COURT: And what is that? Is that  
16 like a 901? What is that?

17 MS. APPLEBERRY: It often is, Your Honor.  
18 In --

19 THE COURT: Well, it often -- is it always  
20 that?

21 MS. APPLEBERRY: Sometimes it's also --

22 THE COURT: See, when you don't put the  
23 rules of evidence number, I can't figure out necessarily  
24 what that means. I'm used to seeing like 404, 405, 408,  
25 901, 1002.

1 MS. APPLEBERRY: Your Honor, those are  
2 specific objections to documents that we feel like you  
3 can't understand and the jury can't understand without  
4 testimony accompanying their admission.

5 THE COURT: Okay. And H?

6 MS. APPLEBERRY: Hearsay.

7 THE COURT: R is relevance?

8 MS. APPLEBERRY: Yes, Your Honor.

9 THE COURT: FA is what?

10 MS. APPLEBERRY: FA is First Amendment.

11 THE COURT: Give me one second. The 300  
12 exhibits that are contained in this motion, defendants'  
13 objections to plaintiffs' 300 exhibits that are  
14 specified in the spreadsheet that starts on Page 1 and  
15 ends in 30, are all admitted. Okay. Everybody taken  
16 care of here?

17 Moving over here, what do y'all got?

18 MR. JACKS: Your Honor, we don't have  
19 anything. We've advised --

20 THE COURT: Okay. I need to take a  
21 time out. I want to be responsive, but there are one,  
22 two, three, four, five, six, seven, eight -- there's  
23 eight of you. I need to know which one of y'all are  
24 speaking. And so it's kind of disconcerting because  
25 I've got one here, one there, one there and one there.

1 Respectfully, if y'all could get -- you don't have to be  
2 univocal, but to the extent the more of that you can do,  
3 the better. Did you have something?

4 MR. WINGARD: Your Honor, I do.

5 THE COURT: What's up?

6 MR. WINGARD: Tomorrow, the plaintiffs  
7 intend to call Margaret Hunt as their first witness or  
8 one of their early witnesses. We object to her  
9 testimony because she has no personal knowledge at all,  
10 and she was not designated as an expert in this case.  
11 So as a nonexpert with no personal knowledge, her  
12 testimony is irrelevant under Rule 402. Her testimony,  
13 because she is -- has the title of investigator with the  
14 Medicaid Fraud Division, although she didn't investigate  
15 anything in this case, would be unfair prejudice under  
16 Rule 403. She has a lack of personal knowledge. Under  
17 Rule 602, her testimony is inadmissible. She offers  
18 opinions by a lay witness, and so those opinions are  
19 inadmissible under 701.

20 THE COURT: Because they have to be under  
21 rationale perception of the witness.

22 MR. WINGARD: Exactly.

23 THE COURT: Okay.

24 MR. WINGARD: She's also an undesignated  
25 testifying expert, so her opinions are inadmissible

1 under 193.6. All of her testimony is repeating  
2 things --

3 THE COURT: And if I ask y'all to look for  
4 your RFD, your request for disclosure, you would be able  
5 to show, so that I could see it with my own eye, about  
6 the exclusion? You'd be able to do that?

7 MR. WINGARD: We would, Your Honor.

8 THE COURT: Good. Be prepared to do that  
9 in the morning.

10 MR. WINGARD: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. WINGARD: She also repeats hearsay, so  
13 her testimony is inadmissible under 802.

14 THE COURT: Because she's not an expert  
15 who reasonably relies upon hearsay to reach her  
16 opinions.

17 MR. WINGARD: Precisely.

18 THE COURT: Okay.

19 MR. WINGARD: She has prepared documents  
20 that contain hearsay within hearsay, so 805 bars that.  
21 The best evidence rule she violates by summarizing all  
22 kinds of documents, including deposition testimony, so  
23 it's inadmissible under 1002 and 1003.

24 THE COURT: And you've made a request for  
25 those documents?

1 MR. WINGARD: For which documents, Your  
2 Honor?

3 THE COURT: The ones that you say that's  
4 not the best evidence of.

5 MR. WINGARD: Well, for instance, a  
6 deposition transcript, she's read 80 deposition  
7 transcripts. I know.

8 THE COURT: I'm sorry.

9 MR. WINGARD: I know. And she's compiled  
10 282 pages of notes from her reading of 80 pages -- I  
11 mean, 80 different deposition transcripts. Every  
12 summary of that deposition transcript would consist of a  
13 violation of the best evidence rule.

14 THE COURT: Okay.

15 MR. WINGARD: And they've prepared to  
16 tender into evidence in two separate exhibits, which  
17 Mr. Johnson is here to talk to you about, those  
18 compilations of her notes and thoughts as she prepared  
19 to give corporate representative testimony in the case.  
20 We think, in addition, the fact that she's summarized  
21 depositions would be a violation of Texas Rule of Civil  
22 Procedure 281, which prohibits deposition transcripts  
23 from going back into the jury room, and also Rule 287,  
24 which requires the Court to reread back to the jury the  
25 deposition testimony that jurors have a hard time

1 remembering. So for all those reasons, we would urge  
2 that Margaret Hunt not be allowed to testify in this  
3 case, no personal knowledge, not an expert.

4 THE COURT: Okay. You've made your  
5 record. Yes.

6 MR. JACKS: Your Honor, we have submitted  
7 a written brief on January 3rd on these issues. We have  
8 relied upon the -- insofar as the report is concerned to  
9 the courts, the exception for investigations conducted  
10 under authority of law. We have -- Ms. Hunt will be  
11 testifying from those reports. She will testify that  
12 the sources of information she worked with and the  
13 documents she worked with are those that she would do  
14 customarily as an investigator. It happened in this  
15 case, instead of having to go out and interview  
16 witnesses in the first instance. Witnesses had given  
17 sworn testimony, whose trustworthiness is even greater  
18 than if she had had to start this investigation from  
19 scratch. She will testify that she would, as a Medicaid  
20 fraud investigator, collect documents from defendants  
21 through the use of a subpoena, which was, of course,  
22 done in this case, and from the State records, review  
23 and report her findings on those, which she has done,  
24 that the procedures which she has followed are those  
25 that she, as a Medicaid fraud investigator, would

1 employ. And we have referenced the Court to Rule  
2 803(8)(c) concerning the reports of an investigator, the  
3 ability of an investigator necessarily to rely upon  
4 hearsay, the ability of an investigator to state  
5 opinions and conclusions, including conclusions as to  
6 state of mind. We also -- certain of what she did was  
7 to review voluminous financial -- certain of what she  
8 did also was to review voluminous financial records of  
9 payments by these defendants to various state officials  
10 and state agencies and to prepare spreadsheets that are  
11 summaries of those that are admissible under Rules 1006  
12 and 611(a), and that she, as a --

13 THE COURT: Okay. Let's put a wrap on it.  
14 I've got it.

15 MR. JACKS: Okay.

16 THE COURT: Thanks.

17 MR. WINGARD: May I approach, Judge?

18 THE COURT: For what reason?

19 MR. WINGARD: To hand you a letter brief  
20 that we filed in response to their letter brief on  
21 this --

22 THE COURT: No. I've got more material  
23 than I can possibly put up with.

24 MR. WINGARD: May I respond to the  
25 argument?

1                   THE COURT: No, your time tempus fugit.  
2 It fled. Okay. Let me talk to y'all about a practical  
3 thing. Today is day one. We have 19 more days  
4 together. It is my experience and my judgment that what  
5 I want is a good cruising speed. If we try to do it  
6 heroic and stay here, I've got to take -- keep her here.  
7 I've got to keep Elizabeth here. I've got to keep  
8 Stacey there. I've got to keep Carol. And we cannot do  
9 that. And so that's how come I talked to y'all last  
10 week about doing the 45 minutes from 4:45 until 5:30.  
11 Now, look out -- this is a terrible start. But we've  
12 had a very long day. But I can't have it, seriously.  
13 And so what you've got to do, if you want me to attend  
14 to it, is digest it, and get it into bite-size chunks.  
15                   Now, a lot of this, I've indicated -- on  
16 the First Amendment issues, on the Nora Pennington  
17 issues, on the other things, I've already indicated what  
18 y'all believe, rightfully or wrongfully, is the Court's  
19 error. I'm going to stay dumb and -- I was dumb and I'm  
20 going to stay dumb, which is to say I'm going to try to  
21 be at least consistent with my rulings. And so what we  
22 talked about previously is that I have no problem  
23 letting y'all try to make a record, bring it to the  
24 Court's attention, try one more desperate attempt to  
25 keep the Court from making an error, but we understand

1 where I'm going on that. So I'm going to ask for  
2 y'all's cooperation. If I hit this again, well, then it  
3 becomes a contest of wills, and how does that turn out?

4 I did not just hear an iPhone go off, did  
5 I? Because that would drive me crazy. Wouldn't it you?

6 MR. WINGARD: Yes, Your Honor, it would.

7 THE COURT: Sweeten?

8 MR. SWEETEN: Yes, Your Honor.

9 THE COURT: If that goes again, you will  
10 not have a phone.

11 MR. SWEETEN: It won't happen again, Your  
12 Honor. I apologize.

13 THE COURT: Okay. I'm sorry. It's just  
14 an autonomic -- it's an autonomic response. If I had a  
15 laser canon, you wouldn't be there.

16 MR. WINGARD: Judge, this witness tomorrow  
17 is a -- it's a big deal, and this is a new -- this is a  
18 new thing. It's not something you've ruled on before.  
19 What they intend to do with this witness --

20 THE COURT: Yeah, yeah. I understand.

21 MR. WINGARD: They're going to summarize  
22 their whole case through her. She's read 80  
23 depositions. She's going to take the stand and she's  
24 going to --

25 THE COURT: They've got somebody they paid

1 to do this, too.

2 MR. WINGARD: Well, I know they did, but  
3 this is going to be a different witness.

4 THE COURT: What did that fellow -- a  
5 million and a half? Something like that.

6 MR. McCONNICO: Closer to two, Your Honor.

7 THE COURT: Closer to what?

8 MR. McCONNICO: Two.

9 THE COURT: Two, wow. For a 350-page  
10 paper?

11 MR. McCONNICO: I think it's over 400.

12 THE COURT: I didn't get that for my  
13 thesis.

14 MR. JACKS: 1200 footnotes, Your Honor.

15 THE COURT: Oh, okay. Well, now you said  
16 that, no more shock.

17 MR. WINGARD: The problem is they didn't  
18 identify her as an investigator until last week, okay?  
19 So we didn't know about 808 -- or 803(8)(C) until the  
20 3rd of January, okay? They didn't -- whenever we asked  
21 her questions about her investigation, they asserted the  
22 attorney-client privilege. So --

23 THE COURT: Okay. So watch --

24 MR. WINGARD: The point is this --

25 THE COURT: So what kind of relief do you

1 want?

2 MR. WINGARD: We want her not to be able  
3 to come in and summarize depositions from the stand.

4 THE COURT: In case I don't do that, what  
5 other kind of relief do you want?

6 MR. WINGARD: We want her not to be able  
7 to tender and offer into evidence summaries of all of  
8 the exhibits and depositions that she's read. Now, she  
9 can come in and she can summarize voluminous records in  
10 a spreadsheet, to the extent that all the records are  
11 admissible. But she can't ever come in and summarize  
12 depositions in written notes or from oral testimony from  
13 the stand. It's not allowed. The only cases they've  
14 cited that say it's ever allowed is at the very end of  
15 the case after the testimony has already been admitted.  
16 Under Rule 1006, there have been these summary witnesses  
17 at the end of the case in rebuttal who come in and  
18 summarize --

19 THE COURT: I will look at it.

20 MR. WINGARD: Okay. Thank you, Your  
21 Honor.

22 THE COURT: Okay. Here's what I need, is  
23 I need your magic bullet brief. And do I have your  
24 antidote?

25 MR. WINGARD: Yes, Your Honor. If you

1 don't, I'm going to give you -- let me see.

2 THE COURT: Oh, man, do not approach me  
3 with that.

4 MR. JACKS: Well, it has cases attached to  
5 it.

6 THE COURT: I think I would pull out a  
7 couple of pages.

8 MR. JACKS: The brief is six pages.

9 THE COURT: Hand me six pages.

10 MR. JACKS: You got it.

11 THE COURT: You're coming with the  
12 antidote.

13 MR. McCONNICO: The antidote is right  
14 there, Your Honor.

15 THE COURT: Could I see you two just for a  
16 second? Sweeten, you can come here. Gosh, I sure hate  
17 to booger up a case right at the very beginning, so I'll  
18 be back in the morning. I sure hate to booger up a case  
19 right at the beginning.

20 MR. McCONNICO: Yes, sir.

21 THE COURT: I was talking to you, but I  
22 was hoping they would --

23 MR. McCONNICO: I understand.

24 THE COURT: So y'all got anything else?  
25 Are we done here?

1 MR. JACKS: We have nothing else, Your  
2 Honor.

3 THE COURT: Say what?

4 MR. JACKS: We have nothing else, Your  
5 Honor.

6 THE COURT: I'll see y'all in the morning,  
7 shortly before 9:00 o'clock.

8 *(Court adjourned)*

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1 THE STATE OF TEXAS)

2 COUNTY OF TRAVIS )

3 I, Della M. Koehlmoos, Official Court  
4 Reporter in and for the 250th District Court of Travis  
5 County, State of Texas, do hereby certify that the above  
6 and foregoing contains a true and correct transcription  
7 of all portions of evidence and other proceedings  
8 requested in writing by counsel for the parties to be  
9 included in this volume of the Reporter's Record, in the  
10 above-styled and numbered cause, all of which occurred  
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's  
13 Record of the proceedings truly and correctly reflects  
14 the exhibits, if any, admitted by the respective  
15 parties.

16 WITNESS MY OFFICIAL HAND this the 9th day  
17 of January, 2012.

18 /s/: Della M. Koehlmoos  
19 DELLA M. KOEHLMOOS, TX CSR 4377  
20 Expiration Date: 12/31/13  
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