

2:16-cr-46-GMN-PAL - July 12, 2017

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) CASE NO. 2:16-CR-46-GMN-PAL
)
Plaintiff,) LAS VEGAS, NEVADA
) WEDNESDAY, JULY 13, 2017
vs.) 1:09 P.M.
) COURTROOM 7C
ERIC J. PARKER (11),)
O. SCOTT DREXLER (12),) JURY TRIAL, DAY 3
RICHARD R. LOVELIEN (13),)
STEVEN A. STEWART (14),)
DEFENDANTS.) **ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE GLORIA M. NAVARRO, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF:

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(continued next page)

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Proceedings reported by machine shorthand. Transcript produced
by computer-aided transcription.

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Also Present:

Christopher Allen, BLM
Sharon Gavin, Special Agent, FBI
Joel Willis, Special Agent, FBI
Mike Abercrombie, FBI
Mamie Ott, Legal Assistant
Nona Dodson, Jury Consultant
Tori Bakken, Paralegal
Brian Glynn, I.T.

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1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 13, 2017; 1:09 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for Jury
7 Trial, Day 3, in Case No. 2:16-cr-46-GMN-PAL, United States of
8 America versus Eric Parker, O. Scott Drexler, Ricky Lovelien,
9 and Steven Stewart.

10 Counsel, please note your appearances for the record.

11 MR. MYHRE: Good afternoon, Your Honor. Steve Myhre,
12 Erin Creegan, and Nadia Ahmed on behalf of the United States.

13 THE COURT: Good morning [sic], Mr. Myhre, Ms. Ahmed,
14 Ms. Creegan.

15 MR. TANASI: Good afternoon, Your Honor. Rich Tanasi
16 for Steven Stewart. Also with us at counsel table is Nona
17 Dodson and Brian Glynn. Thank you.

18 THE COURT: Good morning, Mr. Tanasi and --

19 MR. MARCHESE: Good --

20 THE COURT: -- Ms. Dodson, Mr. Glynn.

21 Go ahead.

22 MR. MARCHESE: I'm sorry, Your Honor.

23 THE COURT: Go ahead.

24 MR. MARCHESE: Afternoon. Jess Marchese on behalf of
25 Eric Parker.

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1 THE COURT: Good morning, Mr. Marchese, Mr. Parker.
2 I didn't say hello to Mr. Stewart.
3 Go ahead.

4 MR. LEVENTHAL: Good afternoon, Your Honor. Todd
5 Leventhal on behalf of Mr. Drexler.

6 THE COURT: Good afternoon, Mr. Leventhal and
7 Mr. Drexler.

8 MR. PEREZ: Good afternoon, Your Honor. Shawn Perez on
9 behalf of Ricky Lovelien.

10 THE COURT: And good afternoon, Mr. Perez and
11 Mr. Lovelien.

12 All right. And, just so that everyone remembers,
13 before we bring in the jury, we do have some expectations about
14 how Court will be conducted today. So remember: This is a
15 courtroom; it's not a sporting event. And so it's never
16 appropriate to make any expression of your opinion, whether
17 verbally or through body language, no matter how much you agree
18 or disagree with something that is being said or done.

19 People should not speak out of turn. Everyone has a
20 microphone. We also have an attorney here for everyone. And I
21 do remind the defendants that the Marshals do have speaker
22 systems set up in the holding cells so that if anyone does
23 exhibit any kind of verbal or body-language conduct that is not
24 appropriate they are authorized to remove that person and place
25 them in the holding cell where they can still hear the rest of

1 the trial but they will not be present.

2 Likewise, if everyone in the public will please double
3 check and make sure you do not have an electronic device with
4 you. They are not permitted in the courtroom. Even if they
5 are turned off or in vibrate mood, you're not allowed to have
6 any kind of electronic devices. The attorneys have electronic
7 devices so that they can conduct and do the things they need to
8 do for a trial. But the public is not permitted to have any
9 electronic devices. There's no recording devices, audio or
10 video, that are allowed in federal court. And, likewise, the
11 Marshals are authorized to remove anyone who is not acting in
12 accordance with these expectations.

13 We did experiment a little bit yesterday after you all
14 left to see if we could improve the audio. So hopefully
15 everyone can hear me now. We -- and everyone else. The
16 problem is when we turn up the speakers too high we get
17 feedback because of the crowd and then if we don't have it loud
18 enough then we can't all hear each other. So just bear with us
19 and feel free on the breaks to give me feedback and to give
20 Aaron some feedback as to whether you can or cannot hear us
21 better or not. So I have two microphones. And I'm told the
22 problem is I can't put them too close together because then
23 you'll get one of those ear-piercing, loud kinda things goin'
24 on.

25 So the problem with this microphone is that when I turn

1 my head then this microphone doesn't pick me up. So hopefully
2 the other one will.

3 And then so, likewise for your podium, you now have two
4 microphones at the podium. So hopefully, regardless of which
5 way you're looking, one of the two microphones will pick you
6 up.

7 So remember we're recording. So, even though in the
8 courtroom we can all hear each other, if it's not recorded, it
9 doesn't get transcribed and it's not part of the record. So
10 the important thing is that the recorder can hear you. So
11 don't get angry if she tells you that she can't hear you.
12 She's doing you a favor by telling you that.

13 All right. We're gonna go ahead and bring in the jury.
14 Then you all can exercise your peremptory challenges. And
15 then, when we're done, I'm going to have Aaron swear them in
16 and then I'm just only gonna give them the recess admonish.
17 I'm not gonna give them the long instruction. I'll do that on
18 Monday morning whenever we start at 9:00 and then we can have
19 opening statements and I'm assuming we'll have time for maybe
20 one witness. I don't think for two. But, I mean, if you want
21 to have a second witness ready just in case. But I think we'll
22 probably only get to one witness. We may not even finish the
23 witness depending on how quick or short that witness is.

24 Mr. Tanasi.

25 MR. TANASI: Thank you, Your Honor.

1 If you'd allow, the defense does have one additional
2 motion for cause.

3 THE COURT: Okay.

4 MR. TANASI: Juror --

5 THE COURT: From --

6 MR. TANASI: -- No --

7 THE COURT: -- Day 1 or Day 2? Because I have them
8 separated here.

9 MR. TANASI: Juror No. 111 who --

10 THE COURT: Day 1.

11 MR. TANASI: -- I think based on the numbering would be
12 Day 1.

13 THE COURT: Yes.

14 MR. TANASI: This particular juror, Your Honor, I think
15 can't be fair and impartial in this case. Based on the notes
16 that I've got, she's indicated that the average police officer
17 doesn't go to -- an average police officer wouldn't go to a
18 protest and say I want to arrest somebody. Therefore, I'm
19 prejudiced to believe that if --

20 THE COURT: Wait.

21 MR. TANASI: -- someone --

22 THE COURT: 111, I think, is a man, not a woman.

23 MR. TANASI: He, yes.

24 THE COURT: Oh, okay.

25 MR. TANASI: I apologize.

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1 THE COURT: I thought maybe I was looking at the wrong
2 one. All right. So he. Go ahead.

3 MR. TANASI: That's correct. I apologize.

4 Therefore, I'm prejudice to believe that if someone's
5 arrested at a protest then they have violated the law. And
6 then I'm slightly prejudiced towards the police officer in
7 their benefit, a tad skewed, that a person should have to
8 kinda -- to show their innocence.

9 So I think that there's kind of a burden-shifting issue
10 there based on, you know, my notation of her [sic] responses.

11 THE COURT: His.

12 MR. TANASI: His. I don't know why I'm hung up on
13 that, Your Honor. His.

14 And so, given that, I would say I don't think he can be
15 fair and impartial in this case.

16 MS. CREEGAN: The Government will stipulate.

17 THE COURT: All right. So we will excuse Juror
18 No. 111.

19 MS. CREEGAN: Your Honor, should we treat Juror 540 as
20 moved up or maintain them in the alternate pool?

21 (Pause in the proceedings.)

22 MS. CREEGAN: I think we would have move them up due to
23 the --

24 THE COURT: Aaron --

25 MS. CREEGAN: -- peremptories.

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1 THE COURT: -- should we just leave them in -- because
2 we already have printed out the seating chart for everyone.

3 COURTROOM ADMINISTRATOR: We can leave them in order
4 for the seating chart, Your Honor. Um . . .

5 THE COURT: Yeah.

6 Should we --

7 COURTROOM ADMINISTRATOR: And --

8 THE COURT: -- and do you want to leave an empty chair
9 or just leave him here and just between all of us we know that
10 he's excused?

11 MR. TANASI: I'm fine with that, Your Honor.

12 THE COURT: He doesn't really need to know.

13 MS. CREEGAN: That's fine with the Government as well.

14 THE COURT: Okay.

15 So, for example, on mine, I put a big red "X" on it.
16 So, if you do the same, then we shouldn't have a problem. So
17 you still can count heads if you're trying to figure out who's
18 who.

19 MS. CREEGAN: So should the parties then assume that
20 Juror No. 540 is now part of the main pool and that Juror 615
21 is now moved into the alternate pool?

22 COURTROOM ADMINISTRATOR: I will provide a new
23 peremptory sheet for the parties to review. Everyone's going
24 to move up one. So one of the four parties that's not on that
25 list I have a separate list for you. One of the four extras we

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1 brought will be bumped up into the alternate pool and the first
2 alternate will be bumped into the main juror pool.

3 THE COURT: Okay.

4 So can you tell us before we start? Because they are
5 gonna want to know who their alternates are before they
6 exercise their relevant peremptories.

7 COURTROOM ADMINISTRATOR: Definitely. Yes. Juror 540
8 will be Juror No. 36 and Juror No. 615 will be in alternate
9 spot 44.

10 (Counsel conferring.)

11 THE COURT: Okay. So then the alternate grouping is
12 548 through 615, those eight? One, two, three --

13 COURTROOM ADMINISTRATOR: That's correct --

14 THE COURT: -- four five --

15 COURTROOM ADMINISTRATOR: --

16 THE COURT: -- six, seven, eight.

17 So those eight are the individuals in the alternate
18 group. We'll keep four and you each have two peremptories.
19 So, if you exercise them all, we'll end up with the four
20 alternates. If you don't exercise them, we just take the first
21 four. Does that make sense?

22 MS. CREEGAN: Yes.

23 (Counsel conferring.)

24 MS. CREEGAN: And, Your Honor, I think I also spoke
25 with defense. We were going to ask for it to be noted when

1 something was a joint challenge or a challenge by a particular
2 party, and I believe that they indicated they are all joint.
3 But I'll let them make their presentation.

4 THE COURT: Well, I did give them four extra for them
5 to exercise individually in case someone wanted to veto someone
6 else's vote for anything, however it is that you're deciding
7 for the joint ones. If there's something that the others want
8 to keep but you really don't want on the jury, I wanted
9 everyone to be able to have one that you could use to take
10 anyone off that you personally did not want to have on there
11 even if you were overruled.

12 MR. TANASI: Sure.

13 And I think, Your Honor, in getting together prior to
14 court, I think we all kind of have come to a very similar
15 feeling on who we would be collectively exercising our strikes
16 on. So I don't know if we need to necessarily mark that each
17 time. Is that what Your Honor would like? Or just make the
18 record now that we are kind of all in agreement on who we'll be
19 striking throughout the process?

20 THE COURT: If you want to just have the presumption be
21 that all of the challenges are joint unless noted otherwise,
22 then it'll be incumbent on the person who wants to override the
23 rule -- you know, the decision of the majority --

24 MR. TANASI: Sure.

25 THE COURT: -- and exercise their own vote to go ahead

1 and indicate that it's one of their four individual votes.

2 MR. TANASI: I think that's the way to go, Your Honor.
3 I think we'll . . .

4 THE COURT: Otherwise I don't know how else we would
5 know if -- you know, if Mr. Leventhal tries to use two instead
6 of one.

7 MR. TANASI: Right.

8 MR. LEVENTHAL: Why you pickin' on me?

9 MR. TANASI: You got to watch him. That's true.

10 THE COURT: So that way --

11 MR. PEREZ: I think he --

12 THE COURT: -- that way it --

13 MR. PEREZ: -- has six.

14 THE COURT: -- we hopefully would be able to avoid any
15 problems that way too.

16 I think that last time it was Mr. Jackson, Mr. Perez
17 who at sidebar said that they didn't always agree with
18 everything that the rest of the defense were doing as far as
19 the striking. So that's why I wanted to make sure that there
20 was an opportunity, if someone wanted to exercise it, that they
21 would have that option. You don't have to obviously, but I
22 just wanted to make sure everyone had the option.

23 MR. TANASI: I think the defense is collectively okay
24 with that presumption.

25 THE COURT: Mr. Perez?

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1 MR. PEREZ: Oh, we're fine.

2 THE COURT: Okay.

3 MR. TANASI: All right. Thank you.

4 MS. CREEGAN: Thank you, Your Honor.

5 THE COURT: Are you ready, Aaron?

6 COURTROOM ADMINISTRATOR: Just about, Your Honor.

7 THE COURT: Okay.

8 (Pause. Courtroom Administrator and the Court conferring.)

9 COURTROOM ADMINISTRATOR: Nicole's on her way up,
10 Judge.

11 THE COURT: Okay.

12 (Pause in the proceedings.)

13 COURTROOM ADMINISTRATOR: Here's a corrected.

14 MR. TANASI: Okay.

15 COURTROOM ADMINISTRATOR: I'll keep the original. So
16 that's just for your reference.

17 MR. TANASI: Okay. Thanks.

18 (Pause. Courtroom Administrator and the Court conferring.)

19 MR. MARCHESE: And, Your Honor, just a point of
20 clarification. As to the alternate, we understand we have the
21 ten collective peremps and one individual one. Does that go
22 towards the alternate?

23 THE COURT: No.

24 MR. MARCHESE: Okay. And then --

25 THE COURT: Then we have two for the alternates.

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1 MR. MARCHESE: Two for the alternates.

2 THE COURT: Um-hum.

3 MR. MARCHESE: Okay. Thank you.

4 THE COURT: So it's ten plus four plus two.

5 MR. MARCHESE: Got it.

6 COURTROOM ADMINISTRATOR: And, Counsel, just so you
7 know how that breaks down, it's going to be two for the
8 Government for five turns; three for defense for four turns;
9 two for you for the last turn.

10 MR. MARCHESE: Got it.

11 COURTROOM ADMINISTRATOR: I'll let you know as we go --

12 MR. MARCHESE: Okay.

13 COURTROOM ADMINISTRATOR: -- back and forth.

14 MR. TANASI: Okay.

15 (Pause in the proceedings.)

16 COURTROOM ADMINISTRATOR: All rise.

17 (Prospective jurors enter the courtroom, 1:28 p.m.)

18 THE COURT: All right. Thank you. You may be seated.

19 We are on the record and we have been joined by the
20 jury -- or the prospective jury. So good afternoon and welcome
21 back, everybody. We have combined the groups from Monday and
22 Tuesday. And now we are going to have the attorneys practice
23 what we call the peremptory challenges. So yesterday and the
24 day before I exercised the for-cause excuses and so all we have
25 left now are the individuals who are qualified to sit on the

1 jury and then the parties are going to be taking turns looking
2 at the list, looking at their notes from the last two days, and
3 deciding if there are any further strikes that they want to
4 utilize.

5 So, while we do that, there's really nothing for you
6 all to do except just, you know, sit and look pretty as every
7 once in a while they'll be taking a look at you or counting
8 heads as they try to make sure that they have who they think
9 they have. Every once in a while they'll -- you know, there'll
10 be a number that someone is thinking about -- as you have, you
11 have jury numbers; like maybe, you know, Juror No. 1 -- and
12 then, you know, they'll look at their notes and say, oh, but
13 that was a man and I'm looking at a women so . . . So they'll
14 be looking at you a lot, but don't feel self-conscious too
15 much. They are just trying to make sure that they are counting
16 correctly as people get removed and they have to recount.

17 I don't know, Aaron. Did you plan to have some music
18 on during this or . . .

19 COURTROOM ADMINISTRATOR: We do, Your Honor.

20 THE COURT: All right. Well, Aaron's got some music to
21 entertain you so that you're not too bored during this time.
22 If you really need to stand up and stretch, you're welcome to.
23 But, like I said, the parties are going to want to be looking
24 at your faces and counting. And we did give them a seating
25 chart. But, just the same, it'd be easier if you don't stand

1 up for too long. So you can get up and stretch if you need to.
2 But please go ahead and sit back down so we can see behind ya.
3 All right.

4 (Peremptory challenges, 1:35 p.m. Resumed, 2:40 p.m.)

5 THE COURT: All right. Looks like the parties have
6 finished exercising their peremptory challenges. And I just
7 reviewed the results.

8 Did the parties also have an opportunity to review the
9 final document to make sure that it's accurate and consistent
10 with what you thought you were doing? We've had a couple times
11 when people miscounted. So I just wanted to make sure before I
12 announce it out loud that you've had a chance to review it.

13 MS. CREEGAN: We have had an opportunity to review it,
14 Your Honor. And we do have a legal issue that we'd like to
15 bring to sidebar.

16 THE COURT: All right. So let's go ahead and meet at
17 sidebar.

18 (Begin sidebar conference.)

19 (Discussion between the Court and the court reporter.)

20 THE COURT: Okay. So let's do this one at a time. So
21 this is the Judge speaking. And we have everyone at sidebar, I
22 think. Okay. I believe that I can see everyone.

23 All right. So everyone's here. Please say your name
24 before you speak so that she can make sure that she remembers
25 who everyone is. We do have a different person each day. All

1 right.

2 So, Ms. Creegan, you had an objection or some issue you
3 wanted to raise?

4 MS. CREEGAN: Yes, Your Honor. Erin Creegan for the
5 United States.

6 Your Honor, we'd like to make two Batson challenges,
7 one on the grounds of gender, 8 out of 14 of the men in this
8 panel of 36 were eliminated by the defendants; and also on the
9 grounds of discriminating against nonwhite jurors, 6 out of the
10 11 of the nonwhite jurors were eliminated in this panel.

11 THE COURT: Do you have names so that the . . .

12 MS. CREEGAN: I do have numbers.

13 So the males they are -- in order of strike -- 296;
14 314; 498; 95; 294; 85; 457; and, by not striking, leaving only
15 485 excluded.

16 THE COURT: 485. You said by not striking 485?

17 MS. CREEGAN: By not exercising a final peremptory, 485
18 was excluded. However, there was a mark from having originally
19 reviewed him in some manner.

20 THE COURT: Okay. So the . . .

21 (Pause in the proceedings.)

22 THE COURT: They waived -- so the defense waived their
23 last peremptory challenge.

24 MS. CREEGAN: Correct, Your Honor. However, there are
25 cases where refusing to exercise a peremptory in order to

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1 ensure that a person is not selected has been held to be a
2 conscious action to discriminate. In this case, we believe it
3 was done on purpose to exclude a nonwhite male.

4 (Pause in the proceedings.)

5 THE COURT: So 485 is a male or female?

6 MS. CREEGAN: Male.

7 THE COURT: Male.

8 And he -- so you're claiming that he was not excu- --
9 or he was not stricken by the defense because if he had been --

10 MS. CREEGAN: It would have made it more conspicuous
11 that it was a racial- and gender-based challenge. He's the
12 only juror that -- he's the extra 13th juror that would not be
13 seated. However, even without that juror, that would still be
14 7 out of 14 males, half of the defendants' peremptories even
15 though males constitute only one third of the entire panel.
16 The result is that the final jury would be nine women.

17 THE COURT: All right. Well . . .

18 (Pause in the proceedings.)

19 THE COURT: You'll have to help me because some of
20 these I don't remember for sure if they are male or female. I
21 hadn't written it down. So it look like -- I'm gonna go in
22 order on the list instead of in the order that they were
23 challenged.

24 MS. CREEGAN: Certainly.

25 85, 95 -- and I hope that my order is correct as

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1 well -- 294, 296, 457, then 485.

2 THE COURT: Wait, wait, wait. 457.

3 MS. CREEGAN: Um-hum.

4 THE COURT: Yes.

5 MS. CREEGAN: Then 485, then 498.

6 COURTROOM ADMINISTRATOR: Your Honor?

7 THE COURT: Yes.

8 (Courtroom Administrator and the Court conferring.)

9 THE COURT: Oh, yeah. I think they can take a
10 10-minute bathroom break. Thank you.

11 (Prospective jury panel leaving the courtroom.)

12 THE COURT: All right. Well, these are joint. The
13 defendants did indicate on the form that they were joint.
14 There's none of them that were individual. So let's hear the
15 gender-neutral reason for --

16 MR. MARCHESE: And, Your Honor --

17 THE COURT: -- Juror No. --

18 COURTROOM ADMINISTRATOR: I'm sorry. I can't quite
19 hear.

20 THE COURT: Yeah. Let's wait for them to leave.

21 MR. MARCHESE: Well, I was going to say can we just go
22 out to the tables and not have a sidebar then?

23 THE COURT: Sure.

24 MR. MARCHESE: Makes it easier; right?

25 (Pause in the proceedings.)

1 THE COURT: Okay. While we're waiting for them to file
2 out, who are the racial peremptories?

3 MS. CREEGAN: They are -- and I'll try to do this also
4 in numerical order and there's some overlap -- there's -- 80
5 percent of all nonwhite males were struck -- 95, 296, 329, 445.

6 THE COURT: Wait, wait. 296.

7 MS. CREEGAN: Yes.

8 THE COURT: Okay. Keep going.

9 MS. CREEGAN: 445 -- 329 and 445 -- I'm sorry. I'm not
10 sure where you stopped -- and 485 and 498.

11 THE COURT: 445. After that?

12 MS. CREEGAN: 485 and 498.

13 COURTROOM ADMINISTRATOR: The jurors have exited, Your
14 Honor.

15 THE COURT: Okay.

16 MS. CREEGAN: That leaves a panel of nine women, even
17 of which are white, for a total of nine white jurors.

18 THE COURT: All right.

19 Aaron, did you say they are gone?

20 COURTROOM ADMINISTRATOR: Yes, Your Honor.

21 THE COURT: All right. Let's go ahead. It'll make it
22 easier for everyone so we're not squished in this corner.

23 (End sidebar conference.)

24 THE COURT: All right. So it looks like the defendants
25 also needed to use the restroom. So does counsel waive their

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1 presence so they can use the bathroom? Or do you want to wait
2 for them to come back?

3 (Pause in the proceedings.)

4 MR. MARCHESE: Parker, we would waive his presence.

5 MR. LEVENTHAL: You do?

6 (Counsel conferring.)

7 MR. TANASI: Your Honor, I think, given the
8 circumstances, we can waive Stewart's presence as well.

9 MR. LEVENTHAL: Yeah. Given that we were at sidebar,
10 we'd be at sidebar anyway. Drexler waives.

11 MR. PEREZ: Lovelien waives as well, Your Honor.

12 THE COURT: All right. Thank you.

13 (Pause in the proceedings.)

14 THE COURT: All right. I wanted to double check to
15 make sure that a -- that racial challenge didn't have different
16 factors to consider with a gender/Equal Protection Clause
17 challenge. I'm not finding that there's much of a discrepancy.
18 It seems to be the same factors --

19 MS. CREEGAN: That is --

20 THE COURT: -- either way.

21 MS. CREEGAN: -- our understanding as well, Your Honor.

22 THE COURT: Okay.

23 (Pause in the proceedings.)

24 THE COURT: All right. So who wants to address the
25 apparent striking issue here? And the Court does find that the

1 Government has at least made a *prima facie* case, not unexpected
2 as to the racial challenge. But I have looked at the
3 individuals who were struck on alleged gender bias and I did
4 confirm that they are males and quite a few of them, half of
5 them, which results in many more white female on the jury than
6 you would think just on a purely statistical basis. So I think
7 they've raised enough of a question to ask the defense to
8 explain and give a neutral reason for their strikes for -- on
9 Equal Protection grounds. It looks like the factors are the
10 same. So you could probably just address them all at the same
11 time rather than dividing them up, but . . . So the issues are
12 striking males and striking nonwhites.

13 MR. LEVENTHAL: Well, I can -- Todd Leventhal -- I can
14 address the cross-off first of all 'cuz there was a marking.

15 There's some indication from the Government that we
16 crossed it off thereby concealing or trying to conceal. I just
17 screwed up on the numbering actually. And, when I brought it
18 back to Aaron, he indicated that I had screwed up on the
19 numbering so I had to cross one off and I initialed it. So
20 there was no concealing and there was no deception. There was
21 just a problem with the number.

22 And the reason we didn't need to do the last one was
23 because he was last on the list and he was number 13 anyway.
24 So there wasn't any type of concealment. We waived the last
25 one for no other reason other than that.

1 Your Honor, I have lists and lists of reasons for
2 everybody. They are completely gender neutral. We spoke at
3 length to individual people during voir dire and we gathered
4 that information and we took things that they said, not
5 necessarily who they were gender or race. And I've got them
6 all listed here per person on why it is that we chose -- excuse
7 me -- why it is we chose that juror over another juror. And
8 there was never a question, at least with us here as a group,
9 on we're gonna choose this person over this person because it's
10 a female versus a male. It just came out that way.

11 Some of the males that we wanted they had crossed out
12 already. I mean, that's what we were left with. But this is
13 in no way a gender-based decision on how we picked this jury.
14 And, if the Court wants me to go through each individual one on
15 why, I've got notes here and I can do that.

16 THE COURT: Okay.

17 MR. LEVENTHAL: Who would you like me to start with?

18 THE COURT: Yeah. I only see the Government struck two
19 men.

20 MR. LEVENTHAL: How many women did they strike?

21 THE COURT: So let's see. The first one is Juror
22 No. 85 on the first day.

23 (Defense counsel conferring.)

24 MR. MARCHESE: Well, Your Honor, as to number 85, our
25 issue with him was some of his answers is in respect to law

1 enforcement, that you should always respect law enforcement.
2 That was one of our main issues with him. Had nothing to do
3 with his gender; it was more his answers to the voir dire from
4 yesterday.

5 MS. CREEGAN: And, Your Honor, one of the things for
6 the Court to consider when that's offered as a explanation is
7 to compare them to similarly situated jurors from other groups.

8 Juror 205 indicated a great deal of respect for law
9 enforcement, that she would always take the advice of a law
10 enforcement officer. Yet, as a white woman, she was seated on
11 the jury.

12 MR. LEVENTHAL: She also indicated that people arrested
13 at a protest doesn't mean they're guilty; they got to go
14 through the process, the court process which is different than
15 other people that we heard say, well, if they were at a protest
16 and they were arrested, then they must have done something
17 wrong. And I think we've kicked those people off. So,
18 actually, 205 did say that. She said sitting on a jury's a
19 privilege; she's been a leader and a follower and she considers
20 herself to be a peacemaker. So we --

21 MS. CREEGAN: Juror --

22 MR. LEVENTHAL: -- chose her.

23 MS. CREEGAN: -- 95's responses were very similar. Did
24 not indicate that they would not go through a legal process. I
25 don't believe they were even asked that by defense counsel.

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1 MR. MARCHESE: My notes do --

2 MS. CREEGAN: Juror 85 --

3 MR. MARCHESE: -- not indicate --

4 MS. CREEGAN: Excuse --

5 MR. MARCHESE: -- that.

6 MS. CREEGAN: -- me.

7 (Defense counsel conferring.)

8 THE COURT: What did you say, Mr. Marchese? That
9 your --

10 MR. MARCHESE: My notes --

11 THE COURT: -- notes indicate that --

12 MR. MARCHESE: -- my notes indicate something different
13 on those two particular jurors. Maybe I wrote them down wrong.
14 But what I have and what the Government has are two different
15 things apparently.

16 THE COURT: Right. So what do you have?

17 MR. MARCHESE: Well, I gave the -- my initial answer
18 and then, um -- I'm sorry. It was 205. Let me --

19 THE COURT: 85 and.

20 MR. MARCHESE: -- find her.

21 THE COURT: -- 205, yes.

22 MR. MARCHESE: That she believes -- similar to what
23 Mr. Leventhal had said -- that she believes in the court
24 process and that sitting on a jury is a duty and a privilege.
25 I have that she would listen to the facts.

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1 MS. CREEGAN: I have Juror 205 saying that, if you're
2 arrested, you're probably guilty. And Juror 85 saying I was
3 taught to respect law enforcement officers and I would require
4 evidence to prove guilt. I also have Juror 85 saying that it
5 was an honor to be on a jury.

6 MR. TANASI: Your Honor, Juror 85 indicates he --
7 again, law enforcement officers have more training than me and
8 respects their decisions.

9 MR. PEREZ: Your Honor, if I might chime in.

10 I believe Juror 85 was my decision this morning at
11 around 9:00 o'clock to kick. And primarily it was his Facebook
12 posts. He bleeds red, white, and blue. I mean, you know. And
13 that to me wasn't gonna work. All his photos were the American
14 eagle and, you know, everything was red, white, and blue.

15 MS. CREEGAN: Your Honor, the --

16 MR. PEREZ: It had -- I didn't even know it was a male.
17 And yet one of the things that gets me is Mr. Tanasi. We
18 started off today he kept saying "she" or "he." He didn't even
19 know. Because when we were going through these jurors this
20 morning, we were lookin' at the numbers and the notes that we
21 had for every juror. I mean, the notes are extensive. You
22 know, it wasn't a matter of male/female. I mean, there's two
23 African-American jurors I'd love to have but we can't get them
24 up there. They are too far in the back. Nobody said anything
25 about striking them. It's just -- I mean, this is what we had

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1 to deal with.

2 THE COURT: Well, the issue before us is Juror No. 85.
3 And, regarding his Facebook posts, what I had written down is
4 he said that he posts to Facebook before reading the entire
5 article. I'm not sure I understand your explanation that his
6 Facebook page being red, white, and blue --

7 MR. PEREZ: It's --

8 THE COURT: -- was a reason for striking that is race
9 neutral -- or that is neutral to his gender.

10 MR. PEREZ: It had nothing to do with his gender. I
11 mean, everything was -- you know, I looked at it. It was like
12 American eagle this and American eagle that and then combine
13 that with the law enforcement. It was like -- wasn't because
14 he was a man.

15 MS. CREEGAN: Your Honor, the law requires that the
16 reason be convincing. Of course, counsel can articulate a
17 reason and there always will be something to say especially
18 when we've spoken to jurors so much. But the Court has to do
19 an independent evaluation of whether that reasoning is
20 sufficiently convincing to have actually eliminated a juror on
21 that basis. And, since one of the things that the defendants
22 intend to do in their case is appeal to patriotism, I don't see
23 how it makes sense to eliminate the juror because their
24 Facebook is red, white, and blue.

25 THE COURT: That's why I'm confused too --

1 MR. PEREZ: Be --

2 THE COURT: -- why the red, white, and blue --

3 MR. PEREZ: Your Honor --

4 THE COURT: Would be --

5 MR. PEREZ: -- this case --

6 THE COURT: -- negative --

7 COURT REPORTER: I'm sorry.

8 THE COURT: One at a time, please.

9 So why would the -- and I'm sorry if I'm being dense.
10 But I just don't understand why the red, white, and blue would
11 be --

12 MR. PEREZ: Your --

13 THE COURT: -- negative --

14 MR. PEREZ: -- Honor --

15 THE COURT: -- for the --

16 MR. PEREZ: -- this --

17 THE COURT: -- defense.

18 MR. PEREZ: -- case against Mr. Lovelien is all
19 Facebook. Completely, a hundred percent Facebook. That's why
20 my questions to the jury were about media, were about Facebook.
21 There are no photos of Mr. Lovelien doing much of anything. If
22 anything, it's Facebook posts.

23 So the way a person uses their Facebook and what they
24 post and how they, you know, present their beliefs is important
25 to me as far as for Mr. Lovelien. Now, I'm sure that, you

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1 know, other defense counsel here has other reasons; but that
2 was my primary reason. And that was the juror that I wanted to
3 kick this morning.

4 THE COURT: All right. So the way that he uses his
5 Facebook is important to you. But why is the way that he's
6 using his Facebook a reason to strike him? That's what I'm
7 not --

8 MR. PEREZ: I didn't --

9 THE COURT: -- understanding --

10 MR. PEREZ: -- think --

11 THE COURT: -- because he specifically says he posts
12 stuff to Facebook --

13 MR. PEREZ: Right.

14 THE COURT: -- he hasn't even read. It seemed like it
15 was actually consistent with the defense theory, not --

16 MR. PEREZ: I didn't think he could be fair to --

17 THE COURT: -- contrary.

18 MR. PEREZ: -- Mr. Lovelien.

19 THE COURT: Okay. Why do you think he cannot be fair
20 to Mr. Lovelien?

21 MR. PEREZ: I mean, call it gut feeling. I mean, I've
22 been through this. We just did this trial once before. I
23 spoke to the jurors after the -- after trial was over. I kinda
24 have an idea of what they were thinking and how they were
25 thinking.

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1 MS. CREEGAN: Your Honor, res- --

2 MR. PEREZ: I just don't --

3 THE COURT: But the gut feeling is not articulable. So
4 you need to articulate why it is the red, white, and blue theme
5 on his Facebook page or the eagles -- why would that be a
6 reason to strike him?

7 MR. PEREZ: Well, I don't think it's a matter of why I
8 strike him. It's did I strike --

9 THE COURT: Well --

10 MR. PEREZ: -- him --

11 THE COURT: -- it is.

12 MR. PEREZ: -- because --

13 THE COURT: That's --

14 MR. PEREZ: He was a male.

15 THE COURT: -- that's the problem. The test is that if
16 there is a enough of a *prima facie* case, which the Government
17 has made, to show that there is a pattern of a particular race,
18 or in this case a gender, being excluded then the burden shifts
19 to the party excluding them to state a neutral reason for the
20 striking as opposed to one that is motivated by gender or race.
21 So that's why you need to give me something and then the
22 Government has to make an argument as to why that would be a
23 pretextual excuse which they can use by comparing it to other
24 folks that said the same or similar things. But I don't think
25 that I have a articulated reason yet that is neutral.

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1 MR. TANASI: Your Honor, if I may just be heard. And
2 then --

3 THE COURT: Yes.

4 MR. TANASI: -- I know you've made the determination
5 that there's the *prima facie* showing in this case. But we did
6 exclude, I think it was, six females. So it's not as though,
7 you know, we didn't exclude any females in this case. So kind
8 of going back to it, I would, I guess, respectfully contest the
9 fact that the *prima facie* showing even exists. But I
10 understand that Your Honor's made that decision.

11 So, again, coming back to 85, the law enforcement
12 impartiality/the law enforcement siding with that was, you
13 know, my biggest concern with number 85.

14 MS. CREEGAN: And, Your Honor, I'd just like to put two
15 things on the record. One is the defendants eliminated
16 80 percent of all nonwhite males. They eliminated 25 percent
17 of all white females. To say that we struck some is not
18 sufficient to show that there is not a pattern.

19 And in response to Mr. Perez's argument that --

20 THE COURT: What Mr. Tanasi was saying was that they
21 struck six females. But you're saying that of those six
22 females . . .

23 MS. CREEGAN: Of those six females, four are white
24 females; two are nonwhite females. By far the lowest
25 proportion of people that were struck is 25 percent white

1 females; the highest, 80 percent nonwhite males.

2 And, in response to Mr. Perez's argument that he talked
3 to the previous jury, one thing that I noticed that is
4 extremely striking is that the demographics of this new jury,
5 if they are seated as is, are exactly the same as the previous
6 jury as originally seated. Seven white women, one Asian woman,
7 one African-American women, two white males, and one Asian
8 male -- that is demographically the identical makeup of our
9 previous jury.

10 MR. MARCHESE: She's giving us way too much credit.

11 MR. TANASI: Right.

12 Not only that, Your Honor, there's an African-American
13 female on the jury. If that was the motive and the plan, she
14 would have been stricken too.

15 MS. CREEGAN: Sparing one is not sufficient to not
16 demonstrate a pattern. And, although it may be the case that
17 they did not set out with that goal, to say things like "gut
18 feeling" and "talking to the last jury," that's not sufficient
19 to show that it is not racially or gender motivated.

20 MR. TANASI: I'm sorry, Your Honor. My job and my goal
21 here is to prevail in this case. I'm not going to spare
22 somebody and undercut that job at the same time just to survive
23 a *Batson* challenge. There's a white -- there's a
24 African-American female on the jury.

25 MR. LEVENTHAL: And, Your Honor, you --

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1 THE COURT: It's --

2 MR. LEVENTHAL: Sorry.

3 THE COURT: Okay. So let's --

4 MR. LEVENTHAL: There --

5 THE COURT: -- move on from 85 then. The next
6 gentleman after 85 is number 95.

7 MR. TANASI: Your Honor, I can speak to number 95.

8 My issue is that his response to one of my questions
9 was if someone attends a protest and gets arrested or harm
10 comes to them it's their own fault; it's on them. It's no
11 mystery that our defense theory in the case is that our clients
12 were attending a protest. If he's of the mind-set that just by
13 being there and he ultimately -- or my client subsequently gets
14 arrested -- he shouldn'ta kinda been there in the first place
15 or it's just kind of on him for being there -- he's clearly
16 somebody that doesn't seem to -- that wouldn't be consistent,
17 essentially, with the defense theory in the case which wouldn't
18 be fair.

19 THE COURT: All right. Well, he -- number 95 is
20 Hispanic and he also said that he attended a protest when his
21 girlfriend protested at work for three days and he brought her
22 stuff. I don't remember if it was food or drink. Sodas or
23 something I think he said. But he . . .

24 Any other reason?

25 MR. TANASI: Court's indulgence.

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1 THE COURT: Yes.

2 (Pause in the proceedings.)

3 MR. TANASI: Again, Your Honor, the protest responses
4 was the fundamental reason.

5 (Pause in the proceedings.)

6 MS. CREEGAN: I think Jurors 207 and 205 gave similar
7 responses. Juror 207 was eliminated by the Government in a
8 final elimination. Juror 205 is seated on the jury. They are
9 both white women.

10 MR. TANASI: Actually, Your Honor, 205, the response I
11 have noted is people who are arrested in a protest doesn't mean
12 they are guilty of a crime; they need to see the court process.

13 (Pause in the proceedings.)

14 MS. CREEGAN: I have for Juror 205 saying they are
15 probably guilty if they are arrested.

16 MR. LEVENTHAL: Is what?

17 MS. CREEGAN: And Juror 207 saying we're all
18 responsible for our own --

19 MR. TANASI: I have --

20 MS. CREEGAN: -- actions.

21 MR. TANASI: -- the exact opposite.

22 THE COURT: Number 205 said that arrested people are
23 not guilty until --

24 MR. MARCHESE: Yeah, that's our --

25 THE COURT: -- until they --

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1 MR. MARCHESE: -- indication --

2 THE COURT: -- go to court.

3 MR. MARCHESE: -- as well.

4 MS. CREEGAN: We have her saying she's prob- -- they
5 say it has to go through the court process. But they probably
6 are guilty; they wouldn't have been arrested if they had not
7 done something wrong.

8 MR. TANASI: And, again, I have the exact opposite,
9 Your Honor.

10 THE COURT: Well, it's not the exact opposite. They --
11 she said both things, that they are probably guilty but just
12 because they are arrested doesn't mean that they are guilty.
13 She was distinguishing between --

14 MR. TANASI: Fair enough.

15 THE COURT: -- that they --

16 MR. TANASI: And I guess --

17 THE COURT: -- probably --

18 MR. TANASI: -- maybe in --

19 THE COURT: -- guilty but --

20 MR. TANASI: -- my mind --

21 THE COURT: -- that they --

22 MR. TANASI: -- it's the --

23 THE COURT: -- wouldn't --

24 MR. TANASI: -- exact opposite.

25 THE COURT: -- actually be guilty until they went to

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1 court -- until they were found guilty by court. To me it just
2 indicates --

3 MR. TANASI: I guess --

4 THE COURT: -- she understood the -- and had knowledge
5 of the procedural process and the system.

6 MR. TANASI: The process was, I guess, the impartiality
7 and respecting that process anyways.

8 MS. CREEGAN: I asked all the jurors if they could
9 follow the proper process and respect the reasonable doubt
10 standard and they all said yes. And I don't show a follow-up
11 question to Juror 95 by the defense to try to determine whether
12 95 was somehow unfair or not partial -- not impartial.

13 MR. TANASI: I guess I would submit that actually
14 verbalizing it and not raising your hand are two different
15 things.

16 (Pause in the proceedings.)

17 THE COURT: All right. The next male is number 284.

18 (Pause in the proceedings.)

19 MR. MARCHESE: Being that this case is so much about
20 emotion, we found him to be very analytical. Either his
21 questionnaire or his responses indicated that he's a scientist.
22 So that was my issue with him. And it also -- I don't want to
23 skip ahead -- but the next individual as well works in the I.T.
24 department. And I didn't have a lot on either of them. So
25 rather than put someone on a jury that I don't know very much

1 about -- just for whatever reason, didn't answer "yes" or raise
2 their hand -- I felt it was my duty to Mr. Parker to maybe get
3 somebody that I knew a little bit more about and get them onto
4 the jury.

5 MS. CREEGAN: Your Honor, there is some case law that
6 discusses that, for example, removing female jurors because
7 they might get attracted to a male defendant is a pretext for
8 removing a female juror. Mr. Marchese's saying we want people
9 who are more emotional. I think that's just a stereotype about
10 women. There are women on your jury who are accounting and
11 financial professionals; they were not eliminated for being
12 analytical.

13 (Pause in the proceedings.)

14 THE COURT: All right. I think the next one is 296.

15 MR. TANASI: Your Honor, that one -- with respect to
16 296, I can tell you I just have very little notes on him; so
17 kind of also an indication as to what Mr. Marchese was
18 discussing, you know, not knowing enough so not taking a risk
19 (A). And (B) what we do show is he, you know, seems to at
20 least get some of his news from two channels; looks like 13 and
21 5. And, again, you know, only having kind of that limited
22 information and not really knowing enough and just -- maybe
23 just looking at news and trying to try to speculate and guess,
24 in our opinion, it was best to not take that guess.

25 MS. CREEGAN: Which, I believe, Juror 376 is a

1 comparable white female juror who watches television; watches
2 local channels. I think the only question she answered is that
3 she watches *Criminal Minds* and *SVU* yet she is seated on the
4 jury.

5 MR. TANASI: Your Honor, we have some more information
6 with respect to her. She indicates that -- you know, true she
7 watches different channels, but she doesn't watch a lot of news
8 because it's generally depressing. She gets her news from
9 Facebook, likes investigations, someone that potentially has an
10 open mind.

11 MS. CREEGAN: I would submit that no -- there is no
12 distinguishable difference between them in terms of
13 open-mindedness. In fact, I think that Juror 296 even
14 described himself as being open-minded.

15 THE COURT: I didn't hear that last part. That
16 296 . . .

17 MS. CREEGAN: Even stated that he was open-minded.
18 These are both two younger people who we spoke to very, very
19 little; both single; both live with parents; both watch local
20 news. 296 is off the jury; 376 is on.

21 MR. TANASI: Again, Your Honor, we have more
22 information with respect to 376 than we did --

23 THE COURT: Okay.

24 MR. TANASI: -- with respect to 296, at least what I
25 have noted.

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1 THE COURT: Go ahead.

2 (Pause in the proceedings.)

3 MR. TANASI: I also have noted 376 went to CSN and
4 works at K-Mart and she plays crime scene games online, again,
5 lending itself to the investigations and having an open mind.

6 MS. CREEGAN: Those are facts, but I don't know how
7 they demonstrate a distinguishable difference between them or
8 how 376 has more of an open minds. In talking to these jurors,
9 we're gonna have some facts. But the meaningful difference
10 between them is not apparent.

11 THE COURT: 376 was the one who said that her
12 stepfather knew about the case and had indicated an opinion.
13 We don't know what that opinion is; it wasn't inquired into
14 which is also a risky choice.

15 (Pause in the proceedings.)

16 THE COURT: All right. I think the next one is
17 number -- is it 314?

18 MR. LEVENTHAL: Oh, 314?

19 THE COURT: Yes.

20 MR. LEVENTHAL: That was clear. It was -- he indicated
21 that he owns a restaurant and he knows Sergeant Jenkins who
22 was -- as the Court knows, was a witness here. He indicated
23 that Jenkins comes into his restaurant at least, I believe he
24 said, once a month. And, to be quite honest -- and I -- you
25 know, whatever they are saying about gut feeling -- and I'm

1 trying to articulate this -- that is one of the facts. But my
2 gut feeling that he went on to say -- that he watches FOX and
3 he believes in protests -- I just didn't believe it; I just
4 didn't buy it. I thought he was trying too hard to get onto
5 the jury and I honestly just -- he was one of my first ones
6 that I just felt like that he was trying to snow me when I was
7 asking questions of him. I think that the Jenkins thing's -- I
8 think he wasn't completely honest and forthcoming with his
9 relationship with Jenkins. And he called him TJ and he watches
10 his show and yet he still tried to appease us by saying -- and
11 this was my feeling -- that he likes -- he likes to -- he
12 thinks that it's okay for people to go protest. He's
13 frustrated with the country. I just didn't -- I just didn't
14 believe him. That's why.

15 MS. CREEGAN: Your Honor, I don't believe that Juror
16 314, there's any evidence for dishonesty. But I'll stipulate
17 that close familiarity with a Metro officer is a sufficiently
18 gender-neutral reason.

19 THE COURT: All right. The next one is 457.

20 (Pause in the proceedings.)

21 MR. LEVENTHAL: 457 indicated that he would never
22 consider protesting anything; he was not raised that way. As a
23 matter of fact, he indicated when asked about would he attend a
24 protest against the government that that was unheard of; it was
25 a sin almost. He had very, very, very strong feelings about

1 going to a protest or protesting or standing up to any kind of
2 authority in that way and he indicated that that's the way he
3 was raised.

4 There was other things I had to look at when we
5 analyzed him on whether -- you know, he was in the military;
6 he's a casino security officer; but he was very vocal and very
7 dug in about the fact that he would not attend a rally or a
8 protest or anything of that nature.

9 (Pause in the proceedings.)

10 MS. CREEGAN: I believe that some portion of 451's
11 answer was based on the fact that as a military member he was
12 not able to protest; that was not something that he could do in
13 that capacity.

14 MR. LEVENTHAL: 451 or 457?

15 MS. CREEGAN: Sorry. 457. Thank you.

16 MR. TANASI: Your Honor, I don't think it's a
17 disability. I remember I had quite a bit of questioning with
18 him. I kinda kept coming back to him, I think even not on
19 purpose. And I do remember -- I don't believe it was a
20 disability. I think it was he said he was in the military and
21 that's just how he was raised, not to protest. I didn't hear
22 anything that said he couldn't.

23 THE COURT: I agree that number 314 and 457 are
24 individuals who gave sufficient information to provide a reason
25 for the defense to want to strike them. So I don't really

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1 question those two --

2 498.

3 MR. MARCHESE: This goes to -- once again, very highly
4 educated man; he had a very technical background. I don't even
5 necessarily understand quite what he did. He's an --
6 apparently he's an expert witness on utilities. Once again, I
7 just found that he'd probably be a very technical; very matter-
8 of-fact-type individual. Just as 325 has a background in
9 accounting, 296 in I.T., and 284 who is a scientist.

10 MS. CREEGAN: And Juror 138 has a CPA and was seated
11 and she's a white female. I'm not sure . . .

12 MR. TANASI: Your Honor, he's -- I think he works at
13 the Nevada Attorney General's Office or was an expert for them.
14 He also was -- you know, I think he did mention something to
15 the effect of this country was founded on protests; and so I
16 think he was trying to maybe clean it up a little bit. But he
17 also said he would, you know, intervene if his -- with his
18 neighbors if he knew them. But, if he didn't know them, he
19 would only call 3-1-1. And, again, you know, our defense
20 theory is no mystery at this point. You know, our guys don't
21 know the people that they came in protest for; it was the
22 cause.

23 MS. CREEGAN: Juror 495 works or the Public Utilities
24 Commission; Juror 138 works for the Department of Treasury of
25 the United States Government. They are more than similarly

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1 situated, yet the white female is on the jury and 498 is kicked
2 off. And to say when he gives neutral answers -- such as
3 respect for protests or respect for the law -- he must not be
4 telling the truth, I would submit is not a convincing reason.

5 MR. TANASI: And, again, Your Honor, I'm not --

6 THE COURT: I was --

7 MR. TANASI: -- I'm not --

8 THE COURT: -- surprised that you struck number 498
9 'cuz I thought that he would actually be someone that you would
10 like. Maybe you don't.

11 MR. TANASI: And, again --

12 MR. LEVENTHAL: I don't --

13 MR. TANASI: -- not --

14 MR. LEVENTHAL: -- didn't.

15 MR. TANASI: -- not to be here and call him a liar.
16 It's the feeling, the sense.

17 MR. LEVENTHAL: It's that gut feeling that I felt he
18 was trying too hard. But he would say things and then back up
19 and try to get . . . And that's how I felt about him.

20 But when you look at -- if we're gonna compare 138, 138
21 indicates officers are not always correct in an arrest. Okay.
22 That's pretty important to us. He didn't say that. He said
23 that the country was founded on -- you know, on protests. But
24 I'm not sure I believe that. He -- you know, he was asked
25 about CNN. And I just didn't -- I didn't get that feeling.

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1 The same way that, you know, Ms. Creegan didn't get the feeling
2 on number 571, which was the first juror she dismissed on the
3 alternate, because obviously he was googling [sic] at her and
4 he had -- she had just indicated that we're just getting rid of
5 women when she got rid of a guy because of a gut feeling. So,
6 I mean, none of this stuff was done based on gender. But we
7 can keep going through it. I'm . . .

8 MS. CREEGAN: For Mr. Leventhal to, I guess, misdirect
9 to the Government when there's currently no *Batson* challenge on
10 the Government, I'm not sure what the purpose of that is. But
11 Juror 571 indicated that he believed that I prosecuted him
12 although he tried to say that he'd be neutral. He also watches
13 *InfoWars*; looks at Alex Jones; says that he believes in
14 maximizing freedom; and, I believe, he also said his family had
15 very strong feelings about this but did not share what they
16 were. So there are more than substantial grounds to eliminate
17 571.

18 THE COURT: His brother was a District Court judge from
19 1994 to 1998.

20 MR. MARCHESE: That was a little -- what got me with
21 that was he went out of his way to say it in his questionnaire.
22 I didn't see why that was overly relevant. I've never
23 practiced in front of him. I've seen him in the courthouse. I
24 don't personally know him. There's no bias there. I just -- I
25 thought it was odd in his questionnaire that he would bring

1 that up because it's completely irrelevant.

2 MS. CREEGAN: I don't think that somebody erring on the
3 side of overdisclosure would be --

4 THE COURT: Well, he said he brought that up because he
5 believed that his brother would know the attorneys in the case
6 and . . .

7 MR. TANASI: And I guess, Your Honor, also kinda going
8 back to the news channel analysis --

9 THE COURT: If I remember correctly, his brother was
10 the first Hispanic District Court judge in the state and he
11 also left the bench to run for the Senate on behalf of the
12 Republican party if you'll remember. It's been a long time,
13 but . . .

14 My understanding of his explanation was that he had
15 worked at the Public Utility Commission and then, when he left,
16 he became a expert because of his prior experience and had
17 testified and been called to testify by the Attorney General,
18 not that he worked for the Attorney General. But that was my
19 recollection. I don't . . .

20 MS. CREEGAN: Correct. That is consistent with the
21 notes that the Government has.

22 MR. TANASI: He had said that he knows Tom Collins, had
23 dealt with Tom Collins. And I thought that it was in that
24 capacity with the Attorney General with his employment or
25 contract employment or whatever the case may be. And then also

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1 just --

2 THE COURT: No. He worked at the Public Utility
3 Commission that Tom Collins was the County Commissioner who was
4 assigned to that particular agency so the questions that he had
5 were directed . . .

6 MR. LEVENTHAL: Your Honor, I'm looking at his Facebook
7 page and it says "Intro: Works at Nevada Attorney General's
8 Office" right here. He lives in Las Vegas; from Fair Oaks,
9 California.

10 MS. CREEGAN: But, be that as it may, he works for the
11 State of Nevada which is not prosecuting [sic] him; Juror 138
12 works for the United States Government which is prosecuting
13 [sic] him. It doesn't make sense to say that that is a
14 discrim- -- a factor that meaningfully affects who was chosen
15 for the jury and who was not.

16 MR. TANASI: And I don't --

17 THE COURT: Yeah. On the one hand, the person's got
18 red, white, and blue and eagles and has too much, you know,
19 federal, I guess, American, um, uh --

20 MR. LEVENTHAL: Well, that I don't --

21 THE COURT: -- things on --

22 MR. LEVENTHAL: -- know about.

23 THE COURT: -- their Facebook; on the other hand,
24 somebody who has too much state relationship on the Facebook.
25 So I'm . . .

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1 MR. TANASI: It's the prosecution I think that -- and I
2 can only speak to the latter -- again, he's working for the
3 Attorney General's Office; he's working for a prosecuting
4 entity.

5 MS. CREEGAN: The Attorney General's Office does more
6 than prosecute.

7 THE COURT: Yeah. It's for the Consumer Affairs
8 Division. It's a reg- --

9 MR. TANASI: I just --

10 THE COURT: -- -ulatory agency.

11 MR. TANASI: -- I know that if -- I had a few cases in
12 state court against the Attorney General's Office. I . . .

13 And I do understand the difference between the AG's
14 Office and the DA's Office. And I don't know. It's, again,
15 just -- seemed risky for us based on that, Your Honor.

16 MS. CREEGAN: Your Honor, the Government submits that I
17 think there's only one or two of these eight that they've shown
18 a gender-neutral reason for. We would ask that they be
19 reinstated and the peremptories lost.

20 (Pause in the proceedings.)

21 THE COURT: So 284, are you saying because he has a
22 science background and said that he's analytical you find that
23 opposite to emotional?

24 MR. MARCHESE: I mean --

25 THE COURT: And you feel --

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1 MR. MARCHESE: -- I . . .

2 THE COURT: -- this is a more emotional case.

3 MR. MARCHESE: As Your Honor can see and there was --
4 you know, I think I had four people down with a technical
5 background -- that was just one of my issues. Because this
6 case is so much about emotion, I just think that people
7 generally who go into the science background -- like there was
8 one -- I don't have her number and I don't want to say her
9 name -- but one of the ladies who's on there -- I believe she
10 works for the School District -- I think those are people who
11 tend to be, generally speaking -- obviously not everyone's the
12 same -- but I think people who choose that particular
13 profession tend to be a little bit more emotional and think
14 touchy-feely, kind of emotional people as opposed to, you know,
15 just black or white which is -- tend to be people who go into
16 the math or sciences.

17 MS. CREEGAN: And, again, we would submit that that's a
18 pretext using the word "emotional" as a stereotypical word for
19 women.

20 MR. MARCHESE: But it's -- maybe it's pretext, but it's
21 not -- it's race neutral or --

22 MS. CREEGAN: A pretext --

23 MR. MARCHESE: -- gender --

24 MS. CREEGAN: -- has.

25 MR. MARCHESE: -- neutral --

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1 Excuse me. I'm speaking.

2 MS. CREEGAN: I apologize, Jess.

3 THE COURT: Just a minute.

4 You stated the reason why. And so now the Government
5 has an opportunity to argue why it's pretextual.

6 MS. CREEGAN: Your Honor, as I was discussing earlier,
7 there's case law that says when you have a pretext which
8 clearly will link something to being a women -- for example,
9 saying, well, because she's a women, she could be attracted to
10 a male defendant and, therefore, I will remove her -- that
11 that's really just a proxy for eliminating women.

12 And, in this case, there are many female finance
13 professionals that made the cut but not male scientists. To
14 say it's a problem with choosing emotional or analytical people
15 is a pretext because the analytical women were not eliminated.
16 And even just to say we want emotional people seems like a
17 stereotypical response to say we just want to pack the jury
18 with women.

19 THE COURT: And so who are the analytical women that
20 were not eliminated?

21 MS. CREEGAN: So we have -- 138 is a CPA.

22 (Pause in the proceedings.)

23 MS. CREEGAN: Sorry.

24 MR. TANASI: Your Honor, can we address those in kind?
25 Or did you want to hear the numbers as they come out?

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1 THE COURT: I want to hear the numbers first and then
2 I'll have you address them.

3 MR. TANASI: All right.

4 (Pause in the proceedings.)

5 THE COURT: And I realize 138 said her sister protested
6 at the Women's March and that she also said that -- 138 said
7 that she believes that it's not enough to be arrested.

8 MS. CREEGAN: And 142 is a finance professional. She
9 is --

10 COURT REPORTER: I'm sorry. "She is" . . .

11 MS. CREEGAN: An Asian female.

12 (Pause in the proceedings.)

13 MS. CREEGAN: 593 which -- 5 -- excuse me -- 539, which
14 the Government eliminated, was also a finance professional.

15 (Pause in the proceedings.)

16 MS. CREEGAN: And, in terms of looking for people who
17 are emotional, I think the defendants eliminated a black
18 female, 445, who has a masters in mental health counseling and
19 works with an indigent population.

20 (Pause in the proceedings.)

21 THE COURT: 435?

22 MS. CREEGAN: 445.

23 THE COURT: Oh, 445.

24 (Pause in the proceedings.)

25 MS. CREEGAN: Then I also show that 339 is an engineer,

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1 that is one of the ones that Mr. Leventhal is referring to,
2 males the Government struck that they would have wanted. He is
3 a white male.

4 THE COURT: Which one is that?

5 MS. CREEGAN: 339.

6 (Pause in the proceedings.)

7 MS. CREEGAN: And 397 was also cut in the last round;
8 he had a master's degree.

9 MR. MARCHESE: I'm sorry?

10 THE COURT: What number is that?

11 MS. CREEGAN: 397.

12 (Pause in the proceedings.)

13 THE COURT: Okay. And let's go back to 95. So your
14 recollection on 95 is that he had said if a person is arrested
15 at a protest . . .

16 MR. TANASI: If someone attends a protest and gets
17 arrested and harm comes to them -- or harm comes to them, it's
18 their own fault; it's on them.

19 THE COURT: That they've assumed the risk of attending
20 a protest that they might get arrested.

21 MR. TANASI: Correct. And . . .

22 (Defense counsel conferring.)

23 MS. CREEGAN: Juror 95, unlike many others, actually
24 had a intimate relationship with someone who actually attended
25 a protest, his girlfriend who attended a work protest. And the

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1 recollection of his answer was in the context if you do
2 something illegal, you get arrested, that's your fault. Not
3 that you could simply be arrested for protesting.

4 MR. TANASI: Which number was that? Are we still on
5 95?

6 THE COURT: Yeah, 95.

7 MR. TANASI: Thank you, Your Honor.

8 MS. CREEGAN: Juror 95 also said there are sometimes
9 things on my Facebook that I don't agree with.

10 (Pause in the proceedings.)

11 MS. CREEGAN: That it would be an honor to be on the
12 jury, that he would listen to all aspects that would be helpful
13 in brainstorming.

14 (Pause in the proceedings.)

15 THE COURT: So what is the Government's argument as to
16 number 85, why the reason given by the defense is pretextual?

17 MS. CREEGAN: Your Honor, the argument that was given
18 that his Facebook is red, white, and blue. My understanding
19 of -- this is 85 Your Honor is inquiring about --

20 THE COURT: Yes, 85.

21 MS. CREEGAN: -- or 95?

22 -- is that that is a pretextual response that given the
23 jurors' [sic] intended defense of saying that they are patriots
24 it doesn't seem to make sense to say that someone who expresses
25 patriotic feelings would be eliminated although he indicated he

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1 respects law enforcement. So did 205; so did 207. Many of the
2 jurors respected law enforcement and they were not eliminated
3 by the defendants.

4 MR. LEVENTHAL: 207?

5 MS. CREEGAN: 207 was eliminated by the Government in
6 our --

7 MR. LEVENTHAL: Right.

8 MS. CREEGAN: -- final round -- in our final rounds.

9 MR. LEVENTHAL: I eliminated someone that they say
10 respects law enforcement. I think 85 went further. 85 went --
11 he respects -- you know, they have more training and I respect
12 their decisions. It goes just beyond I respect law
13 enforcement. If their decisions are to arrest because of their
14 training, then it must be valid.

15 MS. CREEGAN: Juror 205 said I do assume you're guilty
16 if you're arrested.

17 MR. LEVENTHAL: Juror 205? Juror 205 says people who
18 get arrested in a protest doesn't mean they are guilty. That's
19 the complete opposite.

20 MS. CREEGAN: Well, we were just discussing this
21 earlier, Your Honor, that she said you have to go through the
22 court process, but I --

23 THE COURT: Yeah --

24 MS. CREEGAN: -- assume --

25 THE COURT: -- arrested people are not guilty until

1 they go to court.

2 MR. LEVENTHAL: Right.

3 Whereas what 85 indicated was they have more training.
4 So, if they say it's so, I'm gonna respect their -- what they
5 did.

6 THE COURT: 85 said that he was taught to trust and
7 respect law enforcement.

8 MR. LEVENTHAL: Clearly, when we're gonna have, you
9 know, 15 law enforcement officers up here going -- you know,
10 giving numbers on their level of fear, that's gonna go to him
11 much differently than to somebody who says I've got to go to
12 court to see what happens; I've got to give him a fair shot.
13 That's all we're asking for.

14 MS. CREEGAN: I respectfully say that there is no
15 difference between 205 and 85 in the tenor of their answers in
16 support for law enforcement, only in their gender.

17 MR. LEVENTHAL: I see that their answers are completely
18 opposite, on the opposite spectrum actually. One says I'd give
19 'em a chance and the other one said whatever their decision is
20 they have more training and I'll go with it.

21 (Government counsel conferring.)

22 MS. CREEGAN: Juror 85 said the evidence must prove
23 their guilt. Juror 205 said they have to go through the
24 process. Both said they would defer in the initial arrest to
25 law enforcement.

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1 (Pause in the proceedings.)

2 THE COURT: All right. So 139 is a female that was not
3 struck by the defendants. She said that she would not protest
4 and her husband works as a federal security guard for the
5 Federal Protective Service at a federal courthouse.

6 (Pause in the proceedings.)

7 MS. CREEGAN: By contrast, Juror 95 does have a close
8 relation who did protest.

9 THE COURT: Say that again?

10 MS. CREEGAN: By contrast, Juror 95 has a close
11 relative, his girlfriend, who did protest and he -- I believe
12 he even stated that he went with her.

13 (Defense counsel conferring.)

14 MR. TANASI: Your Honor, 139 was a firearm owner based
15 on the questionnaires. The note I have on it anyways.

16 MS. CREEGAN: I believe Juror 95 is also a firearm
17 owner.

18 (Pause in the proceedings.)

19 MS. CREEGAN: On his --

20 MR. TANASI: Again --

21 MS. CREEGAN: -- questionnaire --

22 MR. TANASI: -- Juror No. 95 goes further with
23 attacking, at least in our opinion, the actual attendance at a
24 protest. If you go there and something happens or you get
25 arrested, that's on you; that's your own fault. I don't have

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1 Juror 139 going that far. And it's -- I would -- what I have
2 is, you know, that she wouldn't travel to a protest.

3 MS. CREEGAN: And Juror 95 --

4 MR. TANASI: Not --

5 MS. CREEGAN: -- did --

6 MR. TANASI: -- necessarily that she would never or not
7 attend it. So when you couple that with the firearm
8 ownership . . .

9 MS. CREEGAN: And then Juror 95 also indicated he owns
10 a firearm for home defense in his questionnaire.

11 MR. TANASI: Juror 95.

12 (Defense counsel conferring. Pause in the proceedings.)

13 MS. CREEGAN: In fact, I think he also said that he has
14 a CCW.

15 MR. LEVENTHAL: Well . . .

16 (Defense counsel conferring.)

17 THE COURT: You say "he" referring to number 95?

18 MS. CREEGAN: That's correct, Your Honor.

19 In response to a question by Mr. Leventhal, I have
20 Juror 95 identifying himself by raising his hand as having a
21 CCW.

22 (Pause in the proceedings.)

23 THE COURT: I want to make sure that I'm clear here on
24 the defense reason for striking number 95.

25 MR. TANASI: Your Honor, the fundamental reason on

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1 number 95 is his answer -- or his statement, rather, if
2 someone -- or his question to the question, if someone attends
3 a protest and gets arrested or harm comes to them, it's on
4 them; it's their own fault.

5 (Government counsel conferring.)

6 MR. TANASI: My concern is that he's going to sit here
7 and hear about a protest from the defense theory and any harm
8 that comes to him by just being in this courtroom and being on
9 trial is on him because he shouldn't have gone there; he
10 shouldn't have been there in the first place; it's not
11 something he should have done. If any harm comes to him, don't
12 put yourself in that situation. That kind of person. And I
13 think that was different than just saying I'm not somebody who
14 would protest. That was the reason I asked -- maybe not the
15 most artful question -- but why I asked it that way.

16 (Pause in the proceedings.)

17 THE COURT: All right. And 126 is a female who said
18 that if a person is arrested she believed that the law
19 enforcement must have had a reason for arresting them, that
20 their behavior -- the person must have exhibited behavior to
21 give law enforcement a reason. And that person was struck by
22 the defense consistently with the reason given for number 95.

23 MS. CREEGAN: Jurors 205 and 207, which are white
24 women, were left by the defense -- Juror 207 being struck by
25 the Government in its final strike -- that gave very, very

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1 similar responses to 95.

2 MR. LEVENTHAL: How is --

3 MR. TANASI: Your Honor, again --

4 MR. LEVENTHAL: -- how is the --

5 MR. TANASI: -- can --

6 MR. LEVENTHAL: I'm sorry.

7 MR. TANASI: -- can I -- I'm sorry -- can I speak to
8 that one on 205?

9 205 is completely different, people who are arrested in
10 a protest doesn't mean they are guilty of a crime; still need
11 the court process. That's completely different than the point
12 I was trying to just make which is if you go to a protest and
13 get arrested that's on you. In my mind, those are two
14 completely different things.

15 MR. LEVENTHAL: And I don't know how the Government
16 keeps using 207 as something that we did. They struck 207. I
17 don't know why she keeps bringing up 207 as something we did by
18 leaving 207 in. They struck 207; we didn't.

19 MS. CREEGAN: That's correct. The Government struck
20 207, not the defense. Juror 95 was in their first few strikes.

21 MR. LEVENTHAL: But they are using -- she's using that
22 to indicate that we wouldn't have? I mean, I -- they did it.
23 I don't know. But she's indicating that they had some similar
24 responses. We might have; we might not have. They did it. So
25 the -- that question never came to us.

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1 (Defense counsel conferring. Pause in the proceedings.)

2 THE COURT: All right. Well, the Court finds that
3 Jurors No. 498, 457, and 314, as to those three jurors, the
4 defendant has provided a clear and reasonably specific neutral
5 explanation for their strike. Um . . .

6 (Pause in the proceedings.)

7 THE COURT: Let's look at the . . .

8 (Pause in the proceedings.)

9 THE COURT: All right. So what are the Government's
10 reasons -- I'm sorry -- the defendants' reasons for striking --
11 well, all right. So Juror No. 95 I suppose is on both lists;
12 he's on the racial list as well. I've already heard those
13 reasons.

14 MS. CREEGAN: Your Honor, I'm sorry. We're having a
15 little trouble hearing you.

16 THE COURT: Oh.

17 So Juror No. 95 is -- oh, did I go off? That's why.
18 There you go -- Juror 95 would also be on the list for the
19 race-neutral question. As far as that's concerned, I think
20 we've heard all the information there.

21 MR. TANASI: Your Honor, yeah, again, it's the person
22 goin' to a protest; it being on them, it being their own fault.
23 That's the bottom line.

24 THE COURT: Well, he didn't say if a person goes to a
25 protest they are automatically guilty. He said they assume the

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1 risk if they go to a protest. If they get arrested, that's --

2 MR. TANASI: Right.

3 THE COURT: -- you got to expect that if you go there.

4 That's --

5 MR. TANASI: Right.

6 THE COURT: -- can't whine about it.

7 All right. Let's see. Oh.

8 (Pause in the proceedings.)

9 THE COURT: Okay. So the next . . . Let's see who
10 that person is.

11 (Pause in the proceedings.)

12 THE COURT: Well, number 126. Is she included in your
13 race challenge?

14 MS. CREEGAN: 126 is not.

15 THE COURT: Okay.

16 284, he's not. Is he?

17 MS. CREEGAN: And may I ask, Your Honor: Are you
18 asking for gender challenge or racial challenge?

19 THE COURT: Racial. Moving on to racial.

20 MS. CREEGAN: Okay. So we've already done 95. I think
21 the next is 296. I believe 284 is a white male.

22 THE COURT: What about 288?

23 MR. MYHRE: 288 is a white female.

24 THE COURT: All right. So 296. Didn't we
25 already . . .

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1 MS. CREEGAN: He is a male so we have discussed him.

2 THE COURT: Okay.

3 And the reason for that was because the parties didn't
4 know enough about him, that it was seen as a risky move to let
5 him stay on the jury. All they know is that he watches local
6 news, Channels 5 and 13; young and single.

7 (Pause in the proceedings.)

8 THE COURT: You know, I have to be honest. It's
9 difficult to accept the fact -- it's difficult to accept the
10 reason being given as we don't know enough about that juror
11 when we had questionnaires, we had my questions with the
12 slideshow, and all of the attorneys had an opportunity to
13 question everyone. So, if you don't take that opportunity to
14 ask questions and get information, I don't think you can use
15 that as an excuse. That being said, that's not the only reason
16 that was given. The other reason was because he only watches
17 local news.

18 MR. LEVENTHAL: Your Honor, can we bring our clients
19 out since this is --

20 THE COURT: Sure.

21 MR. LEVENTHAL: -- taking a little bit longer?

22 THE COURT: Yeah. Come on -- yeah.

23 MR. LEVENTHAL: Thank you.

24 (Pause. Defendants return to the courtroom, 3:55 p.m.
25 Attorney-client discussions.)

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1 THE COURT: All right. So, as to 295, is there any
2 other . . .

3 MS. CREEGAN: It's 296, Your Honor.

4 THE COURT: I'm sorry. You're right. 296. I even
5 wrote down 296.

6 296, any other clear and reasonably specific reason
7 that the defense wants to proffer?

8 MR. MARCHESE: Other than what I brought up in
9 reference to his employment.

10 Also, if the Court noticed, I changed my strategy a
11 little bit from --

12 THE COURT: I'm sorry. What about his employment?

13 MR. MARCHESE: He has a technical background; he's in
14 I.T. So he fell into the category of the other three
15 individuals.

16 But I changed my strategy in reference to, you know, I
17 didn't get very much off of his questionnaire. And, if you
18 noticed from day one to day two, I specifically started
19 targeting people who I had very little on. And I understand
20 that, you know, a lot of other departments wouldn't even give
21 us the opportunity to do individual voir dire. But, if he was
22 in yesterday's jury pool, I most likely would have picked him
23 and specifically asked him some questions just to get him
24 talking so I could have something other than, you know, he's in
25 I.T.

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1 MS. CREEGAN: I don't have Juror 296 being asked more
2 questions than 376. And I have to say, from my own
3 observation, I did not see a difference in the amount of
4 speaking to individuals between the two days.

5 MR. MARCHESE: Well, must have been in a different
6 courtroom then.

7 MR. TANASI: And, again, Your Honor, I've laid out for
8 the record before, the difference with respect to 376. Again,
9 crime scene games online; doesn't watch the news 'cuz it's
10 depressing; watches *Criminal Minds* and *Law and Order*; likes
11 investigations; somebody that sounded more like a person who
12 would be willing to hear the whole process out.

13 MS. CREEGAN: And the Government has illustrated that's
14 a -- it's a reason but it's not really one that should be
15 accepted as something other than pretextual, that both were
16 asked very few questions, they both indicated they watched the
17 news, they are both single, live with their family, they are
18 both young. Um . . . One likes science; one likes crime
19 shows. But I'm not sure that that's sufficient to say that
20 there's a difference as opposed to a distinction.

21 MR. TANASI: Again, Your Honor, I just would point out
22 that when it's all said and done and we're going through and
23 looking at our lists after we've gone through two days of it,
24 whether we didn't ask him enough questions or we did or we
25 should have or whatever the question may be, we're left with

1 the list that we have. And so we have to make a strategic
2 decision. And that's what we did.

3 MR. LEVENTHAL: I also --

4 THE COURT: I don't -- I'm looking at this and I'm -- I
5 think you're assuming that I'm thinking what you're thinking
6 instead of telling me.

7 MR. TANASI: Oh.

8 THE COURT: So I need you to actually say --

9 MR. TANASI: Okay.

10 THE COURT: -- and not just . . .

11 So I know that 376 said that she watches crime TV shows
12 and plays crime video games, but . . . So what is the
13 connection there? So do you --

14 MR. TANASI: To --

15 THE COURT: -- do you believe that makes her more
16 likely to sympathize with not law enforcement as opposed to
17 with law enforcement because she likes crime TV shows and plays
18 video games that are based on --

19 MR. LEVENTHAL: No.

20 THE COURT: -- criminal law?

21 MR. LEVENTHAL: I --

22 THE COURT: I guess that's the part that I'm missing.

23 MR. LEVENTHAL: And so --

24 THE COURT: Because I agree with you that that was her
25 representation. I just don't understand why that makes her

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1 more sympathetic or favorable to the defense than --

2 MR. LEVENTHAL: It might be odd to you. But, whenever
3 I'm picking a jury, I like people that watches *CSI* because I
4 think that those shows, within one hour, make people believe
5 that the -- law enforcement can do things that they just can't
6 do. And so I like people like that. Not that they hold 'em to
7 a higher standard, but they like to get intrigued by it.
8 Whether or not this is the case for that --

9 THE COURT: So we have --

10 MR. LEVENTHAL: -- I just --

11 THE COURT: -- an unrealistic --

12 MR. LEVENTHAL: -- generally --

13 THE COURT: -- expectation of what the Government is
14 able to prove?

15 MR. LEVENTHAL: Absolutely. They think that they
16 should take eye analysis of everybody in the wash or something
17 and they've got drones. I -- I don't know. But I always like
18 those types of people who watch crime shows because they put
19 more on the Government or the state to prove their case. A
20 little, generally. That's my thing. I do that all the time
21 with all the jurors that I've ever picked. And it might be
22 something stupid; but I've always been somewhat successful with
23 people who like crime shows when I'm a defense -- on the
24 defense side.

25 THE COURT: Okay.

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1 MR. LEVENTHAL: That's how I can articulate it, as dumb
2 as it sounds.

3 MS. CREEGAN: Juror --

4 THE COURT: Okay. That --

5 MS. CREEGAN: -- three seventy . . .

6 THE COURT: -- is a clear and reasonably specific
7 reason for keeping number 376. Now, let's do the reverse.
8 Give me a clear and reasonably specific reason for not keeping
9 296.

10 MR. LEVENTHAL: I don't have one. It was something --
11 again, all I have is that he gets his local news -- exactly
12 what the Court went through.

13 But, Your Honor, it wasn't like we were going through
14 this going, well, we've got this one or that one which is the
15 process that we're going through now. We weren't -- like, this
16 is not how we went through it.

17 We all sat around. We got a general feeling.
18 Everything was written down. And not one word . . . And I
19 can't give you why other than what's in here and our
20 perceptions and exactly, specifically why that person was
21 kicked out. But it was not -- I guess Mr. Marchese indicated
22 that he's a very technical person. And I probably just went
23 with it. I didn't have a view one way. As a matter of fact, I
24 have on my thing it's a -- it's a zero which to me meant not an
25 "X" and not a highlight, which was a "yes." So it -- it could

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1 have gone either way on that person. It just --

2 THE COURT: Yeah. But 296 was the very first
3 peremptory challenge that the defense exercised.

4 MR. LEVENTHAL: 296 was a mistake, Your Honor. It was
5 not; I'm telling you. The one above that -- I wrote that
6 wrong. And, when I told the guys, they said, well, don't worry
7 because if we get down to the end, 296 is gonna be gone. But
8 really our first peremptory challenge was supposed to be one --
9 the person above 296, which was --

10 MR. PEREZ: 288.

11 MR. TANASI: 288.

12 MR. LEVENTHAL: -- 288. That was our first. But I
13 messed it up and I wrote it at the wrong box. And they said
14 don't worry; we'll get to that and -- you know, we'll get back
15 to that. That's what happened.

16 But I -- he would have eventually, maybe -- I don't
17 know how it came down -- towards the end been stricken. But it
18 was a mistake on mine that I wrote it. And we all sat around
19 and I said I could cross it off and they said, no, we'll get
20 her, 288, on the next go-round. 288 was actually our first
21 pick; a female was our first pick to get rid of. And 288 --

22 THE COURT: Well, if 288 was supposed to be the first
23 one, you didn't get to her until number 7.

24 MR. LEVENTHAL: May I? Your Honor --

25 THE COURT: Um-hum.

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1 MR. LEVENTHAL: -- can I show you my paper where I
2 wrote "1"?

3 THE COURT: No. I'm just looking at what you actually
4 did.

5 MR. LEVENTHAL: I --

6 THE COURT: The --

7 MR. LEVENTHAL: -- under- --

8 THE COURT: -- first --

9 MR. LEVENTHAL: -- -stand.

10 THE COURT: -- peremptory challenge was against 296 and
11 the second -- I'm not going to go into all the other ones. But
12 the seventh one was 288.

13 MR. LEVENTHAL: Yeah. I have written down Carl -- Kari
14 Suzanne, number 1. I wrote down -- wrote it down on our --
15 sort of our list of people that we were gonna get rid of. And
16 I made that mistake. So . . .

17 MR. TANASI: I have the --

18 THE COURT: Okay.

19 MR. TANASI: -- same thing.

20 THE COURT: Maybe someone who wrote down somewhere that
21 they wanted to strike 296 then can give me what they wrote down
22 why 296 was stricken.

23 MR. TANASI: Your Honor, again, it's the absence of
24 information. It's the absence of information. It's not
25 knowing enough and so not taking the risk. And, again, knowing

1 only, at least that I've got noted -- and I know there's more
2 on the questionnaires -- but, you know, where he gets his news
3 from -- more local news than national news -- it just --
4 there's just not enough -- there was not enough for us.

5 MS. CREEGAN: In a case where there's a 27-page
6 questionnaire and an hour and a half of combined defense time
7 to question a juror, I don't think that that is a sufficient
8 reason that is not a pretext.

9 (Pause in the proceedings.)

10 THE COURT: Okay. 296 did say that he worked in I.T.
11 in his written questionnaire.

12 (Defense counsel conferring.)

13 MR. TANASI: And, Your Honor, I mean, further with
14 respect to Mr. Leventhal's representation, I also have number
15 one circled right next to 288 as who our first strike was
16 supposed to be. And I'm happy to provide that to the Court if
17 it's at all relevant to your decision.

18 MR. LEVENTHAL: I'll provide my copy as well and -- to
19 let you know that 288 indicated that if you participate in a
20 protest, then you made the chance -- choice to get the
21 consequences. So that was a pretty harsh statement, like some
22 of the other males that said the same thing, and it was based
23 upon that idea that you suffer the consequences whereas other
24 people were a little bit I want to wait and see what happens; I
25 want to -- you know, I -- cops or not all police officers, law

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1 enforcement is not always correct in their arrests and that's
2 why we've got this process. So she was number one on my list,
3 a female.

4 MS. CREEGAN: Juror 296 did not make any similar
5 statement.

6 MR. LEVENTHAL: I'm sorry?

7 MS. CREEGAN: Juror 296 did not make any similar
8 statement.

9 MR. LEVENTHAL: 296?

10 (Pause in the proceedings.)

11 THE COURT: He was explaining why 288 was his number 1
12 choice, but 288 was not stricken by the defense until their
13 seventh strike. So not their second, third, fourth, fifth, or
14 sixth.

15 MR. TANASI: And, Your Honor, what's --

16 THE COURT: So ultimately, even if at some point the
17 theory was to strike 288 number 1, that's not what actually
18 happened. At some point that changed and number 296 was the
19 first person struck and 288 fell all the way down to number 7.

20 Let's move on to -- we did 296 -- we did 95 and 296.
21 This is moving on to the racial challenge. Who is after 296?

22 MS. CREEGAN: The number in which they appear in the
23 panel, it is 329.

24 THE COURT: All right. So why was 329 struck?

25 (Pause in the proceedings.)

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1 MR. TANASI: Your Honor, 329, a female, would not --

2 THE COURT: Hispanic. I think that's the reason for
3 the challenge.

4 MR. TANASI: Under- --

5 MS. CREEGAN: That's --

6 MR. TANASI: -- -stood.

7 MS. CREEGAN: -- correct.

8 MR. LEVENTHAL: Oh, Hispanic?

9 THE COURT: Yeah. We moved on from gender to --

10 MR. TANASI: Understood.

11 THE COURT: -- to race.

12 MR. TANASI: -- to race.

13 Would not get involved in a neighbor's dispute; mainly
14 only would call to help. Again --

15 (Defense counsel conferring.)

16 MR. TANASI: The defense theory being our clients are
17 people who help others; our clients are people who have --
18 protesting what they believe is wrong. This is somebody who
19 wouldn't get involved in a neighbor's dispute; maybe only would
20 call for help. She is not necessarily someone that we believe
21 would have anywhere near the mindset of our clients in this
22 case.

23 (Pause in the proceedings.)

24 THE COURT: All right. Well, Ms. Creegan, I do
25 remember there were quite a few other individuals who said that

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1 they would not get involved if there was -- if they heard
2 hollerin' --

3 MS. CREEGAN: You're --

4 THE COURT: -- from a --

5 MS. CREEGAN: -- correct --

6 THE COURT: -- neighbor.

7 MS. CREEGAN: -- Your Honor. So many of them said it
8 that I actually didn't write them all down; it was such a
9 common response. I only wrote down that two or three people
10 said that they would get involved.

11 (Pause in the proceedings.)

12 MR. TANASI: And, Your Honor, I guess I'd also point
13 out the other two notes that we have with respect to 329 is
14 she's more of a follower in a group -- and defense tend to try
15 to find leaders -- and I have a note that she has a friend who
16 works in the courthouse. I don't have more information on
17 that. But not knowing who that is, the nature of the
18 relationship, where the bias may or may not lie --

19 MS. CREEGAN: Well, I believe she said --

20 MR. TANASI: -- why take --

21 MS. CREEGAN: -- she was --

22 MR. TANASI: -- the risk.

23 MS. CREEGAN: -- I apologize. Go ahead.

24 MR. TANASI: Go ahead.

25 MS. CREEGAN: I believe she said she was friends with

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1 Summer Rivera, the Jury Coordinator? Is that the right person
2 that I'm thinking of?

3 THE COURT: Yes.

4 (Defense counsel conferring.)

5 MS. CREEGAN: Who is a neutral courthouse personnel.

6 MR. TANASI: Again, not knowing -- not disparaging
7 Sumner in any way and not disparaging what her mind-set may be
8 with respect to the case; not knowing what that is, it's a
9 safe, nonrisky bet to eliminate that risk.

10 MS. CREEGAN: If I remember, earlier the defendants
11 were arguing that we should keep the paralegal from the Public
12 Defender's Office who had extensive knowledge about the case.

13 MR. TANASI: Until we had a chance to further question
14 her or the Government had a chance to further question her. In
15 the very early stages, not where we're at now.

16 (Pause in the proceedings.)

17 THE COURT: All right. So, as to Juror No. 95, the
18 question being whether the defense reason given for striking
19 him, that his response was that if someone attends a protest
20 they are assuming the risk of being arrested and whether or not
21 that is pretextual, the Court does find that Juror No. 324 said
22 that it's the right of a person to protest but they are
23 accountable for their consequences and Juror No. 288, likewise,
24 said that a protester needs to accept the risk. Those are both
25 females -- to my recollection, Caucasian females -- and both of

1 them were struck by the defense as well.

2 MR. LEVENTHAL: We didn't --

3 THE COURT: So I think that's consistent with their
4 explanation that -- of why they struck number 95. So the Court
5 is satisfied as to Juror No. 95 that there's a race-neutral and
6 gender-neutral reason given for the striking of number 95.

7 329's a lot harder. So 329, I realize you say that 329
8 indicated they would not get involved in a neighbor's dispute.
9 And I do recall that and that is a clear and reasonably
10 specific neutral reason. The Government is stating that it's
11 pretextual because there were a number of other people who
12 likewise didn't want to get involved and said that they would
13 not necessarily get involved. I think -- at best, I think some
14 of the answers were calling 3-1-1 or calling police or
15 something like that. But nobody -- I don't remember anyone
16 saying that they would actually get involved. I think there
17 was one person who said -- and it was a man -- if he knew the
18 neighbor he would go talk to 'em. If he didn't know the
19 neighbor, then he wouldn't get involved. I don't remember who
20 said that though. And I was looking through my notes to see if
21 I actually wrote it down, but I didn't see where I actually
22 wrote that down.

23 MS. CREEGAN: I believe that's Juror 339, Your Honor.
24 It was a white male.

25 (Pause in the proceedings.)

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1 THE COURT: All right. So, after 329, who is the next?

2 MS. CREEGAN: Juror 445, African-American female.

3 THE COURT: 445?

4 MS. CREEGAN: That's correct, Your Honor.

5 (Counsel conferring. Pause in the proceedings.)

6 THE COURT: All right. So she was the African-American
7 woman who has no cable TV and watches local Channel 3 and 5;
8 looks at website news; was unhappy that the current
9 Administration is talking about reducing the money -- the
10 funding for social services; was concerned for the chronically
11 homeless. I don't have a whole lot else. I guess I could look
12 over here.

13 So what was the neutral reason for striking 445?

14 (Pause in the proceedings.)

15 MR. TANASI: Your Honor, the first note that I've got
16 kinda off to the right was Trump. And my sense and kinda
17 thoughts on her was that she would be anti-Trump. And, you
18 know, trying to read the political tea leaves of everybody and
19 trying to figure out which tea leaves align potentially with
20 doing what's best for my client in the case, I think her
21 anti-Trump sentiment would be -- translate to an anti-defendant
22 sentiment in this case. So that's the first kind of note that
23 I had on it.

24 And then I also had the kinda analytical, critical
25 thinker component as well that Mr. Marchese had referenced

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1 earlier.

2 MS. CREEGAN: What I have Juror 445 saying is the
3 current Administration is cutting back some of her funding. I
4 don't know why that would be imputed to the defendants as
5 opposed to the party, the federal government, which appears in
6 this courtroom on the opposing side of the case. Also, it
7 seems as a mental health counselor who works with extremely
8 disturbed people, she would have the emotional component that
9 the defendants indicated that they were looking for.

10 (Pause in the proceedings. Defense counsel conferring.)

11 THE COURT: I keep getting confused with her because
12 numerically she would have been in Day 2, but we have her come
13 in on Day 1. So she's on a different list every time I go look
14 for her there. Okay.

15 (Pause in the proceedings.)

16 THE COURT: All right. Who is next after 445? Is that
17 the last one?

18 MS. CREEGAN: The last one is 485 which is the person
19 who was left unstruck and, therefore, eliminated from the jury.
20 He is an Asian male.

21 MR. LEVENTHAL: 485?

22 MS. CREEGAN: 485.

23 MR. LEVENTHAL: Your Honor, we did a -- we asked the
24 Court to, if you remember, dismiss this juror for cause because
25 we didn't believe that he could even understand. He -- when he

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1 was -- when I believe Mr. Marchese was talking to him, he
2 didn't understand what he was saying. And so there was some
3 indication, at least to us, that he wasn't gonna understand
4 what was going on so . . . And we did ask for the Court to
5 kick him out for cause. That did happen. So we didn't use
6 our -- again, if the Court wants me to go into it, we didn't
7 use our last peremptory challenge because it wasn't necessary
8 at that point. He was number 13.

9 MR. TANASI: And, just building on that, Your Honor,
10 again, on our side of the fence anyways, we weren't exactly
11 crystal clear what the conflict was that she -- he had
12 referenced. He had a conflict of some kind. And Mr. Marchese
13 had asked him questions back and forth. And that was -- again,
14 I'm basically rearguing the same motion for cause that we
15 argued with respect to 485.

16 MS. CREEGAN: Well, even the motion for cause can be
17 pretextual. Though he had a very strong accent, he understood
18 English; he worked in the military for a long period of time.
19 He did not indicate that he had a language barrier or could not
20 understand. And what he stated was his conflict is that he was
21 informed, as a former corrections officer, it was possible that
22 he had a conflict. He did not volunteer himself to be removed
23 from jury service.

24 MR. MARCHESE: My recollection was that he was told at
25 some point in his former career was that he was unable to serve

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1 in a jury because of a conflict. Now he works in a food court;
2 he's obviously not in that same career. So I thought that that
3 there was an odd answer and not to mention, I mean, personally
4 I had a very difficult time understanding his accent. But,
5 even more importantly, I thought that it took a while to get to
6 where I needed to on the questions. I thought that there was a
7 comprehension issue which is why we raised the challenge for
8 cause yesterday.

9 MR. LEVENTHAL: And just one further comment. When
10 Mr. Tanasi asked everyone just to raise their hand and to
11 stretch, he was the only one I think that didn't. I don't know
12 if he didn't want to or didn't understand to. There was
13 some -- we just -- there was a disconnect there. That's --

14 THE COURT: I do recall he didn't raise his hand. I do
15 recall he said he would not protest and that he would talk to
16 neighbor or call police if neighbor too loud. There was only
17 three cooks. He was the first person to speak up when we
18 started asking questions to let us know that he might have a
19 conflict, but it wasn't clear why he would have a conflict.
20 And it wasn't responsive to the question that was asked. And
21 later I think he explained that it was that he -- back when he
22 was on duty with the Navy as a correctional officer in the brig
23 that he had been told it would be a conflict to serve on a
24 jury. And I don't know if that was on a military tribunal as a
25 correctional officer. But that's right. He was also the one

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1 that brought up *TMZ*. He did seem to have a bit of a language
2 barrier, and I agree wasn't always clear whether he was failing
3 to understand the question or refusing -- I do remember when he
4 didn't raise his hand and -- because I did make a note to
5 myself if he's on the jury I got to watch and make sure he
6 actually raises his hand when we swear them in. So I don't
7 have a belief that the exercise of a challenge as to 485 was
8 for an inappropriate reason.

9 MS. CREEGAN: Your Honor, that concludes the
10 Government's challenges both for gender and for cause.

11 Let me ask the Court, if I have it correctly, that the
12 Court has not yet ruled on 85, 284, 296, 329, and 445; is that
13 correct?

14 THE COURT: Correct.

15 (Pause in the proceedings.)

16 MR. TANASI: Ms. Creegan, would you mind reading those
17 one more time?

18 MS. CREEGAN: 85, 284, 296, 329, 445.

19 MR. TANASI: Thank you.

20 MR. LEVENTHAL: 85, 2 what?

21 (Defense counsel conferring. Pause in the proceedings.)

22 THE COURT: 296 and 284 are in the same camp in that
23 they are both science fields.

24 (Pause in the proceedings.)

25 THE COURT: As I said before, I don't accept the excuse

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1 that we didn't know enough about them as reasons for excusing
2 296. I'm not considering that. But 296 is young. He's
3 single; never served on a jury before; only watches local news,
4 not national news; appears from his written questionnaire
5 responses that he lives with his parents.

6 MS. CREEGAN: And, even being young and single and
7 living with his parents, he is comparable to Juror 376.

8 THE COURT: Oh, I'm not saying he isn't qualified, yes.

9 (Pause in the proceedings.)

10 THE COURT: He's technically qualified. I'm looking at
11 him in relation to 376, which was the woman who is in a similar
12 situation. I don't know that she lives with her parents. She
13 had a stepmom and a stepdad. So I'm not saying that it's
14 exactly the same situation. But she was quite young. Um . . .

15 (Pause in the proceedings.)

16 THE COURT: What did 376 do for a living?

17 MR. LEVENTHAL: I had K-Mart.

18 THE COURT: Did it say what her position was? Was she
19 I.T.?

20 MR. LEVENTHAL: No. I don't -- I don't believe so.

21 THE COURT: Let's see.

22 MR. LEVENTHAL: Went to CSN; works at K-Mart. That's
23 what I have. But she's the one that I indicated why, the
24 investigations.

25 THE COURT: Oh, she was taking the Asian -- is it Asian

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1 studies, Asian literature class?

2 MS. CREEGAN: I believe that's somebody else.

3 THE COURT: That's somebody else. Okay.

4 (Pause in the proceedings.)

5 THE COURT: Oh, 376 is a creative writing major.

6 (Pause in the proceedings.)

7 THE COURT: All right. Well, it's 4:30. And I wanted
8 to let the jury know, obviously, before the end of the day. So
9 let me take about a 10-minute break and see if I can't look at
10 this more easily on my computer on my desk because I've got way
11 too many documents here.

12 COURTROOM ADMINISTRATOR: All rise.

13 Off record.

14 (Recess, 4:31 p.m. Resumed, 5:18 p.m.)

15 LAW CLERK: All rise.

16 THE COURT: All right. You may be seated.

17 (Pause in the proceedings.)

18 THE COURT: All right. So the Government's first
19 challenge was based on gender, violating the Equal Protection
20 Clause, claiming that the defense had struck -- one, two,
21 three, four, five, six -- seven of the fourteen males,
22 50 percent of the males, resulting in an unusually high number
23 of females on the jury, white males; but that goes into the
24 next argument about the gender.

25 So the Court did look at the seven individual jurors,

1 the reasons given by the defense after the Government raised
2 its *prima facie* statements that the Court accepted and then the
3 Government argued that the reasons given by the defense were
4 either not clear and reasonably specific or were pretextual.
5 And, honestly, we went back and forth quite a few times and I
6 gave everyone a lot of opportunity to tell me more and explain
7 more.

8 So I did find that Jurors No. 498, 457, 314 were all
9 excluded for nongender reasons and they were legitimate.

10 Also, looking at number 95 and the fact that he said
11 that a person assumes the risk of being arrested if they
12 protest was belied by the fact that 139 also said that she
13 would not protest and then 451 said that they can't imagine a
14 person being arrested only for protesting. 451 also -- also
15 said she was afraid of firearms, but she remained on the jury.
16 So 451 was not struck, 139 was not struck, nor was number 205
17 which was also a female that was similarly situated to Juror
18 No. 95.

19 Likewise, Juror No. 85, who was the individual that the
20 defense said they struck because there was red, white, and blue
21 all over his Facebook page and eagles, that reason is belied by
22 the fact that the defendants refer to themselves as patriots
23 and have been explaining that the state rule of law should
24 supersede the federal rule of law because -- that's because of
25 the Constitution and the historical background.

1 What it came down to is -- for number 85, the defense
2 said that a cause for concern for them and the reason why they
3 struck 85 was because of the fact he said that he was raised to
4 trust and respect law enforcement. And, as the Government
5 pointed out, a lot of the jurors said that they respected law
6 enforcement. And that really isn't a legitimate reason for
7 excluding someone. In this case, as the defense pointed out,
8 there are expected to be, again, a large number of law
9 enforcement professionals who will be testifying. And so the
10 credibility of those individuals will be key.

11 However, I said before, Juror No. 455 -- 51, four five
12 one, also stated that she couldn't imagine a person being
13 arrested only for protesting. And so it doesn't appear that
14 number 85 was struck for any other reason other than the fact
15 that he was -- is a male as opposed to a female.

16 Likewise with number 284, the reason given was that he
17 had a science background and therefore would not be emotional
18 and that this case is an emotional case so they were seeking
19 jurors who were emotional. Government argued that it's a
20 stereotypical thing to say that females are more emotional than
21 men and that case law provides for that as stereotypical
22 reasons are not clear and reasonably specific reasons that
23 would justify a strike.

24 Here it's not just an emotional assumption based on
25 nothing other than gender. There is information that's

1 tangible, which is that their background is in science. So I
2 don't think that it's necessarily a stereotypical assumption on
3 the part of the defense; I think it is on information provided
4 by the juror which is that the juror has a scientific
5 background.

6 However, Juror No. 138, who was not struck by the
7 defense, is a certified public accountant. Juror No. 142 is a
8 finance professional. Both of them are females; both of them
9 are analytically based, science-based professions with higher
10 degrees; not just a job that deals in numbers but is actually a
11 scientific degree, college degree. So I don't think that a
12 sufficient reason has been given by the defense for the
13 striking of Juror No. 284 that is other than because 284 was a
14 male.

15 Likewise, with Juror No. 296, the I.T. professional,
16 they also -- defense also stated that they didn't know enough
17 about this particular juror and therefore it was risky to put
18 this juror on the panel. Like I said before, the attorneys
19 have all been given more information than I think you probably
20 would in any other federal case. With the written
21 questionnaire, with the questions that I incorporated that were
22 proposed by counsel, and with each counsel having an
23 opportunity to further ask questions, the lack of information
24 is not a sufficient reason to strike someone in this particular
25 case with all the opportunities that were given.

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1 The other information provided by the defense as to why
2 Juror No. 296 was stricken was because he only watched local
3 news, Channels 5 and 13; and young and single; things like
4 that. The Government raised that Juror No. 376 was not struck
5 and she was a woman with the same -- in the same situation:
6 had little information about her; she watches crime TV and
7 crime -- plays crime games, video games; and she's a --
8 creative writing I think was her -- either her major or her --
9 I think it was her major, her college major -- I don't think
10 she's done yet -- but she's a creative writing major. So that
11 does differentiate her from the I.T. professional for number
12 296.

13 However, again, I go back to 138 who is a female CPA
14 and 142 who is a finance officer as well as number 451 is
15 also -- I think she's retired -- but she worked in HR and
16 finance, both of which are analytical; "the rules are the rules
17 and you can't bend" 'em types as opposed to someone in creative
18 writing or social work and things like that.

19 So the Court finds that the reasons given to exclude
20 and strike 296 do not justify striking them for any reason
21 other than because they were males as opposed to the females.

22 Then, as to the gender-based pattern provided, the
23 Government raised the issue that -- one, two, three, four --
24 five individuals that were on the jury venire were struck who
25 are not Caucasian. I accept the reason given for striking

1 Juror 485, with the language barrier and his apparent
2 confusion.

3 Number 329 not because she said she would not get
4 involved in a neighbor's dispute, because there were quite a
5 few people who said that. The reason that I'm accepting as
6 justifiable is because she was a friend of a court employee.
7 And in this case -- this is not the first trial for this case;
8 this case was tried before. And the person that she's friends
9 with is the jury coordinator who also was the coordinator for
10 the last trial as well as this trial. So she wasn't asked and
11 maybe should have been asked if she knew anything about this
12 case from her friend or things like that, but I think that
13 would be cause enough to strike her.

14 And then, as to Juror No. 95, as I said before, I don't
15 think there was a sufficient reason to strike him just because
16 he said that a person assumes the risk of being arrested if
17 they protest when Juror No. 455 said the same thing, that she
18 couldn't imagine a person being arrested only for protesting.
19 And other -- and another juror, number 139, who said that she
20 would not protest, but she was kept on and so did -- and Juror
21 No. 205 was also similarly situated.

22 So then we have Juror No. 445 and -- who was not
23 scientific and analytical but struck because she was emotional
24 and sympathetic -- or not sympathetic but certainly not
25 analytical. But the reason being that she had responded to the

1 question about was there anyone who was unhappy with the
2 direction that the country is moving and she said she was
3 unhappy with the decreased funding to social services and that
4 that was her field with helping the homeless. And the defense
5 explained that that was a cause of concern for them because if
6 someone is blaming Trump for something they were afraid that
7 that would have a bad connotation and would spill over on the
8 defendants and that the juror would find a reason to dislike
9 the defendants somehow because of a connection with Trump.
10 I -- to me that was not a clear and reasonably specific
11 explanation.

12 So Jurors No. 85, 95, 284, 296, and 445 I found were
13 not stricken for just cause.

14 Now, the effect of that, um . . .

15 (Pause in the proceedings.)

16 MR. TANASI: Your Honor, I apologize. Could you read
17 those numbers one more time?

18 THE COURT: Yes. 85 . . .

19 (Pause in the proceedings.)

20 THE COURT: Yeah. 85, 95, 284, 296, and 445.

21 I see, because one of them is on both lists. So 2 --
22 so 95 and 296 are actually on both lists, both on the gender
23 challenge and on the race challenge.

24 (Pause in the proceedings.)

25 MR. MARCHESE: Your Honor, the defense has a motion.

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1 THE COURT: I understand. But let me --

2 MR. MARCHESE: Okay.

3 THE COURT: -- let me finish this up.

4 MR. MARCHESE: All right. Sorry.

5 THE COURT: So the effect of this would be whether or
6 not the defense then would lose their peremptory challenges or
7 would have the opportunity to use them on different
8 individuals. The -- if they lose the right to use all of their
9 peremptory challenges that were misused, then the effect would
10 be -- and I wrote this down -- we would lose Juror No. 376, who
11 I had written down I thought she was mixed race; we would also
12 lose 388, who I had written down looked like she was African
13 American. So it's almost like a -- there's no gain, I guess;
14 there's -- you're just canceling out one for another. And then
15 451 would also be lost. 444 would be lost because she would be
16 too -- or 445 -- is that the one? 4 -- yeah, 445, it really
17 doesn't matter because she's too far down. She wouldn't -- I
18 don't think she would be on there anyway.

19 So I'm not sure if that affects the resolution that's
20 requested by the Government.

21 MS. CREEGAN: That's what we're requesting, Your Honor.
22 We're requesting for those peremptories to be lost.

23 THE COURT: I also had -- where's that white piece of
24 paper? -- I also actually -- since I had a little time while we
25 were waiting for Mr. Leventhal to come back, I went through the

1 other jurors that were not struck that are -- that would be on
2 the jury.

3 Juror No. 80 is the HR/Payroll Director, a financial
4 responsibility. Number 84 has a degree in business finance.
5 As I said, 138 CPA. 142, accounting. 325, accounting. So
6 this is what -- the reason why I just didn't think that the
7 science-based analytical background was reason sufficient when
8 all these other individuals who have a similar background were
9 not struck.

10 (Pause in the proceedings.)

11 THE COURT: All right. So let's hear the defense
12 challenge.

13 MR. MARCHESE: Yes, Your Honor.

14 And some of the -- in one of the Government's pretrial
15 motions, they alluded to the fact that it was their belief that
16 our strategy for the trial would be to seat as many women in
17 the jury as possible. If you look at the Government's
18 challenges, there's an inordinate percentage of women that were
19 struck by them. As a matter of fact, it's a larger amount than
20 the approximate 50 to 55 percent that we struck on the two
21 particular *Batson* challenges that the Government made. So,
22 based upon that, we would make a *Batson* challenge to the
23 Government that they struck more jurors based upon the fact
24 that they were female rather than male.

25 THE COURT: All right, Ms. Creegan. We've got Juror

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1 No. 3 -- was it -- no, no. No, the third one is -- Juror
2 No. 41.

3 MS. CREEGAN: Correct, Your Honor. We struck, I
4 believe it was, 8 out of 22, which is not 50 percent; it is
5 closer to a third of the female jurors. I'm happy to go
6 through each one, but I'm not sure if a *prima facie* case has
7 been made at this point.

8 MR. MARCHESE: Your Honor, I was speaking that they had
9 10 peremptories and they struck 8. I'm unsure where they're
10 getting 22 peremptories from.

11 MS. CREEGAN: 22 women were in the 36 panel. So we
12 struck one third of the women in the panel.

13 MR. MARCHESE: Well, I was alluding to the fact that
14 they used 8 of their peremptories of the 10 that they had on
15 females. So, to me, that's 80 percent.

16 MS. CREEGAN: My point in response to Mr. Marchese is
17 that since only a third of the people in the panel were male,
18 we -- to be striking at a normal rate, only a third of the
19 people we strike would be female. We were one off that. By --

20 THE COURT: All right.

21 MS. CREEGAN: -- contrast --

22 THE COURT: But the defense struck seven females.

23 MS. CREEGAN: I understand, Your Honor. And let me try
24 to articulate this a little better.

25 Although there were 14 males in a panel of 36, which

1 makes them numerically a very small -- a minority, yet the
2 defendants struck seven of them. In the panel, there were 22
3 females, which is about two thirds of the panel. Therefore, if
4 we were making completely blind strikes statistically with a
5 computer, we would expect our peremptories to be at two thirds
6 women. That is very close to what they are. We have two that
7 were male and eight that were women. For it to be a third, it
8 would be three male, seven women.

9 THE COURT: All right. Well, how would that not apply
10 to your argument that the defense struck seven women?

11 MS. CREEGAN: Seven males?

12 THE COURT: I'm sorry. Seven males.

13 MS. CREEGAN: Because males were only a third of the
14 panel, they were going out of their way striking what is a
15 small group within the panel whereas our numbers reflect the
16 composition of the panel.

17 THE COURT: I see.

18 (Defense counsel conferring. Pause in the proceedings.)

19 THE COURT: So how many men were on the panel?

20 MS. CREEGAN: 14 out of 36.

21 (Counsel conferring. Pause in the proceedings.)

22 THE COURT: All right. Well, I agree with the defense
23 that it looks like striking 8 out of 22 -- or 8 females at
24 first blush looks like quite a bit out of 10 peremptory
25 challenges, so 8 out of 10 would be 80 percent of your

1 challenges are on females. But, as the Government points out,
2 there were overwhelming number of females so striking 8 out of
3 the group is not a suspect number.

4 (Pause in the proceedings.)

5 THE COURT: All right. So the Government is moving to
6 have the defense lose those five peremptories?

7 MS. CREEGAN: That is correct, Your Honor.

8 THE COURT: And what's the basis for that as opposed to
9 allowing them to use them more artfully?

10 MS. CREEGAN: I believe that's appropriate under the
11 circumstances. Five being reinstated shows a persuasive
12 pattern of gender and racial discrimination. I don't believe
13 that those -- under circumstances where the defense is that
14 egregious that they should be allowed to re-choose.

15 MR. LEVENTHAL: That egregious?

16 THE COURT: Mr. Leventhal, you wish to be heard on
17 that?

18 MR. LEVENTHAL: Your Honor, I understand that the Court
19 has indicated that we've used our peremptories in the wrong
20 way, I guess. But we have given the Court, at least for each
21 one of these, reasons and they were valid reasons. And they
22 weren't egregious reasons. We didn't sit around and say we
23 want this versus that. We based it upon a finding of what
24 people said and what our notes are.

25 So, if the Court's gonna -- already -- and has already

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1 ruled that these five were done, then I would at least ask that
2 we be allowed to have our peremptories. I believe that's
3 what -- we didn't do it egregiously; we didn't do it with an
4 intent. But I understand the Court has -- says at least for
5 one or two of them there's no other reason. But, if the
6 Court's looking at, like, you know, comparing one person's
7 scientific background versus another person's scientific
8 background, there's -- there's -- it's not just that. I'll
9 give an example.

10 The Court is comparing the accountant. And I looked.
11 And, even though there was a female accountant that we kept,
12 that female accountant -- and I'm -- it's gonna be one -- which
13 one was the female accountant? -- that female accountant
14 indicated that they would be fair; they would be impartial.
15 And, just because of the technical background, if you will,
16 that wasn't the only deciding factor in how we came to these
17 decisions. And also we didn't know what they were gonna do.

18 And so, you know, I just -- when you pick a jury, we
19 don't sit here and we say, well, we've got 50 women and 20
20 males and therefore we have to have so many. You can't pick a
21 jury that way. If we have so many peremptories -- and we had
22 14 -- and we used 50 percent of them to remove males and
23 females and the Government had 10 and used 8 of them, which is
24 80 percent, to remove females, their percentages are much
25 higher and -- if that's what they are basing it on.

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1 We don't sit here and say, okay, we've got one Hispanic
2 guy. I -- that would be insane to put that burden on everybody
3 to put -- mark down exactly "male," "female," "Hispanic,"
4 "African American," "Vietnamese." We were even asking what
5 that gentleman was, Island Pacific? We didn't -- we weren't
6 sure what he was. But it gets to be an exercise in craziness.

7 And I understand what the Court's saying. But I would
8 appreciate -- or I would think that the Court should give us at
9 least those five peremptories. We did not do anything
10 egregious or with any intent or malice or -- this was not done
11 with any of that. So that I would ask that we get our
12 peremptories back and use 'em on a different -- I guess a
13 different way if that's what the Court is requiring or
14 requesting us to do.

15 THE COURT: Ms. Creegan, do you want to respond to the
16 argument about the statistical percentage?

17 MS. CREEGAN: I'm sorry, Your Honor. Which argument is
18 that?

19 THE COURT: His argument that it was statistically
20 reasonable, the challenges made by the defense.

21 MS. CREEGAN: I think it is not statistically
22 reasonable. It reeks of a plan to reconstitute the jury from
23 the previous case. Usually when there's a Batson challenge,
24 there's a single juror or two removed. But this is a
25 persuasive plan to remove people who are not white or who are

1 male. It's totally impermissible. We have to preserve equal
2 access to the courts. I don't think it's appropriate to allow
3 them to reselect and then potentially have to relitigate this
4 motion again.

5 THE COURT: And I think earlier you made a comparison
6 to the composition of the jury in the first trial?

7 MS. CREEGAN: That's correct, Your Honor. The -- if
8 the jury had sat as the peremptories went forward, it would be
9 statistically and demographically exactly the same as the first
10 trial. When the first juror who -- before she was excused for
11 sleeping, sat, nine women; nine white people; an overlap of
12 seven white women. And that jury is reconstituted here exactly
13 including the single Asian female, the single African-American
14 female, two white males, and one Asian male.

15 MR. MARCHESE: I mean, Your Honor, for that to occur,
16 we would have to somehow break into the court's jury selection
17 process and somehow get these jurors -- I mean, it would be
18 like hitting five royal flushes a row. There is no -- they are
19 giving us way too much credit. There is no possible way that
20 we could have got the exact demographics. And, if they want to
21 search all our computers, I guarantee they won't see anything
22 of that breakdown. I didn't even know that that was the
23 breakdown statistically of male versus female and Asian versus
24 Hispanic versus African American.

25 MR. LEVENTHAL: And I would add, Your Honor, we had two

1 extra peremptories at the last because we're missing two. They
2 only had six at the last one. The Court gave them four more
3 just based upon the fact that this was their reasoning or their
4 logic. So they've had ten. So to say that now we've come up
5 with or devised this scheme to have the same makeup would be
6 crazy. We have two less; they have four more. So how are we
7 able to mold a jury exactly or come to that -- some kind of,
8 you know . . . I -- I -- I'm gonna go play the lottery.
9 That's incredible. We did not do that either.

10 THE COURT: All right. Well, the reason why they were
11 given peremptory challenges -- and the parties agreed to
12 this -- was because there was a retrial and there was the
13 realistic threat that there would be more individuals who had
14 heard about the case since it was so recent and was accepted
15 that we would have more peremptory challenges. So they were
16 given -- everybody was given more peremptory challenges.

17 The law says that, to accept the stated nonracial
18 explanation given, the court need not agree with it and the
19 question is not whether the stated reason represents a sound
20 strategic judgment but whether the race-neutral explanation
21 given for the peremptory challenge should be believed. And the
22 nonmoving party must give a -- rather -- which would be the
23 defense in this case -- must give a clear and reasonably
24 specific explanation of a legitimate reason for exercising the
25 challenge. And then the comparison is made for other

1 individuals.

2 So, for example, circumstances that raise the inference
3 are the number of people in the racial group that are in the
4 venire; the nature of the crime; the race of the defendant and
5 the victim; the pattern of strikes against members of a racial
6 group; the prosecution's questions and statements during the
7 voir dire as well as the defense questions and statements.

8 So, as I said, we're gonna go ahead and, I guess, void
9 or invalidate the strikes as to Jurors No. 85, 95, 284, 296,
10 and 445. The result of that would be that Juror No. 451, 388,
11 376, 425, and 275 -- or maybe not because the last one, I
12 think, doesn't get on there either way. I think that was . . .

13 Is that right, Aaron? Does 275 stay on because 445 is
14 so far down that she wouldn't have got on there anyway?

15 COURTROOM ADMINISTRATOR: That's correct, Your Honor.

16 THE COURT: Okay. So 275 stays on.

17 So we lose 325, 376, 388, and 451. The Court does find
18 that there is a pattern, both from the last trial and with this
19 trial taken together; that it is more than one person. If I
20 had found that it was only one, maybe even only two people who
21 were struck without just cause, then it would be easier to say
22 that the defense could keep its challenge and reuse it
23 appropriately. But, when there's five different people who are
24 struck and the reasons given are not sufficient and not
25 believable in view of the other information that we have about

1 the other jurors, it's difficult to say that it was not
2 intentional or part of a plan to exclude the males and
3 nonwhites from the jury.

4 There were other males and nonwhites that were excused
5 from the jury for legitimate reasons, race-neutral reasons,
6 that could be believed. But the reasons provided for these
7 five just do not meet the standard for explanations that could
8 be believed. And I know some of the explanations given were
9 "gut feeling." I'm not saying I don't believe that you have a
10 gut feeling, but it has to be an articulated clear and
11 reasonably specific reason. So I don't find that that -- that
12 the gut feeling is sufficient.

13 All right. So, Aaron, are you -- are you -- is your
14 chart a mess? Are you able to print it out so everybody has a
15 copy?

16 COURTROOM ADMINISTRATOR: It's a mess, but it will be
17 not a mess in just a moment.

18 THE COURT: Okay. So let's bring everybody back in
19 while he finishes up the chart. And I'll double-check it to
20 make sure it's correct before I read it into the record.

21 COURT SECURITY OFFICER: Your Honor, do they have to be
22 lined up? Or can it be random?

23 THE COURT: You know, I think you can just bring
24 them -- they don't need to be in order. That's gonna take too
25 much time and I'm gonna call them. No. I won't worry about

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1 seating.

2 COURT SECURITY OFFICER: Okay.

3 THE COURT: In fact, if you just want to bring 'em all
4 into the benches, I'll just fill up the box.

5 COURT SECURITY OFFICER: Yes, ma'am.

6 THE COURT: That would probably be easier for them too.

7 COURTROOM ADMINISTRATOR: All rise.

8 (Prospective jury panel enters the courtroom, 5:53 p.m.)

9 COURT REPORTER: Your Honor, do you want them taking
10 the jury box?

11 THE COURT: Oh, you don't need to sit in the jury box.
12 You can go back to the benches. Thank you.

13 PROSPECTIVE JUROR: Even though we're already here?

14 THE COURT: Yeah. You can go back to the benches.
15 I'll call you into the box and tell you who is gonna be in the
16 box. Sorry about that. A reasonable belief on your part
17 definitely.

18 (Pause in the proceedings.)

19 THE COURT: Okay. Everyone may be seated.

20 I'm sorry. I'm just trying to make sure that I have
21 the list in the proper order.

22 (Pause in the proceedings.)

23 THE COURT: All right. So, when I call your name, you
24 can come on up and sit in the chair in the jury box. The first
25 juror is Juror No. 80.

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1 COURT SECURITY OFFICER: Your Honor, (pointing)?

2 THE COURT: The second one is Juror No. 84 and Juror
3 No. 85, Juror No. 95.

4 (Pause in the proceedings.)

5 THE COURT: This doesn't match. What about this
6 person?

7 (The Courtroom Administrator and the Court conferring.)

8 THE COURT: Number 138.

9 (The Courtroom Administrator and the Court conferring.)

10 THE COURT: 139. 142. 188. 205. 275.

11 (Pause in the proceedings.)

12 THE COURT: 284. 325. No?

13 (The Courtroom Administrator and the Court conferring.)

14 THE COURT: I'm sorry. 296. I missed it. Yes. So
15 after 284 is 296.

16 (The Courtroom Administrator and the Court conferring.)

17 THE COURT: Okay. So not 325.

18 COURTROOM ADMINISTRATOR: Correct.

19 THE COURT: All right. Sorry. Not 325.

20 COURT SECURITY OFFICER: 325?

21 THE COURT: So we need 296.

22 (Pause in the proceedings.)

23 THE COURT: Okay. So next is 548. 609. 612. And
24 615.

25 You may be seated.

1 So the rest of the jurors who came -- and we really
2 appreciate your patience, your time, filling out the jury
3 questionnaire, receiving all those continuance notices when the
4 dates kept getting changed, and having you come in -- I know
5 it's never convenient to park downtown. I wish we had more
6 parking for you that was closer and we wish the weather was
7 better. There's so many things that we are grateful for and
8 one of them is for having individuals such as yourselves that
9 are honorable individuals who respected the process and
10 generally tried to provide the answers that were requested of
11 you as difficult as sometimes they were.

12 So we appreciate you very much. You are excused. This
13 means you should not be called again for 2 years. Please make
14 sure that you take water bottles, purses, bags, sweaters, any
15 reading material that you might have brought with you. We do
16 very much appreciate your time. And you may go ahead and hit
17 that traffic now. I'm sorry to let you go so late in the day.

18 (Prospective juror pool leaves the courtroom, 6:03 p.m.)

19 THE COURT: All right. So, as to the rest of you,
20 we're going to swear you in.

21 Aaron, if you'll please administer the oath.

22 COURTROOM ADMINISTRATOR: Yes, Your Honor.

23 Will the jurors please stand and raise your right hand.

24 You and each of you do solemnly swear or affirm that
25 you will well and truly try the matter at issue in this cause

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1 now pending before this court and a true verdict render
2 according to the law and the evidence, so help you God?

3 JURORS: (In unison) "I do."

4 COURTROOM ADMINISTRATOR: Thank you. You may be
5 seated.

6 THE COURT: All right. And, when we come back on
7 Monday, we'll come back at 9:00 a.m. and I'll give you some
8 more instructions. But it's late in the day today and I'm not
9 gonna keep you any longer.

10 I am going to give you a short admonition which is that
11 during this recess until Monday, and actually throughout the
12 trial, you are not to discuss this case with anyone or permit
13 anyone to discuss it with you. You can talk to your fellow
14 jurors about other things but not about this case. You can
15 tell your family and your employers and coworkers that, yes,
16 you were chosen to be on the jury; yes, you're going to be
17 hearing the case; and, yes, it's gonna take a while.

18 Aaron either has printed out or is going to print
19 out -- because he already -- he did it. He's really good -- he
20 already printed out the calendars for you all. And so, when
21 I'm done with my admonition, you'll follow our Security Officer
22 and he'll take you back to the room, which we call the jury
23 room, which is where you'll meet every day. And there you'll
24 see you have the schedules and some other information about
25 numbers to call if there's emergencies and things like that.

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1 So please do not discuss the case itself with anyone.
2 You can tell them that it's a criminal case. You can tell them
3 the name of the case, which might be helpful so that they don't
4 talk about the case to you. Otherwise, if they do attempt to
5 talk to you about the case, let them know the judge said that
6 could be a crime; so don't talk to me about the case. Write it
7 down and show it to me later if it's that important, but don't
8 tell me about it now.

9 All right. So, until the case is completely submitted
10 to you -- which means after you hear all the testimony, receive
11 all the evidence, after you're given the jury instructions --
12 that's when you'll begin deliberation process; that's when you
13 could start talking about the case. But that's not gonna
14 happen for a while.

15 Also you are not to read or listen to or view anything
16 that touches upon this case in any way. Like I said, if anyone
17 should attempt to talk to you about the case or, if you
18 inadvertently hear something about the case, you need to bring
19 it to the Court's attention right away so that we could look at
20 into it and find out if it was deliberate; accidental; whether
21 it was harmful or not or harmless.

22 Also, you are not to research or make any independent
23 investigation concerning the case. As you'll find out more on
24 Monday, I do permit the jurors to ask questions. We have
25 forms -- you don't write down your name or your jury number;

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1 you don't sign it or anything like that. It's a completely
2 anonymous form with just whatever questions you have. The
3 reason I do that -- it does take time, a little more time. But
4 it also gives you an outlet for when you have a question so
5 that you can resist the temptation to go and figure it out
6 yourself or ask somebody or get on the Internet and look it up
7 yourself. We want you to ask us the question so that the
8 parties equally have an opportunity to give you the
9 information.

10 There have been cases in the past where people look it
11 up on the Internet and they look up the Google Map and they
12 don't realize that -- and maybe some of you do if you've lived
13 in Las Vegas long enough -- the satellite maps change. 10
14 years can go by and you'll have an intersection that looks
15 completely different than it did even 5 years ago, let alone
16 10 years ago. And so you're looking at it to see whether this
17 car could have seen the other car coming or whether the sign
18 was in the way or not and you're looking at the wrong
19 information. And that's not fair to the parties. So, if you
20 have a question, we want to know so we can provide you that
21 information.

22 Sometimes people use terminology that's legal
23 terminology that you might not be sure. You think you know
24 what it means, but you want to be sure you know what it means.
25 Ask the question. Or someone might call something, you know,

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1 "ABC" and you don't know what "ABC" stands for; you don't know
2 what they are talking about. Ask us and the parties will be
3 happy to let you know and give you information so that you
4 understand the case better.

5 So, finally, you are not to form an opinion regarding
6 the issues in this case until all the evidence has been
7 presented to you. There will be witnesses that are called.
8 It's gonna take some time. Don't make a decision just because
9 of the evidence that you heard on day one or day two, on day
10 three. You know, withhold that opinion and wait until you've
11 heard all the evidence so that you can have a more meaningful
12 discussion between yourselves during the deliberation process.

13 You will have buttons that are going to be given to you
14 that are in the jury room. Please wear those all the time.
15 Sometimes it's cold in here and you might have a sweater on.
16 So, if you're in and out anywhere in the building or even in
17 the parking lot or the grounds, make sure you have the button
18 on. So, if you put on the sweater, take the button off and put
19 it on the outside of the sweater so we can see it and vice
20 versa. If you have a sweater on and you take off the sweater
21 'cuz you're hot, make sure that you put the button back on.
22 This way it'll be easier for people in the elevator or the
23 smoking area or the coffee shop or wherever it is that you
24 might encounter someone to know that you're a juror and not to
25 accidentally talk to you about the case. Remember, we'll have

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1 witnesses standing outside waiting to be called and things like
2 that. And so we don't want you inadvertently striking up a
3 conversation with them.

4 All the attorneys have been admonished they are not to
5 speak to you about anything at all. So they are not to talk to
6 you about the case, but I admonish them not to talk to you
7 about anything: the weather, your hair looks nice today or
8 anything, did you see that ball game last night? They are not
9 to talk to you about anything so as to not inadvertently get
10 into a conversation with you about anything. So don't be
11 offended if you see the attorneys and they see you and run the
12 other way. They just don't want to get in trouble with the
13 judge by accidentally talking to you about something. So they
14 don't mean to be rude; they are just trying to be respectful of
15 the process.

16 I think that covers all the major warnings that I want
17 to give you before Monday. And you'll have more information
18 that I'll provide you on Monday.

19 So we'll go ahead and stand for the jury. And just go
20 ahead and file out and follow Mike and he'll give you all the
21 information you need.

22 Feel free to bring water bottles Monday. We will have
23 some for you in the jury room as well though. And it's helpful
24 to bring sweaters and things. Sometimes it gets really hot and
25 then gets cold and then it gets hot.

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1 (Jury out, 6:10 p.m.)

2 THE COURT: All right. We're outside the presence of
3 the jury.

4 So we'll go off record till Monday. We'll begin at
5 9:00.

6 Yes.

7 MR. MYHRE: Your Honor, we have just one brief
8 housekeeping matter we could bring up. I know it's been a long
9 day, but --

10 THE COURT: Okay.

11 MR. MYHRE: -- in anticipation of Monday.

12 Actually two things. One is if we can get some idea of
13 whether defense will be opening as well on Monday because our
14 first witness we anticipate will be a Sheriff Lombardo and we
15 kinda want to give him a time to be here that would be
16 reasonable so he's not just hanging around.

17 So, if we anticipate openings would be over by
18 11:00 o'clock, we can have him here at 11:00 so we can go right
19 into witnesses. Or, if we think it's going to be all morning
20 for opening, then we could put him in the afternoon. So I --

21 THE COURT: I think --

22 MR. MYHRE: -- anticipate --

23 THE COURT: -- last time didn't we have at least one of
24 the defense attorneys --

25 MR. LEVENTHAL: Two.

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1 THE COURT: -- reserve?

2 MR. MARCHESE: I --

3 THE COURT: Two --

4 MR. MARCHESE: -- reserved.

5 THE COURT: -- reserved --

6 MR. LEVENTHAL: Two, Your Honor.

7 THE COURT: -- until later?

8 MR. LEVENTHAL: Yes.

9 MR. MARCHESE: I reserved mine and gave it at the
10 opening of our case in chief.

11 THE COURT: All right.

12 MR. LEVENTHAL: So did Mr. --

13 THE COURT: So do you --

14 MR. LEVENTHAL: -- Perez.

15 THE COURT: -- have a plan?

16 MR. LEVENTHAL: Mr. Perez is --

17 THE COURT: So Mr. Perez is gonna give an opening --

18 MR. LEVENTHAL: No. I --

19 THE COURT: -- on Monday?

20 MR. LEVENTHAL: -- I said Mr. Perez --

21 MR. PEREZ: I --

22 MR. LEVENTHAL: -- waived --

23 MR. PEREZ: -- I haven't --

24 MR. LEVENTHAL: -- his opening.

25 MR. PEREZ: -- made up my mind yet, Your Honor. More

1 than likely, but I'm not sure.

2 MR. LEVENTHAL: We haven't really decided that, if
3 we're gonna waive any. When we know, we'll inform the
4 Government.

5 THE COURT: All right.

6 So, Mr. Perez, you waived your opening?

7 MR. PEREZ: No, no.

8 THE COURT: No, no. You didn't. You just reserve it.

9 MR. PEREZ: Right.

10 THE COURT: Okay.

11 So Mr. Marchese and Mr. Perez reserved last time.

12 MR. PEREZ: Correct.

13 MR. LEVENTHAL: Correct.

14 THE COURT: Is that right? All right.

15 And then Mr. Tanasi and Mr. Leventhal gave their
16 opening statements.

17 So do you -- I would anticipate that we probably will
18 have at least one motion, if not more, to discuss before we
19 begin. And then I have to give my -- the admonition of
20 preliminary instructions to the jury. So that'll take a good
21 15, 20 minutes. And then we can probably go into opening
22 statement unless we need a bathroom break and then have opening
23 and then have lunch. So it certainly wouldn't be before lunch.

24 MR. MYHRE: Thank you, Your Honor. That's very
25 helpful. Thank you.

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1 THE COURT: Don't you think?

2 And then -- so then, when we come back from lunch,
3 probably there will be one or more openings. So I don't --

4 MR. TANASI: I think it's --

5 THE COURT: -- I would --

6 MR. TANASI: -- fair to say --

7 THE COURT: -- estimate 2:00 o'clock would be maybe a
8 good -- what do you think, Mr. Tanasi?

9 MR. TANASI: I think it's fair to say that at least
10 some of the defense would give an opening so --

11 THE COURT: Someone's gonna given an opening; right?
12 So at least one.

13 MR. TANASI: Right. I'd say fair to say at least one.
14 I don't know how much that helps but . . .

15 MR. MYHRE: Okay.

16 THE COURT: So I think we can plan to have him start no
17 sooner than 2:00 p.m.

18 MR. MYHRE: That's very helpful. Thank you, Your
19 Honor.

20 THE COURT: Okay.

21 MR. MYHRE: And then the second one is we moved to
22 have -- we'd ask the Court if it'd be possible for the defense
23 counsel -- since we now have two fewer defendants -- that
24 defense counsel tables be turned and to face forward as opposed
25 to the defendants facing directly in front of the jury. And

1 one of our concerns is the -- for example, Mr. Parker and
2 others have worn their pocket Constitutions and so forth. I
3 think whatever their belief system with respect to that, you
4 know, if that's going to occur, we don't want them
5 communicating through what they are wearing; what they are
6 reading; what they are showing to the jury.

7 MR. MARCHESE: Wait.

8 MR. MYHRE: And so --

9 MR. MARCHESE: Your Honor, Mr. Myhre brought this to my
10 attention yesterday. I asked Mr. Parker to take his out while
11 the jury is present. He abided by that request. And, I mean,
12 quite frankly, it's pretty far. I don't necessarily think that
13 the jury would even be able to see it. But, regardless, it's a
14 moot point because he's just not gonna wear it.

15 MR. LEVENTHAL: And, Your Honor, generally we have --
16 if we had a table -- I have a tough enough time seeing. I
17 never saw Juror No. 1 before. I know -- I heard she's swiveled
18 quite a bit. I never even know -- because I'm over here, I
19 can't see. I can barely see the witnesses half the time.

20 And so, when we're generally here, we're either here so
21 we could see everything or the long table comes down this way
22 anyway; right?

23 THE COURT: Um-hum.

24 MR. LEVENTHAL: Right.

25 So it becomes very difficult if I'm stacking up going

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1 towards Your Honor, towards the bench, it becomes even harder
2 for me to is see the witness and the jury. It's gonna be even
3 more difficult than it is now being here so . . .

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

5 MR. PEREZ: Not to mention --

6 THE COURT: -- have less people than last time, right,
7 because we -- I think we had -- Mr. Burleson also had an
8 assistant besides his attorney and so we won't have them --

9 MR. TANASI: And it's only one less --

10 THE COURT: -- Mr. Engel and his attorney so . . .

11 MR. TANASI: Sorry, Your Honor.

12 THE COURT: Right.

13 And then Ms. Dodson won't be here.

14 MR. PEREZ: Your Honor, if we turn the tables, the
15 jury's gonna see the shackles. I mean -- and if they are
16 required to wear them . . .

17 THE COURT: Well, if they don't -- the jury doesn't
18 come in through that back door anymore. Now that we've chosen
19 them and seated them, they'll be coming in through the door
20 that's close to the bench over here so we don't have the same
21 danger that we do during the voir dire where they are coming in
22 through the exit door where the public comes in. That's the
23 concern with having the old-fashioned seating where everyone's
24 facing the judge. But now that they are all coming and going
25 through the witness -- through the door that's nearest to the

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1 witness, then we really don't have a problem with the shackles.

2 MR. LEVENTHAL: But we agree --

3 MR. PEREZ: Well --

4 THE COURT: One, two, three, four.

5 MR. LEVENTHAL: Hold on. Hold on.

6 We agree to abide by -- you know, and not having --
7 they all know. They wouldn't put anything in their pockets.
8 So, if that's the concern and the only concern, I think the
9 prejudice that's gonna be placed upon me and not seeing
10 witnesses and not seeing the reaction of the jurors is much
11 greater. They've already taken out and they've abided by that
12 and they'll continue on abiding by that. If Mr. Myhre or
13 anybody from the Government says anything otherwise, then just
14 bring it to our attention. But, until that happens, Judge, I
15 don't want to be stuck up here in the corner somewhere where I
16 can't see a witness. That's -- that wouldn't be good.

17 THE COURT: All right. Well, let me think on that
18 because I think if there's eight people -- one, two, three,
19 four, five, six, seven eight -- then does that leave enough
20 room for -- what is his name, Brian? Is it --

21 COURTROOM ADMINISTRATOR: He has his own table, Your
22 Honor. But it's my understanding that with the depth of the
23 tables the shackles would be visible from the jury box -- from
24 the end of the jury box.

25 THE COURT: Okay. So that's the concern.

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1 MR. MYHRE: Well, we normally would put up some sort of
2 shroud around the other tables, correct, to cover the -- so
3 potential for seeing the shackles would be eliminated?

4 THE COURT: Well, that covers the front. That's why
5 the tables now have the wooden fronts. That's the, um --

6 MR. MYHRE: But it would go around --

7 THE COURT: -- I know what you're talkin' about, the
8 black tablecloth --

9 MR. MYHRE: Skirt --

10 THE COURT: -- skirt, yes.

11 MR. MYHRE: Right.

12 THE COURT: Yeah. We had to use those before because
13 it was open. Um . . .

14 MR. MYHRE: But these appear to be closed on the sides
15 as well so --

16 THE COURT: Right. These are closed.

17 MR. TANASI: But I would think that that would require
18 almost an entire row then to close off so that the shackles
19 aren't seen. Because even though the side's closed, if
20 they're -- if he moves backwards -- if Mr. Stewart moves
21 backwards or turns for any reason, his shackles would be
22 exposed outside of that little divider that Mr. Myhre just
23 referenced. I mean, there'd have to be, I think, more
24 elaborate curtaining system of some kind which may draw more
25 attention to it in and of itself.

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1 THE COURT: All right. Well, let me take that under
2 submission.

3 Anything else?

4 MR. MYHRE: That's all we had, Your Honor. Thank you.

5 THE COURT: All right.

6 Sorry I can't answer right away on that. I realize I
7 need to probably test it out myself and have input from other
8 individuals as well to see if it's even feasible before I make
9 that decision.

10 I don't think we need this anymore.

11 (The Courtroom Administrator and the Court conferring.)

12 THE COURT: So those are the officials.

13 COURTROOM ADMINISTRATOR: Okay.

14 (The Courtroom Administrator and the Court conferring.)

15 COURTROOM ADMINISTRATOR: Off record.

16 THE COURT: Off record.

17 (Proceedings adjourned at 6:19 p.m. Trial to resume on
18 Monday, July 17, 2017, at 9:00 a.m.)

19 --oOo--

20 COURT REPORTER'S CERTIFICATE

21 I, FELICIA RENE ZABIN, Official Court Reporter, United
22 States District Court, District of Nevada, Las Vegas, Nevada,
23 do hereby certify that pursuant to 28 U.S.C. § 753 the
foregoing is a true, complete, and correct transcript of the
proceedings had in connection with the above-entitled matter.

24 DATED: July 18, 2017

25 /s/ Felicia Rene Zabin
FELICIA RENE ZABIN, RPR, CCR NO. 478