

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

ECHOSTAR SATELLITE CORP., et	)	
al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. SACV 03-950 DOC
	)	Day 1, Volume II
NDS GROUP PLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Jury Trial  
Santa Ana, California  
Wednesday, April 9, 2008

Debbie Gale, CSR 9472, RPR  
Federal Official Court Reporter  
United States District Court  
411 West 4th Street, Room 1-053  
Santa Ana, California 92701  
(714) 558-8141

EchoStar 2008-04-09 D1V2

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I N D E X

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PROCEEDINGS

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Jury Selection

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1 SANTA ANA, CALIFORNIA, WEDNESDAY, APRIL 9, 2008

2 Day 1, Volume II

3 (11:12 a.m.)

4 (Previous proceeding reported by Sharon  
5 Seffens in Volume I.)

6 THE COURT: All right. We're back in session.

7 All counsel and the parties are present. The  
8 prospective jurors are present, and I believe at the recess,  
9 we just had proceeded to Mr. Webb.

10 THE DEFENDANT: Yes.

11 THE COURT: How are you, sir?

12 PROSPECTIVE JUROR: Oh, boy.

13 THE COURT: You don't need a question. You can  
14 just start.

15 PROSPECTIVE JUROR: Thanks. If I remember all of  
16 'em. I worked as a software support for a title and escrow  
17 company. My wife works in a homeowners' association  
18 management company. I've been in computers since before  
19 they were personal computers. Reading -- I like political  
20 thrillers -- some authors for science fiction fantasy and,  
21 of course, Sherlock Holmes. Hobbies include diving. I'm an  
22 avid diver. If I wasn't here, I would be doing that right  
23 now. Charitable -- I've done a 62-mile bike ride for Best  
24 Buddies, a hundred-mile bike ride for MS, and I'll be doing  
25 those again this year.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: Everything covered.

3 THE COURT: That's a lot of information. Thank  
4 you for paying attention. You can get so much more about  
5 people when they're willing to volunteer than you can asking  
6 all the silly questions judges ask where we get a "yes" or  
7 "no." So thank you.

8 I think the key question for me is that you know  
9 nothing about the case so far. Nothing's really been  
10 presented except for our short colloquy. It's going to  
11 involve some rather sophisticated information, but that's  
12 not a requirement to be a juror on this case.

13 Would you be fair and impartial to both sides on  
14 this matter?

15 PROSPECTIVE JUROR: Certainly.

16 THE COURT: Would you follow the law?

17 PROSPECTIVE JUROR: Certainly.

18 THE COURT: It's just about as simple as that.  
19 Let me turn you over to questions from counsel.

20 MR. WELCH: Thank you, Your Honor.

21 THE COURT: This would be Mr. Welch from EchoStar.

22 MR. WELCH: Mr. Webb, do you have cable or  
23 satellite?

24 PROSPECTIVE JUROR: Cable.

25 MR. WELCH: What are some of your favorite

1 channels that you like to watch?

2 PROSPECTIVE JUROR: Discovery, History --  
3 basically those.

4 MR. WELCH: Mr. Webb, what is it that you like  
5 about those channels? What is it that fascinates you?

6 PROSPECTIVE JUROR: This is what's really reality  
7 TV. Not that so-called fake reality TV, people, the life of  
8 some star. I don't care about that. It's what's really  
9 happening out there in the world.

10 MR. WELCH: Okay. What are your views on  
11 competition? We talked earlier, and everybody had different  
12 types of views on competition. Do you think competition --  
13 things like reverse engineering -- can be taken too far?

14 PROSPECTIVE JUROR: Competition, not too far.  
15 Reverse engineering, yes.

16 MR. WELCH: Okay.

17 PROSPECTIVE JUROR: Depending what it's used for.  
18 I've had to do a little of it myself for a job. I've had to  
19 figure out what a programmer was doing when he was there and  
20 made the program, and I had to kind of back it out, how he  
21 did it, to do what we needed to do.

22 MR. WELCH: Do you mind telling us about that  
23 situation?

24 PROSPECTIVE JUROR: It was a Visual Basic program  
25 for a payroll company.

1 THE COURT: Excuse me. Payroll?

2 PROSPECTIVE JUROR: Payroll, yes. And we kept  
3 track of the payrolls that came in and went out. And he had  
4 written it in a way that didn't quite capture what we needed  
5 to. So I had to go back in and fix it.

6 MR. WELCH: And were you able to go through that  
7 pretty quick, or did it take some time?

8 PROSPECTIVE JUROR: Better part of half a day.

9 MR. WELCH: Better part of half a day to review a  
10 bunch of records? Or was it --

11 PROSPECTIVE JUROR: No, I had to actually go  
12 through his Visual Basic code and try to figure out what it  
13 was he was trying to do and then change it, 'cause basically  
14 we were operating it from an older system to a newer one.

15 MR. WELCH: Okay. We're talking about the  
16 competition and things like that. Do you believe that  
17 competition is unhealthy, that it results in increased costs  
18 for consumers?

19 PROSPECTIVE JUROR: Not at all. It's very  
20 healthy. It's been mentioned it provides innovation, helps  
21 drive that, helps drive down costs, gives consumers more  
22 choices.

23 MR. WELCH: Okay. Thank you, Mr. Webb.

24 THE COURT: Thank you.

25 And counsel.

1 MR. STONE: Thank you, Your Honor.

2 THE COURT: This is Mr. Stone on behalf of NDS.

3 MR. STONE: Good morning, Mr. Webb.

4 PROSPECTIVE JUROR: Good morning, sir.

5 MR. STONE: It sounded like when you went back to  
6 look at what the programmer had done, it was a little bit  
7 like Sherlock Holmes yourself. You had to kind of recreate  
8 the trail, if you will, the trail of evidence.

9 PROSPECTIVE JUROR: That's correct.

10 MR. STONE: How were you able to do that? Did you  
11 look at the source code comments?

12 PROSPECTIVE JUROR: The little you have in there,  
13 yes, sir, but mostly the code itself.

14 MR. STONE: Are you familiar at all with Assembly  
15 language programming?

16 PROSPECTIVE JUROR: Very little. This is almost  
17 all done in Visual Basic, but I've had some experience with  
18 it.

19 MR. STONE: If you had to say who one of your  
20 heroes is, without counting relatives, who would that be?

21 PROSPECTIVE JUROR: Ronald Reagan, who was my boss  
22 there for a while, who's also 50 years older to the day than  
23 I am. Several other people, some of my diving people,  
24 instructors, and a teacher, Mrs. Dale, my geometry teacher,  
25 who before that, I was never good at math, and she showed me



1 how to do it.

2 MR. STONE: I never had an "after"; I just had the  
3 "before."

4 Well, it sounds like you respect people that show  
5 professional competency and dedication to their work. Is  
6 that a fair statement?

7 PROSPECTIVE JUROR: Oh, yes.

8 MR. STONE: You said you worked for Ronald Reagan.

9 PROSPECTIVE JUROR: I was in the Navy; he was the  
10 President.

11 MR. STONE: Sir, when did you serve in the Navy?

12 PROSPECTIVE JUROR: Early '80s.

13 MR. STONE: Do you have any friends or relatives  
14 who are engineers or work in a trade where they take things  
15 apart?

16 PROSPECTIVE JUROR: No.

17 MR. STONE: All right. Thank you very much.  
18 Appreciate it, sir.

19 THE COURT: The peremptory now passes back to the  
20 defense.

21 MR. STONE: Thank you, Your Honor.

22 The defense would like to thank and excuse  
23 Juror No. 7, Mr. Cannavino.

24 THE COURT: Mr. Cannavino, thank you very much,  
25 sir.

1           If you would also go back and talk to Millie. If  
2 she has another case, they'll assign you out. If not, I  
3 want to thank you for your jury service.

4           THE CLERK: Dana Hallock, H-A-L-L-O-C-K.

5           THE COURT: Good morning.

6           PROSPECTIVE JUROR: Good morning.

7           THE COURT: Welcome to your 50 best friends  
8 listening to you. I'm just kidding you. Nothing like jury  
9 service.

10          PROSPECTIVE JUROR: Yeah.

11          THE COURT: Let me have you start wherever you'd  
12 like to. There have been a lot of questions by counsel and  
13 the Court, and the easiest way, I think, for you to proceed  
14 is for you to tell us whatever you'd like to.

15          PROSPECTIVE JUROR: Okay. The very first thing  
16 is, I'm a dental assistant/office manager, and I cannot  
17 possibly serve on a four-week jury trial.

18          THE COURT: Okay.

19          PROSPECTIVE JUROR: Okay. My husband is an  
20 engineer. He works for Boeing. We have DISH Network. We  
21 have stock with DirectTV. What else do you want to know?

22          THE COURT: Okay. You're doing fine. You're not  
23 leaving yet, but you're doing fine.

24          PROSPECTIVE JUROR: Okay.

25          THE COURT: Would you be fair and impartial to

1 both sides?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Would you follow the law?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Now, I'm going back to about an hour  
6 and a half ago. Remember that somewhat silly example I made  
7 everybody imagine, or tried to make you imagine, that this  
8 was a freeway?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: And I talked a little bit about this  
11 accident that occurred, a hit and run. Do you understand  
12 that there's a difference between people who are doing their  
13 best to tell you the truth and their perception may be a  
14 little askew?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And that may affect your verdict. You  
17 may think they just don't know what they're talking about.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Or it may not, or the degree thereof.  
20 And then there are people who may lie to you.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Just come in, take an oath, take  
23 anything they want, and they'll just sit right there and  
24 look at you and lie to you.

25 PROSPECTIVE JUROR: Yes.

1           THE COURT: Okay. And you understand the  
2 importance of jurors in making that decision, your  
3 commonsense wisdom and your life experiences. Actually, all  
4 of you make those decisions in your everyday life multiple  
5 times and really don't think about it, from children on to  
6 co-employees to management positions.

7           PROSPECTIVE JUROR: Yes.

8           THE COURT: Do you have any technical background  
9 in computers? Do you know anything about the satellite  
10 signals and packing?

11          PROSPECTIVE JUROR: I am a monkey on the computer.  
12 I know what I've been shown, and that is it.

13          THE COURT: Okay.

14          Now, I don't know if counsel will accept you or  
15 not, and I know that you can't possibly serve. I'm just --  
16 from my background, everybody serves.

17          PROSPECTIVE JUROR: I understand.

18          THE COURT: So if I have to do battle with your  
19 employer, I will.

20          PROSPECTIVE JUROR: Just tell 'em to pay me.

21          THE COURT: And that's what I'm most worried  
22 about. I worry about getting that employer who just says,  
23 "I'm not gonna pay."

24          PROSPECTIVE JUROR: His policy is not to pay.

25          THE COURT: Yeah. Well, we'll go down there with

1 the marshals. I'm just kidding you.

2 You know, and I may get backed into a corner. If  
3 that happens, then I'm stuck because I really am not gonna  
4 have you suffer horrendous losses. But I think that anybody  
5 excused is actually missing a fabulous opportunity.

6 PROSPECTIVE JUROR: Uh-huh.

7 THE COURT: Okay.

8 Counsel, do you have questions?

9 MR. WELCH: Thank you, Your Honor.

10 Ms. Hallock, one of the things you mentioned is  
11 that you had DISH Network. Do you have any problems with  
12 the DISH Network service?

13 PROSPECTIVE JUROR: No.

14 MR. WELCH: And how long have you had  
15 DISH Network?

16 PROSPECTIVE JUROR: Probably three years, four  
17 years.

18 MR. WELCH: Okay. You mentioned also that you  
19 were a shareholder in DirecTV. Approximately how long have  
20 you been a shareholder in DirecTV?

21 PROSPECTIVE JUROR: I don't know the answer to  
22 that question.

23 MR. WELCH: Okay. Did you ever follow -- like  
24 DirecTV -- did you ever follow the industry?

25 PROSPECTIVE JUROR: Not me.

1 MR. WELCH: Satellite industry?

2 PROSPECTIVE JUROR: Not me.

3 MR. WELCH: Okay. What do you know about hacking?  
4 Have you ever heard the term of "hacking"?

5 PROSPECTIVE JUROR: I have, but I don't know  
6 anything about it.

7 MR. WELCH: What have you heard about hacking?

8 PROSPECTIVE JUROR: Just that it happens, and  
9 there are those that could go into your Internet or your  
10 computer and get your information -- identity theft and so  
11 on and so forth with that. But I don't really know anything  
12 about it.

13 MR. WELCH: Have you ever thought about the effect  
14 that hacking may have on pricing of -- like if you had  
15 DISH Network and there's a hacker out there, have you ever  
16 thought about how that affects you as a consumer?

17 PROSPECTIVE JUROR: I would assume that as in any  
18 kind of theft, shoplifting, anything of that sort, it's  
19 going to cost more to the consumer.

20 MR. WELCH: Okay.

21 PROSPECTIVE JUROR: It would cost me more because  
22 I'm going to pay for those things that somebody else is  
23 using for free.

24 MR. WELCH: Okay. Have you ever known anybody or  
25 have you been actually a victim of identity theft?

1 PROSPECTIVE JUROR: My husband has been.

2 MR. WELCH: And how did that get resolved, if you  
3 don't mind me asking?

4 PROSPECTIVE JUROR: It all took place over the  
5 Internet. Somebody applied for a credit card in his name  
6 over the Internet, and we actually received the credit card.  
7 He didn't realize what it was, destroyed it, and then  
8 something happened. We got a bunch of phone calls regarding  
9 our Internet purchases. And immediately -- off to the  
10 police to file a report on that. And they actually did  
11 catch the person that was doing this.

12 MR. WELCH: Okay.

13 PROSPECTIVE JUROR: But we were not involved any  
14 further than the police report, but they did notify us when  
15 it was cleared up.

16 MR. WELCH: Okay. Has there been any of the  
17 questions that have been asked up to this point in time that  
18 you have any strong feelings about?

19 We've all been sitting here and kind of gone  
20 through, and we only have a few minutes with you. Is there  
21 anything that has come up that you have an opinion about?

22 PROSPECTIVE JUROR: No. Not really.

23 MR. WELCH: What are your hobbies?

24 PROSPECTIVE JUROR: I sew. I have my animals, and  
25 I sew.

1 MR. WELCH: What type animals do you have?

2 PROSPECTIVE JUROR: I have a Yorkie, and I have an  
3 Abyssinian cat.

4 MR. WELCH: Do you do any type of nonprofit work  
5 or community service work?

6 PROSPECTIVE JUROR: I used to work with the  
7 children in the church and that sort of thing. We also used  
8 to feed the homeless. I haven't done that for a while.

9 MR. WELCH: Okay. Thank you, Ms. Hallock.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Thank you very much.

12 Counsel on behalf of NDS.

13 MR. STONE: Thank you, Your Honor.

14 THE COURT: This would be Mr. Stone.

15 MR. STONE: Good morning, Ms. Hallock.

16 PROSPECTIVE JUROR: Good morning.

17 MR. STONE: I'll go back to the theft question.  
18 Would you think it would be a good idea that if there was  
19 theft occurring at a company they would try to get to the  
20 bottom of it?

21 PROSPECTIVE JUROR: Yes.

22 MR. STONE: And want to ask a lot of questions  
23 about how this came about?

24 PROSPECTIVE JUROR: Yes.

25 MR. STONE: Things like that. You would expect



1 that kind of standard of conduct?

2 PROSPECTIVE JUROR: Yes, I would hope so.

3 MR. STONE: Do you use the Internet much at all?

4 PROSPECTIVE JUROR: I use the Internet a lot.

5 MR. STONE: Any problems with the Internet?

6 Things you don't like about it, things you really like about  
7 it?

8 PROSPECTIVE JUROR: Of course, the pop-ups. I  
9 don't like having a problem with the computer. I haven't  
10 really had a problem with the Internet.

11 MR. STONE: As far as competition, are you in  
12 favor of tough but fair competition?

13 PROSPECTIVE JUROR: Yes.

14 MR. STONE: Do you think that's good for  
15 consumers?

16 PROSPECTIVE JUROR: I think it's very good for  
17 consumers. It raises the standard for performance, it  
18 lowers cost, generally speaking, and you have a choice.

19 MR. STONE: Do you regularly read any newspapers?

20 PROSPECTIVE JUROR: No. Classifieds.

21 MR. STONE: When you're looking to buy or sell  
22 something, I assume.

23 Any magazines you regularly read?

24 PROSPECTIVE JUROR: No.

25 MR. STONE: All right. You know the difficult

1 question that's coming: Excluding your relatives, who would  
2 you believe is one of your heroes?

3 PROSPECTIVE JUROR: I don't really have any  
4 current-day heroes. I would probably say Paul in the New  
5 Testament because he was a man that did everything, had a  
6 lot of power, and still had a second chance and a third  
7 chance to do things correctly.

8 MR. STONE: Do you think you could be fair and  
9 impartial to both sides here based on everything you've  
10 heard?

11 PROSPECTIVE JUROR: Yes.

12 MR. STONE: Thank you very much. Appreciate it.

13 THE COURT: Thank you.

14 The peremptory now passes back to the plaintiff.

15 MR. WELCH: Your Honor, we would like to thank and  
16 excuse Ms. Huizenga.

17 THE COURT: Ms. Huizenga, thank you very much.  
18 Please go back and see Millie and see if there's another  
19 case we need your service on today. I guarantee almost  
20 every other case will be a three- or four-day case. If not,  
21 I want to thank you for your service.

22 Call another juror, please.

23 THE CLERK: Douglas Bender, B-E-N-D-E-R.

24 THE COURT: Mr. Bender, how are you today?

25 PROSPECTIVE JUROR: Good.

1 THE COURT: Have you heard all the prior  
2 questions?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: I'm going to have you start wherever  
5 you would like to.

6 PROSPECTIVE JUROR: I've owned my own consulting  
7 practice for about five years now.

8 THE COURT: So you're a sole business person.

9 PROSPECTIVE JUROR: Yes, yes. I sort of work with  
10 a consortium of other HR practitioners as well, consulting  
11 practitioners, so we work together.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: There was so many questions I  
14 can't remember all of 'em.

15 I'm on the Internet almost every day researching,  
16 whatever.

17 THE COURT: Have you ever been a juror before?

18 PROSPECTIVE JUROR: I have been a juror before in  
19 civil matters and criminal matters.

20 THE COURT: Both civil and criminal.

21 PROSPECTIVE JUROR: Yes, yes.

22 THE COURT: You understand that distinction I  
23 tried to point out. A lot of my jurors here haven't been to  
24 federal court.

25 PROSPECTIVE JUROR: Uh-huh.

1           THE COURT: Most of the jury service -- 95 percent  
2 of the nation's workload -- takes place in the state courts  
3 on a volume business, much less complex, usually shorter  
4 cases. There, if you served on a civil matter, you actually  
5 had 12 jurors, and they could disagree. It could be nine to  
6 three. Here there's eight of you, and you have to be  
7 unanimous in whatever you do. Or you can hang up -- just  
8 can't reach a decision.

9           PROSPECTIVE JUROR: Okay.

10          THE COURT: Anything else, sir?

11          PROSPECTIVE JUROR: Undergraduate degree in  
12 political science and economics and masters degree in human  
13 resources counseling. Did go to law school.

14          THE COURT: Okay.

15          PROSPECTIVE JUROR: Didn't finish. Went to law  
16 school, got an offer I couldn't refuse.

17          THE COURT: Probably a lot happier right now,  
18 right?

19          PROSPECTIVE JUROR: Happier right now. I think I  
20 might have made a lot more money. Have done and continue to  
21 do a lot of volunteer work --

22          THE COURT: Okay.

23          PROSPECTIVE JUROR: -- for nonprofits. Work with  
24 the Boy Scouts. I've sat on trustee boards of churches.  
25 Work right now with a very, very tiny community-based

1 nonprofit in Orange County.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: And a biblical hero for me  
4 would be probably Solomon simply because when asked, "What  
5 would you want?" He just wanted wisdom.

6 THE COURT: Yeah.

7 PROSPECTIVE JUROR: That's what I look for most, I  
8 suppose. Wife doesn't work. She is a stay-at-home mom,  
9 seven kids.

10 THE COURT: You have seven children?

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: Don't ever say "just."

13 PROSPECTIVE JUROR: We're done. We're done.

14 THE COURT: That's a lot of information. Thank  
15 you.

16 PROSPECTIVE JUROR: Thank you.

17 THE COURT: And let's have counsel get a flavor  
18 for who you are also.

19 I think the most important, you know, fundamental  
20 question is just that question about fairness. We can dress  
21 that up in all sorts of legal terms and pretend, as judges,  
22 that because we've handed down these different readings,  
23 that jurors understand that. Just basic fairness: Can you  
24 be fair and impartial to both these parties?

25 PROSPECTIVE JUROR: I can do that.

1 THE COURT: No bias or prejudice towards one of  
2 them?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Now, when it starts, you may form some  
5 thoughts along the way, but for all the potential jurors,  
6 once you're a juror, keep an open mind all the way through  
7 the case. Don't go through that roller coaster of  
8 decision-making. You hear the plaintiff's case, and you  
9 hear the defendant's case, and you like this witness. Wait  
10 until the very end, and then I'll instruct you on the law  
11 after arguments by counsel. And your task I'm not saying  
12 will be simple, but it will be very interesting.

13 And once again, will you follow the law that I  
14 instruct you on? Remember I'm the lower trial court. The  
15 Supreme Court's my boss. Congress can pass legislation.  
16 They're not my boss, and the President's not either, but by  
17 the same token -- well, either party. Well, we're the third  
18 and co-equal branch of government. We carry out the law  
19 that Congress passes and that the President is involved in,  
20 of course. But I just need to make sure you'll follow the  
21 law.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. Let me turn you over to  
24 counsel.

25 Counsel.

1 MR. WELCH: Thank you, Your Honor.

2 Mr. Bender, good morning. We talked earlier about  
3 reverse engineering. We had several --

4 THE COURT: Slower, Counsel.

5 MR. WELCH: Sorry, Your Honor.

6 We had several of the panel talk about reverse  
7 engineering. Are you familiar with reverse engineering?  
8 Have you done any type of research on the Internet about  
9 that?

10 PROSPECTIVE JUROR: No research on it, but I  
11 understand the concept.

12 MR. WELCH: Okay. Do you think that reverse  
13 engineering can be taken too far?

14 PROSPECTIVE JUROR: Yeah.

15 MR. WELCH: Okay. And you feel -- it seems like  
16 you feel pretty strongly about that.

17 PROSPECTIVE JUROR: No, it's just -- it's a fairly  
18 simple question.

19 MR. WELCH: Okay. Now, what type of research do  
20 you do on the Internet?

21 PROSPECTIVE JUROR: Primarily related to my work.  
22 I'm a consultant in human resources effectiveness. I deal  
23 with executive coaching work, leadership development,  
24 workplace respect, and valuing diversity. So I do research  
25 in the areas that help me earn my living.

1 MR. WELCH: Okay. Do you do research like if  
2 you're -- like some time you have shoppers that are very  
3 diligent, and before they make decisions on their  
4 purchases -- do you do that kind of research?

5 PROSPECTIVE JUROR: Yeah. I'm one of those, too.

6 MR. WELCH: One of those, too?

7 PROSPECTIVE JUROR: Yeah, yeah.

8 MR. WELCH: Okay. You have the consulting  
9 business. Do you own it yourself?

10 PROSPECTIVE JUROR: Yes.

11 MR. WELCH: Okay. Do you have employees?

12 PROSPECTIVE JUROR: A couple, yeah.

13 MR. WELCH: Okay. They work from their home, or  
14 do they work -- do you have an office?

15 PROSPECTIVE JUROR: They work from home. I do  
16 have an office location but work from home also.

17 MR. WELCH: Okay. And do you monitor them  
18 constantly or frequently?

19 PROSPECTIVE JUROR: No.

20 MR. WELCH: Okay. Have you ever had a situation  
21 where one of your employees has been called into question?

22 PROSPECTIVE JUROR: Never.

23 MR. WELCH: Never. Okay. Have you ever had to  
24 terminate anybody throughout your work experience?

25 PROSPECTIVE JUROR: Yeah, well, you know, as an HR



1 executive you -- over the course of time, you terminate a  
2 lot of people. That happens.

3 MR. WELCH: Okay. Is it a pretty easy decision  
4 for you to make after doing the research?

5 PROSPECTIVE JUROR: It usually is an easy decision  
6 to make. It's not an easy thing to do. It's never easy to  
7 do.

8 MR. WELCH: Okay. Thank you, Mr. Bender.

9 THE COURT: Thank you very much.

10 Mr. Stone on behalf of NDS.

11 MR. STONE: Thank you.

12 Good morning, Mr. Bender.

13 PROSPECTIVE JUROR: Good morning.

14 MR. STONE: Can I ask you where you obtained your  
15 political science degree?

16 PROSPECTIVE JUROR: I went to a school called  
17 Alcorn State University in Mississippi.

18 MR. STONE: And they taught you so well you  
19 decided not to become a lawyer, right?

20 PROSPECTIVE JUROR: I'm not gonna say.

21 MR. STONE: Now, when you do executive coaching,  
22 that's to help executives to better perform their jobs?

23 PROSPECTIVE JUROR: Yes.

24 MR. STONE: What makes a good executive, in your  
25 opinion, if you had to give us some qualities?

1           PROSPECTIVE JUROR: That's a loaded question.  
2           There are a lot of things that probably anybody in this room  
3           would say. Authenticity, integrity, character, ethics,  
4           business acumen, strategic agility, blah, blah, blah, blah,  
5           blah.

6           MR. STONE: And do you think competition is  
7           generally a good thing? Bad thing?

8           PROSPECTIVE JUROR: It's generally a good thing.  
9           I don't think you can be a red-blooded American and say no,  
10          it's not. But so are things like cooperation and  
11          collaboration. Those are good things, too.

12          MR. STONE: Right. And reverse engineering you  
13          mentioned earlier. And that's something you'd have to know  
14          the facts to make up your mind whether it was good or bad --

15          PROSPECTIVE JUROR: Yes.

16          MR. STONE: -- in a particular situation, for  
17          example.

18          THE WITNESS: Yes, sir.

19          MR. STONE: Have you ever worked with law  
20          enforcement to assist them in their job duties?

21          PROSPECTIVE JUROR: Maybe tangentially. I was  
22          thinking of one case about 20 years ago where we had some  
23          theft issues with one of the employers I worked for. So we  
24          had to work with law enforcement in answering questions and  
25          that sort of thing.

1 MR. STONE: But you've never had a job where  
2 you've had to work on a routine basis?

3 PROSPECTIVE JUROR: No, no.

4 MR. STONE: And you've had some jury service?

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. STONE: Was there anything about that jury  
7 service that left a sour taste in your mouth about the  
8 system?

9 PROSPECTIVE JUROR: Never.

10 MR. STONE: Came out okay? You felt good about  
11 the process?

12 THE PROSPECTIVE JUROR: I don't know what "okay"  
13 is, but it worked.

14 MR. STONE: Thank you very much, sir. I  
15 appreciate your time.

16 THE COURT: Thank you.

17 The peremptory passes back to NDS, the defendant.

18 MR. STONE: Your Honor, we accept the panel.  
19 Thank you.

20 THE COURT: All right. Now, Counsel, I believe  
21 that that would exhaust our peremptories.

22 With your permission, I'd like to go through each  
23 juror now and make sure there's ability to sit with us. I  
24 think we all are in agreement that this is the jury that  
25 you're selecting, but let's just make certain because we

1 haven't dwelt on that just because of my rigidity in terms  
2 of excuse.

3 Ms. Harris, can you sit with us for these four  
4 weeks? I promise I will use your time.

5 PROSPECTIVE JUROR: Yes. If I get paid.

6 THE COURT: I want to thank you very much, and I  
7 want to thank your employer, whoever that person is. At the  
8 end of the case, if you would like, I'll write a personal  
9 note of appreciation for jury service. It's something extra  
10 that I think judges should and can do rather than taking the  
11 public for granted.

12 PROSPECTIVE JUROR: Do I need to tell them I'm  
13 mostly coming Tuesday through Friday?

14 THE COURT: Yes.

15 PROSPECTIVE JUROR: 'Cause I work until midnight,  
16 so I'm going to have to ask them to adjust my calendar.

17 THE COURT: I want you awake and alert, so yeah,  
18 you can tell them -- well, 99 percent of the time you're  
19 gonna be out of court on Monday, and if you're in session  
20 Monday I should be giving you plenty of notice. That would  
21 be a huge exception.

22 Second, though, during your jury deliberations,  
23 once you start your deliberations, whenever you start, then  
24 I would like consecutive days. And a month from now, I  
25 don't know if you'll take an hour or days, but I want that

1 consecutive days. I will not take weekends from you.

2 PROSPECTIVE JUROR: Not weekends?

3 THE COURT: No. I will not take weekends from  
4 you. It wouldn't be appropriate. On criminal cases, I  
5 would, by the way. On a criminal matter, you would be in  
6 session over at least a Saturday sometimes.

7 Mr. Hallock, can you sit with us that period of  
8 time?

9 PROSPECTIVE JUROR: I cannot.

10 THE COURT: I'm sorry. Mr. Webb, my apologies. I  
11 forgot.

12 PROSPECTIVE JUROR: I wouldn't get paid for it.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: And I would be very bummed.

15 THE COURT: I understand that.

16 Could I ask who your employer is.

17 PROSPECTIVE JUROR: Fidelity National Information  
18 Services.

19 THE COURT: Will they pay you some part of that  
20 time?

21 PROSPECTIVE JUROR: I'd have to use vacation.

22 THE COURT: No, no, no.

23 PROSPECTIVE JUROR: Personal choice days.

24 THE COURT: Who's the president of your company?

25 PROSPECTIVE JUROR: Oh, my goodness.

1           THE COURT: I don't deal with middle managers who  
2 tell me, "No, he can't serve." I deal with presidents of  
3 companies. Who's the president of your company?

4           PROSPECTIVE JUROR: I'm not sure.

5           THE COURT: I'm going to ask you to get on the  
6 phone with your middle manager in a few moments, and I'd  
7 like to know the president of your company and the phone  
8 number. I'll come back to you.

9           Mr. Howell, can you stay with us for that period  
10 of time?

11          PROSPECTIVE JUROR: I'll need to check.

12          THE COURT: Okay. If you need to check, so be it,  
13 but once again I want to deal with the very top.

14          PROSPECTIVE JUROR: Okay.

15          THE COURT: I sometimes get the in-between that  
16 take that Pavlovian response that jury service is a major  
17 frustration. And they're in here, believe me, using the  
18 courts all the time, so they can give back that service to  
19 the country.

20          Now -- Malmon -- am I pronouncing that correctly?

21          PROSPECTIVE JUROR: It's Malmon.

22          THE COURT: Thank you very much. You're in a  
23 little different position. You don't work for a big  
24 company.

25          PROSPECTIVE JUROR: No, I run a very small one.

1 THE COURT: You run a very small company.

2 PROSPECTIVE JUROR: It's more a question of while  
3 the cat's away.

4 I really want to do this. I probably could make  
5 it work. My only -- my only question is, we have -- there  
6 are things going on, but mid-May -- I think it's the 15th --  
7 I'm scheduled to be away. And I can't change that.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: So I don't know how --

10 THE COURT: April 15th?

11 PROSPECTIVE JUROR: May. No, in May. This is the  
12 9th of April.

13 THE COURT: We could be very close, if not  
14 finished, by that time. It depends upon me keeping a rigid  
15 schedule.

16 PROSPECTIVE JUROR: But I can't go over because I  
17 have commitments on the East Coast mid-May.

18 THE COURT: Mid-May. And so we need to finish by  
19 mid-May and we need to reach a verdict by mid-May --

20 PROSPECTIVE JUROR: That's right.

21 THE COURT: -- because after that part, you have  
22 some difficulty.

23 All right. Ms. Symonds.

24 PROSPECTIVE JUROR: Yes, I can serve, and I  
25 believe my company will pay me. Obviously, the nature of my

1 job makes it difficult for me to be gone that consistent an  
2 amount of time.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: So that would be the only  
5 thing.

6 THE COURT: I expect in your position it would.  
7 You've got six companies?

8 PROSPECTIVE JUROR: Six hospitals.

9 THE COURT: Yeah. Well --  
10 Mr. Bender.

11 PROSPECTIVE JUROR: Yes, Your Honor, I guess I've  
12 got two conflicts here, one of which is, of course, I've got  
13 some projects that are in the queue. So I might be able to  
14 get out of those projects, but I lose money.

15 THE COURT: You're sole support? In other words,  
16 no corporation, no company to help you?

17 PROSPECTIVE JUROR: That's right. I've got some  
18 colleagues, but that means me calling upon them to switch  
19 their schedules around and that sort of thing. I don't know  
20 if that will work.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: The second thing is, probably  
23 the most important thing to me, between the 8th and 12th of  
24 May, my baby daughter is graduating from university in North  
25 Carolina.



1 THE COURT: You will be there.

2 PROSPECTIVE JUROR: I will be there?

3 THE COURT: You will be there; yes, you will.

4 Sometimes when we get a jury -- literally a case  
5 like this, although neither counsel wants this, judges have  
6 two choices. We can preselect jurors by those who can  
7 serve -- I mean, there's no inconvenience; but, then, you  
8 can get the newlywed or the nearly dead -- I'm just kidding  
9 you about that. You get a cross section of people who can  
10 serve, but that's not justice; it's not an American flavor  
11 at all. It's almost a professional, you know, I've got the  
12 time or I'm wealthy or poor enough. I mean, it works to  
13 both extremes. Or I'm a public employee or I'm a particular  
14 one. It's a bad precedent to start.

15 So I can work around. When I finally get the  
16 eight jurors, with all of you, I can work around special  
17 dates. In fact, we can recess until July if you want. It  
18 will drive counsel absolutely crazy. You know, we can come  
19 up -- I mean, I can get a jury. We can take three months  
20 with the case. I've got lots of criminal matters to fill  
21 in, civil three- and four-day matters. I can stay busy when  
22 you're gone. There's no problem.

23 So we can resume in August. We can have one day  
24 now, and September sounds great. I'm just kidding you. But  
25 I can work with those eight people once I've got you here.

1           So I know you've got something on the East Coast,  
2 but if you're gone for a week, I can come back into session.  
3 But that's something I'd like you to work out as a family,  
4 to begin with. You might have something, you know, just  
5 critical to your company on a Friday, but otherwise you  
6 might be able to serve. Everything else is painful, but you  
7 can do that. We'll work together on that, okay?

8           I've got to tell you I've got to go back to  
9 Afghanistan to work with their rule of law and their  
10 attorney general at some point. And if I get a call and  
11 they can't find anybody else silly enough to do it, so I'm  
12 going to go do it. Now, I just came back. But I don't  
13 think that that's till June. So, I mean, that can happen to  
14 all of us. And I'm going to try to not be the problem for  
15 you. Okay. I may turn that down this time and go when  
16 you're done.

17           So I'm aware of your problems. So are counsel.  
18 I'm going to talk to them privately in just a moment. Okay.

19           You have a boss who's not gonna pay you.

20           PROSPECTIVE JUROR: Right. I also have vacation  
21 plans with my husband scheduled.

22           THE COURT: When?

23           PROSPECTIVE JUROR: April 21st. It's the week of.

24           THE COURT: That week you're gone. Okay.

25           And Mr. Paff.

1 PROSPECTIVE JUROR: I am only compensated for one  
2 week or five days. So the three weeks would be a hardship.

3 THE COURT: I want all of you to make notes of  
4 these. You need to go through them again because I'm going  
5 to discuss each of these people with you in just a moment in  
6 private. So once again, Ms. Harris can serve with us,  
7 although it's difficult. Mr. Webb is going to make a call  
8 to his employer in just a moment --

9 Do you have a cell phone, sir?

10 PROSPECTIVE JUROR: Yes, sir, I do.

11 THE COURT: I'll have you do that back in the jury  
12 room if you want to or in the hallway.

13 Mr. Howell, he believes he can be with us.

14 Ms. Malmon has a mid-May engagement on the East  
15 Coast. For how long?

16 PROSPECTIVE JUROR: Two weeks.

17 THE COURT: Two weeks. Okay. And if we hadn't  
18 finished by then, we would probably be back the first couple  
19 weeks in June and then maybe July or August, whenever  
20 everybody could work it out. So it's my job to get this  
21 done but not to get it done so quickly and inefficiently  
22 that it's pushing time.

23 Ms. Symonds, you have problems now and forever,  
24 really, with your position, and we'll work with you, the  
25 group will.

1           Mr. Bender, it's a payment issue with you. And  
2 your daughter's graduation is in May. You'll be there.  
3 Family. That's it. That's an easy one. Okay.

4           You have an issue both with vacation, and that's  
5 in April?

6           PROSPECTIVE JUROR: Yes.

7           THE COURT: And April?

8           PROSPECTIVE JUROR: The 21st. It's the week  
9 beginning the 21st of April.

10          THE COURT: For one week.

11          PROSPECTIVE JUROR: Yes.

12          THE COURT: Okay. And then you'll be back to us,  
13 but you may not be paid.

14          PROSPECTIVE JUROR: I won't be paid.

15          THE COURT: Okay. Now, I want you to call --

16          PROSPECTIVE JUROR: It's their policy.

17          THE COURT: I want you to call again and ask  
18 during this brief recess.

19          PROSPECTIVE JUROR: What he says is you're free to  
20 serve but you're not getting paid.

21          THE COURT: Oh, that's a terrific option, isn't  
22 it.

23          PROSPECTIVE JUROR: I'm very serious about this.

24          THE COURT: Yeah. But call and inform him that  
25 it's contemplated that you're going to be on a federal jury.

1 Ask him one more time. Okay. With a sole employer,  
2 sometimes I am put in a box and I really do need to excuse.  
3 I may be in that position with one or more of you.

4 PROSPECTIVE JUROR: As long as he's by himself,  
5 et cetera.

6 THE COURT: Okay. Mr. Paff, you don't know how  
7 long they pay.

8 PROSPECTIVE JUROR: I believe it's only five days.

9 THE COURT: Five days. I want you to make a phone  
10 call. I'm not trying to take vacation, et cetera.

11 If it's a corporation, oftentimes they recognize  
12 that they use the court system and they're willing to give  
13 back, when they're finally confronted with the reality of,  
14 you know, one of our employees is being asked to serve. And  
15 I'm more than happy to speak to any of the people you call.  
16 But I really don't want to speak to a middle manager because  
17 I get the Pavlovian response: You can't serve.

18 I want to speak to the president of the company or  
19 I want their phone number. Believe me, I've called  
20 Bill Gates before, believe it or not, and ordered him into  
21 court. So it's not a problem amongst some other people.

22 Okay. Now, Counsel, I want to speak to you.

23 I am going to ask the audience to remain patient.

24 I think the best thing we can do is give them a  
25 few moments to make those calls. If we don't reach a

1 resolution in the hallway in terms of our private  
2 discussion, there may be some stipulations with what's  
3 heard. There may not be. Then we're going to have to work  
4 around schedules, et cetera. And one or more of you may  
5 have a financial hardship. I'm concerned about at least  
6 two -- at least two of you. Well, maybe three, depending  
7 upon what Mr. Paff's employer does also.

8 So, Counsel, if I could see you for just a moment  
9 with the court reporter in chambers.

10 For the others, I'm going to have -- Kristee, I'm  
11 going to have you take prospective jurors into the jury  
12 room. You can use the hallway so it's a private  
13 conversation. You don't have to place that in people's  
14 presence. And if you need to use the court phone, so be it.

15 For the remaining jurors, I'm going to ask you to  
16 reassemble at 12:00 noon, okay? 12:00 o'clock. Right back  
17 here. Don't go to lunch. Just go out in the hallway, use  
18 the restroom, and I'll see you at 12:00 o'clock.

19 Counsel.

20 Yeah, about ten minutes. So make these phone  
21 calls and find out.

22 Since we're clearing the courtroom, Counsel, maybe  
23 we can just do that here.

24 I'm going to ask all the remaining jurors to wait  
25 outside for a moment, if you would. We'll come get you in

1 just a moment.

2 (To the reporter:) Rest your hands, Deb, for a  
3 minute.

4 (Outside the presence of the jury.)

5 THE COURT: Okay. We're on the record outside the  
6 presence of the jury.

7 It appears to me initially that Mr. Harris, juror  
8 No. 1, can serve.

9 That juror No. 3, Mr. Howell, can serve, and  
10 Ms. Malmon can as long as we're done by the middle of May.

11 That's pressing it because it's the middle of  
12 April and you don't know how long deliberations take. And  
13 then she's back early June, but on June 15th I'm unavailable  
14 for about three weeks, okay? So you're back in July.

15 And believe me, with a civil case I have no  
16 problems. I'm just worried about you, okay? So everybody's  
17 on fair notice that maybe a couple weeks in June and maybe a  
18 couple weeks in July and August.

19 So Mr. Paff needs to make a phone call. He's  
20 juror No. 8. He thinks he might have a five-day limitation,  
21 which may create the argument for a financial hardship.

22 Juror No. 7, Hallock, is the lady who has an  
23 employer who just won't pay. She's going to be an obvious  
24 financial hardship. And I'm worried about Mr. Bender also  
25 as an obvious financial hardship. He's a sole employer of

1 himself, and once a case -- once a complex case stops, it's  
2 difficult -- we can get it going again, but it's like  
3 pushing an engine up a hill. It's -- they just don't flow  
4 smoothly when you start having recesses.

5 So those are the three. It's 6, 7 and 2 who are  
6 potentially at issue.

7 Now, if there's a stipulation between all of you,  
8 that's the easy way to resolve it, but I'm not going to push  
9 you into that situation.

10 But it doesn't seem to me it's a tactical  
11 stipulation. They're either all gone or one's gone, because  
12 otherwise, each of you are looking at the other thinking,  
13 "That's a juror I favored a little bit more."

14 But you can do it one by one. What are your  
15 thoughts concerning Ms. Hallock if the employer comes back,  
16 which we expect, the dentist, and says no, no pay.

17 MR. WELCH: What was that, Your Honor? I'm sorry.

18 THE COURT: It's No. 7, Hallock, what are your  
19 thoughts if the dentist comes back and says, "Office  
20 manager, no pay."

21 MR. WELCH: That's the one with the financial  
22 hardship, Your Honor, and we'd like to get the trial done.  
23 So we wouldn't want to have to stop. She's got that  
24 vacation, and so we are fine if the other side wants --

25 THE COURT: What are your thoughts?



1 MR. STONE: We would stipulate.

2 THE COURT: Then, let's tentatively stipulate. We  
3 know what's going to happen, and we may just bring her in  
4 here separately so we don't cause this terrific herd, if you  
5 will.

6 What about Bender? He's the gentleman who just  
7 came on the -- he says he has a colleague, but it sounds  
8 like he's self-employed, and you've got a daughter's  
9 graduation down in Mississippi. Once that stops -- all  
10 right. Up to you. What are your thoughts?

11 Let me turn to NDS this time 'cause I turned to  
12 you first. Now let me reverse that so it's fair.

13 MR. WELCH: Thank you, Your Honor.

14 THE COURT: NDS, what are your thoughts?

15 MR. STONE: We prefer to keep Mr. Bender if  
16 there's any chance at all -- we prefer to keep Mr. Bender if  
17 there's any chance at all he can --

18 THE COURT: We would prefer to keep all of them.  
19 That's not what I'm asking. Don't dance on me now, okay? I  
20 want a straight answer: Are you willing to excuse him or  
21 not?

22 MR. SNYDER: No, no.

23 THE COURT: Okay. Thank you.

24 Are you willing to excuse him or not?

25 MR. WELCH: We're fine with Mr. Bender. We're not

1 going to excuse him, Your Honor.

2 THE COURT: Okay. Bender stays.

3 What about Webb? He's the gentleman with Fidelity  
4 National. And I'll take the time to call presidents. I've  
5 done that before. The problem is it takes a lot of time.  
6 So the juror is sitting there. So it's kind of a bluff,  
7 frankly, on my part. It's great theater, but I can't carry  
8 through with it 'cause it takes too long.

9 Do you want him or not?

10 MR. STONE: We want him. No stipulation.

11 MR. WELCH: We want him.

12 THE COURT: Okay. Okay. Here's what we can do.  
13 Let's force Mr. Webb into it by agreement of all parties.  
14 And what we'll simply do is -- we can't go below six. But  
15 if we have to get rid of him, so be it.

16 And No. 2, let's bring Mr. Bender into it. It  
17 appears that neither one of you want to excuse him.

18 And finally, by stipulation, both of you do agree  
19 to resolve Ms. Hallock's matter.

20 MR. WELCH: Yes, sir.

21 THE COURT: Kristee, bring Ms. Hallock in, would  
22 you, please.

23 Now, you understand we could lose Webb, we could  
24 lose Bender eventually. Something can happen when people  
25 aren't able financially to serve.

1           Then if we drop below six, we can't do that by  
2 stipulation of each of you. Okay.

3           (Prospective juror present.)

4           THE COURT: Were you able to make the phone call?

5           PROSPECTIVE JUROR: I did.

6           THE COURT: And his answer?

7           PROSPECTIVE JUROR: No.

8           THE COURT: Then, there's a stipulation by all  
9 counsel that we're going to thank you and excuse you. And  
10 thank you very much. We needed you to make that effort.

11          PROSPECTIVE JUROR: Yeah. He said no.

12          THE COURT: Actually, instead of being frustrated  
13 by it, would you thank your employer?

14          PROSPECTIVE JUROR: Okay.

15          THE COURT: Just say thank you. We appreciate the  
16 effort on his part.

17          PROSPECTIVE JUROR: Thank you. He's just one guy,  
18 and we only have -- there's only five of us.

19          THE COURT: There's nothing further. You made  
20 that very clear.

21          PROSPECTIVE JUROR: Okay. Thank you.

22          THE COURT: Okay. Do you want to bring Mr. Webb  
23 in separately or simply indicate that he's being held in the  
24 group? In other words, a group setting and turn him down in  
25 front of everybody?

1 I think we asked him to make a phone call. Let's  
2 find out what the phone call is.

3 Kristee, would you be kind enough to get Mr. Webb,  
4 who's busily talking to the president of his company, which  
5 ought to be interesting -- or trying to.

6 I think the benefit of that, though, is that we  
7 will check with him later on. In other words, there's  
8 nothing like a letter. And what I usually do in those  
9 circumstances is write a thank you letter to the employer  
10 thanking them for their service. It puts them in the  
11 position of coming back and telling me that their employee  
12 can't serve, which they usually won't do. Presidents of  
13 companies usually don't do that.

14 (Prospective juror present.)

15 THE COURT: Thank you very much, sir. How are you  
16 doing?

17 PROSPECTIVE JUROR: Well, I got the name of the  
18 CEO and his phone number.

19 THE COURT: Good.

20 PROSPECTIVE JUROR: I was also told good luck  
21 getting ahold of him.

22 THE COURT: There we go. All parties want you to  
23 serve in this matter. We're not going to excuse you. But  
24 what I'm going to do is write a letter to your employer, the  
25 CEO, thanking him for the jury service and putting him in

1 the position of telling us why you can't serve.

2 PROSPECTIVE JUROR: Okay.

3 THE COURT: Thank you very much, sir. If you  
4 would go back. It's appreciated.

5 And did we ask Mr. Bender to check anything other  
6 than his daughter's graduation?

7 MR. SNYDER: I don't believe so.

8 THE COURT: Okay. Those dates we will be out of  
9 session. In other words, whatever dates he has, he's going  
10 to his daughter's graduation and then he's back with us. So  
11 we'll work around that. That may be the one week we're in a  
12 session on a Monday.

13 Do you recall the date that he said on that?

14 MR. SNYDER: He said May 8th through 12th.

15 MR. WELCH: It was like May 8th or 9th,  
16 mid-Mayish.

17 UNIDENTIFIED SPEAKER: It was 8th through 12th.

18 THE COURT: We have three different dates so far.  
19 Does anybody really recall the date he said?

20 MR. WELCH: The 8th through the 12th.

21 THE COURT: 8th through the 12th. That's what  
22 we'll do. It's as simple as that.

23 All right. Kristee, would you ask the jury to  
24 join us.

25 And, Ryan, would you get Damien and open up the

1 doors, please.

2 So, Counsel, we'll call one additional juror.  
3 Now, instead of you being stuck by stipulation, I think it  
4 would be fair if each of you had one additional preempt  
5 because you're getting one additional juror after you'd  
6 already gotten through three and three basically.

7 MR. WELCH: That's fine with us, Your Honor.

8 MR. SNYDER: Yes.

9 MR. STONE: Acceptable.

10 THE COURT: I think that's the fairest way to do  
11 it, by stipulation. Okay.

12 (In the presence of the Prospective jurors.)

13 THE COURT: All right. We're back in session.

14 All of the jurors are present.

15 Let me tell you what's happened outside your  
16 presence. Mr. Bender, all parties are adamant they want you  
17 to serve. That's a blessing. You don't know it yet.

18 PROSPECTIVE JUROR: You're right, I don't know it  
19 yet.

20 THE COURT: You don't know it's a blessing yet,  
21 but it is. We're going to work around that date when you're  
22 going to your daughter's graduation, there's just no  
23 question about that. But I'm going to get all these dates  
24 together in a few moments, later in the day. Let's get some  
25 business done today.

1           Mr. Webb, you've been kind enough to get me the  
2 president, but he's not available. "Good luck in finding  
3 him." I'll find him. Don't worry. But all parties want  
4 you to serve, sir. You're going to be serving. I'll do my  
5 best by writing a letter, by the way, to anybody who needs  
6 it, thanking them for your service and then putting them in  
7 the position of telling the Court why they can't.

8           Mr. Paff.

9           PROSPECTIVE JUROR: Yes. I spoke with the VP of  
10 HR, and they'll pay me for the month.

11           THE COURT: I will write a personal letter and  
12 thank them. Make sure you know what the name is. That's  
13 really very nice. Usually we have to push and bully a  
14 little bit.

15           Counsel, why are you all standing? Sit down.  
16 Very nice of you.

17           I'll tell you, I'm going to joke with counsel for  
18 a moment. They're such nice people. This nine-month case  
19 we just finished involving the Aryan Brotherhood, we had to  
20 chain all the defendants down and all the witnesses. Maybe  
21 we'll have do that here too. I'm just kidding you. And  
22 plaintiffs also.

23           So I'm not used to anybody standing. We had  
24 25 marshals in the court, and so with that kind of security  
25 for nine months of my life, I ordered nobody to stand

1 because I didn't want the jury to realize that the  
2 defendants were chained to their seats. And so that's why  
3 it's still shocking to me.

4 But Counsel, I really appreciate it. It's so  
5 refreshing to see that honor to the Court. I'm kidding a  
6 little bit, but thank you.

7 We'll call an additional juror, Kristee.

8 THE CLERK: Mr. Miller.

9 THE COURT: Mr. Miller, thank you, sir. How are  
10 you today?

11 PROSPECTIVE JUROR: Doing okay.

12 THE COURT: Come on up for a moment. First of  
13 all, what are you reading? That sometimes tells us a lot  
14 about you.

15 PROSPECTIVE JUROR: His Dark Materials. It's the  
16 Golden Compass.

17 THE COURT: I thought it was the inner workings of  
18 the Internet.

19 PROSPECTIVE JUROR: No, no. I wish I knew more  
20 about that.

21 THE COURT: Tell me a little bit about yourself.

22 PROSPECTIVE JUROR: I'm a marine biologist. Do a  
23 lot of water quality. When I'm not doing that, I'm usually  
24 at the beach. It's pretty much my life right there.

25 THE COURT: Who are you employed by?



1 PROSPECTIVE JUROR: It's called the Southern  
2 California Coastal Water Research Project.

3 THE COURT: Oh, certainly, certainly.

4 PROSPECTIVE JUROR: Heard of 'em?

5 THE COURT: Oh, certainly, certainly. Absolutely.  
6 They've been in the court along with Friends of the Bay and  
7 a number of other entities. They come in Federal Court  
8 quite often -- federal courts.

9 What else can you tell us? If you're married,  
10 your spouse's occupation.

11 PROSPECTIVE JUROR: Not married.

12 THE COURT: Are you interested in anybody here?  
13 I'm just kidding.

14 The inner workings of the Internet, how  
15 sophisticated are you?

16 PROSPECTIVE JUROR: The usual surfing, nothing too  
17 big. Just Google, eBay, that kind of thing.

18 THE COURT: eBay, okay. Would you be fair and  
19 impartial to both sides?

20 PROSPECTIVE JUROR: Of course.

21 THE COURT: Would you follow the law?

22 PROSPECTIVE JUROR: Of course.

23 THE COURT: You've heard that the case is going to  
24 get some notoriety. Much of that may be overseas, but  
25 certainly some affiliates here have called and repeatedly

1 called, and so I don't know what to expect. This certainly  
2 isn't going to -- sometimes I've got literally half the  
3 courtroom packed with press. That's not going to happen.  
4 My guess is one or two reporters will come in, and they will  
5 send that out through AP or Reuters or something and pick  
6 that up.

7           The important thing is that I take those kinds of  
8 cases head-on and warn you that you might see something  
9 where you don't expect it and say, "Gee, this sounds like  
10 the case." Just turn it over.

11           PROSPECTIVE JUROR: Uh-huh.

12           THE COURT: Remember, most reporters are very  
13 good, but sometimes they come in and cover something that's  
14 not that germane. And you're the only people who will ever  
15 hear this case.

16           PROSPECTIVE JUROR: Okay.

17           THE COURT: So you're not sophisticated with the  
18 hacking world; you don't know anything about satellite  
19 encryption?

20           PROSPECTIVE JUROR: Not particularly. I mean,  
21 I've heard of all of it, but don't know so much about it.

22           THE COURT: Believe me, it's not a prerequisite to  
23 serve. It doesn't matter, the level of expertise in this  
24 area. In fact, sometimes it's just as good that you don't.  
25 You learn as you go.

1 PROSPECTIVE JUROR: Excellent.

2 THE COURT: I don't have any further questions.  
3 Let me turn you over to counsel.

4 MR. WELCH: Thank you, Your Honor.

5 Mr. Miller, besides hanging out on the beach and  
6 catching some rays, do you have any other type of hobbies?

7 PROSPECTIVE JUROR: Not really. Just reading, and  
8 usually that's where I am if I'm not at work. That's kind  
9 of simple, but --

10 MR. WELCH: Could you tell us a little bit about  
11 your work? What is it that you actually do for Southern  
12 California Coastal?

13 PROSPECTIVE JUROR: Most of it is just water  
14 quality. I go out and collect water samples from streams  
15 and watersheds and either bring them back to the lab and  
16 analyze them or send 'em out to be analyzed.

17 MR. WELCH: Are you the primary analyzer? Are you  
18 just the guy --

19 PROSPECTIVE JUROR: There's people above me. But  
20 they'll tell me to do something, and I do it.

21 MR. WELCH: Do you have satellite? Cable?

22 PROSPECTIVE JUROR: Cable. Cox.

23 MR. WELCH: Cable. Have you ever -- when you're  
24 surfing the Internet, have you ever run across anything  
25 related to do with hacking or reverse engineering?

1 PROSPECTIVE JUROR: No. I'd say again I've heard  
2 of it. But if it's an article, I usually just browse right  
3 by it.

4 MR. WELCH: Okay. In this case one of the issues  
5 is gonna be about competition, okay. Do you think that  
6 competition can be taken too far, like reverse engineering  
7 can be taken too far?

8 PROSPECTIVE JUROR: Of course. I think everything  
9 pretty much can be.

10 MR. WELCH: Would you consider yourself an impulse  
11 shopper, or would you consider yourself --

12 PROSPECTIVE JUROR: Yeah. I just recently got a  
13 full-time job, so I buy lots of stuff now.

14 THE COURT: Counsel, just a moment. Let me talk  
15 about that full-time job.

16 These are tough times. I want to make sure that  
17 your employer now doesn't bounce you, which means fire you.

18 PROSPECTIVE JUROR: I doubt they will. Again,  
19 they pay for 40 hours, but then it's up to their discretion  
20 after that. If I was to talk to them, or you, I'm sure they  
21 would be okay with it.

22 THE COURT: I can't talk to them by phone. I can  
23 write letters. I can't get personally involved. But I can  
24 write a letter thanking them.

25 And I think I ought to do that for each one of

1 you, quite frankly, if you end up being a juror, right away.

2 I don't know about you, though; you're the boss,  
3 but I might write you a letter anyway.

4 But I can certainly do that. That puts them in  
5 the position of saying no, this person can't serve. That's  
6 a little different.

7 PROSPECTIVE JUROR: Again, I think they'd be okay  
8 with that. I'm in between big projects right now.

9 THE COURT: We want you to get paid. We don't  
10 want this to be a financial hardship.

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: And the other choice you heard is we  
13 have to screen people, and then we don't get a cross  
14 section, we don't get a democracy.

15 Okay, Counsel.

16 MR. WELCH: What other types of books do you like  
17 to read?

18 PROSPECTIVE JUROR: A lot of them are science  
19 fiction. That's the genre that I read.

20 MR. WELCH: Do you like mystery and thrillers,  
21 things like that?

22 PROSPECTIVE JUROR: Yeah. Just people tell me  
23 this is a good book, so I'll read it.

24 MR. WELCH: What are some of your favorites?

25 THE COURT: Talk a little slower. I'm going to

1 retrain you. Go over to that microphone 'cause we can't  
2 hear you.

3 MR. WELCH: Sorry, Your Honor. Sorry.

4 THE COURT: Just a moment. I know you're  
5 listening. Slower. I want a record of this. Okay?

6 PROSPECTIVE JUROR: I have read a lot of Anne Rice  
7 novels, like that was what I began reading. And I wasn't  
8 big into reading in college, so I haven't been -- you know,  
9 it's kind of a new thing. I finally cleaned up my act a  
10 little and started doing intelligent things. So reading is  
11 new basically.

12 MR. WELCH: Would you consider yourself like an  
13 artistic type?

14 PROSPECTIVE JUROR: No. I'm a science type, I'd  
15 say. I like the sciences and doing that kind of thing. I  
16 guess I'm not all that artistic.

17 MR. WELCH: What are some of your favorite  
18 channels on your cable system?

19 PROSPECTIVE JUROR: I would have to go with HD  
20 Discovery Theater. I like that one a lot. History Channel  
21 as well. I like to learn basically when I watch TV. But  
22 The Bachelor is fun to watch, so I watch that sometimes.

23 MR. WELCH: Do you do any type of nonprofit or  
24 community service-type work?

25 PROSPECTIVE JUROR: I don't.

1 MR. WELCH: Is that something that you think you  
2 would have an interest in later on? Do you have that kind  
3 of --

4 PROSPECTIVE JUROR: Yeah. I mean, I'm sure I  
5 will. It sounds like it's good for the community and  
6 whatnot. So I probably should get on that.

7 MR. WELCH: Thank you, sir.

8 THE COURT: Thank you. And I'll turn you back to  
9 NDS for questioning.

10 MR. STONE: Thank you, Your Honor.

11 Good morning, Mr. Miller. How are you?

12 PROSPECTIVE JUROR: Doing well.

13 MR. STONE: One of the questions I had for you is  
14 what kind of sites you like to go to on the Internet.

15 PROSPECTIVE JUROR: Like I said, Amazon, Google,  
16 you know, just occasional searches. Wikipedia, it's fun,  
17 you can learn things there. Surflife, see when the swell's  
18 coming.

19 MR. STONE: Yeah.

20 PROSPECTIVE JUROR: There's a select five that I  
21 have that I go to.

22 MR. STONE: Now, for how long have you been  
23 chained in a glass cage at a full-time job?

24 PROSPECTIVE JUROR: Only about six months.

25 MR. STONE: Six months. Where were you before

1 then? What school?

2 PROSPECTIVE JUROR: I went to UCI. Just graduated  
3 last summer.

4 MR. STONE: And I'm sorry. What book were you  
5 reading?

6 PROSPECTIVE JUROR: His Dark Material. It's the  
7 Golden Compass. They made a movie out of it.

8 MR. STONE: Do you read any newspapers or  
9 magazines regularly?

10 PROSPECTIVE JUROR: Not as much as I should.

11 MR. STONE: Any technical journals?

12 PROSPECTIVE JUROR: No.

13 MR. STONE: And you said you worked in a lab?

14 PROSPECTIVE JUROR: Uh-huh.

15 MR. STONE: What kind of equipment do you work  
16 with in that lab?

17 PROSPECTIVE JUROR: A lot of spectrometers.  
18 Usually it's optical-based analyzers. So that and, you  
19 know, usually we're just mixing chemicals and whatnot.

20 MR. STONE: Optical-based analyzers?

21 PROSPECTIVE JUROR: Yeah. It's a spectrometer --  
22 I don't know what it's called, but you mix chemicals, it  
23 turns color and you read how much of that color, the  
24 percentage of color, and you can back-transfer it to  
25 concentrations.



1 MR. STONE: Got it. Now, excluding your  
2 relatives, who would you say is one of your heros?

3 PROSPECTIVE JUROR: That's tough but I'd say a guy  
4 named Mike Parsons. He's a big-wave surfer. Actually, he  
5 surfed an 85-foot wave.

6 THE COURT: Mavericks?

7 PROSPECTIVE JUROR: Actually, it was Cortez Bay.

8 THE COURT: Cortez Bay.

9 PROSPECTIVE JUROR: Yeah.

10 MR. STONE: Did they pull him out on a boat?

11 THE COURT: Yeah. Jet ski.

12 PROSPECTIVE JUROR: Jet ski. Southern California.  
13 I'm sorry.

14 MR. STONE: If you're completely insane, you like  
15 that stuff.

16 THE COURT: You can tell which counsel is from  
17 Southern California and which isn't. They all are.

18 MR. STONE: I'm wow'd by that.

19 Do you think competition is generally good for the  
20 consumer? Bad for the consumer?

21 PROSPECTIVE JUROR: Sure. Like everyone says, it  
22 drives down cost and quality goes up.

23 MR. STONE: Of course, everything you can take too  
24 far. We understand that.

25 PROSPECTIVE JUROR: Exactly.

1           MR. STONE: But do you think good, tough  
2 competition is good?

3           PROSPECTIVE JUROR: Yeah.

4           MR. STONE: As long as it's fair?

5           PROSPECTIVE JUROR: Agreed, yeah.

6           MR. STONE: No problem with that?

7           Have you heard anything so far in all the  
8 questions and things folks have answered that makes you  
9 think you might be not the best juror in this case for any  
10 reason?

11          PROSPECTIVE JUROR: I don't think so. I'm ready  
12 to go for it.

13          MR. STONE: Thanks, Mr. Miller.

14          PROSPECTIVE JUROR: You're welcome.

15          MR. STONE: Appreciate it.

16          THE COURT: Just a curious question. You don't  
17 know somebody named Mike Carter, do you? About your age?

18          PROSPECTIVE JUROR: I don't.

19          THE COURT: Okay. Good. All right. Thank you.

20          All right, Counsel. I gave each counsel one  
21 additional peremptory during the recess out of fairness  
22 because we had to excuse one juror.

23          So let me turn to the plaintiff and see if you  
24 wish to exercise that peremptory.

25          MR. WELCH: Your Honor, we'd like Mr. Miller to

1 remain on the jury.

2 THE COURT: Okay. Let me turn to NDS, if you  
3 would like to exercise a peremptory.

4 MR. STONE: No, Your Honor. We accept the panel.

5 THE COURT: You understand that those peremptories  
6 extend across the board as a courtesy from the Court. And  
7 then you're satisfied with the jury; is that correct?

8 MR. STONE: Correct.

9 THE COURT: Okay. All are satisfied with the  
10 jury. Thank you very much.

11 I want to thank you before we begin. I promise  
12 not to waste your time. If you would be kind enough to  
13 stand and raise your right hand, and would you join me and  
14 Kristee and take an oath at this time.

15 (Jurors sworn)

16 ALL JURORS IN UNISON: I will.

17 THE COURT: Please be seated.

18 I want to thank all of you. If you would quietly  
19 go back and see Millie. By the way, on the way, nothing  
20 will be more frustrating than coming into court -- you'll  
21 think it's a complete waste of time if you don't serve. So  
22 I hope you don't form that impression.

23 But we got a lot of you in today for one reason.  
24 We didn't know what to expect. And I'm a little astounded,  
25 quite frankly, that we've got such a great cross section.

1 And I think that any of you would have contributed to that.  
2 So let me just say humbly on behalf of the courts, thank you  
3 very much. Go down and check with Millie. If we've got  
4 service, so be it. If not, have a wonderful day and thank  
5 you.

6 UNIDENTIFIED SPEAKER: The directions of where the  
7 court's located is not a -- is not good directions. They've  
8 got four court systems here, and to get into this building  
9 was hard work.

10 THE COURT: It was difficult. Okay. We're going  
11 to get rid of the Superior Court next door. I spent  
12 17 years there. They're gone. Okay.

13 PROSPECTIVE JUROR: On the summons it says Fourth,  
14 F-O-U-R-T-H. And the street is actually 4th Street. My GPS  
15 wouldn't find it.

16 THE COURT: Thank you for telling me.

17 Okay. We're off the record for a moment.

18 (Remaining prospective jurors excused.)

19 (In the presence of the jury.)

20 THE COURT: Okay. On the record. Why don't you  
21 go to lunch. There's no reason to start opening statements  
22 right now.

23 Now, I'm going to have you come back at 1:30 for  
24 one reason. I don't know whether you -- I can get away with  
25 just an hour for lunch and push this case along or whether I

1 need an hour and a half for lunch.

2 So we're going to split the baby right now, in the  
3 middle, if it's all right. See you at 1:30. Kind of test  
4 that out.

5 Let me tell you where you can go to lunch, and  
6 then the jury's excused.

7 (Off the record)

8 THE COURT: Back on the record.

9 You're not to discuss this matter amongst  
10 yourselves nor form or express any opinion concerning the  
11 case. Don't talk about this case. You can talk to each  
12 other, your families, whatever you want to do, but nothing  
13 about this case. And don't form or express an opinion. See  
14 you at 1:30.

15 Counsel, if you would remain for just a few  
16 moments.

17 (Further proceedings off the record.)

18 (Lunch recess held at 12:19 p.m.)

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2  
3 CERTIFICATE

4  
5 I hereby certify that pursuant to Section 753,  
6 Title 28, United States Code, the foregoing is a true and  
7 correct transcript of the stenographically reported  
8 proceedings held in the above-entitled matter and that the  
9 transcript page format is in conformance with the  
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12 Date: April 9, 2008

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