

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 some other jury?

2 VENIREPERSON RAMIREZ-BYRNES: I think just
3 because, you know, I feel the people -- a lot of people
4 have a lot of negative opinions about Medicaid and the
5 way the State administers the program, and I, of course,
6 have a different opinion about that because I see it
7 firsthand.

8 MR. McCONNICO: Right.

9 VENIREPERSON RAMIREZ-BYRNES: So that's
10 why I say that.

11 MR. McCONNICO: You're very proud of where
12 you work and what y'all do?

13 VENIREPERSON RAMIREZ-BYRNES: I absolutely
14 am, yes, sir.

15 MR. McCONNICO: And you're very proud of
16 the job y'all do?

17 VENIREPERSON RAMIREZ-BYRNES: Absolutely.

18 MR. McCONNICO: Okay. Well, there could
19 be something here that -- where people will say, well,
20 this agency, if they didn't like what was happening,
21 they could have done something different, they could
22 have done something about it. So there could be some
23 criticism of your agency. Will that be a problem for
24 you?

25 VENIREPERSON RAMIREZ-BYRNES: I would not

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
21 Official Court Reporter
22 250th District Court
23 Travis County, Texas
24 P.O. Box 1748
25 Austin, Texas 78767
(512) 854-9321