

1 IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR CITRUS COUNTY

2

3 STATE OF FLORIDA,

4 VS. CASE NO. 2005-CF-298

5 JOHN EVANDER COUEY.

6 \_\_\_\_\_X

7

8

9 PROCEEDINGS: Continued Jury Selections before  
the Honorable Richard Howard,  
10 Circuit Judge

11 DATE: July 13, 2006

12

LOCATION: Lake County Courthouse  
13 First Floor, Courtroom 6  
500 W. Main Street  
14 Tavares, FL 32778

15

REPORTED BY: Tiffany Treffeisen, RPR, FPR  
16 Notary Public,  
State of Florida at Large

17

18 APPEARANCES: RIC RIDGWAY, ESQUIRE  
PETER MAGRINO, ESQUIRE  
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ASSISTANT STATE ATTORNEY

21

22

DANIEL LEWAN, ESQUIRE  
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ATTORNEY FOR DEFENDANT

25 ALSO PRESENT: JOHN EVANDER COUEY

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1                   PROCEEDINGS

2           (Whereupon, Court reconvened on Thursday, July  
3 13, 2006 at 10:13 a.m.)

4           (Whereupon, the defendant was present with  
5 counsel in the courtroom.)

6           (Whereupon, the jury panel was not present in  
7 the courtroom.)

8           THE COURT: All right. I thank everyone for  
9 their patience. I believe our last juror has just  
10 arrived and is squared away.

11          Any preliminary motions, Mr. Lewan, before I  
12 begin to bring our jury panel in?

13          MR. LEWAN: Yes, Judge. At this time, the  
14 defense would renew the motion for change of venue.

15          We think during the course of events yesterday it  
16 is becoming increasingly evident we are not going  
17 to be able to get a fair and impartial jury in Lake  
18 County.

19          We would incorporate all previous arguments  
20 and we would like to supplement and file with the

21 Court a number of media reports. This is limited  
22 to the Lake County-type of media that they could be  
23 exposed to. And this dates from the date of  
24 original filing of the motion for change of venue  
25 until yesterday.

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1 I would also note today's local paper  
2 headlines did deal with the word "confession" of  
3 Mr. Couey, which is out there in this morning's  
4 paper. We don't have a copy of that yet. I didn't  
5 want to bring it into the courtroom. I would note  
6 that for the record.

7 THE COURT: All right. I have reviewed the  
8 copy of the filing. The State has a copy of this  
9 filing?

10 MR. RIDGWAY: Yes, sir.

11 THE COURT: Okay. Thank you very much. What  
12 I'm going to do is I'm going to deny the request,  
13 deny the motion for the same grounds as previously  
14 stated.

15 All right. Now then, anything else before I  
16 bring the panel in?

17 MR. LEWAN: No, Your Honor, not from the  
18 Defense.

19 THE COURT: Anything by the State?

20 MR. RIDGWAY: No, sir.

21 THE COURT: Okay. Mr. Bailiff, we have them  
22 all lined up, ready to go according to the computer  
23 printout? Let's bring them in.

24 Madame Clerk, you ready to read?

25 THE CLERK: Yes, sir.

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1 THE COURT: You going to read from there?

2 THE CLERK: Yes, sir.

3 THE COURT: Sound check okay?

4 THE CLERK: Yes, sir.

5 THE BAILIFF: It will be a couple of minutes,

6 Judge.

7 THE COURT: Sounds good. Could Counsel

8 approach before we bring the jury in.

9

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10 (Whereupon, the following proceedings were had at the

11 Bench by the Court and counsel while the defendant

12 listened via a transmitter:)

13 THE COURT: Do you want me to make the

14 announcement that the jury will start Monday on the

15 17th?

16 MR. FANTER: I don't --

17 MR. RIDGWAY: Let's wait until we get down to

18 that.

19 MR. FANTER: Yeah, I think that's awfully

20 optimistic.

21 THE COURT: Okay. Because I was reading from

22 my script here and I said, oh, I better wait.

23 Okay.

24 (Whereupon, the bench conference was concluded

25 and the following was heard in open court.)

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1 THE BAILIFF: They're ready to come in.

2 THE COURT: Bring them in.

3 (Whereupon, the first group of prospective  
4 jurors was present in the courtroom.)

5 MR. RIDGWAY: May we approach, Your Honor?

6 THE COURT: Attorneys approach. On.

7 \_\_\_\_\_

8 (Whereupon, the following proceedings were had  
9 at the Bench by the Court and counsel while the  
10 defendant listened via a transmitter:)

11 MR. RIDGWAY: Some of the jurors are filling  
12 out the questionnaire. You might just want to let  
13 them know.

14 THE COURT: Okay.

15 (Whereupon, the bench conference was concluded  
16 and the following was heard in open court.)

17 THE COURT: Okay. I thank everyone -- let me  
18 go back on record here. You don't have to fill out  
19 that questionnaire, okay. I do thank you, though,  
20 for your attentiveness in that regard. We'll go

21 over the questionnaire with you as soon as the rest  
22 of the prospective jurors come in, okay.

23 (Whereupon, the second group of prospective  
24 jurors was present in the courtroom.)

25 THE COURT: Mr. Ridgway and Mr. Lewan, while  
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1 they're entering, if you could come up here for  
2 just one more housekeeping matter.

3

---

4 (Whereupon, the following proceedings were had  
5 at the Bench by the Court and counsel while the  
6 defendant listened via a transmitter:)

7 THE COURT: One of the things I always tell  
8 them at this juncture is that they can take notes  
9 when the trial begins, not now, but that they  
10 cannot ask questions.

11 MR. LEWAN: And they will not be able to take  
12 the notes back to the jury.

13 THE COURT: Oh, I know. And I know the drill.  
14 But I'll tell them once the case presents, not  
15 right now, I'll say they can take notes. I'll go  
16 through the normal drill that if one person asks  
17 for them, everyone gets one.

18 We have the things. They are going to be  
19 clean. Write your name down, they go face down.  
20 They are secured and I'll explain why because it is

21 not evidence, okay?

22 MR. LEWAN: Yes, sir.

23 THE COURT: Thank you.

24 (Whereupon, the bench conference was concluded

25 and the following was heard in open court.)

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1 (Whereupon, the entire prospective jury panel  
2 was present in the courtroom.)

3 THE BAILIFF: Your Honor, all jurors present  
4 and accounted for.

5 THE COURT: All jurors present and accounted  
6 for. Thank you very much.

7 Welcome back, folks. Good morning.

8 PROSPECTIVE JURORS: Good morning.

9 THE COURT: All right. In just a few moments,  
10 we are going to be going into the second phase or  
11 actually the third phase of the voir dire  
12 examination.

13 Before I begin, since there's been a break  
14 since yesterday and even the day before when some  
15 of you were prequalified until today, you know,  
16 people go home, they live with other people, they  
17 talk with other people, they may see things.

18 I'm going to ask you a question collectively  
19 of the entire group as well as -- this is obviously  
20 the first group we are going to be working through.

21 So, please pay attention if you are out in the back  
22 audience there.

23 If you can't hear something, just raise your  
24 hand and we'll do everything we can to make sure  
25 the people in the back can hear just as well as the

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1 people in the front.

2 Once again, the assignment by this is strictly  
3 by the computer and we want to make sure everyone  
4 is assigned appropriately. If anyone thinks they  
5 may have heard anything that they shouldn't have  
6 heard over the last day, two or three days, I do  
7 not want you to blurt it out in front of everybody.

8 If anything has come up that you think might  
9 cause a problem with your service as a juror, your  
10 service to this community, overall to both sides of  
11 this particular case, just raise your hand.

12 PROSPECTIVE JURORS: (Hands raised.)

13 THE COURT: Okay. So, let's just keep them up  
14 for a second so that the attorneys -- now what we  
15 are going to do then, we have got a few in the  
16 back. And just keep the hands up. And what I want  
17 to do is this: We are going to have a bench  
18 conference in just a second, which will start  
19 off -- you should be David Brown. Right?

20 PROSPECTIVE JUROR BROWN: Correct.

21 THE COURT: Very good. See, that's the kind  
22 of candor we need. We need honest candor. We need  
23 to know what that might be. And then we're going  
24 to talk about it up here at the bench. I'm going  
25 to turn the white noise function on, which you have

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1 heard that already. That's suppose to cover  
2 everything.

3 Y'all can put your hands down now. But that's  
4 going to cover the matters. And just so that you  
5 understand when we have bench conferences like this  
6 you'll see that Mr. Couey has like a headset on.  
7 That's so that he can participate in the bench  
8 conference and hear what's going on. That's the  
9 only reason we do that.

10 So with that having been said, I'm going to  
11 start then first with Mr. Brown. If you could come  
12 on down, slide on down to the best you can. And  
13 we're going to have these conferences here at the  
14 bench, so everyone just relax.

15 \_\_\_\_\_

16 (Whereupon, the following proceedings were had  
17 at the Bench by the Court and counsel while the  
18 defendant listened via a transmitter:)

19 THE COURT: All right. And you're David Barry  
20 Brown?

21 PROSPECTIVE JUROR BROWN: Yes.

22 THE COURT: Mr. Brown, what is it that you

23 think you might have gleaned or learned over the

24 past 24 hours or so?

25 PROSPECTIVE JUROR BROWN: Yesterday I caught a

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1 couple of minutes of Court TV and they were  
2 discussing how Mr. Couey had a history of child  
3 molestation and that he had confessed.

4 Now, both of these were things that I knew  
5 from the past, I just had forgotten them.

6 THE COURT: Okay. Heard confession. Okay.  
7 Do counsel want to have any inquiry or can I make  
8 my call from here? And how would you want me to  
9 address the excusal?

10 MR. LEWAN: The Judge knows our standing --

11 MR. FANTER: I think it's pretty clear on this  
12 one, Judge.

13 MR. LEWAN: Yeah, this one's clear.

14 THE COURT: Okay. So what about from the  
15 State's perspective?

16 MR. RIDGWAY: I think, Judge, with all do  
17 respect, he has to be excused directly from here  
18 outside the courtroom so that there is no question  
19 that he has even inadvertently communicated with  
20 any other juror.

21 THE COURT: Yeah. Have you told anybody else  
22 about this, what you just told us?

23 PROSPECTIVE JUROR BROWN: I mentioned to the  
24 guy I was sitting next to this morning that I had  
25 caught a couple of minutes of Court TV.

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1 THE COURT: Okay. Did you tell him anything  
2 about the history of molestation or confession?

3 PROSPECTIVE JUROR BROWN: I don't think so.

4 THE COURT: Okay. Was he one of the jurors  
5 here?

6 PROSPECTIVE JUROR BROWN: Yeah.

7 THE COURT: Okay. But you just said you saw  
8 something on Court TV, but you don't think that it  
9 had to do with these two issues; history of  
10 molestation or confession? I know I asked you that  
11 question, but I need to hear it again.

12 PROSPECTIVE JUROR BROWN: No, it did. See, I  
13 was flipping the TV and I caught Court TV. And  
14 they were talking about Mr. Couey's history and his  
15 confession. And what I said was that brought back  
16 my memories.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR BROWN: It was like, okay,  
19 well, I knew that. I had just forgotten it.

20 THE COURT: Okay. Then the procedure that you

21 guys recommend is just to, with our thanks, excuse

22 him right here from the bench? You didn't leave

23 anything back there, did you?

24 PROSPECTIVE JUROR BROWN: No, I just got my

25 briefcase over here.

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1 MR. RIDGWAY: We can have the bailiff retrieve  
2 it.

3 THE COURT: The bailiff will make sure you get  
4 his briefcase. Mr. Bailiff, retrieve his  
5 briefcase, please.

6 And with that, thank you very much for your  
7 candor and honesty. You're excused from further  
8 service with our thanks. Please be careful driving  
9 home.

10 (Whereupon, the prospective juror stepped away  
11 from the bench.)

12 MR. FANTER: I would think at this time it  
13 appropriate to renew our objection to venue --

14 (Whereupon, the bench conference was concluded  
15 and the following was heard in open court.)

16 THE COURT: Thank you very much. You're  
17 excused from further jury service. You're free to  
18 go about your daily affairs.

19 \_\_\_\_\_

20 (Whereupon, the following proceedings were had

21 at the Bench by the Court and counsel while the

22 defendant listened via a transmitter:)

23 MR. FANTER: This is exactly what we were

24 concerned about with the people who said they had

25 knowledge of the case, maybe not specifically the

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1 confession. And here it is, number one, the  
2 memories are coming back that he knew this and  
3 heard this before.

4 We believe anybody who has any knowledge of  
5 this case is not qualified to sit as a juror. We  
6 have approximately six who said they had no  
7 knowledge of the case at all. And we would just  
8 renew our motion to change venue from here --

9 MR. RIDGWAY: To where?

10 MR. FANTER: We have got to try somewhere  
11 else. This isn't going to work, Judge.

12 THE COURT: Okay. I still have to try to use  
13 diligence to exhaust the pool here first. I have  
14 to count on their sworn statements that if they are  
15 going to bring -- just like this guy.

16 If 55 more come up and say the same thing,  
17 we'll see. If 30 more come up and say, it's all a  
18 question of degree.

19 So what I'm going to do is see if anybody  
20 knows from what happened in the paper today, then I

21 think that the next section, the thing next thing I  
22 have to do is ask them in mass: From anything you  
23 may recollect, did anything about this spark any  
24 memory of anything? And I can do that right now.

25 MR. RIDGWAY: Well, let's deal with the ones  
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1 we got and see what happens.

2 THE COURT: Let's deal with the first ones we  
3 got from yesterday and then I'll expand the field.

4 MR. LEWAN: And, Judge, I think you said 24  
5 hours when you were talking to him. He was a  
6 Monday's group. We are going back three or four  
7 days now not just 24 hours.

8 THE COURT: I thought I said earlier to the  
9 entire group --

10 MR. LEWAN: You did to the entire group but we  
11 questioned him individually --

12 THE COURT: Whatever. As soon as he said I  
13 saw something on the news last night he was gone.

14 MR. FANTER: It's just the comments that he  
15 remembered the prior history and the confession,  
16 two of the most inadmissible things.

17 THE COURT: We're trying. You know I'm  
18 trying.

19 MR. FANTER: I understand, Judge.

20 THE COURT: We're going to see how it goes.

21 You might as well stay up here.

22 (Whereupon, the bench conference was concluded

23 and the following was heard in open court.)

24 THE COURT: All right. Who else on the panel

25 in the back row? That would be Mr. Chris Weber.

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1 Mr. Weber, if you would just come on down.

2 \_\_\_\_\_

3 (Whereupon, the following proceedings were had

4 at the Bench by the Court and counsel while the

5 defendant listened via a transmitter:)

6 THE COURT: Mr. Weber, you raised your hand

7 indicating in the last, since you were selected as

8 one of the first group -- and I don't want to limit

9 it to the last 24 hours, but since Monday, since

10 you have been selected as one of the possible

11 jurors to be interviewed for the second or third

12 phase, did you learn anything or glean anything or

13 has something come to your attention, or has your

14 memory of something been refreshed?

15 PROSPECTIVE JUROR WEBER: One of my patients

16 told me he confessed.

17 THE COURT: Was that after you went through

18 the thing here?

19 PROSPECTIVE JUROR WEBER: Correct, yeah, that

20 was Tuesday.

21 THE COURT: That was on Tuesday, okay. With  
22 that having been said, standing motion is granted.

23 Did you leave anything in the box? A book or  
24 anything like that?

25 PROSPECTIVE JUROR WEBER: Just a little game  
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1 book.

2 THE COURT: Mr. Bailiff, get his game book.

3 What I'm going to do is thank you. I'm going

4 to turn the thing off. I do thank you for your

5 jury service. And I especially thank you for your

6 candor in telling us that. This will release you

7 from jury service and you're good to go.

8 PROSPECTIVE JUROR WEBER: Thank you.

9 THE COURT: I want to turn this off.

10 (Whereupon, the bench conference was concluded

11 and the following was heard in open court.)

12 THE COURT: All right. Thank you, Mr. Weber,

13 for your offer of jury service. You are excused

14 from further service, free to go about your daily

15 affairs.

16 All righty. And who is our next that had the

17 hand up? Okay. That would be Mr. Rigdon?

18 PROSPECTIVE JUROR RIGDON: Yes, sir.

19 THE COURT: Very good, sir. If you would

20 forward up.

21

\_\_\_\_\_

22 (Whereupon, the following proceedings were had at the

23 Bench by the Court and counsel while the defendant

24 listened via a transmitter:)

25 THE COURT: Mr. Rigdon, you raised your hand

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1 saying that you might have learned something about  
2 this case or maybe had your memory refreshed over  
3 the last 24, 36, or 48 hours?

4 PROSPECTIVE JUROR RIGDON: Yeah. It's been  
5 pretty much, like, I can avoid media, I can avoid  
6 all that --

7 THE COURT: Keep your voice down just a little  
8 bit. This white noise thing is good but not great.

9 PROSPECTIVE JUROR RIGDON: It is hard to avoid  
10 word of mouth. It is hard to avoid gossip at work  
11 and everything. To be honest with you, I mean, my  
12 memory after I was here Monday, I didn't know too  
13 much. I just knew a little bit. Since then, I  
14 mean, that night I had a dream about the little  
15 girl. And it's been disturbing to me.

16 THE COURT: Other than the dream that you may  
17 have had and the fact it may be disturbing, did you  
18 learn from the media or friend anything outside of  
19 the matters that we discussed here in the  
20 courtroom?

21 PROSPECTIVE JUROR RIGDON: Well, that's it, it  
22 just changed my opinion on everything. I mean, I  
23 don't think it would be fair for me to go on.

24 THE COURT: But you didn't learn anything  
25 separate and apart, like, from the media or  
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1 anything like that?

2 PROSPECTIVE JUROR RIGDON: I just learned what  
3 I heard in the beginning, in the original.

4 THE COURT: Okay. If you would just step over  
5 to the side by the bailiff for just a second, I'm  
6 going to -- do you have any questions for him other  
7 than what we talked about, my limited inquiry here?

8 MR. FANTER: Sure. I mean, is your position  
9 now that you do not believe you can set aside what  
10 you have learned and be a fair and objective juror?

11 PROSPECTIVE JUROR RIGDON: Excuse me? I'm  
12 sorry.

13 MR. FANTER: I said, based on what you now  
14 feel and know do you feel you can not be a fair and  
15 impartial juror?

16 PROSPECTIVE JUROR RIGDON: I believe, yeah, I  
17 wouldn't be able to.

18 THE COURT: Mr. Ridgway, any inquiry?

19 MR. RIDGWAY: No, sir.

20 THE COURT: Any objections?

21 MR. RIDGWAY: No, sir.

22 THE COURT: Okay. Thank you, Mr. Rigdon, for

23 coming in to assist the Court. You're released

24 from your jury summons, free to go about your daily

25 affairs. Thank you, sir.

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1 PROSPECTIVE JUROR RIGDON: Okay.

2 (Whereupon, the juror left the bench.)

3 THE BAILIFF: May I say something before the  
4 next one gets here? The press is, they are  
5 objecting that you are doing this up here and they  
6 can't hear.

7 THE COURT: Tough.

8 THE BAILIFF: I told them the judge will  
9 address that issue.

10 MR. MAGRINO: Meanwhile, don't shoot the  
11 messenger.

12 THE BAILIFF: I'm just saying. I said you  
13 would make that call. That is not my call.

14 THE COURT: I'm not even going to announce  
15 that call, I'm just going to continue.

16 (Whereupon, the bench conference was concluded  
17 and the following was heard in open court.)

18 THE COURT: Who is the next person to raise  
19 their hand in the back row? No one in the back  
20 row? Okay. On the front row? Okay. And your

21 name, sir?

22 PROSPECTIVE JUROR GENES: Fernando.

23 THE COURT: Mr --

24 MR. LEWAN: Fernando Genes.

25 THE COURT: Where is it?

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1 MR. MAGRINO: No. 14.

2 THE COURT: No. 14. Mr. Genes, would you come  
3 forward, sir?

4

5 (Whereupon, the following proceedings were had

6 at the Bench by the Court and counsel while the

7 defendant listened via a transmitter:)

8 THE COURT: Come on up. Hi. How are you,  
9 sir?

10 PROSPECTIVE JUROR GENES: Fine.

11 THE COURT: Mr. Genes, my question to the

12 panel in a -- that's why I had this individual

13 conversation at the bench. Over the past 24, 36,

14 48 hours even, did you learn or hear anything about

15 this case other than what we talked about in court?

16 PROSPECTIVE JUROR GENES: No, Your Honor.

17 That is not why I'm here for.

18 THE COURT: Great. Then just tell me.

19 PROSPECTIVE JUROR GENES: The reason being is,

20 you know, this is a very sensitive, important case

21 where you need people that know how to speak the

22 English language real good. I don't.

23 I have problems understanding big words. When

24 these lawyers start using big words, I'm going to

25 have a problem. I grew up in another country. I

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1 think I told you that the very first day, remember?

2 THE COURT: And what country was that?

3 PROSPECTIVE JUROR GENES: Columbia.

4 THE COURT: Okay. And how long have you lived

5 in the United States?

6 PROSPECTIVE JUROR GENES: Since I was 24. I'm

7 51 now.

8 THE COURT: So you've lived in the United

9 States 26 years?

10 PROSPECTIVE JUROR GENES: Little more than

11 that, yes.

12 THE COURT: Okay. Any inquiry along those

13 lines?

14 MR. LEWAN: No.

15 THE COURT: None by the State?

16 MR. RIDGWAY: My only question would be,

17 Judge, is has he had any problem understanding

18 anything that we have done up until now?

19 THE COURT: Have you had any problems

20 understandingn anything we have done up to now or

21 said?

22 PROSPECTIVE JUROR GENES: Yes.

23 THE COURT: Any idea --

24 PROSPECTIVE JUROR GENES: When you were saying

25 the judiciary, I didn't know what you were talking

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1 about.

2 THE COURT: The what?

3 PROSPECTIVE JUROR GENES: I got problem

4 understanding big words here. I'm not lying to

5 you.

6 THE COURT: Objection?

7 MR. RIDGWAY: No, sir.

8 MR. FANTER: No, sir.

9 THE COURT: I'm going to release you from your

10 jury summons, Mr. Genes.

11 PROSPECTIVE JUROR GENES: Okay.

12 THE COURT: Thank you for your offer of

13 service.

14 PROSPECTIVE JUROR GENES: You're welcome.

15 THE COURT: You're free to go about your daily

16 affairs. Thank you very much.

17 (Whereupon, the bench conference was concluded

18 and the following was heard in open court.)

19 THE COURT: Anybody else on the front row?

20 Anybody else in the entire panel? All right. Now

21 then, on the right side, my right side, commencing

22 with the front row here. The first name would

23 be -- is this -- who is our first row? Who is the

24 lady in the front row? What is your name?

25 PROSPECTIVE JUROR SPANGLER-WAHL: Joann

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1 Spangler-Wahl.

2 THE COURT: Okay. So that would be juror 19.

3 Did you raise your hand?

4 PROSPECTIVE JUROR SPANGLER-WAHL: (Shaking  
5 head.)

6 THE COURT: Okay. Anyone on the front row  
7 raise their hand? Okay. So that would be Ms.  
8 Jenovese?

9 PROSPECTIVE JUROR JENOVESE: Yes.

10 THE COURT: Okay. Would you come on up.

11 \_\_\_\_\_

12 (Whereupon, the following proceedings were had  
13 at the Bench by the Court and counsel while the  
14 defendant listened via a transmitter:)

15 THE COURT: Hi, Ms. Jenovese.

16 PROSPECTIVE JUROR JENOVESE: Hi.

17 THE COURT: The questions that I, the focus of  
18 this is in the last 24, 36 or 48 hours -- in other  
19 words, since you were first brought in and  
20 prequalified, have you heard or learned of anything

21 about this case from either the media, friends  
22 talking to you about it; something that you didn't  
23 tell us or that you may not have known at the time?

24 PROSPECTIVE JUROR JENOVESE: Okay. In the  
25 last few days, I've heard the same thing twice.

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1 THE COURT: What is that?

2 PROSPECTIVE JUROR JENOVESE: That he has  
3 already confessed to the murder somewhere in  
4 Georgia or something like that through just being  
5 at work yesterday and from being at home.

6 THE COURT: Okay. So what I'm going to do,  
7 Ms. Jenovese, I thank you for your jury service.  
8 What I'm going to do is turn this off in a second  
9 because you have a right to be thanked in public  
10 for your jury service.

11 PROSPECTIVE JUROR JENOVESE: Okay.

12 THE COURT: You did a good job by telling us  
13 and being candid with us. And I'm going to release  
14 you.

15 PROSPECTIVE JUROR JENOVESE: Okay. Thank you  
16 so much.

17 (Whereupon, the bench conference was concluded  
18 and the following was heard in open court.)

19 THE COURT: Ms. Jenovese, I thank you for your  
20 offer of jury service. This will excuse you from

21 further service. And please drive careful going

22 home.

23 On the front row, anybody else? And that

24 would be Mr -- what is your name?

25 PROSPECTIVE JUROR CORLEY: Corley.

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1 THE COURT: I didn't hear you.

2 PROSPECTIVE JUROR CORLEY: Corley.

3 THE COURT: Tim Corley, why don't you come on  
4 up.

5

6 \_\_\_\_\_  
(Whereupon, the following proceedings were had  
7 at the Bench by the Court and counsel while the  
8 defendant listened via a transmitter:)

9 MR. LEWAN: Judge, it is more than 48 hours.

10 We go 72. I object to you saying 24, 36, 48.

11 THE COURT: Just jump right in whenever you  
12 want.

13 MR. LEWAN: I just want to make sure they  
14 understand and it doesn't get cut off.

15 (Whereupon, the perspective juror was present  
16 at the bench.)

17 THE COURT: Hi. Are you Tim Corley?

18 PROSPECTIVE JUROR CORLEY: Yes, sir.

19 THE COURT: Mr. Corley, over the last 24, 36,  
20 48, 72 hours, you know, the last four days -- that

21 help you, Mr. Lewan?

22 MR. LEWAN: That's nice. Thank you.

23 THE COURT: Good. Mr. Corley, have you

24 learned or think you might have learned something

25 outside of what we discussed here about this case

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1 from either the media, friends, anything like that?

2 PROSPECTIVE JUROR CORLEY: I have heard of a  
3 supposed confession and it was thrown out.

4 THE COURT: Okay. That's Mr. Corley. Okay.  
5 Well, I thank you for your candor. And I'm going  
6 to say it -- well, it is on the record now. We are  
7 always on the record. But, please, as you leave do  
8 not tell anybody else or any of the other  
9 prospective jurors about those matters. But do  
10 have a good day.

11 PROSPECTIVE JUROR CORLEY: Yes, sir.

12 THE COURT: You're excused.

13 (Whereupon, the bench conference was concluded  
14 and the following was heard in open court.)

15 THE COURT: Thank you, Mr. Corley, for your  
16 offer of jury service. You are released from  
17 further service. Please drive careful going home.

18 Anybody else on the front row? Okay. And on  
19 the second row commencing with Gerald Wright.

20 Okay. That is the second row. Anybody? Okay.

21 The young man raising his hand -- or, okay, first

22 the lady. Come on up. And your name is?

23 PROSPECTIVE JUROR HANSON: Ellen Hanson.

24 THE COURT: Ms. Hanson, that's it? Okay. Why

25 don't you come on up.

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1 \_\_\_\_\_  
2 (Whereupon, the following proceedings were had at the  
3 Bench by the Court and counsel while the defendant  
4 listened via a transmitter:)

5 THE COURT: Hi, Ms. Hanson. Over the last  
6 three or four days or yesterday have you learned or  
7 think you might have learned anything about this  
8 case outside the hearing of the other jurors and  
9 outside the hearing of the Court, Mr. Couey, and  
10 the attorneys? Would you tell me what you may have  
11 heard?

12 PROSPECTIVE JUROR HANSON: Do you want  
13 word-for-word?

14 THE COURT: Word-for-word.

15 PROSPECTIVE JUROR HANSON: Okay. There is a  
16 gas station that I frequent. And they know I've  
17 been on jury duty. When I went in they said, you  
18 still at jury duty? And there was other patrons, I  
19 guess you could say, there that said if you're on  
20 the Couey case you should let him freaking fry.

21 And that they just moved the case because an

22 admission was thrown out of Court.

23 THE COURT: Now, you didn't solicit that --

24 PROSPECTIVE JUROR HANSON: I did not.

25 THE COURT: They said that to you?

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1 PROSPECTIVE JUROR HANSON: I did not comment.

2 I just said, I'm not -- I can't comment on why I'm  
3 at jury duty.

4 THE COURT: All right. Well, I'm going to  
5 turn the white sound off in a moment and thank you  
6 publicly because you have a right to be thanked. I  
7 thank you for your candor and courage, but I will  
8 be releasing you from the summons, okay.

9 PROSPECTIVE JUROR HANSON: Thank you.

10 THE COURT: All right.

11 (Whereupon, the bench conference was concluded  
12 and the following was heard in open court.)

13 THE COURT: Thank you, Ms. Hanson, for coming  
14 forth to offer your jury service. You are released  
15 from your summons, free to go about your daily  
16 affairs.

17 Okay. I believe Edwin Rivera, you raised your  
18 hand. Come on up.

19 \_\_\_\_\_

20 (Whereupon, the following proceedings were had

21 at the Bench by the Court and counsel while the

22 defendant listened via a transmitter:)

23 THE BAILIFF: Can I take one of the jurors to

24 the restroom?

25 THE COURT: Yeah. Any problem with that;

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1 restroom break for one of them?

2 MR. RIDGWAY: No.

3 THE COURT: Take them.

4 (Whereupon, the prospective juror was present  
5 at the bench.)

6 PROSPECTIVE JUROR RIVERA: Someone in my  
7 hometown recognized me --

8 THE COURT: Just relax. Don't necessarily  
9 speak quite so loud. You don't have to be nervous.

10 Mr. Rivera, since the last 24, 48 hours or 72  
11 hours, over the last four days, have you learned  
12 anything about this case or has anyone either told  
13 you about it or have you read any television,  
14 radio, media account of the case?

15 PROSPECTIVE JUROR RIVERA: Someone has told  
16 me, yes.

17 THE COURT: Okay. Now, did they approach you  
18 or did you go solicit them?

19 PROSPECTIVE JUROR RIVERA: They approached me.

20 THE COURT: What did they tell you? And I

21 need word-for-word.

22 PROSPECTIVE JUROR RIVERA: They saw me on

23 television. They recognized me on television when

24 I was walking in the courthouse and he told me to

25 plead guilty. And I'm --

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1 THE COURT: Told you what?

2 PROSPECTIVE JUROR RIVERA: He told me to plead  
3 guilty against him, and I want to deselect myself.

4 THE COURT: He told you to plead guilty?

5 MR. RIDGWAY: I think he means find guilty.

6 PROSPECTIVE JUROR RIVERA: Find him guilty.

7 THE COURT: Okay. He told you to find him  
8 guilty?

9 PROSPECTIVE JUROR RIVERA: Yes.

10 THE COURT: Did he tell you anything about any  
11 other proof, or level or proof, or evidence in the  
12 case?

13 PROSPECTIVE JUROR RIVERA: He just told me  
14 that he doesn't deserve to go out. And I don't  
15 want to really be on the jury if that's what it is  
16 going to be.

17 THE COURT: Any inquiry by the defense --  
18 well, by the State first?

19 MR. RIDGWAY: You understand that if you sit  
20 as a juror that the verdict is your verdict, not

21 somebody else's verdict?

22 PROSPECTIVE JUROR RIVERA: I know. I just

23 don't want him to end up coming to my house and

24 finding where I live.

25 THE COURT: Did this person threaten you? Or

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1 did he act in a threatening mode like you have got  
2 to do this?

3 PROSPECTIVE JUROR RIVERA: I felt like it,  
4 yes.

5 MR. RIDGWAY: Is this somebody you knew?

6 PROSPECTIVE JUROR RIVERA: No.

7 THE COURT: Defense inquiry?

8 MR. FANTER: Did he say anything about why you  
9 should find this guy guilty?

10 PROSPECTIVE JUROR RIVERA: He told me he  
11 doesn't deserve to go out. If it is going to be  
12 like that I don't want anybody coming up to me like  
13 that. I don't want to be in the jury.

14 MR. RIDGWAY: I don't think somebody should be  
15 forced to serve if there's concerns --

16 THE COURT: Defense counsel?

17 MR. FANTER: Yeah.

18 THE COURT: Granted. Okay. And by  
19 stipulation, the record shall reflect the  
20 stipulation of the attorneys.

21           Okay. I'm going to thank you publicly, sir.

22           You're released. But I think it is fair -- we

23           appreciate your candor, okay. You have done

24           nothing wrong and I thank you.

25           **PROSPECTIVE JUROR RIVERA: No problem.**

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1 (Whereupon, the bench conference was concluded  
2 and the following was heard in open court.)

3 THE COURT: Mr. Rivera, thank you for coming  
4 in to assist the Court. You're released from your  
5 jury summons, free to go about your daily affairs.  
6 Please do not discuss those matters anymore.

7 Okay. Anybody else on that second row? Third  
8 row would be commencing with Ms. Silkey. Okay.  
9 Anyone on that third row? Is there a fourth row?  
10 I see some hands.

11 THE COURT: That is fine. I need on the third  
12 row, anyone who has raised their hand on the third  
13 row? Come on up.

14 MR. LEWAN: That's the fourth row that are  
15 raising their hand.

16 THE COURT: Fourth row. None on the third,  
17 okay. On the fourth row then, come on down.

18 MEMBER OF THE PRESS: Your Honor, I'd like to  
19 make an objection on the record.

20 THE COURT: Your objection will not be

21 entertained, ma'am, unless you're a member of the

22 Bar. Please stand silent.

23 Ma'am, if you would, come on up.

24 MEMBER OF THE PRESS: Can I request a brief

25 recess to obtain counsel?

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1 THE COURT: Then go find it.

2 Okay. Come on up, ma'am.

3 \_\_\_\_\_

4 (Whereupon, the following proceedings were had

5 at the Bench by the Court and counsel while the

6 defendant listened via a transmitter:)

7 THE COURT: Hi. What's your name, ma'am?

8 PROSPECTIVE JUROR BERNER: I'm Ann Berner.

9 THE COURT: Ann Berner. Yes, Ms. Berner,

10 since you were done being prequalified, have you

11 made any, or have you learned anything about this

12 case or has anyone talked to you about it,

13 volunteered any information, other than what we

14 discussed the other day?

15 PROSPECTIVE JUROR BERNER: Yes.

16 THE COURT: Tell me what happened.

17 PROSPECTIVE JUROR BERNER: Last night in the

18 kitchen my mom was asking whether she should extend

19 her ticket, whether I was going to be on the case.

20 And I told her, you know, we were still in the

21 process.

22 And she said, well, I don't understand why  
23 it's taking so long since he'd already admitted to  
24 killing the child. And I didn't know before that.

25 THE COURT: You didn't know?

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1       PROSPECTIVE JUROR BERNER: No, I didn't know  
2       that.

3       THE COURT: Okay. And with that, with our  
4       sincere thanks, I'm going to thank you on the  
5       record because you have a right --

6       MR. RIDGWAY: Judge, Judge.

7       THE COURT: What? She said something about --  
8       (Talking simultaneously)

9       MR. RIDGWAY: -- he admitted -- could we ask  
10      the juror --

11      THE COURT: Go ahead.

12      MR. RIDGWAY: Is that word-for-word what she  
13      said?

14      PROSPECTIVE JUROR BERNER: She said, "I don't  
15      understand why it's taking so long since he  
16      admitted to killing her."

17      MR. RIDGWAY: Did she indicate where, when,  
18      how he admitted to killing the little girl?

19      PROSPECTIVE JUROR BERNER: No.

20      MR. RIDGWAY: And did you have any

21 conversation beyond that?

22 PROSPECTIVE JUROR BERNER: No. I asked her to

23 stop because -- and I told her I didn't know that.

24 MR. RIDGWAY: Could the juror be seated and we

25 --

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1 THE COURT: Yeah. Why don't you have a seat  
2 over there. One of the bailiffs will give up their  
3 seat. Why don't you have a seat where one of the  
4 bailiffs is.

5 (Whereupon, the juror was seated, not present  
6 at the bench.)

7 THE COURT: Oh, I just realized I didn't ask  
8 you guys, let you guys ask any questions. Did you  
9 want to ask any questions?

10 MR. FANTER: I think we would, Judge.

11 THE COURT: Okay. Ms. Berner, come on back  
12 for a just second. Thank you. They needed to ask  
13 you some questions.

14 (Whereupon, the juror was again present at the  
15 bench.)

16 PROSPECTIVE JUROR BERNER: Okay. That's all  
17 right.

18 THE COURT: Okay. Go ahead.

19 MR. LEWAN: You were told there was an  
20 admission. What does that mean to you?

21           PROSPECTIVE JUROR BERNER: To me it means if  
22           he admitted it, he did it in my mind. I don't know  
23           why he would admit to it if he hadn't done it.

24           MR. LEWAN: So you think it has put you in a  
25           position where you formed an opinion about his  
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1     guilt or innocence?

2           PROSPECTIVE JUROR BERNER: Yes. You know, I  
3     thought before that I could be objective, but I  
4     don't know why he would have admitted it had he not  
5     done it.

6           MR. LEWAN: Are you able at this time to  
7     reasonably set aside that opinion of guilt and  
8     listen to the Judge's instructions?

9           PROSPECTIVE JUROR BERNER: I don't think I  
10    can.

11          THE COURT: Any further question or objections  
12    to the motion?

13          MR. RIDGWAY: Could we talk, Judge? I mean, I  
14    --

15          PROSPECTIVE JUROR BERNER: You want me to sit  
16    down here, again?

17          THE COURT: Yeah. Have a seat.

18          (Whereupon, the juror was seated, not present  
19    at the bench.)

20          MR. RIDGWAY: Kenneth Slanker is going to

21 testify that he admitted he killed her.

22 MR. LEWAN: But she has a predisposition and

23 opinion of guilt that she won't set aside. That's

24 beyond.

25 THE COURT: State's position is noted. Motion

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1 is granted.

2 (Whereupon, the bench conference was concluded  
3 and the following was heard in open court.)

4 THE COURT: Thank you, Ms. Berner, for coming  
5 in to assist the Court. You're released from your  
6 jury summons. You're free to go about your daily  
7 affairs. Please do not discuss these matters  
8 subsequent, okay. Thank you. With the other  
9 potential jurors, okay.

10 Who is our next person? Come on up. We'll  
11 get your name up here.

12 \_\_\_\_\_

13 (Whereupon, the following proceedings were had  
14 at the Bench by the Court and counsel while the  
15 defendant listened via a transmitter:)

16 THE COURT: What is your name, sir?

17 PROSPECTIVE JUROR HARTWICK: Ed Hartwick.

18 THE COURT: Ed, how you doing today?

19 PROSPECTIVE JUROR HARTWICK: Fine.

20 THE COURT: Mr. Hartwick, over the last couple

21 of days, four days, whatever, have you learned  
22 anything or think you might have learned something  
23 that you didn't tell us because it either hadn't  
24 been in your memory or that something has happened  
25 over the last three days?

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1 PROSPECTIVE JUROR HARTWICK: Yes.

2 THE COURT: Why don't you tell me what's  
3 happened.

4 PROSPECTIVE JUROR HARTWICK: I have met the  
5 father before.

6 THE COURT: Pardon?

7 PROSPECTIVE JUROR HARTWICK: I have met the  
8 father of the girl.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR HARTWICK: On one of the  
11 many fundraisers that we do. Like I said, I'm an  
12 avid motorcycle rider. And I have met him.

13 THE COURT: Okay. Has he talked with you  
14 about this matter?

15 PROSPECTIVE JUROR HARTWICK: Pardon?

16 THE COURT: Has he talked with you about this  
17 matter?

18 PROSPECTIVE JUROR HARTWICK: No, he has not.

19 THE COURT: Do you think that if he was called  
20 to be a witness in the case that you would judge

21 his testimony and credibility -- that is if he was  
22 called to be a witness in the case -- and you would  
23 judge his credibility and truthfulness like any  
24 other witness?

25 PROSPECTIVE JUROR HARTWICK: Probably.  
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1 THE COURT: Okay. Have you learned or gleaned  
2 anything else --

3 PROSPECTIVE JUROR HARTWICK: Yes.

4 THE COURT: -- about this case in the last  
5 four days?

6 PROSPECTIVE JUROR HARTWICK: I made a mistake  
7 by going to work yesterday.

8 THE COURT: What happened at work?

9 PROSPECTIVE JUROR HARTWICK: I walked into our  
10 supply house and the fella behind the --

11 THE COURT: Let's keep our voices down just a  
12 little bit.

13 PROSPECTIVE JUROR HARTWICK: I walked into our  
14 supply house and the fella behind the counter  
15 looked at me and said, Do you know that S.O.B.  
16 buried her alive? And that's all I could think  
17 about yesterday.

18 THE COURT: Said what?

19 PROSPECTIVE JUROR HARTWICK: He told me that  
20 she was buried alive.

21 THE COURT: Did he tell anything more about  
22 the nature of how he came to know that or any of  
23 the additional facts?

24 PROSPECTIVE JUROR HARTWICK: No. Actually I  
25 walked out and didn't even get the material I went  
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1 in for.

2 THE COURT: You continued to follow my order?

3 PROSPECTIVE JUROR HARTWICK: Pardon?

4 THE COURT: You continued to follow my order

5 not to discuss it?

6 PROSPECTIVE JUROR HARTWICK: Yeah.

7 THE COURT: Any questions by the State?

8 MR. RIDGWAY: No, sir.

9 THE COURT: By the defense?

10 MR. FANTER: Do you think that knowledge is

11 going to affect your ability to be fair and

12 impartial?

13 PROSPECTIVE JUROR HARTWICK: Yes, I do.

14 MR. FANTER: And you don't think you could set

15 that aside and just make a decision on what you

16 hear from the witness stand?

17 PROSPECTIVE JUROR HARTWICK: No, I really

18 don't. It really bothered me.

19 THE COURT: I need you to have a seat over in

20 the chair. We need to discuss this issue.

21 (Whereupon, the juror was seated, not present  
22 at the bench.)

23 THE COURT: This is the thing I have to deal  
24 with. My responsibility is to try to get this jury  
25 together. I need to keep my voice down. Is that

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1 if the death, count one, is by asphyxiation it's a  
2 foregone conclusion that the child was buried alive

3 --

4 MR. FANTER: No, it's not.

5 THE COURT: I don't know.

6 MR. FANTER: Oh, I thought you were making a  
7 statement. I'm sorry, Judge. I thought you were  
8 making inadvertently that that was a fact.

9 THE COURT: That is one way you could look at  
10 it. But he hasn't heard about the "C" word.

11 MR. RIDGWAY: Right.

12 MR. FANTER: Judge, the point is Slanker's  
13 statement is not going to be "I buried her alive."

14 MR. RIDGWAY: Right.

15 MR. FANTER: That is only in the suppressed  
16 confession.

17 MR. RIDGWAY: Well, it is also from the,  
18 reasonably argued from the other evidence.

19 MR. FANTER: I disagree.

20 MR. RIDGWAY: I mean, like I said, I'm going

21 to argue she was buried alive and there is evidence

22 to support it from outside the confession.

23 THE COURT: Well, he did say something to the

24 effect he doesn't think he can set it aside.

25 MR. RIDGWAY: Well, that's --

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1 THE COURT: That is really the kicker of the  
2 whole thing. I'll grant the motion.

3 (Whereupon, the bench conference was concluded  
4 and the following was heard in open court.)

5 THE COURT: Okay, Mr. Hartwick, thank you for  
6 coming in to assist the Court. I'm going to  
7 release you from further jury service of this  
8 matter. Please do not discuss any of these matters  
9 with any other potential jurors, okay? Thank you  
10 very much. Have a good day.

11 Okay. On that side, are there any others that  
12 had their hand up or think they would like to bring  
13 something to the Court's attention on that side?

14 Okay then, commencing over on this side, my  
15 left, who would be the gentleman on our first seat?

16 PROSPECTIVE JUROR STEMPEK: Mr. Stempek.

17 THE COURT: Joseph Stempek. Okay. So, on the  
18 first row with Mr. Stempek, anyone who raised their  
19 hand? Okay. That would be Ms. Grimes?

20 PROSPECTIVE JUROR GRIMES: Yes.

21 THE COURT: Okay. Why don't you come on up  
22 and join us here at the bench. Chilly in here,  
23 huh?

24 PROSPECTIVE JUROR GRIMES: I'm freezing.

25 THE COURT: Well, there is a reason for that,  
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21 in a trailer park.

22 THE COURT: You did hear something about a

23 confession?

24 PROSPECTIVE JUROR GRIMES: Yes.

25 THE COURT: Okay. So what we are going to do

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1 is this: I'm going to turn this button off and I'm  
2 going to thank you publicly because you have the  
3 right to be thanked publicly for your service. I'm  
4 also going to direct that you not talk to any of  
5 the jurors out there.

6 Now, some of the reporters might want to talk  
7 to you. I cannot limit you in that regard because  
8 once I release you, you are a free citizen.

9 PROSPECTIVE JUROR GRIMES: Oh, I wouldn't.

10 THE COURT: But I'm going to thank you. And  
11 don't talk to any of the jurors.

12 PROSPECTIVE JUROR GRIMES: Yes, sir.

13 (Whereupon, the bench conference was concluded  
14 and the following was heard in open court.)

15 THE COURT: Ms. Grimes, thank you very much  
16 for your offer of jury service. You are released  
17 from your subpoena, or your summons, free to go  
18 about your daily affairs. Thanks for coming in.

19 Anybody else in that first row? Second row?

20 Okay. Third row, any hands up? Fourth row?

21 Nobody else, hands? Okay. Since I have done this  
22 now, is there any other hands on the first panel?

23 \_\_\_\_\_

24 (Whereupon, the following proceedings were had

25 at the Bench by the Court and counsel while the

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1 defendant listened via a transmitter:)

2 THE BAILIFF: Question, Your Honor, I had a  
3 question from one of the jurors.

4 THE COURT: Which is what?

5 THE BAILIFF: Her husband is a convicted  
6 felon. He did time in state prison for a DUI.  
7 That is not really a problem?

8 THE COURT: That is something for later.

9 THE BAILIFF: Very good.

10 (Whereupon, the bench conference was concluded  
11 and the following was heard in open court.)

12 THE COURT: That having been said, to that  
13 inquiry, is the State and Defense well satisfied  
14 that we have addressed those issues we discussed at  
15 the bench?

16 MR. RIDGWAY: Yes, sir.

17 THE COURT: About the procedure about raising  
18 the hands?

19 \_\_\_\_\_

20 (Whereupon, the following proceedings were had at the

21 Bench by the Court and counsel while the defendant

22 listened via a transmitter:)

23 MR. FANTER: I don't think -- you haven't

24 asked if anybody's memory has come back based on

25 their time to reflect on this.

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1 THE COURT: I was about to do that. Stay up  
2 here.

3 MR. FANTER: I thought you were done. I  
4 didn't know.

5 THE COURT: I'm almost done.

6 (Whereupon, the bench conference was concluded  
7 and the following was heard in open court.)

8 THE COURT: Additionally, since you have had  
9 time -- to the entire jury panel out there -- go  
10 back home, refresh, you know, recollect, and just  
11 live your lives, has anyone in the first part of  
12 this panel, has any spark of memory or recollection  
13 or memory come up about this case that we have not  
14 earlier asked you about? If you do, raise your  
15 hand. Okay.

16 To this panel over here on my first left. I'm  
17 sorry, first right, anybody had their present  
18 memory refreshed about anything over the last four  
19 days? No? If you do -- oh, there is a hand up.  
20 Okay. Come on up. Let's join us up here.

21           And while that lady is making her way up, same  
22           question to this group. Anybody had their memories  
23           or recollections or anything refreshed or think  
24           there is something they would like to share with us  
25           at the bench that they may know or think they might

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1 know about the case? Nope? All right.

2 \_\_\_\_\_

3 (Whereupon, the following proceedings were had

4 at the Bench by the Court and counsel while the

5 defendant listened via a transmitter:)

6 THE COURT: What is your name, ma'am?

7 PROSPECTIVE JUROR COPLEY: Charlene Copley.

8 THE COURT: Ms. Copley, what would you like to

9 tell me here? We got a lot of names here. Okay.

10 Ms. Copley, let's keep our voices down.

11 Ms. Copley, over the past four days or so has

12 anything -- has anyone come up to you, talked to

13 you about the case, or has your memory been --

14 PROSPECTIVE JUROR COPLEY: No, but when you

15 were asking, questioning me yesterday, I lived in

16 New Hampshire at the time that this happened, and I

17 just vaguely recalled something that -- I'm not

18 even sure if it is the same case or not.

19 THE COURT: We need to know anything you might

20 know. It might be a totally different case.

21 PROSPECTIVE JUROR COPLEY: Okay. I just

22 recall --

23 THE COURT: What is it that you think you

24 might recall?

25 PROSPECTIVE JUROR COPLEY: Basically just that

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1 a girl was missing and that she was found nearby  
2 her home. And I just felt that I didn't portray  
3 that accurately yesterday.

4 THE COURT: Okay. Well, do you know anything  
5 else about the case? Anything about the quality of  
6 proof, about the level of proof, or any evidence  
7 that the State might have in the matter? You need  
8 to say yes or no for the court reporter. She's got  
9 this little button thing here.

10 PROSPECTIVE JUROR COPLEY: No. Sorry, no. I  
11 just, when you mentioned the time frame it was the  
12 time we were planning to move down here. And I  
13 just remembered hearing about it because it was a  
14 Florida case.

15 THE COURT: But other than that you haven't  
16 heard anything about the case and you specifically  
17 haven't seen anything in the newspapers or TV or  
18 anything like that?

19 PROSPECTIVE JUROR COPLEY: No, it was back in  
20 2005.

21 THE COURT: So you followed my order about not  
22 reading or listening to anything about the case?

23 PROSPECTIVE JUROR COPLEY: No, but I didn't  
24 think I accurately portrayed that.

25 THE COURT: I am so glad that you have  
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1 candidly come up and shared this stuff with us  
2 because that is a sign -- that is just being honest  
3 and we appreciate that. Any inquiry by Mr.  
4 Ridgway?

5 MR. RIDGWAY: No, sir.

6 THE COURT: Inquiry by Mr. --

7 MR. LEWAN: No, sir.

8 THE COURT: Okay, ma'am, you can have a seat  
9 back in the audience, okay.

10 PROSPECTIVE JUROR COPLEY: Okay.

11 THE COURT: Have a seat right where you were  
12 seated.

13 THE BAILIFF: Ms. Pace, juror No. 6, as well.

14 THE COURT: What?

15 THE BAILIFF: Ms. Pace has something she would  
16 like to share.

17 (Whereupon, the bench conference was concluded  
18 and the following was heard in open court.)

19 THE COURT: Ms. Pace, why don't you come on up  
20 and join us.

21

\_\_\_\_\_

22

(Whereupon, the following proceedings were had

23

at the Bench by the Court and counsel while the

24

defendant listened via a transmitter:)

25

THE COURT: Hi, Ms. Pace.

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1 PROSPECTIVE JUROR PACE: Hi.

2 THE COURT: So, over the last about four days,  
3 do you think you may have learned anything about  
4 this case other than what we talked about?

5 PROSPECTIVE JUROR PACE: No, there is  
6 something that I remembered, though, that I didn't,  
7 we didn't talk about before. And I remember that  
8 at some point there being news coverage of, like a,  
9 they showed a surveillance video of her being  
10 abducted at a car lot or in a parking garage. I  
11 remember seeing surveillance of the abduction.

12 THE COURT: I think I can accurately tell  
13 you -- I think the attorneys would not object to  
14 this. That is not this case.

15 PROSPECTIVE JUROR PACE: Oh.

16 THE COURT: That is a case called the Carly  
17 Brucia case.

18 PROSPECTIVE JUROR PACE: Oh, okay.

19 THE COURT: Where there was a videotape of  
20 like a guy in dungarees or something like that.

21 PROSPECTIVE JUROR PACE: Yeah, I just remember

22 seeing it and it dawned on me.

23 THE COURT: That is not this case. That was

24 down in Sarasota.

25 PROSPECTIVE JUROR PACE: Oh, okay, okay.

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1 THE COURT: Other than that have you been able  
2 to abide by my order and not read or listen to  
3 anything about the case?

4 PROSPECTIVE JUROR PACE: Yes, sir.

5 THE COURT: So you haven't seen anything in  
6 the newspaper, TV, anything like that?

7 PROSPECTIVE JUROR PACE: No, sir.

8 THE COURT: Inquiry by the State?

9 MR. RIDGWAY: No, sir.

10 THE COURT: Defense?

11 MR. FANTER: No, sir.

12 THE COURT: Thank you very much. You may have  
13 a seat back in the audience.

14 (Whereupon, the prospective juror was seated.)

15 THE COURT: Attorneys can remain up here. So  
16 I handled that business with the press okay? Any  
17 suggestions or --

18 MR. MAGRINO: Absolutely, Judge. I mean, the  
19 Court --

20 (Attorneys talking simultaneously)

21 MR. MAGRINO: It is your courtroom and to run  
22 it procedurally proper, that is what we are doing  
23 to save time, effort, and everything else.

24 MR. LEWAN: I don't see any other solution to  
25 the problems we are dealing with right now. Unless

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1 you go back to individual voir dire.

2 THE COURT: So what are the -- while we're on  
3 the record, what does that get us to down to? We  
4 are down to 45 now. How do you feel about this?  
5 Do you want to make the effort at least?

6 MR. RIDGWAY: Yeah, I think we've got to. I  
7 mean, either that or we sit and wait for 60 more to  
8 come in tomorrow.

9 I think we need to do this, Judge. I know I  
10 hate this and I'm not sure exactly how this is  
11 going to work. But we need to think about working  
12 here today until we burn this panel out or we get  
13 16 and lock them up tonight.

14 THE COURT: I was thinking about that. If we  
15 can get 16 --

16 MR. LEWAN: I think we need to talk about --

17 COURT REPORTER: I'm sorry, I can't hear Mr.  
18 Lewan.

19 THE COURT: Speak a little louder.

20 MR. LEWAN: Judge, I think we need to tell

21      them that as far as --

22           (Talking simultaneously)

23           THE COURT: Get Gary up here. Get Gary up

24      here.

25           MR. LEWAN: And, Judge, there was some of

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1     these jurors that had work issues. They were going  
2     to call. And I don't know how the Court wants to  
3     handle that. There are some loose ends out there  
4     for some of these people to address.

5           MR. MAGRINO: Well, I think it is just  
6     something to consider and we can re-evaluate  
7     depending on how far we go.

8           (Whereupon, Sergeant Johnson, was present at  
9     the bench.)

10          THE COURT: We are thinking about -- you got  
11     to swing around here because the court reporter,  
12     blue man, and all that.

13          If we can get 16 people out of this group  
14     somehow, my thought is -- and I'm sorry, the  
15     attorneys broached it. I want to give them credit.  
16     We lock them up now.

17          THE BAILIFF: Tonight?

18          THE COURT: Tonight.

19          THE BAILIFF: Okay.

20          THE COURT: With a strong admonition. Because

21 we're running a real risk here. See what your  
22 arrangements are over there at the other place to  
23 see if we can't lock them up tonight. If  
24 necessary, we can keep them here locally.

25 THE BAILIFF: Oh, yeah. I don't know -- I  
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1 mean, I can give them the hotel over there. The  
2 question is, is the travel time in the morning back  
3 and everything? I would suggest if I can get  
4 arrangements here --

5 MR. RIDGWAY: Judge, my suggestion is let's  
6 just, let's just go ahead and start talking to  
7 these folks while they see what is here and see how  
8 it goes.

9 THE BAILIFF: I'll make arrangements.

10 MR. RIDGWAY: And if we get to where we're  
11 looking close then --

12 MR. FANTER: I have a real feeling this is  
13 really going to be an issue after we are done here  
14 today.

15 THE COURT: We'll see.

16 MR. RIDGWAY: Well, you know, we are going to  
17 lose them one way or another.

18 THE COURT: We'll see.

19 THE BAILIFF: I'll make the arrangements.

20 THE COURT: Make the arrangements.

21 THE BAILIFF: For 16?

22 MR. RIDGWAY: I guess the alternative would be

23 just say, look, folks, there's going to be a change

24 of plans. We are going to work today until -- if

25 we get a jury, you'll be sequestered tonight. Is

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1 that going to cause a problem for anybody and let's  
2 just deal with them one at a time.

3 THE COURT: You want to put 16 more in the  
4 box? You want to fill up these spots? Make  
5 Mr. Johnson go --

6 MR. RIDGWAY: Well, if we are going to do a  
7 general hardship issue thing right now...

8 THE COURT: Okay.

9 MR. LEWAN: Yeah, let's keep going the way  
10 they are right now.

11 THE COURT: Okay. Let's do that. Let's do  
12 the general hardship for the whole group. Then  
13 we'll reapproach.

14 (Whereupon, the bench conference was concluded  
15 and the following was heard in open court.)

16 THE COURT: All right. Members of all three  
17 groups. It is not A, B, and C it is just group,  
18 group, group. Okay. Um, there has been a  
19 suggestion for a change in the batting order, as it  
20 were, regarding the hardship issue.

21 Remember yesterday, the day before, and the  
22 day before that we talked about the issue of  
23 hardship. And once again, can everyone hear me  
24 okay? Okay.

25 If, in fact, you are selected as one of our  
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1 final jurors during this proceeding, I will then be  
2 sequestering those 16 jurors today, okay. That we  
3 would then make arrangements for you to get your  
4 clothing items, things like that. We would get the  
5 accommodations, they're all squared away; food,  
6 transportation. We're prepared, okay. We're  
7 prepared.

8 But when we talked about the fact that if you  
9 were selected as one of the final jurors the trial  
10 may start a couple of days from now or something  
11 like that, that plan has now changed.

12 So then, first I would like to see from this  
13 group when I talk, when I change that, if you are  
14 selected as one of the final jurors -- and I'll  
15 address this to the entire panel.

16 And then, once again, if it does, come on up,  
17 we'll talk at the bench. That is the procedure,  
18 Mr. Ridgway, Mr. Lewan, you prefer at the bench?

19 MR. RIDGWAY: Yes, Your Honor.

20 MR. LEWAN: Yes, Judge.

21 THE COURT: Okay. So I'm just going to start  
22 with this entire group here. If that procedure is  
23 such that you think it is just going to be so  
24 unduly hard on your family or personal life,  
25 because I know I told you you could check with the  
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1 employers and check with family and maybe  
2 reschedule some doctors appointments, things like  
3 that.

4 Is there anyone in this panel that that would  
5 represent such an undue hardship to be sequestered  
6 a few days early that you just couldn't be a jury  
7 panel or a juror member? Okay. That would be  
8 Mr. Sineath? Okay. We'll come back to you in a  
9 second.

10 In this group to my right, is there anyone --  
11 everyone heard me okay? If you're selected as one  
12 of our 16 jurors then, in fact, we would sequester  
13 you today. Someone would have to get your stuff.  
14 We would make every effort we can to get all your  
15 personal stuff; clothes, change of clothes,  
16 toiletry items, things like that for you so that we  
17 could then have you sequestered.

18 Is there anyone, with that modification, that  
19 represented an undue hardship in this group?

20 Okay. I'm seeing six hands up, okay. So just

21 put the hands down. We'll be discussing these  
22 matters at the bench in just a few moments.

23 On this group on my left, same question. I  
24 have got three hands up. Six, three, nine, one,  
25 ten. Okay.

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1 MR. FANTER: There's a couple more, Judge.

2 THE COURT: Oh, there is a couple of more.

3 PROSPECTIVE JUROR PACE: There is a question.

4 THE COURT: Oh, there's a question.

5 PROSPECTIVE JUROR PACE: When you say

6 "someone" would get our stuff, we would not be

7 allowed to get our own things?

8 THE COURT: No, ma'am.

9 PROSPECTIVE JUROR: How would we get our car

10 back tomorrow? My wife is without a car.

11 THE COURT: We are going to do everything we

12 can. If you will entrust someone; either friend,

13 family, I don't know about -- court personnel might

14 drive it. I don't know. This is a very

15 extraordinary type of situation, sir. But if there

16 is a question about that, let's discuss it at the

17 bench.

18 So with that having been said, attorneys join

19 me again at the bench. We'll start on the back --

20 if there is a question, come on up. Let's go right

21 down the line again. Mr. Sineath, why don't you

22 come on back up.

23 \_\_\_\_\_

24 (Whereupon, the following proceedings were had

25 at the Bench by the Court and counsel while the

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1 defendant listened via a transmitter:)

2 THE COURT: Okay. Let's do the thing.

3 Mr. Sineath, you heard the fact that if you are

4 selected you would have to go in today, as it were.

5 Please understand this is not a punishment or

6 anything. Please understand.

7 PROSPECTIVE JUROR SINEATH: Right.

8 THE COURT: What hardship would this represent

9 that would be so difficult you couldn't --

10 PROSPECTIVE JUROR SINEATH: To be perfectly

11 honest with you, I have got my kids coming back

12 from Carolina tomorrow, okay. If I get in there

13 today I won't be able to see them and it would be a

14 total of four weeks before I have seen two of my

15 children.

16 THE COURT: Okay. Now, this is on part of a

17 visitation situation?

18 PROSPECTIVE JUROR SINEATH: No, no, no, no.

19 They are visiting relatives out of state.

20 THE COURT: Okay. So this isn't a divorce

21 thing?

22 PROSPECTIVE JUROR SINEATH: No. It is just

23 they are out of state visiting. So, it is not that

24 it would put a burden as far as financial or

25 anything like that but just not being able to see

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1 my kids.

2 THE COURT: It wouldn't be for four weeks  
3 straight. It would be -- I think we discussed this  
4 or maybe we didn't discuss it in your group but let  
5 me flesh this out. The sequestration would last  
6 probably one week. Actually, we are starting a  
7 little early, okay.

8 I can assure you the attorneys do not drag  
9 their heels on these matters. They want to present  
10 the case. The case needs to be presented. But in  
11 your situation, assuming certain matters that  
12 happened in the first part of the trial, there  
13 could be a second phase. There would be a break  
14 between phase one and phase two.

15 So it is not like you would be out of pocket  
16 for four weeks. There would be a one-week  
17 sequestration and assuming certain factors are met,  
18 there would be a break and then there will be a  
19 second sequestration. We would again bring you  
20 over there.

21 PROSPECTIVE JUROR SINEATH: Is it going to be

22 possible if --

23 THE COURT: You can call them.

24 PROSPECTIVE JUROR SINEATH: Okay. That's my

25 big thing is am I going to be able to have contact

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1 and make calls?

2 THE COURT: Yes.

3 PROSPECTIVE JUROR SINEATH: As long as they  
4 are supervised, I understand.

5 THE COURT: They would be supervised calls.

6 You would have phone calls. I wouldn't want

7 contact visits or anything like that, just phone

8 calls; and only to family and just to make sure

9 they are not discussing the case. With that, a

10 week sequestration, break, and maybe another week

11 sequestration.

12 PROSPECTIVE JUROR SINEATH: Okay.

13 THE COURT: You think you can live with that?

14 PROSPECTIVE JUROR SINEATH: I'm cool with that

15 as long as I can --

16 THE COURT: Yeah, of course. I appreciate it.

17 You can have a seat back there.

18 (Whereupon, the juror was seated, not present

19 at the bench.)

20 MR. FANTER: Judge.

21 THE COURT: What? Did you want to ask

22 questions of him?

23 MR. FANTER: It's just that I'm thinking, you

24 know, this is new for us all. Based on what they

25 are telling us, are we honestly going to be able to

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1 let them go in the middle?

2 MR. RIDGWAY: Say again, what?

3 MR. FANTER: I said, based on what they are

4 telling us and with your procedure now, are we

5 honestly going to be able to cut them loose for a

6 week?

7 THE COURT: The only problem I'm seeing -- and

8 I'm going to join in on this. The only problem I'm

9 seeing is your witnesses or both --

10 MR. RIDGWAY: Alan's point is -- I hate to

11 admit he's got a good point, but he's got a good

12 point -- is if we have had this much exposure in

13 two days if there is a three-week break between

14 guilt and penalty, what are they looking at being

15 exposed to? Now, granted, there's not as many hot

16 button issues. I mean, they will --

17 MR. LEWAN: We have had threats. I can only

18 imagine --

19 COURT REPORTER: I'm sorry, I'm having trouble

20 hearing defense counsel.

21 THE COURT: You got to get close.

22 MR. LEWAN: We have had threats, at least one

23 here threatened. I can only imagine what would

24 take place if they have three weeks out in the

25 community after a guilty verdict before penalty

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1 phase.

2 MR. RIDGWAY: Well...

3 MR. LEWAN: And the exposure there and the  
4 pressure that would be put onto them.

5 MR. RIDGWAY: If this is going where it looks  
6 like it's going, are you going to let me depose  
7 your guys before guilt so that we -- or how are we  
8 going to do this so they are not --

9 MR. FANTER: I don't have a problem with that.

10 MR. RIDGWAY: I mean, that's --

11 MR. FANTER: I think you could do that. Sure.

12 THE COURT: And then keep them sequestered  
13 during -- now I have got to go back and readvise  
14 them of the whole thing.

15 MR. RIDGWAY: Well, the problem is we can't --

16 MR. FANTER: Well, that procedure time wise  
17 isn't going to happen, Judge, because we have a  
18 drop dead date on the 24th.

19 MR. RIDGWAY: Right. No --

20 THE COURT: We are already on --

21 MR. RIDGWAY: No, Judge, here's --

22 THE COURT: You guys want to --

23 MR. RIDGWAY: Can we take a ten-minute recess?

24 THE COURT: Yes. Thank you.

25 MR. MAGRINO: And obviously with a strong

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1 admonishment from the Court.

2 THE COURT: Thank you.

3 (Whereupon, the bench conference was concluded  
4 and the following was heard in open court.)

5 THE COURT: All right. Just relax everyone.

6 This is what we are going to do. We are going to  
7 take a ten-minute recess, okay. You are going to  
8 remain in the care, custody, and control of the  
9 bailiffs. They are going to take you back. This  
10 is not a time for a smoke break, okay.

11 Every person here is directed not to discuss  
12 any of these matters amongst yourselves. Don't  
13 talk about jury service, don't talk about anything  
14 you may know, think you might know, or any of those  
15 matters that I just shared and discussed with you,  
16 okay. We are just going to take a ten-minute  
17 recess for benefit of court personnel. So if you  
18 would go with the bailiffs. Mr. Bailiffs, take  
19 them out. Nobody talk to these jurors.

20 (Whereupon, the prospective jurors left the

21 courtroom.)

22 THE BAILIFF: Jury is clear, Your Honor.

23 THE COURT: Thank you. Ten-minute recess.

24 (Whereupon, a recess was taken at 11:14 a.m.)

25 (Whereupon, court reconvened at 11:52 a.m.)

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1 (Whereupon, the defendant was present with  
2 counsel in the courtroom.)

3 (Whereupon, the prospective jury panel was  
4 present in the courtroom.)

5 THE COURT: Mr. Ridgway, as lead counsel for  
6 the State, Mr. Lewan, as lead counsel for the  
7 defense, given the responses that we have received  
8 over the last four days, as well as the responses  
9 we have received over the last two hours, does the  
10 State -- well, does the Defense renew its motion  
11 for a reset date?

12 MR. LEWAN: We would, Judge.

13 THE COURT: Okay. Mr. Ridgway, your --  
14 state's position?

15 MR. RIDGWAY: Your Honor, I have to  
16 reluctantly agree. I don't think there is any  
17 choice.

18 THE COURT: Very good. I know that the judge  
19 in the case involving the X-Box matters was faced  
20 with this same dilemma; that is the rights of the

21 accused to have a fair and impartial panel to  
22 decide his case. And that sometimes butts up  
23 against the First Amendment's rights of the media  
24 to cover the matter. And making no criticism,  
25 absolutely no criticism is intended or advanced by  
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1 this Court.

2 I'm going to thank the good jurors of Lake  
3 County and all the perspective jurors that came in.  
4 You guys did a heck of a job. You knew the job was  
5 going to be tough when you came on board,  
6 especially to this group here that offered your  
7 good services and didn't try to get out of it.

8 Even the ones that tried to be excused and,  
9 nonetheless, indicated their willingness and  
10 expression to come in and go on over -- and it  
11 wasn't 90 miles due west. I'm sorry, I doubled it.  
12 That is because of my travel myself. It was only  
13 about 45-miles due west.

14 But I also want to say for the record purposes  
15 that this effort to impanel a jury within the Fifth  
16 Circuit is done because of a -- you know, we do try  
17 to keep an eye on the bottom line. And we also try  
18 to keep an eye with keeping our cases within our  
19 Circuit.

20 So, I took that into account by moving the

21 case from Citrus one case over to Lake County,  
22 which is the farthest away county that we could  
23 find and try to keep it, again, within the Circuit.

24 I think, gentlemen, you would agree with me  
25 that that is not going to happen. Again, we can't

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1 keep it within the Circuit. I will say that,  
2 though a tremendous amount of planning and  
3 foresight went into these matters from, especially  
4 from the attorneys and the other court personnel.  
5 They are to be commended for the efforts they did  
6 in this matter. But this case simply cannot be  
7 presented, we cannot pick a jury here in Lake  
8 County.

9 And, again, it is through no fault of the  
10 jurors. And it is the honesty and the candor of  
11 the jurors that did that. No one came into this  
12 court and was trying to fudge or try to tell a  
13 story about trying to get on the jury or anything  
14 like that.

15 You were candid with us. We needed that. You  
16 fulfilled the highest services of your juries  
17 duties. With that having been said, I'm going to  
18 release, Madame Jury Clerk, every juror that's been  
19 summonsed for this time. Of course, that doesn't  
20 excuse any of your other jurors that you've got

21 coming in for the other judges.

22 But these matters will be reset at a date --

23 the attorneys will be notified by my office of our

24 next pretrial date and likely trial months, okay.

25 And please check with your respective offices

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1 for setting aside, given these other matters,  
2 probably a month, okay.

3 Mr. Ridgway, anything before I recess court?

4 MR. RIDGWAY: No, sir, other than to remind  
5 the Court of this --

6 THE COURT: Oh, the other matters.

7 MR. RIDGWAY: -- about the --

8 THE COURT: Contact jurors matters. Anything  
9 else besides that, Mr. Lewan?

10 MR. LEWAN: No, sir.

11 MR. RIDGWAY: No, sir.

12 THE COURT: All right. Members of the jury  
13 panel, in just a few moments when I release you  
14 formally from your jury summons, you are free to go  
15 about your daily affairs.

16 You are completely free to talk to whomever  
17 you want to talk to. And you are completely free  
18 to not talk to whomever you want to. If you would  
19 like to go out through that door past the phalanx  
20 of reporters that may have questions for you, it is

21 your right to talk to them. It is their right to

22 talk to you if they want to and you want to.

23 If you don't want to talk to them, you can

24 come this way and we'll be escorting you out

25 through the, or with the bailiff. So that's the

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1 first and only decision you are going to have to  
2 make is if you would like to just go home and enjoy  
3 your privacy, go with the bailiffs. If not, you  
4 can go that way. If there be no other court --  
5 Madame Clerk, is there any other Court business?

6 THE CLERK: No, Your Honor.

7 THE COURT: We are in recess.

8 (Whereupon, Court was in recess at 11:56 a.m.,  
9 Thursday, July 13, 2006. The recording of this  
10 proceeding was concluded.)

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