COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

NOV 20 1986

UNITED STATES OF AMERICA,

Plaintiff,

vs. C2-85-69

LOREN GREY BEAR et al.,

Defendants.

T R A N S C R I P T

of

P R O C E E D I N G S

April 14, 1986

8:50 o'clock A.M.

U. S. District Courthouse
Old Federal Building
Fargo, North Dakota

BEFORE: HON. JUDGE PAUL BENSON

A P P E A R A N C E S

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WHEREUPON,

the following proceedings were had, to-wit:

(Whereupon, the following was had outside the hearing of the jury.)

THE COURT: I'm informed that two of the defense counsel are not present yet, is that correct?

MR. SOGARD: That's correct, Your Honor. My understanding, we met Mr. Bohlman last night. He went to Grand Forks and was coming back and we have not seen him at this point. I don't know about Mr. Spaeth.

MR. FRAASE: Someone received a telephone call from Mr. Spaeth. I don't know who.

MR. LARIVEE: Said he was in Grand Forks at 7:00 o'clock.

THE COURT: Well, we can proceed with whatever it was counsel desired to take up with the Court prior to the jury being brought in.

MR. VOGEL: May it please the Court, Your Honor, one matter that I wanted to raise with the Court is the business of bringing the incarcerated defendants into the courtroom. What we would request on behalf of those incarcerated defendants who are in the custody of the Marshal Service is that we be allowed to pick them up at the Marshal's office after they have been brought in and in that fashion they will be treated in the same fashion as the other

defendants who are staying at the Isis Hotel or otherwise staying here in Fargo and not incarcerated.

THE COURT: You find Chief Deputy Vokes.

MR. HELEY: He's on his way. He will be here in a matter of minutes.

THE COURT: I see no problem, but I just, with your request, but I'll clear it with the chief deputy. I asked Mr. Heley to have him come into the courtroom.

MR. VOGEL: The other matter that I wanted to raise, Your Honor, has to do with the voir dire process. There is some confusion in my mind about exactly how this is going to be accomplished. It would be my request on behalf of my client that what we do would be to examine 14 prospective jurors at a time after the Court has addressed the entire panel as a whole. It would be my further request that the remainder of the panel, aside from the 14 being questioned, be out of the courtroom and then once the 14 have been questioned that they be taken to some other area other than the courtroom so that, as was pointed out the other day they won't be contaminated or prejudiced by other matters that might come up in the course of the voir dire questioning later in the morning.

THE COURT: That's going to create too many problems for the Court, and my experience with the possibility of the jury being contaminated, I just think the

possibility of contamination is as great or greater by having jurors someplace out of the courtroom and I'm going to follow through with my original plan to have them seated in the courtroom. So that request is denied.

MR. DALEY: This is the furthest I have ever been from the jury box during voir dire. I would request that the Court ask each juror to speak as loudly as possible.

THE COURT: I will do that. On the other hand, I would ask counsel not to hesitate to speak up if you are unable to hear. I think that's the only way to accomplish that is that if you can't hear them just say so and the juror I'm sure would respond. Somebody else.

MR. SOGARD: I wanted to indicate to the Court I think from this prospectus we have a difficulty. It's hard to see the jurors in the last row and the first part way over on the right and, therefore, that would be the area. Could be bobbing up and down if the Court would understand. It may be that we are trying to follow.

THE COURT: You certainly will not be criticized for bobbing up and down from that particular location.

MR. SOGARD: Thank you, Your Honor.

THE COURT: You should feel free to move forward if you need for some reason to take a look at a juror or something.

MR. SOGARD: Thank you, Your Honor.

THE COURT: I make that simply because of the rather unfavorable position in which you are located.

THE COURT: Mr. Vokes, the request has been made that the defendants in custody be released to counsel at the Marshal's office rather than your bringing them to the courtroom and I am inclined to grant that unless you have some security objection.

MR. VOKES: We don't have any objection. Other than we want to make sure if the defendant did abscond the responsibility didn't lay with the Marshal Service.

THE COURT: The responsibility will lay with the Court and with the attorney if the defendant, if there is any responsibility, it will not be attributed to the Marshal Service.

MR. VOKES: Thank you, Your Honor.

THE COURT: And I guess in order to make it entirely clear, I will have the record show that the Marshal is ordered to deliver the custody of the defendants who are presently in detention to Mr. Vogel at the Marshal's office. Does that do it?

MR. LARIVEE: I have a question about, what about during the noon hour, Your Honor? We deliver them back to the --

THE COURT: To the Marshal's office.

MR. LARIVEE: To the Marshal's office any time we

are not in court session.

THE COURT: Are the attorneys willing to accept custody during recess, for example?

MR. LARIVEE: No, I'm not willing to accept custody any time.

THE COURT: Then you mean --

MR. LARIVEE: I'll pick my client up at the office of the Marshal and I'll bring him back when we are not in session, that's all I will do.

THE COURT: Then you are not willing to bring him back to the Marshal's office?

MR. LARIVEE: I said I would bring them from there to the courtroom and back to the Marshal's office.

THE COURT: That's the way it will have to be.

I wanted to clarify what's going to happen during noon hours and recess. During your noon hour all the defendants in detention will be returned by the lawyers to the Marshal's office where they will be held in detention over the noon hour unless the lawyers wish to take custody and I will allow that.

MR. ZIMNEY: On behalf of Jesse Cavanaugh, Your Honor, I would like the opportunity to take custody of Jesse during noon hour on certain occasions. Not always. On those occasions I don't, I'll return him to the Marshal's office. I'd like to get clarified what the procedure would be from

here on out in the morning. When the attorneys have an opportunity to pick up there clients at the Clay County jail and bring them over with the idea that the attorneys have responsibility for them.

THE COURT: My understanding that that is the procedure that's going to be followed.

MR. ZIMNEY: I checked with the jailer yesterday and they didn't know what was going to be followed.

MR. LARIVEE: Is it my understanding then that we are going to be transporting our clients from the Clay County jail? I don't want to do that.

THE COURT: I was under the impression that there was going to be one of the attorneys picking up all of them. I don't know whether that's --

MR. VOGEL: Judge, the discussions were as follows: I talked to the clerk's office and also to Mr. Vokes with the idea of trying to work out some kind of arrangement because obviously there would be times when the lawyers would want to consult with their clients, either before a session started in the morning or after court had been completed in the afternoon. At that point I had visited with some of the other lawyers, but obviously we do have communication problems because most of them are from Grand Forks. Some of the lawyers expressed an interest in having some kind of arrangement whereby we could pick up at times

the defendants over at the Clay County Law Enforcement Center and bring them over here to the Court and transport them back. We did some further checking yesterday and also on Saturday and determined that among ourselves we do not have a vehicle large enough to accommodate all six of the people that are incarcerated over at the Clay County Law Enforcement Center.

There was also a discussion by some of the lawyers that they didn't want to be involved in transporting the Defendants back and forth on a regular basis because it would take time away from trial preparation and other matters that we would have to be handling with the Court. To complicate the situation, I also visited with the Clay County jailer. He indicated there was going to be a problem with respect to getting the incarcerated prisoners fed with hot meals because of the fact that the St. Ansgar Hospital serves the inmates over there promptly at 5:00 p.m. My only role in this was to see if we could try to work out something reasonable, and I think part of the problem is that it's a complicated situation with a lot of different persons involved. My latest information is it's just not going to be possible to get that one vehicle that we could use to bring the people back and forth. And then we also have the problem who is going to take on that responsibility to do that. I think there will be times certainly when I with respect to my client will want to pick him up and drop him off. But part

of the purpose of calling the meeting here this morning was to have the marshal present so he could explain his concerns and also have Your Honor available to listen to the problems and perhaps give us some guidance with respect to how to resolve them.

THE COURT: Chief Vokes, that thrusts the ball in your court.

MR. VOKES: I'm confused, Your Honor. Our only concern is, we have incarcerated defendants, we are responsible for their safety and if that prisoner escapes while in our custody, it's our responsibility. If we have a limbo situation here which at times they're in our custody and other times they aren't, I don't know when that is. It's very confusing for me. At times you people go pick them up, other times we go pick them up. We are not going to have coordination in order to get these people into court. That's our concern. Boils down, we'll bring them in, that's our job anyway.

MR. ZIMNEY: Might I suggest if the attorney is going to pick up his client in the morning or meet with them at noon hour or whatever that we give the Marshal Service half a day notice which I think would be sufficient, would it not?

MR. VOKES: Any notice would be fine.

THE COURT: Very well. The arrangements will

remain then, the responsibility will remain with the Marshal Service to pick the detained defendants up in the morning and bring them to the Federal Building and to return them in the evening. Now I would expect that, I would hope, at least, that some arrangements could be worked out with the Clay County Law Enforcement Center to feed those detained, six detained defendants at 6:00 o'clock or thereabouts rather than 5:00.

MR. VOKES: Your Honor, the trouble with the jail, Clay County jail is they do not have the facilities. They have ovens there but eventually one hour's time the food would probably be dried out. Any moisture in the food would dissipate. They said they are going to try it for a couple days and see the result. But they will try to keep the food warm. That's all they can do. They do not cook the food on premises.

THE COURT: If that does not work out, possible for the Marshal Service to cater the food in to the Federal Building before you take them back?

MR. VOKES: We would have to feed them.

THE COURT: You understand that the Court is not likely to recess earlier than 5:00 o'clock.

MR. VOKES: I'm aware of that, Your Honor.

THE COURT: I guess that pretty well resolves the problem.

MR. DALEY: I have one question, Your Honor. For the defendants who are in the supervision of the probation department, it's my understanding that they would be fed at the halfway house during the noon hours, but I was just thinking for convenience sake it might be easier if they are going to bringing meals in for the incarcerated defendants, perhaps all of the defendants could be fed here in the courtroom rather than going back and forth if the Court sees any merit to that.

THE COURT: I guess I will ask you simply to work that out with Mr. Broome. He's the chief probation officer and chief of pretrial services and those defendants I believe one in custody of pretrial services, something you should work out with him. If you can not resolve it, then take it up with the Court.

MR. THOMPSON: Your Honor, very briefly. On behalf of Defendant Loren Grey Bear, I made some arguments on the record before with respect to the composition of the jury panel that's been drawn in the case. I would this morning like to put on the record, I'd like to say on the record my continuing and present objection to the fact that there is a panel drawn from the Southeastern Division of this direct which is to be used as the drawing source for those jurors and the alterntes who will be seated in the case. The Eighth Circuit --

THE COURT: Just a moment. I don't need any argument. Just get it on the record that you are continuing your objection, you made your objection before, and the objection is overruled. So the record may show that you have again made the objection.

MR. THOMPSON: The Court will not hear any case law cited into the record?

THE COURT: No.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: Very well. Anything more?

MR. ZIMNEY: Your Honor, I believe I can speak on behalf of all of the defendants. We would join in the motion.

THE COURT: Very well. The record may so show.

MR. DALEY: Just as a clarification, Your Honor, since there is no spokesman, I believe that if any defendants make an objection that we would like it deemed that we all join in the objection of any of the lawyers making the objection unless specifically requested to not join in the objection.

THE COURT: Well, I suggested that sometime ago but I ran into some resistance and that procedure certainly is acceptable to the Court.

MR. DALEY: I'll let anybody has any objection to that speak now.

THE COURT: Court is willing to have the record

so show that an objection by a defense counsel shall be deemed joined in by all counsel unless counsel for a specific defendant states otherwise.

MR. FRAASE: Your Honor, I think that the problem you have is we understood the Court would recognize that but we weren't certain if the Eighth Circuit would. I guess that I'm going to go along with Mr. Daley's suggestion, if I think there is an unusually critical matter, I'll separately put my objection on the record.

THE COURT: That's a problem with the Eighth Circuit that arose with an instruction. I had stated prior to going into summation, final summation, I'd gone over the instructions with counsel and no specific objection had been made to a failure to give a specific instruction which had been requested. I made the general statement that counsel shall be deemed to have objected to the failure of the Court to have given a specific instruction that may have been requested by counsel and the opinion from the circuit, as I recall, stated that counsel could not, they ruled on the basis that counsel had not objected specifically to the failure to give that instruction and so they just ruled that the objection had been waived. Said it wasn't sufficient in that situation. How they might look at it -- I felt because of that that I should call that to counsels' attention How they might look at it in the situation with 11 defendants and

11 counsel, I am in no position to know.

Anything more that needs to be brought up?

MR. LARIVEE: One other point, I guess, Your Honor, in regards to bringing the detained defendants. I would appreciate if they would be here prior to the arrival of the jury members. They would be brought over say at 8:00 o'clock in the morning.

THE COURT: I would expect they would be brought over earlier than that. What time --

MR. VOKES: We would leave at 7:30 and be back at 8:30.

THE COURT: You will be here at 8:30.

MR. VOKES: We close the door. Supposedly no jurors should be around.

MR. LARIVEE: If they are walking into the building, depending how you bring them over, if they are handcuffed or another situation with a chain, I don't think that's appropriate and that's what I'm concerned about.

MR. VOKES: Jurors would have to be in the back.

MR. LARIVEE: They could be parking their cars. They could be walking into the building.

MR. VOKES: They can't walk into the back, Your Honor.

MR. LARIVEE: They may be parking over there.

MR. VOKES: They may not be in the back. They

shouldn't be. It's possible.

MR. LARIVEE: I don't want to have a problem with that. I'd like to have them here in plenty of time we wouldn't anticipate a juror coming or being here.

THE COURT: What time do the the jurors, I mean, the defendants have breakfast, detained defendants?

MR. VOKES: probably between 7:00 and 7:30. Between 6:30 and 7:30.

THE COURT: And what time do you contemplate picking them up?

THE COURT: Our regular office hours are from 8:00 to 4:30. We start before that, we are working overtime and under Gramm, Rudman they don't like us to work overtime.

THE COURT: I'm aware of that. I think I will request in view of this request that you plan to pick the jurors up at 8:00 o'clock over there, to get them here, the detained defendants. Pick them up at 8:00 o'clock in the morning so that you would have them here probably not later than 8:15. I'm not holding you to that time but get them here, the likelihood of the jurors --

MR. LARIVEE: Just one question. I would just ask if they are here notify --

THE COURT: The detained defendants.

MR. VOKES: They are here, unseen by jurors.

MR. ZIMNEY: Your Honor, would I be right in

assuming that the motion in limine as to ex parte motions relative to subpoenas would be at a later time today?

THE COURT: Yes. Not going to be heard at this time.

This meeting of counsel will be deemed a pretrial meeting and from this moment on will be deemed trial so the jurors will be brought in and the trial will officially commence as of the bringing of the jurors into the courtroom.

MR. LARIVEE: Mr. Spaeth is not here yet, Your Honor.

THE COURT: Hold it just a minute.

MR. FRAASE: Some of the defendants, I would think counsel would want to get there defendants in here.

THE COURT: The Defendants should be brought in ahead of the jurors.

THE COURT: Counsel will have to get the defendants. We have a problem here of Mr. Spaeth. Do you know, Mr. Bohlman, you were just a little bit later, I'm not sure the weather delayed you.

MR. BOHLMAN: The weather is bad. I talked to him this morning. I know he was on his way. I have no idea where he is. The weather is bad and getting worse and the roads are in very bad condition.

THE COURT: Mr. Spaeth is representing?

MR. VOGEL: He represents Maynard Dunn, Your

Honor.

THE COURT: What would be, I'll wait a reasonable time. What would be the position of the United States if we were to sever that one defendant?

MR. FISHER: We'd oppose. We can wait a reasonable time. Perhaps Mr. Spaeth will get here.

THE COURT: I guess that's what we'll have to do then. We will wait a reasonable time to see when Mr. Spaeth shows up.

THE COURT: While we are waiting for Mr. Spaeth --

MR. SPAETH: He's here.

MR. LARIVEE: Your Honor, I had another question I'd like to bring up. I'd like to have some idea of how many of the jurors are actually here and will be available to be drawn for a jury.

THE COURT: I don't know. I'll find out in a minute.

Mr. Spaeth, I appreciate your having come through the inclement weather.

MR. SPAETH: Quite a drive.

THE COURT: Mr. Bohlman, I don't mean to exclude you in showing that appreciation.

MR. BOHLMAN: Thank you, Your Honor.

THE COURT: Or any of the other counsel.

How many jurors do we have?

THE CLERK: Approximately 75, Your Honor.

THE COURT: Approximately 75.

MR. LARIVEE: I have one other question, Your Honor. I'm interested in knowing how the people that are excused from the jury panel are excused and for what reasons they are excused without having to appear in court.

THE COURT: They are excused by sending in written questions.

MR. LARIVEE: Who acts on that? Yourself?

THE COURT: I do.

MR. LARIVEE: As far as the drawing of the jury, Your Honor, I think that if there are only 75 jurors here I would at this time on behalf of Roger Charboneau object to the commencement of the trial based upon only a partial jury panel being here.

THE COURT: What's the basis of your objection? What's the legal basis of your objection?

MR. LARIVEE: Well, I'll give that to the Court at a later time if you wish.

THE COURT: Actually the objection is overruled because, that's the reason I asked the legal basis for your objection. That matter has been specifically ruled on by the Eighth Circuit on a question that arose in the District of North Dakota and that's 583 Fed 2nd 411, United States versus Little Bear.

MR. LARIVEE: That's the case I was concerned with, Your Honor.

THE COURT: The clerk just told me that it's going to require some basic orientation of the jury panel by the, the deputy clerks relating to -- Darlene would you tell the attorneys what that orientation relates to.

THE CLERK: Generally when jurors are called in the very first time, they have many questions as to their length of service and how their name was actually summoned and we define to them the difference between state court and federal court and about how many times they can be expected to be called and the exact method that they should request a jury excuse, parking, code-a-phones. It's just a general orientation that we give a group like this. Would probably take ten minutes.

THE COURT: That will be done then and counsel are welcome to sit in the courtroom while the orientation is done if you desire to do so. But once that has been completed, then the Defendants may come into the courtroom, well, the Defendants, normally the Defendants and the parties are not in the courtroom when this is done. Simply basic orientation. If there is any objection to it, I'll just not allow the clerk to do it at this time. Let them resolve those problems later if they should arise.

MR. ZIMNEY: Your Honor, on behalf of my own

client, I would like to have my client available and I would like to be in the courtroom when the orientation is given.

MR. VOGEL: I'd make the same request. I think probably the others would join in that, too.

MR. BOHLMAN: Yes, Your Honor.

MR. THOMPSON: Yes, Your Honor.

THE COURT: I'd like to see Darlene in chambers when we recess now. So the Defendants should be brought in, the jurors can then be brought in, the orientation can be had and we will then proceed.

(Recess taken.)

(Whereupon, the following was within the hearing of the jury.)

THE COURT: First of all, when I look outside and then look at the full courtroom, I want to express my appreciation to all of you, all of the jurors, prospective jurors and all the parties, all of the attorneys for having come in for these proceedings starting today. Obviously, if we had known what the weather was going to be, we would have delayed it until the weather cleared up, but by the time that became evident it was too late to call the matter off.

Case before the court is C2 85-69. United States of America versus Loren Michael Grey Bear, Jesse Dean Cavanaugh, Paul Henry Cavanaugh, Tayron Dale Dunn, also known as Terry Dunn, Maynard James Dunn, Timothy Sylvester Longie,

Jr., Roger Darrel Charboneau, Dwayne Allen Charboneau, Leonard George Fox, Richard John LaFuente, also known as Ricky LaFuente, John Emmanuel Perez, also known as John Perez. United States ready to proceed?

MR. FISHER: Yes, Your Honor.

THE COURT: Are all of the defendants ready to proceed.

MR. LARIVEE: Yes, Your Honor.

MR. ZIMNEY: Yes, Your Honor.

MR. VOGEL: Yes, Your Honor.

MR. VOGEL: Yes, Your Honor.

MR. BOHLMAN: Yes, Your Honor.

MR. FLATEN: Yes, Your Honor.

MR. SOGARD: Yes, Your Honor.

MR. SPAETH: Yes, Your Honor.

MR. HAGA: Yes, Your Honor.

MR. FLATEN: Yes, Your Honor.

MR. DALEY: Yes, Your Honor.

THE COURT: Members of the jury panel, the case which was just called for trial is a criminal case that comes before this court by reason of an indictment that was returned by the grand jury. An indictment is a formal document which the government uses to commence its charge against a defendant and upon which it brings its case into court. The Indictment in the case, or the indictment in any

case serves no other trial purpose whatsoever. The sole purpose of an indictment is to serve as an accusation or charge which the United States makes against a defendant.

In this case the United States has made charges against 11 different defendants in one indictment and I will ask the clerk to read the Indictment.

(Whereupon, the Indictment was read by the clerk.)

THE COURT: As I have indicated, the sole purpose of the Indictment which was just read aloud is to serve as an accusation or charge which the United States makes against a defendant. Each of the defendants in this case has entered a plea of not guilty to the charges that have been made against each as read, as you have heard from the reading of the Indictment. By the Defendants' plea of not guilty, each of the defendants has raised issues of fact to be tried to a jury, and the burden is on the prosecuting authority, which is the United States Government through the Justice Department of the United States, to prove the charges it has made against each of the defendants beyond a reasonable doubt.

The United States in all criminal matters is represented by the United States Attorney and Assistant United States Attorney. In this case the United States is represented by three of the Assistant United States Attorneys, Mr. Dennis Fisher, I will ask Mr. Fisher to stand so he may

be identified and also to introduce the other two Assistant United States Attorneys who are seated with him at the counsel table.

MR. FISHER: Thank you, Your Honor. With me today are Mr. Lynn Crooks and Mr. Norman Anderson, both Assistant United States Attorneys. Also at the end of the table is Spencer Hellekson, special agent with the FBI.

THE COURT: Thank you.

Defendant Jesse Dean Cavanaugh is represented by his attorney, Mr. Thomas Zimney. Would you stand and have your client stand, please. And I would ask Mr. Cavanaugh and each of the defendants to stand, please, just turn toward the jury panel so they may recognize you. Thank you.

Defendant Paul Henry Cavanaugh is represented by his attorney, Mr. Gerald Haga. I would ask Mr. Haga to stand so he may be recognized and the defendant. Thank you.

Defendant Dwayne Allen Charboneau is represented by his attorney, Mr. Michael Daley. I would ask Mr. Daley to stand and Mr. Charboneau. Thank you.

Defendant Roger Darrel Charboneau is represented by his attorney, Mr. Allen Larivee. I would ask Mr. Larivee to stand and Mr. Charboneau. Thank you.

Defendant Maynard James Dunn is represented by his attorney, Mr. Kevin Spaeth. I would ask Mr. Spaeth to stand and Mr. Dunn. Thank you.

Defendant Tayron Dale Dunn, I assume he will be referred to in these proceedings as Terry Dunn, and represented by his attorney, Mr. Dan Vogel. Mr. Vogel and Mr. Dunn. Thank you.

Defendant Leonard George Fox is represented by his attorney, Mr. Mark Fraase. Mr. Fraase and Mr. Fox. Thank you.

Defendant Richard John LaFuente, I may not have pronounced that correctly, I may have come reasonably close, also known as Ricky is represented by his attorney, Mr. Bruce Bohlman. I would ask Mr. Bohlman to stand and his client. Thank you.

Defendant Loren Michael Grey Bear is represented by his attorney, Mr. David Thompson. Thank you.

Timothy Sylvester Longie is represented by his attorney, Mr. Allen Flaten. I would ask Mr. Flaten to stand, Mr. Longie.

And Mr. John Emmanual Perez is represented by his attorney, Mr. Warren Sogard. Thank you.

You may have noted in my introducing each of the defendants that the lawyers representing the Defendants are seated at the counsel table and the party that each is representing is seated as nearly as possible directly behind the lawyers. A seating chart has been, the lawyers and the defendants will occupy the same seat throughout the trial and

a seating chart has been prepared and will be presented to the jury that is ultimately chosen to hear this case so that you may become, in the course of trial you may become acquainted with each of the lawyers and each of the defendants, and it is very important that you do become familiar with each of the lawyers and each of the defendants and I'll explain that in a little more detail in a moment.

The Plaintiff, the United States of America, and the defendants are referred to in these proceedings as the parties to the lawsuit. In other words, the United States of America is one party and there are 11 other parties. Each of the defendants is referred to as a party in the lawsuit. Parties to the lawsuit are entitled to have the case tried to a jury that is impartial. An impartial jury is a juror wherein each individual juror is without bias of any kind and is fair and objective. To state that another way, an impartial juror is a juror who is able and willing to render a verdict solely on the evidence presented in the courtroom during this trial and the law applicable to the charges that have been made and applicable to the evidence that has been presented as the jury will receive it from the presiding judge in the instructions from the Court. An impartial juror must be willing and able to disregard and set aside all prejudice, all sympathy, any ideas, notions or beliefs about the law or the case that they may have previously encountered

or that they may have previously held and render a verdict solely on the evidence and the law presented in this courtroom during this trial.

The case is going to be tried to a jury of 12 persons and two alternates. In a criminal case the law requires that it be heard by a jury of 12 persons. No more than 12, no fewer than 12. However, to guard against the possibility that in the course of the trial something may arise which would make it impossible for a juror to continue, we are impaneling two additional jurors which we call alternates. The alternate jurors will sit through the trial, hear all the evidence, participate in the trial to the same extent as the 12 jurors that are chosen and when all the proceedings have been completed and the jury, or the case has been submitted to the jury, at that point, if we still have two alternates, the alternates will be excused.

And in a case of this kind it could happen that one or two of the jurors impaneled would, some serious tragedy or something could arise that would cause one of the the jurors to be excused from proceeding any further and in that case one of the alternates would take the place of the juror that is excused. And that's, but in order to insure that the two alternates have the same interest in the case, the same attentiveness to the case as the 12 jurors, it's been the practice of the Court not to identify the alternates

to the jury or the alternates themselves until the case is submitted to the jury, and if we still have alternates at that time, then the alternates are excused. However, the lawyers will know who the alternates are, the Court will know who the alternates are. But we want each of the 14 jurors who are chosen to feel that they are going to be one of the jurors that are going to be called upon to render a verdict when all the evidence and all of the proceedings in the trial up to the submission of the case to the jury have been completed.

To select this jury of 12 jurors and two alternates, we are going to draw initially 49 names. I say initially, what I really mean to say is we are going to call 49. We may be drawing more names than that. We are going to qualify 49 jurors and then it will be up to the parties and their attorneys, the parties through the advise and guidance of their attorneys to make the determination as to which 14 of the 49 will serve as the jury in the case. The reason for that is that in a criminal case both sides should have some determination as to the makeup of the jury we are drawing. Because we have so many defendants in this case, we are qualifying 49 jurors so that there may be a meaningful selection by the parties. And, as I say, when I say the parties, as I indicated, I'm talking about the United States representing the prosecuting authority and the defendants,

each of whom have been charged. So that they may have some part in the selection of the final 14 to hear the case.

Now in order that their selection will be a meaningful selection, a knowing selection, it's necessary that the Court ask each of you whose names are drawn certain questions. Those questions are going to be, initial questions are going to be relating to your background, your occupation, your prior jury service, the names of your spouse and just general information relating to those matters. And then I will be asking questions relating to your, the obligation of the jury that is selected to serve as a fair and impartial jury.

I have indicated that a fair and impartial jury is a jury wherein each juror is without bias of any kind, is fair and objective, each juror is able and willing to render a verdict solely on the evidence presented in the courtroom during this trial and each juror is willing and able to do those matters which are necessary to make a fair determination in judging credibility of witnesses and in determining issues and disputed issues of fact.

You will note in my opening comment I indicated that the charge has been made, the charges against each of these defendants has been made by a grand jury. The responsibility of the office of the United States Attorney to prosecute charges when the grand jury has returned charges,

and the United States Attorney, of course, has further responsibility in that when information is brought to their attention that there may have been a crime committed, they then present that information to a grand jury and the grand jury makes a determination as to whether the person should be brought to trial, and I won't go into what the legal determination must be, but they make the determination whether a person should be brought to trial and at that point the burden arises that the United States has to prosecute the case. And the United States through the United States Attorney has the burden to prove the charges that have been made against the Defendant beyond a reasonable doubt. The reason for this is that the law provides that each defendant must be presumed to be innocent until the jury is satisfied that the United States has proved the charges that has been made against each defendant beyond a reasonable doubt.

The jury is going to have to make a separate determination as to each of the 11 defendants and the charges that have been made against each of the 11 defendants, and in making that determination, the jury is going to have to determine whether or not as to each of the defendants the United States has proved the charges beyond a reasonable doubt. If the jury should find that the United States has not proved a charge against a defendant beyond a reasonable doubt, it is the duty of a fair and impartial jury to return

a verdict of not guilty. If a jury determines that the United States has proved a charge made against a defendant beyond a reasonable doubt, it is the duty of an impartial jury to return a verdict of guilty as to that defendant. And the jury must keep in mind at all times that they must consider only that evidence which is presented in this courtroom during this trial. They cannot go outside of the courtroom to look for evidence, and if they have heard or read something about the case, and I will go into that a little bit later, if they have heard or read something about the case prior to coming into the courtroom, it is the duty of an impartial juror to set aside and disregard anything that they may have heard or read about the case prior to coming into the courtroom and render a verdict based solely on the evidence and the law presented to the Court, presented to the jury in this courtroom during the trial.

The jury must also keep in mind because the United States has the burden to prove the charges beyond a reasonable doubt that a defendant has no burden to present any evidence or even to testify. If a defendant should choose not to present any evidence or not testify, the jury is not to attach any significance to that at all because that is a constitutional right which a defendant in any criminal case has. It cannot even be discussed by the jurors in any way in making a determination as to whether the United States

has proved the charges beyond a reasonable doubt and whether a verdict of guilty or not guilty should be returned.

I'm going to comment just briefly the fact that I take notice that there have been news media reports of this case carried and some of you may have heard or read some news media reports relating to the pendency of this case, and I wish to caution you at this time that in line with what I have just indicated a moment ago, that the verdict in this case must be arrived at solely on the basis of the evidence and the law presented in this courtroom during this trial, if a juror or a prospective juror has read or heard something about this case prior to coming into court, that in itself does not disqualify a prospective juror from serving as a juror. But if that prospective juror should feel that by reason of something that they have read or heard prior to coming into court, it would be impossible, or not possible for them to set that aside and disregard it, then they, in reaching a verdict, then that juror should make that known to the Court so that you may be excused from serving as a juror in the case. It is not unusual for a person selected for jury duty to have some preconceived idea, notion or belief about the case which they may have acquired by some method or another, and the test is whether that juror is able and willing, if they have some preconceived idea, notion or belief about the case prior to being called in as a juror,

whether that juror, prospective juror is willing and able to set aside and disregard any preconceived idea, notion or belief about the case, and it is the duty of a prospective juror who has been called as a possible juror in the case to disclose that because both sides, not just the Defendant, not just the prosecution but both sides are interested and entitled to have a jury of 14 people who are fair and impartial and who are willing and able to set aside and disregard any preconceived ideas, notions or beliefs about the case that they may have encountered and render a verdict solely on the evidence and the law presented in the courtroom during this trial. And, as I say, it is not at all unusual for a person to have such a preconceived notion, idea or belief or prejudice or sympathy.

I've indicated you cannot return a verdict on the basis of prejudice or sympathy. If there is some reason that a juror cannot function as an impartial juror, and I will again repeat the initial definition I gave of an impartial juror. An impartial juror, jury is a jury in which each juror is without bias of any kind and is fair and objective. Stated another way, an impartial juror is a juror who is willing and able to render a verdict solely on the evidence presented in the courtroom during this trial and the law applicable to the charges that have been made, applicable to the evidence that has been presented; in other words, the law

that is given to the jury from the presiding judge of the Court. An impartial juror must be willing and able to disregard and set aside all prejudice, sympathy, ideas, notions or beliefs about the law or the case that they have previously encountered and render a verdict solely on that which is presented in this courtroom during this trial.

Though, as I started to say, it's not unusual for a person to be in a position where they are unwilling or unable to serve as an impartial juror because of some knowledge that they may have previously, or some reports that they may have previously received on the case that causes some prejudice, sympathy, ideas, notions or beliefs that they might have. That's not unusual. But the duty is imposed by law and it's a constitutional duty that each jury must be willing and able to disregard and set aside any ideas, notions or beliefs that they may have encountered and render a verdict solely on the law and the evidence presented in the courtroom during this trial, and if you can carry out that constitutional duty, then you are a fair and impartial juror, and if you cannot, then you should disclose it in the course of the jury selection process and you should not be hesitant to disclose it because, as I indicated, we are all part of human nature and there are times when we do have ideas, notions or beliefs that are within us and all we ask is if you have any such idea, notion or belief that would in any

way interfere with your ability to be a fair and impartial juror that it should be disclosed in the course of the jury selection process so you may be excused from serving as a juror, because as I indicated, each side has a constitutional right to a fair and impartial jury.

One additional word I would mention, I will again mention, is that the jury that is finally selected is going to have to consider the case against each defendant individually, and I will alert you to the fact that there are going to be a lot of witnesses called in to testify, they're going to be a lot of witnesses that will -- strike that. I'll simply say there will probably be lots of discrepancy in testimony between one witness and another witness and that gets to the real reason why we have trial by jury because we have to have in those situations a panel of people drawn from the community who are willing and able impartially to hear both sides, to judge the credibility of the witnesses, to determine which witnesses they are going to believe, which witnesses they are going to disbelieve and I will in the course of my preliminary instructions that I will give to the jury that is finally selected go into how they should judge credibility of a witness in a little more detail. I just alert you at this time to what your responsibility is going to be. And I am just about ready to now have the clerk start drawing names. But having discussed at some length the

duties and responsibilities of the jury selected to hear this case, primarily their duty and responsibility to listen to the case with an open mind, listen to the case as an impartial juror, use their best judgment, their honest judgment in making a determination in the case, I will ask now before we start calling names, having the jury call, drawing names, are there any of you based on what I have said who feel that it would be difficult or impossible for you to be, either that you would be unable or unwilling to serve as an impartial juror in this case?

Would you come forward, please.

The record may show that eight prospective jurors have come forward. I'm going to ask one of the Assistant United States Attorneys, one of the defense counsel to also come forward and I will select, I am looking at Mr. Vogel. I would select Mr. Vogel and I will select Mr. Fisher and then I'm going to ask each of these prospective jurors who have indicated that they would be unable or unwilling to serve as a fair and impartial juror to come forward, and I'm not going to ask you your name. I'm going to, come up here and I will ask you to come forward one at a time and so the lady in the blue jacket will you come forward.

The clerk called my attention to the fact none of the jurors have been sworn to answer questions. That's a necessary part of the procedure. That's why we have the

clerk of court to keep the judge straight.

(Whereupon, the prospective jurors were sworn.)

THE COURT: Now I would ask the two lawyers that I have designated and I ask the Court reporter and ask each of these prospective jurors to come forward one at a time and I'm going to ask just one or two questions.

(Whereupon, the following was had outside the hearing of the jury.)

MR. SOGARD: May I? I merely ask the Court to allow me to be present as I do an analysis. If this relates to the matter of publicity, I believe I have the greatest familiarity with the material that we submitted to the Court, therefore, I'd like to be present so I would know.

THE COURT: My plan was to ask each one of them what they read, if it's because of something they read, that's my plan and also to just want to make a record. Jurors must be chosen at randum and I want to make a record that there is some basis for what they say. Each one is going to be excused and go out that door one at a time. I just want something on the record. Why I asked only one attorney for each side, I didn't see a need --

MR. VOGEL: Judge, the problem would be some of these jurors for one reason or another still remain as part of the panel.

THE COURT: They are going to be excused right

now.

MR. VOGEL: On that basis I was requested, if in fact they might be staying here, I was requested by the other lawyers they be allowed to participate.

MR. SOGARD: I understand you will be excusing them.

THE COURT: I'm going to excuse them. They told me they couldn't be a fair and impartial juror. I'm going to take them at their word. I want to make a record.

MR. SOGARD: I be allowed, I'm curious to find out whether or not they are making any reference to specifics because I may be presenting a motion at the conclusion of our selection of jurors.

THE COURT: I'm not going to ask them about anything specifically they may have read. I don't want to get into that. I'm just going to ask them if it's because of something they have read. I will give you the if it's because of something they have read. I'm not going to ask them specifically. People can be influenced by different things. One person might influence them, wouldn't necessarily carry over to the other person being influenced. I just want to know what the reason for it is.

MR. SOGARD: Thank you, Your Honor.

MR. DALEY: Excuse me, Your Honor, may I approach the bench to make a record?

MR. DALEY: I appreciate the Court's logistical problems. I want to have a standing objection to any bench conferences taking place on behalf of Duane Charboneau without my presence and if the Court is going to call on the lawyers for certain purposes, rather than do this again --

THE COURT: That's fine. You may have a standing objection. I'm going to assure you there is nothing going to be said here that's going to prejudice any attorneys. One defense attorney present and one government attorney present.

THE COURT: Would you state your name?

ANNIS LIBERDA: Annis Liberda.

THE COURT: You've indicated that you would be unable or unwilling to be a fair and -- Let me finish. I'm not going to ask you very much and I'm going to excuse you I just want to.

MR. LARIVEE: May I approach the bench?

THE COURT: You may in a moment, sir.

Ask you if it's because of something that you may have read or?

ANNIS LIBERDA: Some other reason. I work in Jamestown State Hospital and many of my patients are native American and I wonder if I would be biased.

THE COURT: That's fine. You're doing exactly what you should do, and if you have some doubt about that then you should let it be known and I appreciate it. You are

excused from any further jury service on this case. I would ask you, however, not to discuss this case with any of the other prospective jurors, not to discuss what we are saying up here at this point and not to tell anybody your reasons why you will not be able to serve as a fair and impartial juror.

ANNIS LIBERDA: Okay.

THE COURT: Not to tell anybody your reason, at least until you somehow learn that --

ANNIS LIBERDA: Am I allowed to tell the people when I go back to my job?

THE COURT: Tell them -- wait a couple days.

ANNIS LIBERDA: Okay.

THE COURT: I wouldn't care any other case but I feel this might not be fair.

You don't have to justify it. I just wanted to know. So you are now excused. the clerk will tell you what you need to do. So go into the clerk's office and tell them you're permanently excused from this panel.

THE COURT: Mr. Larivee, you may approach the bench.

MR. LARIVEE: On the record I'd like an explanation of what's happening here.

THE COURT: Well, I am simply calling each juror, these jurors unable to, have indicated they would be unable

to serve as a fair and impartial juror, I'm asking them, number one, if it's because of something they may have read in the paper. I'm asking, this juror that came up said no because she worked with a lot of native Americans. She worked at the state hospital and worked with a lot of native Americans. She's afraid if she were a juror her experiences in working with them might create some bias on her part.

MR. LARIVEE: I'm going to object this being done without at least myself being part of this.

THE COURT: The record may show your objection. I'm doing it this way simply because for the convenience. There is going to be procedures followed by this Court in the course of this trial that you may not agree with but that I consider to be necessary because of the number of people involved and to have it in an orderly trial and there is a record being made of what's being said up here. If there is any prejudice the record will, it will be in the record.

MR. LARIVEE: Your Honor, the only way we'd be apprised of what was done is at the time the record was prepared and I think the jury selection is such, and --

THE COURT: This is not jury selection.

MR. LARIVEE: Yes, it is, Your Honor, you're excusing someone that could in fact be a potential juror and that's in fact jury selection.

THE COURT: I'm not going to argue the point with

you. This is the procedure that will be followed. You have, objection is on the record.

MR. LARIVEE: Thank you.

THE COURT: Come forward, please.

MR. HAGA: Your Honor, may I note on the record the objection to procedure on behalf of my client.

THE COURT: It is noted.

MR. BOHLMAN: Your Honor, on behalf of LaFuente, also note my objection.

MR. THOMPSON: On behalf of Loren Grey Bear, note my objection.

MR. FLATEN: On behalf of Tim Longie, note my objection?

MR. SOGARD: On behalf of John Perez, I note my objection.

MR. ZIMNEY: Same objection.

MR. FRAASE: Same objection.

MR. SPAETH: On behalf of Maynard Dunn, Your Honor.

THE COURT: Would you state your name?

SUSAN NEUENSCHWANDER: My name is Susan Neuenschwander.

THE COURT: The reason why you feel you could not be a fair and impartial juror, does that arise out of anything you may have heard or read about this case before coming into the courtroom?

SUSAN NEUENSCHWANDER: Yes, it is.

THE COURT: Very well. That's all I want to know.

Just a moment. You are excused, you may, from serving, any further service in the case. You may be called as a juror later on. I would ask you do not discuss your reasons that you have given with the other jurors or discuss the case in any way with any of the other prospective jurors and, of course, the jury then as finally selected will be told not to discuss the case. I would ask you wait for at least until we have a jury impaneled before you talk anything about this?

SUSAN NEUENSCHWANDER: Would you like me to stay?

THE COURT: You are now excused. Go to the clerk's office.

Come forward please.

You've indicated -- would you state your name.

LEIGH SCOTT: Leigh Scott.

THE COURT: You've indicated that you feel you could not be a fair and impartial juror if you were selected in this case. I will ask you is that based on something you've heard or read about the case before coming into court?

LEIGH SCOTT: No. It's basically health.

THE COURT: Hold your voice down.

LEIGH SCOTT: It's health. I'd like to serve, it's not that, but I have got diabetes and I have to have my

shots and my snacks and meals approximately the same time. If there is any day, you know, I don't know how drawn out it can be.

THE COURT: I will excuse you on the basis of undue hardship.

I thank you. You are excused and I would ask that you not discuss your excuse with anybody for at least two or three days until after we get a jury impaneled and, of course, you must not talk to any of the jurors that are impaneled. You understand that?

LEIGH SCOTT: Uh-huh.

THE COURT: Very well. You are now excused from any further service on this case. You go to the clerk's office and they will tell you what to do.

LEIGH SCOTT: Okay. Thank you.

THE COURT: Would you state your name for the record.

JERRY BRODELL: Jerry Brodell.

THE COURT: And you've indicated that you would not be willing to be a fair and impartial juror if you were selected as a juror in the case. Is this based upon what you've heard or read about the case prior to coming into court?

JERRY BRODELL: No.

THE COURT: What is it based on?

JERRY BRODELL: I know one of the defendants quite well and I knew the Eddie Peltier, the police officer.

THE COURT: Very well.

JERRY BRODELL: Around town and I kind of know another one I think. Actually two of them, but one quite well.

THE COURT: Thank you. You are excused at this point. Just a moment. You're excused at this point from any further service of this case. You may likely be called in later on other cases. I would ask you not discuss your reasons for having been excused until after we have a panel fully, have a jury impaneled.

JERRY BRODELL: I also have had, one of the lawyers has been, I have had him as a lawyer, too, so for one of the defendants.

THE COURT: So just don't discuss the matter with anybody for at least two or three days until we get a jury panel.

JERRY BRODELL: Okay.

THE COURT: You are excused. You may go to the clerk's office and they will tell you where to go from there.

Would you state you full name for the record.

WILLIAM SANGER: William M. Sanger.

THE COURT: You have indicated that you feel you would not be a fair and impartial juror if you were slected

as a juror. Is that because -- just a minute, let me finish. Is that because of anything you may have previously heard or read about this case?

WILLIAM SANGER: Not necessarily.

THE COURT: What is the basis for it?

WILLIAM SANGER: I just don't think I could be impartial. I have some very deep personal conviction and I think it would be unfair to these defendants.

THE COURT: I appreciate you're telling me that and you're doing exactly what we hope all jurors will do. You are excused. You may be called in again in another case, but I just ask you not disclose your reason until, for two or three days. Give us time to get a jury in the case.

WILLIAM SANGER: Okay.

THE COURT: Don't talk to anybody else.

WILLIAM SANGER: Should I stay here now?

THE COURT: No. You are excused. The clerk will tell you, go to the clerk's office, they will tell you what to do. Would you state your name?

ORIETTE KICKERTZ: Oriette Kickertz.

THE COURT: You have indicated you could not be an impartial juror in the case. Is that because of anything that you have heard or read about the case before coming into court?

ORIETTE KICKERTZ: No. It's because I am

thoroughly against them. I have a lot of emotional problems. I don't feel I could handle it.

THE CURT: You are biased against drinking?

ORIETTE KICKERTZ: Against drinking.

THE COURT: You are biased against drinking. You feel that might influence you?

ORIETTE KICKERTZ: Yes.

THE COURT: You are excused from any further service on this case and I would, go to the clerk's office and I would just ask that you not discuss with anyone your reason for your inability to serve as an impartial juror for at least two or three days until we have a jury selected in the case.

ORIETTE KICKERTZ: Okay.

THE COURT: Just go to the clerk's office and they will tell what you to do.

State your name?

GLADYS KING: Gladys King.

THE COURT: You have indicated that you could not be an impartial juror in the case. Is that based on anything that you have heard or read about the case prior to coming into court?

GLADYS KING: No. My husband was in business with an indian and it was very bad experience.

THE COURT: Very bad experience with indians?

GLADYS KING: Uh-huh.

THE COURT: Very well. I am going to excuse you from any further service in the case. You may go to the clerk's office and they will tell you what to do. I just ask you not discuss your reasons for being excused for at least two or three days until after we get a jury impaneled in the case.

GLADYS KING: Thank you.

THE COURT: You are free to go now.

WILLIAM BILBEN: William Bilben.

THE COURT: You indicated you could not be an impartial juror in the case. Is that based on anything you have heard or read prior to coming into court relating to this case?

WILLIAM BILBEN: No.

THE COURT: What is it based on?

WILLIAM BILBEN: Well, I'm prejudice.

THE COURT: All right. That's a reason for --

WILLIAM BILBEN: I lived in Sisseton, South Dakota and I have been, had a few fights with more than one indian at a time so...

THE COURT: I sure appreciate your giving us that information. You are excused for the service on this case. You will be called again on another case, and I would ask that you not discuss with anyone your reasons for being

excused until, even until after a jury has been selected. Just say two or three days.

I'll tell you what I'm going to do now. I'm going to declare a 15 minute recess. That will give you time to tell the other defendants, defense lawyers the definite reasons that were given so they may have the information at the time I start questioning these other jurors.

MR. VOGEL: I will do that, Your Honor. As I indicated initially, the other lawyers asked me to object to the procedure. I'll again restate that for the record on behalf of the other lawyers. I'll explain to them what went on with respect to these proceedings.

THE COURT: Very well.

(Whereupon, the following was within the hearing of the jury.)

THE COURT: The Court will take a 15 minute recess at this time. We'll reconvene at 11:20.

(Recess taken.)

THE COURT: Members of the jury panel, during the precess the lawyers indicated that there were some legal matters they wished to take up before we proceed any further in the case and in order to accommodate that request of the lawyers and yet not keep the jury waiting around while those matters are handled and because we are approaching the noon hour, I'm going to recess these proceedings for the jury

panel until 1:00 o'clock this afternoon. I would ask that you all come back, be back in the courtroom at 1:00 o'clock and I would further ask that you keep in mind that you are now a prospective panel for this case and I will give you, the panel that is eventually selected will be given instructions about their duty not to discuss the case with anyone while the case is pending, and so I am asking you and applying that requirement on each of you at this time, over the noon recess or any other time until you are excused, please do not discuss this case with anyone, among yourselves or with anyone else. And so the jury now then is excused for lunch and I would ask that you, would ask that you come back at 1:00 o'clock.

PROSPECTIVE JUROR: Cold in here, Judge.

THE COURT: My secretary just informed me at the recess -- we don't have any control over the heat or temperature of the building, and my secretary just informed me that she has asked, called GSA. That's General Services Administration. They are responsible for the building. Called them about heat and they said the heat was being turned on. Now I would expect that by the time you come back the courtroom should be warm and before the afternoon is over you will be wondering if we could turn on some fans. I appreciate that. I don't want you people to be uncomfortable. The jury panel is now excused until 1:00 o'clock

(Whereupon, the following was had outside the hearing of the prospective jury.)

THE COURT: I'm not sure who asked for this meeting.

MR. SOGARD: I did, Your Honor. Thank you for giving it to us.

The procedure the Court adopted this morning has given me great concern. And the concern is simply that I'm not able to adequately represent my client in two areas. Specifically, while I recognize the Court indicated that it was not going to make a general inquiry as to what the rationale these individuals had for being unable to be fair and impartial jurors, in reviewing what Mr. Vogel took notes on that, it seems to me what was elicited by the questions from the Court was in essence a response that basically went across the gamut of prejudice that is, I believe, in existence in this jury panel. And if the Court recalls, a week ago we had a discussion about the issue of latent prejudice that may exist in the panel to begin with and to this point, I have not made a motion for change of venue on the basis that it is not proper for such a motion to ally until we have had an opportunity to examine the panel. My problem is that the procedure the Court used this morning does not give me the opportunity to examine the individuals, to make a record and to demonstrate to the Court that the

latent prejudice that I believe exists can in fact be verified through the statements of these jurors. Therefore, I object to the proceedings and any such procedures in the future in that it will make it impossible, I believe, for me to be able to present what I believe a valuable and important argument, and for me to be able to reach the conclusion as to whether or not a motion for change of venue would be proper.

Therefore, I wish to have this meeting with the Court so that, A, I could lay that objection on the record and, secondly, I also wish to renew my motion to sever if in fact the Court will continue to follow this procedure because I believe that if the Court does so it will result in a constitutional problem for my client in that, A, he will not have effective counsel and, B, he will not be able to be provided with the due process that would be followed in the normal process of jury selection. So I believe these are concerns and serious and important, and I know the Court wishes to proceed on a fair basis and I think that the Court senses that there is going to be a problem in that area. And I would ask that, A, that the change, the procedure be changed and that in specific relationship to individuals who wish to remove themselves from the jury that the Court does allow some form of interrogation. I think the Court quite properly did that at the bench away from the rest of the jurors and I think that's appropriate but I would suggest

that possibly we could use the procedure of going to the chambers and interviewing that witness so all counsel can be aware of what that individual was saying so that we can in each and every one of us, but particularity to John Perez, I need to be able to make an assessment as to whether or not this jury panel is going to give my client the due process he is entitled to under the constitution, and so on that basis that was the purpose of the meeting that I requested.

MR. HAGA: May it please the Court, Your Honor, on behalf of Paul Cavanaugh I adopt the comments and arguments made by Mr. Sogard and on behalf of Paul Cavanaugh at this time I would like to make a motion to the Court to severe Paul Cavanaugh from the trial of the remaining defendants for the reasons he stated and the reasons previously advanced to the Court in briefs and arguments by other defendants.

THE COURT: Denied.

MR. LARIVEE: At this time, Your Honor, if I may. On behalf of Roger Charboneau, I would remake my motion for severance. These problems that are becoming apparent are exactly the reasons we made the motion. There is no way that I can properly represent him if I don't know what's going on anywhere during this proceeding, including bench comments by anyone. You said you weren't going to interrogate these people. You did do that. I want to know what's being said.

I want to know what you're asking and I want to know what somebody else is saying. I strenuously object to picking one counsel to be at the bench for bench conferences, and unless you specifically direct me not to, I'm going to go and be there for each one of them. And I think we have to have all this information to protect our clients. And it's going to be a problem. If it's a logistics problem, I'm sorry, but that's not my fault. I made a motion to severe so we wouldn't have these problems. The Court saw fit to not do that. Consequently, I want to be involved in every bench conference. I would also ask the Court to direct that as soon as possible the notes that the reporter took of this conference at the bench be transcribed and made available to all of us. Thank you.

THE COURT: Your motions are denied.

Mr. Thompson.

MR. THOMPSON: Thank you, Your Honor, on behalf of defendant, Loren Grey Bear, I at this time would incorporate by reference the legal and substantive arguments that have been made both by Mr. Larivee and by Mr. Haga and Mr. Sogard on behalf of their respective clients, and I would at this time make a motion for the reasons that Mr. Larivee set forth for severance of Mr. Grey Bear from this trial as a defendant. And I would also in addition express particular concerns to the Court that were brought to the attention of

the Court again on behalf of my client, the concerns expressed by Mr. Sogard on behalf of his. Thank you.

THE COURT: Yes. That's denied.

Now any other counsel wish to join in those motions, if they have something in addition to add to what Mr. Sogard and Mr. Larivee have said, I would ask that you express it or otherwise just state that you join in the objection.

MR. FRAASE: I join in the objection and the motion.

THE COURT: Very well. Denied.

MR. ZIMNEY: I do on behalf of James Cavanaugh.

THE COURT: Denied.

MR. VOGEL: I do on behalf of Terry Dunn.

THE COURT: Denied.

MR. BOHLMAN: On behalf of Ricky LaFuente, join.

THE COURT: Denied.

MR. FLATEN: On behalf of Tim Longie I join in the objection and renewing my motion for severance.

THE COURT: Denied.

MR. DALEY: On behalf of Duane Charboneau also join the motion for severance and if the Court is going to continue these procedures I would request as a safeguard that transcripts of all bench conferences not held in the presence of all defense counsel be transcribed, or at the first

convenient recess the Court reporter at least read back what was said to counsel who are not able to hear the conversations firsthand.

THE COURT: Denied.

MR. SPAETH: Your Honor, I join in the motions of my co-counsel for Mr. Dunn and ask for a point of clarification, ask the Court's intent as relates to bench conferences throughout the trial.

THE COURT: We probably will have very few bench conferences throughout the trial. I'll rule from the bench without a conversation. Anyhow, you have any, did I act on your motion?

MR. SPAETH: No, you didn't.

THE COURT: That's denied.

Anybody else that hasn't spoken? Very well.

We have a very unusual situation here. We moved the case from the Northeast to the Southeast for the sole reason that that courtroom up there is absolutely impossible to accommodate this number of people that are involved in the case. Secondly, it was somewhat of a surprise to me, and I'm entering an order today relative to the moving of the trial from the Northeast to the Southeast. And it's evident to me today that the jurors that did have a bias or a prejudice did not hesitate to come forward, and the fact that one or two started to come forward, we ended up with about nine. And it

was interesting to me that we received that, we had that many of them come forward. It was also interesting that only about two of those objected to the, I mean, their impartiality was based on what they had read or heard about the case before coming into court. There were three or four, three or four, some had personal problems which they kind of tied up impartiality to, but three or four of them had a bias within themselves as against indian people because of their, couple of them because of their proximity to reservations and couple of them because of their dealings that they had with, contacts that they have had with indians.

I think we can recognize that we are, by drawing the jury from the Southeast we are much farther removed from the source of the kind of prejudice that was expressed here when these prospective jurors approached the bench this morning.

I am following procedures in the case I would not normally follow in other cases. However, I am following procedures which I believe will give everybody a fair and impartial trial but at the same time it will eliminate commotion, it will eliminate disorder and it will allow the case to proceed in an orderly manner. If I have errored the Court of Appeals will tell me so when the time comes. But it is my responsibility now to conduct this trial in a way that will promote orderliness and yet an opportunity for every

defendant to present his defense and for the government to present its case, and I am going to have to exercise my discretion and the authority that is vested in the presiding judge and conduct the trial accordingly. That's the way it's going to be done. I regret that it has to be done that way, but that's the situation we have.

MR. SOGARD: Your Honor, if I may. I appreciate the Court's remarks because I intend to agree in philosophy with the observation that the Court, that we had 11, or two hands went up and then several. My observations from other trials which the Court has had large number of jurors called has also been, though, that when the interrogation in voir dire takes place, at the same time there is also a residual effect because as people tend to recognize that an individual has the courtesy to get up and honestly say, "I have a problem in the area," or, "yes, I do have somewhat of a prejudice," that tends to come out more.

The problem that I saw this morning was that we had eight or nine people who came out merely on the assumption that in the back of their head this was probably relating to indian prejudice and I have a suspicion that in terms of the interrogation or the questioning that the Court would conduct on voir dire that in fact we will see even more individuals who if in fact they are questioned so that they see other people honestly go and state their views and their

experience that they will very likely also begin to express the types of feelings that they may have, and I think that is something that is a concern for all of us. We all want the fair trial. That's the only concern I have. I would like to see that process not inhibited but to come forth. That's going to mean all of us are going to get a fairer jury in the long haul.

MR. THOMPSON: Your Honor, very briefly I wanted to explain why I filed the affidavit that I did this morning with the clerk. 28 USC section 1867 (a) requires in order to make, in order to take exception to the methodology used in selecting a jury, if I am going to in addition to my constitutional arguments make use of that statute I have to have filed an affidavit with the Court prior to the commencement of voir dire examination which is what I did. I just wish to, my intention is not to delay or cause unnecessary time spent on this but I feel I have to make my record and in order to do so my argument.

THE COURT: what was your citation?

MR. THOMPSON: 28 United States Code section 1867 (a). And my point being, Your Honor, that my objection on behalf of defendant, Loren Grey Bear to the drawing of the jury panel from the Southeastern Division is based upon equal protection and due process components of the Fifth Amendment, the Sixth Amendment of the United States Constitution in

addition, and this statutory argument and the case law suggests that given the expressed language of that section, that's 28 U. S. correction, section 1867 (a), that if I don't file that affidavit prior to the commencement of voir dire examination, which commenced immediately thereafter with regard to those several people who came forward, then I waive it. So for that reason that I set forth and filed with the clerk prior to the commencement, I believe I made my record and I thank you.

I would also in addition to that move for dismissal of the indictment on the grounds that I have set forth.

THE COURT: Denied.

Before I recess for lunch, United States have any input into this? I'm not asking for it.

MR. FISHER: I have none, Your Honor.

THE COURT: Very well. Court will be in recess until 1:00 o'clock.

(Recess taken.)

THE COURT: Clerk will call the names of, draw the names of 14 jurors and as your name is called, please come forward and take the chair indicated. There was one juror who did not get sworn this morning. I believe the juror was just momentarily out of the courtroom. That juror will be sworn at this time. There was one juror and there

may have been more. If you have not been sworn to answer questions, will you please rise at this time and raise your right hand.

(Juror sworn.)

THE CLERK: The first juror drawn is 29, Patricia Nelson. Step forward and be seated in the jury box.

Number 103, Peder Pederson. Number 89, Doris Nelson. Number 191, Rodney Walcker. Number 149, David Soderstrom. Number 193, Steven Swiontek. Number 61, Luella Brown. Number 178, Mary Cote. Number 45, Jeffery Nelson. Number 168, Dale Bunn. Number 93, Elaine Cummins. Number 64, Mary Dickey. Number 194, Vicky Hassler. And the 14th juror drawn for this drawing will be number 42, Conrad Anderson.

EXAMINATION OF PATRICIA NELSON

BY THE COURT

Q. Patricia Nelson, where do you live?

A. Page, North Dakota.

THE COURT: I'm going to remind all the jurors that, this is a big room and some of the lawyers are seated way back there by the wall and it is important that every one of the lawyers and every one of the defendants, everybody in front of this rail hears your answers to any questions that I ask, so just kind of keep that in mind and speak up as much as you can.

Q. How long have you lived there?

A. Oh, about 30 years.

Q. What is your occupation?

A. We run our own business.

Q. What is the nature of business?

A. A garage, an auto body, filling station.

Q. Are you otherwise employed other than in your own business?

A. No, I'm not.

Q. What is the nature of your employment in your own business?

A. Bookkeeping.

Q. And how long has your husband been in the garage business?

A. Since 1941.

Q. What other business, if any, has he had, do you know?

A. None.

Q. What other occupations --

A. None.

Q. -- have you had?

A. None.

Q. What is the extent of your education?

A. High school.

Q. What is the extent of your husband's education?

A. College graduate.

Q. How many children do you have?

A. Six.
Q. Are any of your children presently living at home with you?
A. No, they aren't.
Q. Have you ever served as a juror before?
A. No, I have not.

EXAMINATION OF PEDER PEDERSON

BY THE COURT

Q. Peder Pederson, where do you live?
A. West Fargo.
Q. How long have you lived in West Fargo
A. Five years.
Q. What is your occupation?
A. I'm a mechanical engineer.
Q. And how long have you been in that business, profession?
A. Fifteen, 17 years.
Q. What other occupations or profession have you had?
A. None.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?
A. No.
Q. Has she at any time been employed out of the home?
A. Yes.

Q. What was the nature of that employment?
A. Work in production control.
Q. By whom was she employed?
A. Steiger Tractor.
Q. How long did she work for Steiger?
A. Nine years.
Q. What other employment, if any, had she had?
A. That's it.
Q. Any other members of your household presently living with you that are employed out of the home?
A. No.
Q. How many children do you have?
A. Two.
Q. What is your education? I presume that you have got a college degree?
A. Bachelor of mechanical engineering from University of Minnesota institute of technology.
Q. What is your wife's education?
A. She is a college graduate.
Q. What course of study did she take, if you know?
A. I'm not exactly sure.
Q. Have you served on a jury before?
A. No.

EXAMINATION OF DORIS NELSON

BY THE COURT

Q. Doris Nelson, where do you live?
A. Jamestown.
Q. How long have you lived at Jamestown?
A. Twenty-five years.
Q. What is your occupation?
A. Bookkeeper, a school for the critically handicapped.
Q. How long have you been employed at the school?
A. One year.
Q. Are you married?
A. Yes.
Q. What is your husband's occupation?
A. He's a Burroughs service repairman. Burroughs Corporation.
Q. How long has he been in that occupation?
A. Thirty years.
Q. Have you had any other occupation other than your present?
A. Before I was married.
Q. What was that?
A. Working as a bookkeeper.
Q. Has your husband to your knowledge had any other occupation?
A. Yes. He was also a bookkeeper.
Q. Do you have children?
A. Yes.

Q. How many?
A. Four.
Q. What is the extent of your education?
A. One year of college.
Q. What is the extent of your husband's education?
A. Same.
Q. Have you served on a jury before?
A. Not district court but in Jamestown.
Q. In district court in Jamestown?
A. No. Whatever court Jamestown is.
Q. You did serve?
A. Yes.
Q. On the jury in a court in Jamestown?
A. Yes.
Q. How long ago?
A. Six years.
Q. Do you know whether it was district court or state court or municipal court?
A. Municipal I suppose. I don't really know.
Q. City court or state court, you don't know?
A. No.
Q. Or county court?
A. No.
Q. How many cases did you serve on as a juror? One?
A. Yes.

Q. What was the nature of the case, If you remember?
A. Father suing a son.
Q. For some money?
Q. Yes.
Q. Are there any other persons presently living in your household that are employed out of the household?
A. No.

EXAMINATION OF RODNEY WALCKER

BY THE COURT

Q. Rodney Walcker?
A. Yes, sir.
Q. Where do you live?
A. Finley.
Q. How long have you lived at Finley?
A. Since 1961.
Q. What is your occupation?
A. I'm an electrician with civil engineering out at Grand Forks Air Force Base.
Q. How long have you been so employed?
A. Nine years.
Q. And what other occupations have you had?
A. That's about it.
Q. You say that's about it?
A. As a laborer.
Q. You have had just miscellaneous --

A. Yes.
Q. -- work of that kind?
A. Yes.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?
A. No, sir.
Q. Has she at any time to your knowledge been employed out of the home?
A. Yes.
Q. What was the nature of her employment?
A. She worked at a bakery.
Q. What other employment if any has she had?
A. None.
Q. Do you have children?
A. No, sir.
Q. What is your education?
A. High school graduate.
Q. What is your wife's education?
A. High school.
Q. Have you ever served as a juror before?
A. About four years ago I had jury duty, but I was never selected, here in district court.
Q. You were called for jury here in this court?
A. Yes, sir.

Q. But you didn't serve on any juries?
A. No, sir.

EXAMINATION OF DAVID SODERSTROM

BY THE COURT

Q. David Soderstrom, where do you live?
A. In rural Fargo.
Q. How long have you lived here?
A. About six years.
Q. Where did you live prior to that?
A. In West Fargo.
Q. In the general area?
A. Yeah.
Q. What is your occupation?
A. I'm a computer programmer.
Q. How long have you been in that trade?
A. About two years.
Q. What other occupations have you had?
A. I was a draftsman.
Q. And how long were you --
A. I was a draftsman about 15 years.
Q. By whom are you presently employed?
A. Alloway Manufacturing.
Q. They manufacture farm machinery?
A. Yes.
Q. Are you married?

A. Yes.

Q. Is your wife employed out of the home?

A. No.

Q. Has she at any time to your knowledge been employed out of the home?

A. Yes. She was a school teacher.

Q. How long did she teach school, if you know?

A. About six years.

Q. Do you know whether or not she had any other occupations?

A. No, she didn't.

Q. Do you have children?

A. Yes, two.

Q. Are any of them presently employed?

A. No.

Q. Anybody else living with you in your household that is employed out of the home?

A. No.

Q. Have you served on a jury before?

A. No.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

Q. I may mispronounce your name but I'll take a try at it. Steven Swiontek.

A. Yes, sir.

Q. Where do you live?
A. Fargo.
Q. How long have you lived here?
A. Fourteen years.
Q. What is your occupation?
A. I'm a branch supervisor at Gate City Federal Savings and Loan.
Q. How long have you been with Gate City Federal?
A. Eight years.
Q. What other occupations, if any, have you had?
A. None.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?
A. She works part-time as an RN at Dakota Hospital.
Q. And how long has she worked at Dakota Hospital?
A. Nine years.
Q. Has she had any other occupations to your knowledge?
A. No.
Q. Are there any other members of your household presently employed out of the home?
A. No.
Q. How many children do you have?
A. One.
THE COURT: Did I ask you, Mr. Soderstrom, your

education?

MR. SODERSTROM: No, you didn't.

THE COURT: I thought I had missed that.

What is your education?

MR. SODERSTROM: Two years of technical school.

THE COURT: And what is your wife's education?

MR. SODERSTROM: She has had four years of college.

THE COURT: What course of study did she pursue in college?

MR. SODERSTROM: Special education.

Q. And what is your education, Mr. Swiontek?

A. Have Bachelors Degree and one and a half years towards my Masters.

Q. And your wife is a registered nurse so I presume that she has got a degree in nursing, and did she get her nursing degree from the university or from a hospital?

A. Two years associates degree at NDSU.

Q. Have you ever served as a juror before?

A. No, I have not.

EXAMINATION OF LUELLA BROWN

BY THE COURT

Q. Luella Brown, where do you live? I

A. live in Cogswell, North Dakota.

Q. How long have you lived at Cogswell?

A. Seven years.
Q. That's down in Sargent County?
A. Yes.
Q. What is your occupation?
A. I'm just a housewife.
Q. That's pretty important position.
What is your husband's occupation?
A. He's been gone for many years.
Q. What was his occupation?
A. Laborer.
Q. Do you have any children?
A. Yes. I have four living.
Q. Are any of them living with you?
A. No.
Q. Is there anyone presently living with you that is employed out of the home?
A. No. I have nobody living with me.
Q. What is your education?
A. Sixth grade.
Q. Have you ever served as a juror before?
A. No, I haven't.

EXAMINATION OF MARY COTE

BY THE COURT

Q. Mary Cote is it?
A. Cote.

Q. Cote. Where do you live?
A. Fargo.
Q. How long have you lived here?
A. All my life except for about three years.
Q. What is your occupation?
A. I'm a telephone operator, federal government.
MR. DALEY: Excuse me, Your Honor, could we have her speak up?
A. I'm a telephone operator for the Government.
Q. And how long have you been in that position?
A. Twelve years.
Q. What other positions, if any, have you had, or occupations?
A. I worked about four years in the public school system in hot lunch program and about six years for Northwestern Bell as a telephone operator.
Q. Are you married?
A. Yes.
Q. What is your husband's occupation?
A. He's a pressman for the Fargo Forum.
Q. And has he had any other occupations to your knowledge?
A. No.
Q. Are there any other members of your household presently living with you that are employed out of the home?
A. Yes. I have a daughter, 23, mentally handicapped

daughter that lives at home.

Q. How many other children do you have?

A. I have three older than her.

Q. Have you served on a jury before?

A. No.

Q. Did I ask you the extent of your education?

A. High school.

EXAMINATION OF JEFFERY NELSON

BY THE COURT

Q. Jeffery Nelson, where do you live?

A. Wahpeton, North Dakota.

Q. How long have you lived in Wahpeton?

A. Six years.

Q. What is your occupation?

A. Appliance repair.

Q. And how long have you been in that employment?

A. Six years.

Q. What other employment, if any, have you had?

A. That's about it.

Q. Are you married?

A. Yup.

Q. Is your wife employed out of the home?

A. Yup.

Q. Where is she employed?

A. Neilson Electric, bookkeeping.

Q. How long has she been so employed?
A. About two years.
Q. What other employment, if any, has she had?
A. She worked at St. Francis Home in the kitchen for about a year.
Q. Are there any other members of your household presently living with you that are employed out of the home?
A. No.
Q. How many children do you have?
A. Two.
Q. What is the extent of your education?
A. Eleven years.
Q. What's the extent of your wife's education?
A. Graduate, high school.
Q. Have you served on a jury before?
A. No, I haven't.

THE COURT: Mary Cote, did I ask you if you served on a jury before?

MARY COTE: Yes, you asked me. I did not.

THE COURT: I hadn't made a note of it and I didn't remember.

EXAMINATION OF DALE BUNN

BY THE COURT

Q. Dale Bunn?
A. Right.

Q. Where do you live?
A. Lisbon.
Q. How long have you lived in Lisbon?
A. About 18 years.
Q. What is your occupation?
A. Farmer, rancher.
Q. How long have you been in the farming, ranching business?
A. About 25 years, 26 years.
Q. Have you had any other occupations?
A. No.
Q. Are you married?
A. Yes.
Q. What is your wife's occupation, if any? Is she employed out of the home?
A. She works two days a week in a restaurant.
Q. Has she had any other occupation out of the home to your knowledge?
A. No.
Q. Any other members of your household presently living with you that are employed out of the home?
A. No.
Q. What is your education?
A. Eleven years.
Q. And your wife's education?

A. Twelve years.

Q. Have you served on a jury before?

A. No.

EXAMINATION OF ELAINE CUMMINS

BY THE COURT

Q. Elaine Cummins, where do you live?

A. Wahpeton.

Q. How long have you lived in Wahpeton?

A. Forty-one years.

Q. What's your occupation?

A. Well, I'm semiretired. I type transcripts for a court reporter.

Q. You are then employed by a court reporter?

A. Yes.

Q. You are not employed by a court?

A. No. He's freelance.

Q. How long have you been doing that kind of work?

A. Well, oh, five or six years. Before that I worked for an attorney.

Q. Who did you work for?

A. Well, I worked five years for Chris Anderson and about as many years for Bayard Lewis.

Q. This is in Wahpeton?

A. Yes.

Q. What was the nature of their practice? Did they --

A. General.
Q. General practice?
A. General.
Q. Did they ever defend cases in court or prosecute cases in court?
A. Yes.
Q. Both?
A. Both.
Q. Are you married?
A. I'm a widow.
Q. What was your husband's occupation?
A. He was a public accountant.
Q. Did he have any other occupation to your knowledge?
A. Before that he was in the Navy.
Q. Do you have children?
A. Four.
Q. Are any of them presently living at home?
A. No.
Q. Is there anyone in your household living in your household employed out of the home?
A. No, just myself.
Q. What's the extent of your education?
A. One year of college.
Q. What is the extent of your husband's education?
A. Two years of college.

Q. You ever served as a juror before?

A. No.

EXAMINATION OF MARY DICKEY

BY THE COURT

Q. Mary Dickey, where do you live?

A. Wahpeton.

Q. How long have you lived in Wahpeton?

A. Five and a half years.

Q. What is your occupation?

A. Housewife.

Q. What is your husband's occupation?

A. He works for Burlington Northern as a brakeman.

Q. Have you --

MR. LARIVEE: What was her answer?

THE COURT: Works for Burlington Northern as a brakeman.

MR. LARIVEE: Thank you.

Q. Have you had any other occupation out of the home, that is --

A. Before I was married I worked in a machine shop.

Q. And to your knowledge has your husband had any other occupation?

A. He also worked in a machine shop.

Q. What is the extent of your education?

A. High school.

Q. And your husband's?
A. Two or three years of college, I'm not sure.
Q. How many children do you have?
A. Three.
Q. Are there any of your children living at home?
A. Three.
Q. Are they of such an age that they are employed out of the home?
A. No.
Q. Have you ever served as a juror before?
A. No, I haven't.

EXAMINATION OF VICKY HASSLER

BY THE COURT

Q. Vicky Hassler, where do you live?
A. Jamestown.
Q. How long have you lived in Jamestown?
A. twenty years.
Q. What is your occupation?
A. My husband and I own a floor covering store.
Q. And how long have you been in that business?
A. Eight years.
Q. Has your husband had any other occupation to your knowledge?
A. Yes. He worked at the Jamestown Sun, which is a newspaper, for 20 years in Jamestown.

Q. What was his position with the paper?
A. He was a linotype operator and then when they went to offset, he was a computer operator.
Q. And how many children do you have?
A. Two.
Q. Either of them employed out of the home?
A. Well, my daughter has a part time job at a grocery store.
Q. Anybody else presently living with you that is employed out of the home?
A. No.
Q. What is your education?
A. Twelve years, and then I have had some correspondence courses since.
Q. And what is your husband's education?
A. Twelve.
Q. Have you served on a jury before?
A. No, I haven't.

EXAMINATION OF CONRAD ANDERSON

BY THE COURT

Q. Conrad Anderson, where do you live?
A. West Fargo.
Q. How long have you lived at West Fargo?
A. Seven years.
Q. Where did you live prior to that?

A. Before that?
Q. Before that, yes?
A. In Fargo.
Q. What is your occupation?
A. I'm retired from a machinery manufacturer.
Q. And how long were you in that business?
A. Twenty-five years.
Q. What other occupations, if any, have you had?
A. Service station.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?
A. No.
Q. Has she at any time to your knowledge been employed out of the home?
A. Yes. Some years ago she was in draperies.
Q. Has she had any other occupation to your knowledge?
A. No.
Q. Do you have children?
A. Yes, three.
Q. Any of them presently living at home with you?
A. No.
Q. Anyone else in your home that is employed out of the home?
A. No, sir.

Q. What is your education?
A. Eighth grade.
Q. And your wife's education?
A. Eight.
Q. Pardon?
A. Eighth grade.
Q. Eighth grade.

Have you served on a jury before?

A. No.

THE COURT: I believe one of the jurors in the back row told me that they were a computer operator. I don't know whether I asked you where you're employed, did I?

MR. SODERSTROM: Yes, I'm employed with Alloway Manufacturing.

THE COURT: Oh, yes. That's right.

MR. SODERSTROM: I didn't know if you asked me if there was anyone else in our home that worked outside the home. I don't exactly know what the definition of household is. We do have some people that have been staying with us for a month or two. I don't know if that should be brought up or not.

THE COURT: I appreciate your mentioning that. You have other people living in your home?

MR. SODERSTROM: Temporarily. I don't know for how long.

THE COURT: And are they employed someplace?

MR. SODERSTROM: Yes.

THE COURT: Where?

MR. SODERSTROM: At a horse barn south of town.

THE COURT: Is there more than one?

MR. SODERSTROM: Just occasionally his wife.

THE COURT: And where is his wife employed, if you know?

MR. SODERSTROM: She is not employed.

THE COURT: She is not employed.

That completes my questions on your background. I am now going to ask you questions that relate to your ability to be a fair and impartial juror if you were selected as a juror in the case. I am not going to ask, my initial question will be to the 14 of you and then I will, if your answer to any question I ask is yes, I would ask that you raise your hand and then I will very likely ask you some additional questions.

Are any of you acquainted with the defendants, any of the defendants in the case or know anything about any of the defendants? And just for the benefit of all of you, I will repeat their names. Jesse Dean Cavanaugh, Paul Henry Cavanaugh, Dwayne Allen Charboneau, Roger Darrel Charboneau, Maynard James Dunn, Terry Dunn, Leonard George Fox, Richard John Ricky LaFuente, Loren Michael Grey Bear, Timothy

Sylvester Longie, John Emmanuel Perez. Any of you acquainted with any of those people?

Record may show no response.

Are any of you acquainted with Mr. Zimney? Mr. Zimney represents Jesse Dean Cavanaugh. Any of you acquainted with Mr. Haga representing Paul Henry Cavanaugh? Any of you acquainted with Michael Daley representing Dwayne Allen Charboneau? Any of you acquainted with Allen Larivee representing Roger Darrel Charboneau? Any of you acquainted with Kevin Spaeth representing James Maynard Dunn? Any of you acquainted with Dan Vogel representing Terry Dunn? Any of you acquainted with Mark Fraase representing Leonard George Fox? Any of you acquainted with Richard John LaFuente? I'm sorry. Mr. Bruce Bohlman representing Richard John LaFuente? Any of you acquainted with David Thompson representing Loren Michael Grey Bear?

Record may show to this point there has been no response relating to the acquaintanceship of any of the defendants to this point.

MR. HAGA: One of the jurors raised his hand.

THE COURT: I wanted to clear the record up prior to this.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

Q. You know David Thompson, is that it?

A. Yes, Your Honor.
Q. What's the nature of the acquaintanceship with Mr. Thompson?
A. when I served in the state legislature for eight years, Mr. Thompson served in the legislative counsel. I knew who he was.
Q. Did you have a social relationship with Mr. Thompson?
A. No, I did not.
Q. You just knew who he was?
A. Yes.
Q. Is there anything about your aquaintanceship with Mr. Thompson or at least your knowledge of who he was that would in any way interfere with your ability in this case to be a fair and impartial juror if you are selected as a juror in the case?
A. No.
Q. Do you know what I mean when I speak of the term fair and impartial juror?
A. Yes, I do, Your Honor.
THE COURT: Any of you acquainted with Allen Flaten?
Record may show no response.
Any of you, Mr. Flaten represents Timothy Sylvester Longie.
Any of you acquainted with Warren Sogard

representing John Emmanual Perez? You know Mr. Sogard also?

STEVEN SWIONTEK: Yes, Your Honor. I have met him before. I don't know if that was your definition or not. I have met Mr. Sogard before.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

Q. More than once?

A. Probably once or twice over the last number of years.

Q. What was the occasion of your having met Mr. Sogard? Was he doing some legal work for you or somebody else?

A. No, Your Honor, it was not. I believe --

Q. Was it a social occasion?

A. No. I just, it was at a time when we were on the street, or whatever, and he was with some other people and I was introduced. I can't remember the whole details of it.

Q. Have you ever sat down and visited with Mr. Sogard about anything?

A. No, not -- no.

Q. Is there anything about your aquaintanceship with Mr. Sogard that would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

THE COURT: I am now going to read off a lot of names, these are potential witnesses in the case, and I'm

going to read them off loud enough, I hope, so that all of the prospective jurors in the courtroom will hear the names. If any of you are acquainted or know any of these people, I would ask that you raise your hand. Doesn't necessarily mean all of these witnesses are going to be called but they potentially may be called to testify in the case. LaVonne Alberts, Pete Belgarde, Colin Kelly Brunelle, Gerald Buchli, William Byram, Carol Jean Cavanaugh, James Charboneau, Dawn DeMarce, Ken DeMarce, Patricia DeMarce, William Billy Fox, Cornell Goodthunder, Shirley Beasley Greywater, Merle Henke, Terry Herman, Diane Iverson, MD, Joann Johnson, Shelly Johnson, Gloria Little Ghost, Mary McDonald, Bruce McDonald, Bruce Mindt, Kevin Mindt, Maria A. Orlati, O-r-l-a-t-i. Some of these names I may not, I have some doubt as to whether or not I pronounce them correctly, I will spell them. Florestine Peltier, Fred Peltier, Gladys Peltier, John Peltier, Duane Rue, Glen Rue, Morie Whitetail, Celeste Yankton, Roger Yankton, Mike Bear, Doris Mindt Cavanaugh, Michelle Iron Heart, Kim Kraft, Tony McDonald, Andrea Peltier, Paul Robertson, Quentin Yankton, Valerie Knutson, Vina McDonald, Edith Peltier, Mylo Smith, Russell Wiliams, D.D.S. I presume that means dentist. Joseph Brown, Sr., Shirley Bull, Annabel Cavanaugh, Milton Green, Lisa Greywater, David Hauge, H-a-u-g-e, Spencer Hellekson, Rita Iverson, Eulana Johnson, Larry Joshua, Sr., Bernice Juarez, J-u-a-r-e-z,

Domingo Juarez, J-u-a-r-e-z, Jr., Rocky Littlewind, Bernadine Mindt, Deloris Mindt, Dale Moser, Earl Reed, Shirley Shaw, Brenda, I would pronounce it Touche, T-o-u-c-h-e, Doctor Walter Wasdahl, James Yankton, Kile Zimmer.

The record may show no response to any of those names.

Are any of you acquainted with any one of the three Assistant United States Attorneys who are --

PROSPECTIVE JUROR: That doctor Dr. Walter Wasdahl. Where was he from?

THE COURT: I presume he's probably from Fargo.

MR. LARIVEE: Grand Forks.

MR. ZIMNEY: Grand Forks.

THE COURT: Is he a pathologist?

PROSPECTIVE JUROR: Was he from Cogswell, do you know? I knew him when he was a little boy, that's why I was wondering.

THE COURT: Anyhow, he is a pathologist and he is from Grand Forks and he will very likely be called to testify in this case.

PROSPECTIVE JUROR: I'm sure that Walter was, I used to know, went for doctoring, you know. So it could possibly be the same.

THE COURT: If that is the Dr. Walter Wasdahl you knew, would that in any way interfere with your ability to be

a fair and impartial juror if you were selected as a juror in the case? Do you know what I mean?

PROSPECTIVE JUROR: He was just a neighbor, he was just a neighbor, you know, that we knew. I knew his folks, you know, and the kid.

THE COURT: Thank you.

Now then the next question I asked if any of you are acquainted with any of the Assistant United States Attorneys who are on this case? Any of you know Mr. Dennis Fisher, Mr. Lynn Crooks or Mr. Norman Anderson?

Record may show no response.

Are any of you related to or do any of you have close personal friends who are law enforcement officials?

PROSPECTIVE JUROR: My son is a cop at Cogswell.

THE COURT: Your son is a policeman?

PROSPECTIVE JUROR: My grandson.

THE COURT: At where?

PROSPECTIVE JUROR: At Cogswell. He works through Forman with sheriff of Forman.

THE COURT: Is he a deputy sheriff in Sargent County?

PROSPECTIVE JUROR: He isn't a deputy, no. He's just a cop at Cogswell but they do call him for different things.

THE COURT: This is a son of yours?

PROSPECTIVE JUROR: My grandson.
THE COURT: Grandson?
PROSPECTIVE JUROR: Yeah.
THE COURT: How long has he been so employed?
PROSPECTIVE JUROR: Three, four years.
THE COURT: Do you ever discuss law enforcement with him?
PROSPECTIVE JUROR: No.
THE COURT: How often do you visit him?
PROSPECTIVE JUROR: What?
THE COURT: How often does he visit you?
PROSPECTIVE JUROR: We see him everyday sometimes.
THE COURT: You live in the same place?
PROSPECTIVE JUROR: Live in the same town. But he works at the Melroe Manufacturing.
THE COURT: Does he ever talk to you about his work?
PROSPECTIVE JUROR: No, never.
THE COURT: Would the fact that you have a grandson who is associated with the Sargent County Sheriff Department in any way interfer with your ability to be a fair and impartial juror if you were selected as a juror in this case?
PROSPECTIVE JUROR: No way. You mean just in North Dakota?

THE COURT: No, I don't. I mean any.

Any of you?

MARY DICKEY: I do.

EXAMINATION OF ELAINE CUMMINS

BY THE COURT

Q. Or close personal friends who are in law enforcement, that is, wherever they might be.

A. I have a nephew and a brother-in-law who was a California Highway Patrol.

Q. You are Elaine Cummins?

A. Right.

Q. They are both with the California Highway Patrol?

A. Yes.

Q. Brother-in-law and a nephew?

A. Father and son.

Q. That's what I was going to say, probably a father, son combination?

A. Yes.

Q. How long has the father been with the California Highway Patrol?

A. Well, a long time. I don't know the day.

Q. Is this your sister's husband?

A. My sister's husband, yes. But he is going out of that into something else because he has to take an early retirement because of injuries on the job.

Q. And he's been a member of the highway patrol for a long period of time?
A. Yes.
Q. And his son, how long has he been a member of the highway patrol?
A. Oh, I suppose ten, 12 years.
Q. How often do you visit with your sister and her husband and your nephew?
A. Not very.
Q. Not very often?
A. There a year ago.
Q. You were there a year ago?
A. Yes.
Q. When was the last time they were here? When I say here, I mean to visit you.
A. I guess my husband died 15 years ago and that's the last.
Q. That's the last time?
A. Yes.
Q. You visited them a year ago, and how long had it been since you visited with them at that time?
A. Well, I was in California three times since my husband died.
Q. Three times in the last 15 years?
A. Yes.

Q. You ever discuss law enforcement with them?
A. No.
Q. Anything about the fact that your brother-in-law and nephew are in law enforcement that would interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. No.
Q. You understand what I mean when I speak about the duties and responsibilities, when I spoke about the duties and responsibilities of a fair and impartial juror the morning?
A. Yes.

THE COURT: Any of the rest of the 14 of you who have?

MARY COTE: I have a nephew for a long time --

EXAMINATION OF MARY COTE

BY THE COURT

Q. You're Mary Cote?
A. Right. In Riverside police officer.
Q. Here in West Fargo?
A. Uh-huh. For about five years I think it is.
Q. What was his position? What was he in you say?
A. He's a part-time police officer.
Q. Part-time police officer employed by the community of Riverside?

A. Right.
Q. And that's a nephew?
A. Yes.
Q. How long has he been so employed, do you know?
A. I think about five years.
Q. How often do you see him?
A. About twice a year. Holidays probably.
Q. You ever discussed law enforcement with him?
A. No.
Q. Is there anything about your association or relationship to this nephew which could interfere, in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in case?
A. No.
Q. Do you know what I mean when I speak of the duties and responsibilities of a fair and impartial juror?
A. Right. I know.

THE COURT: Patricia Nelson, you raised your hand.

EXAMINATION OF PATRICIA NELSON

BY THE COURT

A. We have a son graduated from NDSU in criminal justice.
Q. Criminal what?
A. Criminal justice. Is employed at Hennepin County jail in Minneapolis.

Q. How long has he been so employed?
A. About three weeks.
Q. This is a nephew you say or son?
A. My son.
Q. Your son.

Has the fact that your son is apparently pursuing a career in law enforcement, would that affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, it wouldn't.
Q. You feel that you could give a fair and impartial consideration to all the evidence in the case and set aside and disregard the fact and be uninfluenced by the fact that your son is going to pursue a career in criminal law enforcement?
A. Yes, I think I could.
Q. You could do that?
A. Yes.
Q. You would be willing to do that?
A. I would be willing to do that.

THE COURT: Somebody else raised their hand.

Mr. Pederson.

EXAMINATION OF PEDER PEDERSON

BY THE COURT

A. I have a good friend who is a highway patrolman in

Illinois.

Q. How often do you see this good friend in Illinois, I mean, this good friend of yours in Illinois, how often do you see him?

A. I suppose in the last ten years he's been up here about four times.

Q. Where did your friendship arise from?

A. Well, he was a brother of another good friend of mine who I met through him and then we spent some vacationing and so forth over the years.

Q. When is the last time you have seen him?

A. I think three springs ago.

Q. You have a continuing social contact with him?

A. Not really.

Q. You ever discuss law enforcement with him?

A. Just a few of the stories he's told.

Q. Without telling me the exact stories what was the nature of the stories, as you indicated?

A. Basically some humorous stories of some of the people that he's picked up while on his job.

Q. Is there anything about this friendship which would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. Would you be able and willing to set aside and

disregard the friendship that you have for this law enforcement official and render a verdict solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

Q. You have any doubt about your ability to do so?

A. No.

THE COURT: Somebody else raised their hand? Vicky Hassler.

EXAMINATION OF VICKY HASSLER

BY THE COURT

A. Right. Mine are just friends. I have three of them that are friends on the police, on the Jamestown police force.

Q. You have three friends who are on the Jamestown police?

A. On the Jamestown police force.

Q. Have you known them all the same period of time or have you known them for varying periods of time?

A. Basically I have known them all for 20 years.

Q. For what?

A. About 20 years.

Q. Twenty years.

You have social relationships with all of them?

A. Yeah.

Q. When you say yes, what is the nature of that?

A. Well, few volleyball games and do some golfing, things

like that.

Q. You golf together?

A. Yeah.

Q. With all three of them?

A. One of them we do quite frequently, one of the three officers and his wife.

Q. Is there anything about this relationship -- do you visit in each others homes?

A. Yeah.

Q. Is there anything about this personal friendship that your family has with these three families that would interfer with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. Would you, if you were a juror in the case, be able to, and willing to render a verdict based solely on the evidence and the law presented in the courtroom during this trial uninfluenced in any way by the fact that you have friends in law enforcement?

A. Yes.

THE COURT: Anybody else have any friends in law enforcement, or relatives?

Record may show no further response.

Have any of you or any members of your family -- now I probably would get, I probably would have half of the

answers to this already but I'll ask it anyhow. Have any of you or any member of your family ever been in law enforcement other than what some of you have disclosed as far as your friendships are concerned? Have any of you or members of your family actually been law enforcement officials.

Record may show no response.

Have any of you or any member of your family ever been the victim of a crime to your knowledge.

Yes. Mr. Swiontek.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

A. Your Honor, our house was burglarized approximately six years ago in Fargo, sir.

Q. Did, was the burglar apprehended?

A. No, not to -- no.

Q. Was property taken from your home?

A. Just a checkbook.

Q. Any damage done to your home?

A. Minor, minor damage. Window broken through a door.

Q. Is there anything about this experience that you have had which would interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, it would not.

Q. Would you be willing and able to set side and entirely disregard that experience you've had if you were selected as

a juror and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, I would.

THE COURT: Yes.

ELAINE CUMMINS: Did you say any member of family?

THE COURT: I said you or any member of your family to your knowledge ever been the victim of a crime.

EXAMINATION OF ELAINE CUMMINS

BY THE COURT

A. One of my sisters had her purse snatched. She lives in California and my brother had his home broken into out there, quite a few things taken.

Q. And both of these, your sister and your brother are residents of California?

A. Right.

Q. And this happened in California?

A. Yes.

Q. How long ago did it happen?

A. Well, my brother's house was broken into about eight years ago and my sister, it was longer than that. I'm not --

Q. How do you happen to know about it?

A. Well, they told me.

Q. And did they write to you about it or did they tell you when you were out there visiting?

A. Well, my brother and my mother came back here for a

visit.

Q. And that's when -- would this experience that your relatives had in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. Could you set aside and give no consideration at all to this experience that your relatives had if you are selected as a juror and would you render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

THE COURT: Anybody else have an answer to that question?

Record may show no further response.

Have any of you ever participated in a criminal case as a complainant, as a witness for either the prosecution or the defense or in any other capacity other than as a juror?

Record may show no response.

Have any of you or any member of your family ever been arrested or indicted or accused of a crime?

Marry Cote.

EXAMINATION OF MARY COTE

BY THE COURT

A. I have a different nephew that was accused of a crime last summer.

Q. Where does your nephew live?

A. Here. Went to trial.

Q. What was the outcome of the case?

A. He was found not guilty.

Q. Would this experience which your nephew had in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

THE COURT: Mr. Pederson.

EXAMINATION OF PEDER PEDERSON

BY THE COURT

A. DUI count.

Q. Well, I don't know, I guess some people would consider that a crime and others consider it being a traffic violation, but it does carry a penalty so I guess it would.

What do you have to tell me about DUI?

A. I had one.

Q. You had one?

A. Yes.

Q. How long ago did that take place?

A. About nine years.

Q. Would this experience that you've had in any way interfere with your ability to be a fair and impartial juror

if you were selected as a juror in the case?

A. No.

Q. How was it disposed of?

A. I just had to take the class.

Q. You had to take a class. Did you take the class?

A. Yes. And pay a fine.

Q. And you paid a fine?

A. Yes.

Q. You're telling me, as I understood your answer, you feel you could set aside and disregard this experience that you personally have had if you were selected as a juror and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

THE COURT: Anybody else have an answer to that question. Any of you or any member of your family ever been arrested or indicted or accused of a crime. Yes.

EXAMINATION OF MARY DICKEY

BY THE COURT

A. About two years ago my brother-in-law was arrested.

Q. Your brother-in-law was arrested where?

A. In Williston.

Q. What was the nature of, the nature of the arrest?

A. He was a peeping Tom.

Q. Was the case disposed of?

A. He got probation.

Q. Is this somebody who's close to you?

A. I never see him, no.

Q. You never see him?

A. No.

Q. Would this experience which he had in any way interfere with your ability to be a fair and impartial juror in the case?

A. No.

Q. Can you if were you selected as a juror set aside this experience in your service as a juror and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yeah.

THE COURT: I might say I really appreciate the fact that you folks are willing and forthright in responding to these questions because, as I indicated earlier today, it's very important, first of all, that all these defendants receive a trial heard by a fair and impartial jury and, as I also mentioned, it's up to the attorneys to make the determination as to who they want on the jury. We are going to qualify 49 jurors in the case and they will then make the determination of which 14. And it is important that they have all the relevant information to help them make the determination as to who they want to serve as the jury in the

case because, as I mentioned, both sides are entitled to and interested in having a jury that can be fair, objective and impartial and render a verdict based solely on the evidence and the law that is presented in the courtroom during this trial uninfluenced by any bias, prejudice or any experience or any other matters that may relate to their previous experience.

Have any of the 14 of you ever lived on or near an indian reservation?

Record may show no response.

Have any of you ever had substantial business or personal dealings with indians who are sometimes referred to, with indians, and I may mention indians are sometimes referred to as native American.

Yes. Doris Nelson.

EXAMINATION OF DORIS NELSON

BY THE COURT

A. Yes. At the Ed Carlson School where I work, there are some indian children.

Q. You have indian children?

A. So we have to work with BIA.

Q. You work with children and their parents?

A. BIA.

Q. Bureau of Indian Affairs?

A. Right.

Q. Do you also work with the parents of these children?
A. No. It's usually just BIA.
Q. Usually just the Bureau of Indian Affairs?
A. Yes.
Q. Is there anything about your work with the handicapped indian children which would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. No. No, it wouldn't.

THE COURT: Anybody else has had any substantial business or personal dealings with indians?
Record may show no response.

Do any of you have any sympathy, bias, prejudice or any other feeling or attitude toward the indian people which would in any way interfere with your ability to be a fair and impartial juror?

The record may show no response.

Has anyone talked to any of you prior to your coming into court today about this case? Anyone talked to any of you about this case prior to your coming into court today?

Record may show no response.

There will be evidence in this case relating to the use of alcoholic beverages. Do any of you have any attitude or bias toward the use of alcohol which would in any

way interfere with your ability to be a fair and impartial juror and render a verdict solely on the evidence that is presented in this case, in the courtroom during the trial of this case?

Do any of you have any strong feelings either for or against the use of alcohol which might in some way interfere with your ability to be a fair and impartial juror? Yes.

LUELLA BROWN: I have a son died from the use of alcohol and drinking. He laid in a coma for a month.

THE COURT: Would this experience in any way interfere with your ability to be a fair and impartial juror in the case?

LUELLA BROWN: No, it wouldn't. No, it wouldn't.

THE COURT: I presume prior to your son's death he had been treated for alcoholism, is that correct?

LUELLA BROWN: Yes. He had been.

THE COURT: Do any of the rest of you have any members of your families or you individually that has ever been treated for alcoholism?

Yes. Mary Dickey.

EXAMINATION OF MARY DICKEY

BY THE COURT

A. My dad was.

Q. How long ago was that?

A. Five months ago.

Q. Would this experience that your father has had in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. You take a drink once in a while?

A. No.

Q. Do you have any prejudice against someone who might --

A. No.

Q. -- use alcoholic beverages?

A. No. Not at all.

Q. Do you have sympathy for someone who may overindulge in alcohol which would, might interfere with your ability if you were, to be a fair and impartial juror if you were selected as a juror in the case?

A. Do I have sympathy for them? No.

Q. Do you have any bias against them?

A. No.

THE COURT: Have any of you read, heard or seen anything concerning this case in the newspapers, on the television or on the radio prior to your coming into court today?

You've all responded affirmatively that all of you have seen or read or heard something about this case prior to coming into court today. Now I'm going to ask you

some questions about that. I'm not going to ask you what you read or heard, I am going to ask you questions relating to it but I do not want you to tell me specifically what you heard or read.

EXAMINATION OF PATRICIA NELSON

BY THE COURT

Q. Patricia Nelson, what is the source of the news media reports that you have heard or read in the case?

A. In the Fargo Forum.

Q. Have you heard any other reports on this case prior to coming into court?

A. No, I haven't.

Q. Just the Fargo Forum?

A. Yes.

Q. How many times have you read something in the Fargo Forum about it?

A. Once, that I can remember.

Q. Once. Now without you're telling me what you heard or read, do you remember what you heard, I mean what you read?

A. I think so.

Q. If you were selected as a juror in the case, could you set aside and disregard anything that you may have read about the case prior to coming into court and render a verdict based solely on the evidence that is presented in the courtroom during this trial?

A. Yes.
Q. Was there anything about, anything in the newspaper item that you read which would in any way, created any interest in the case for you?
A. No. Something I read.
Q. I beg your pardon?
A. It was just something I read.
Q. Do you normally read the newspaper everyday?
A. Yes.
Q. But you have read only one article relating to this case?
A. Just recently. I don't remember.
Q. You only remember having one article relating to this case?
A. Yes.
Q. Your answer is what?
A. Yes.
Q. And I guess, did I ask you whether you would be able to set aside and disregard what you have read?
A. Yes.
Q. I think I did.

EXAMINATION OF PEDER PEDERSON

BY THE COURT

Q. Mr. Pederson, have you read or heard anything in the news media? I think all of you told me that no one has

talked to you about that.

THE COURT: any of you discussed this case with anyone prior to coming into court?

Record may show no response to that.

Q. Then, Mr. Pederson, did you read something about this case prior to your coming into court?

A. Just in the newspaper.

Q. Have you heard anything over the radio or television or seen anything over the radio or television?

A. I'm just aware of the generalities of it and I might have heard a TV response but I can't say absolute for sure.

Q. How many news articles representing to the case have you read in the newspaper?

A. Probably one or so.

Q. Do you know for sure how many you may have?

A. Not really.

Q. Could you possibly have read more than one?

A. I can't say for sure.

Q. Is there anything about what you read that caused you to became interested in the case?

A. Not particularly.

Q. Have you read anything about this case which you would be unable to set aside and disregard if you were selected as a juror in the case?

A. No.

Q. Would you be able, can you tell me in good conscience that you would be able and willing to set aside and disregard anything that you have read in the case and render a verdict based entirely on the law and the evidence presented in the courtroom during this trial?

A. Yes.

EXAMINATION OF DORIS NELSON

BY THE COURT

Q. Doris Nelson, you have read or seen, read something about this case or heard something on either television or radio?

A. I can't even remember which paper but I remember seeing the article.

Q. How many articles did you read?

A. Probably one.

Q. Is there any likelihood you might have read more than one?

A. Possibly.

Q. You remember what you read?

A. No. I remember the picture of the young man.

Q. Not asking you to tell me what you --

A. But --

Q. What you have read or heard, I'm just asking you if you remember. Don't tell me what you remember. I'm just asking you if you remember what you heard or read about the

case.

A. Yeah.

Q. Would you be willing and able to set aside and disregard anything that you may have heard or read and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

EXAMINATION OF RODNEY WALCKER

BY THE COURT

Q. Rodney Walcker, have you read or heard something about the case before coming into court today?

A. Yes. In the newspaper and TV.

Q. How many times have you seen a newspaper article relating to it?

A. Once or twice.

Q. Could it be more than that?

A. No more than twice.

Q. Is there anything about what you have read or heard that caused you to take an interest in the case?

A. No, sir.

Q. How many times have you heard a report on the case, either radio or television, to your memory?

A. Just once or twice maybe on the evening news.

Q. If you were selected as a juror in the case, would you be willing and able to set side and disregard anything that

you may have previously read or heard about the case and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, sir.

EXAMINATION OF DAVID SODERSTROM

BY THE COURT

Q. David Soderstrom, have you read news reports of this case?

A. I remember reading one newspaper story.

Q. One newspaper story?

A. Right.

Q. A recent one or sometime ago?

A. Yesterday.

Q. Yesterday. You heard anything on the radio or television related to this case?

A. I guess maybe I have. I don't remember.

Q. You remember for sure whether you have?

A. I don't remember for sure. I think it was relating to this case.

Q. Have you heard or read anything about this case that has caused you to take a particular interest in the case prior to your coming into court today?

A. No.

Q. If you were selected as a juror in the case, would you be willing and able to rendered a verdict based solely on the

evidence and the law presented in the courtroom during this trial?

A. Yes.

Q. And would you be willing and able to set aside and disregard anything that you may have previously heard or read about the case?

A. Yes.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

Q. Mr. Swiontek, have you read any newspaper articles relating to this case?

A. I remember seeing an article in the Forum a while back.

Q. Have you seen more than one article relating to this case?

A. No, I have not.

Q. Have you heard any news reports on this case either over the radio or television?

A. I can't remember hearing any or seeing any on TV.

Q. If were you selected as a juror in the case, would you be willing and able to set side and disregard anything that you may have heard or read relating to the case prior to your coming into court today?

A. Yes, I would.

Q. And would you be willing and able to render a verdict based solely on the evidence and the law presented in the

courtroom during this trial?

A. Yes.

EXAMINATION OF LUELLA BROWN

BY THE COURT

Q. Luella Brown, have you read something about this case before coming into court today?

A. No, I haven't read anything. I heard on television.

Q. Have you heard television reports relating to this case?

A. Just that there was going to be a trial.

Q. I don't want you telling me what you heard. You told me what you heard was going to be a trial?

A. That's all I heard.

Q. Have you heard any other?

A. No, I haven't.

Q. No other reports at all?

A. No.

Q. Heard any radio reports?

A. No.

EXAMINTION OF CONRAD ANDERSON

BY THE COURT

Q. Conrad Anderson, have you read any news reports relating to this case prior to your coming into court today?

A. just one.

Q. Just one. And is that a recent report or --

A. Yes. That's yesterday's Forum.
Q. Have you heard any radio or television reports relating to the case prior to your coming into court?
A. No, I haven't.
Q. If you were selected as a juror in the case, could you set aside and disregard anything that you may have read in the Forum yesterday relating to the case or any other time and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?
A. Yes, sir.

EXAMINATION OF VICKY HASSLER

BY THE COURT

Q. Vicky Hassler?
A. Hassler.
Q. Hassler. Have you read any news reports relating to this case prior to your coming into court?
A. When I got here this morning, it was like after hearing, I remember hearing something about it, possibly in the Jamestown Sun, that's basically all. It jarred my memory that I was familiar with hearing it before.
Q. Have you, do you have a recollection of having heard any television or radio report relating to the case?
A. I'm thinking I read it in our local paper at some point.
Q. Do you, without telling me what you read, do you

remember specifically what you read?

A. Not specifically.

Q. If you were selected as a juror in the case, would you be willing and able to set aside and disregard anything that you may have read about this case prior to coming into court and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

EXAMINATION OF MARY DICKEY

BY THE COURT

Q. Mary Dickey, have you read any newspaper articles relating to this case?

A. Article in the Fargo Forum.

Q. And was this a recent article?

A. Yeah. Yesterday's.

Q. Have you heard any news reports on the radio or television?

A. Not that I remember.

Q. If you were selected as a juror, would you be willing and able to set side and disregard anything that you may have read about this case prior to your coming into court and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, I would.

EXAMINATION OF ELAINE CUMMINS

BY THE COURT

Q. Elaine Cummins, have you read any newspaper article relating to this case prior to your coming into, here today as a potential juror?

A. Not recently but just general talk mostly. I remember reading an article but it's quite a while back.

Q. You said general talk, does that mean you talked to somebody about this case before coming in?

A. When, oh, sometime ago when I saw the article in the paper, somebody remarked that it was in there and showed it to me. That's when I read it.

Q. How long ago was that?

A. Quite a while. I just don't remember. I don't remember what was in it. Just generally.

Q. Have you seen any other newspaper articles relating to the case?

A. No.

Q. Have you hard any television or radio reports relating to the case?

A. No. A friend relayed to me that she had heard that it was coming up and that's it.

Q. If you were to remember anything that you may have heard or read about the case, would you be willing and able to set side and disregard anything that you may have previously heard or read about the case prior to coming into

court and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

EXAMINATION OF DALE BUNN

BY THE COURT

Q. And, Mr. Bunn, have you read any news reports relating to the case prior to your coming into court?

A. Yes.

Q. How many?

A. Two I believe, one quite a while ago and one yesterday in the Forum.

Q. Do either of these articles cause you to take any particular interest in the case?

A. No.

Q. Have you heard anything relating to this case over radio or television?

A. No, I haven't.

Q. If you were selected as a juror, would you be able and willing to set aside and disregard anything that you may have heard about this case or read about this case prior to your coming into court and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

THE COURT: Do you understand, I'm addressing

this question to all have you. Do you understand that that is a constitutional right that both sides have in the case and that's the right to have the case decided on the basis of the evidence and the law presented in the courtroom during this trial and that it would be a violation of your duty if you were to render a verdict upon anything other than the evidence and the law presented in the courtroom during this trial because both sides are entitled to a fair and impartial jury based on that which is presented here.

EXAMINATION OF JEFFERY NELSON

BY THE COURT

Q. Mr. Nelson, have you read any newspaper articles relating to this?

A. I heard it on TV.

Q. How long ago?

A. Friday. Friday or Saturday.

Q. Have you heard anything about it prior to that time?

A. No, I hadn't.

Q. Would you, if you were selected as a juror in the case, would you be able to set aside and disregard anything that you heard on TV and set --

A. Yes.

Q. Render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

EXAMINATION OF MARY COTE

BY THE COURT

Q. And, Mary Cote, have you read any newspaper articles relating to this case?

A. Yes. Newspaper.

Q. How many have you read?

A. I think there was one probably three months, a few months ago, and then yesterday there was an article on it.

Q. Do you remember anything in the article that you read two or three months ago?

A. Not particularly.

Q. Don't tell me what you remember. Just asking you if there is anything about anything that you read that you still remember?

A. Not particularly, no.

Q. Have you heard anything relating to this case on either television or radio?

A. No.

Q. If you were selected as a juror, could you set aside and disregard anything that you have read in the newspaper relating to the case and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, I would.

THE COURT: When I asked if any of you knew

certain people, I overlooked asking if any of, I spoke to you about the responsibility of United States Attorney for the state of North Dakota to, the office of the United States Attorney to prosecute any federal actions of this kind that are brought and I did not, however, mention the United States Attorney himself. United States Attorney in this district is Mr. Rodney Webb. Any of you acquainted with Mr. Webb.

Yes, you know Mr. Webb?

STEVEN SWIONTEK: Yes, I do.

EXAMINATION OF STEVEN SWIONTEK

BY THE COURT

Q. What's the nature of your acquaintance with Mr. Webb?

A. I know Mr. Webb. He and I are in the same Kiwanas group in Fargo.

Q. I suppose that's something that has arisen within the last four or six years. I'm thinking back over the length of time Mr. Webb has been the United States Attorney.

A. Right.

Q. You have a friendship with Mr. Webb, social relation?

A. No, I do not.

Q. Relationship with Mr. Webb?

A. No, I do not.

Q. Just happen to both belong to the same club?

A. Right. I know him.

Q. Is there anything about you're being common members in

a club that would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, it would not.

THE COURT: Any of you know the First Assistant United States Attorney, Mr. Gary Annear. Mr. Webb is United States, Mr. Annear is First Assistant. These three gentlemen that have been previously introduced are Assistant United States Attorneys. Any of you know Mr. Gary Annear?

Record may show no response.

Well it is 20 minutes to 3:00 and I suppose some of you are tired of having sat for this period of time and so we will take a 20 minute recess at this time for the jury, and I would ask counsel and defendants to reassemble here in 15 minutes. In other words, at five minutes to 3:00.

(Recess taken.)

(Whereupon, the following was had outside the hearing of the prospective jury.)

THE COURT: Counsel have any additional questions they would like to have me ask the jury panel? Mr. Bouchee handed me a couple of questions that were, that were given to him, I believe, by Mr. Vogel and I will ask both of those questions.

Has any member of your family been killed as a

result of motor vehicle accident.

Any of you know Eddie Peltier or family. I obviously overlooked that one. Those questions will be asked of these 14.

MR. SOGARD: Your Honor, I would like to request that you ask the questions contained in our requested voir dire questions, numbers 19, 20 and 21.

THE COURT: Wait until I find them.

MR. SOGARD: Those were designed after the questions that were used in the Kahl case and I found them extremely helpful because it was an easier way of acsertaining what their normal daily habits were as far as reading newspapers and listening to television. I think, as the Court has noticed in eliciting these responses, it would be extremely helpful in understanding what we would normally expect what these people have read under the circumstances.

THE COURT: Very well. I will ask those questions.

MR. SOGARD: Thank you.

THE COURT: My inclination would be, and I when I have completed with these 14, we will seek to qualify another 14 and based on the time it has taken up to this point, that's probably about as far as we'll get today. But when I have qualified these 14, I, unless there is some objection, I'll excuse them for the day and ask them to come back tomorrow morning. If you want them to stay and remain, I

will allow them to remain but they are going to have to remain in the courtroom.

MR. VOGEL: I have got no objection to their being excused. In fact, I think that was part of the request.

THE COURT: That's why I'm doing it because it was part of the request. I wasn't going to have them sitting around in a room where they have nothing to do except to twiddle their thumbs. As least, if they are in the courtroom they see what's going on.

MR. DALEY: In line with our requested voir dire, I would like the Court to make an inquiry somewhat paraphrasing number 14 as to whether or not there is any additional credibility given to a witness because of their occupation regarding law enforcement and also something inquiring into question raised in number 28 about the nature of the offense, violent nature of the charge.

THE COURT: I will ask 28. I'm not sure that 14 has any probative value. I expect the answer of everyone of them would be no. And I have had that request many times and I never asked it because I think it's covered by the, covered by the general instructions relating to judging the credibility of witnesses. If I ask it, I would ask it in this way: Are any of you likely to believe the statements of law enforcement officials more than the statements of someone who's not in law enforcement.

MR. DALEY: That's fine.

MR. LARIVEE: That's fine, Your Honor.

THE COURT: I'll ask that. Are you likely -- I don't like the phrasing of that.

MR. LARIVEE: I think it's important to ask that at this point rather than just in the instructions because they don't have any opportunity to respond at that time.

THE COURT: You are correct.

MR. VOGEL: Judge, I just would ask one other request and that's, I think, a question that I have heard judges ask in the past and that is obviously the judge can't ask all the questions that might relate to matters that really do bother the jurors with respect to the case. A question to the effect is there anything else that we should know about or that you would want us to know about with respect to your ability to be a fair and impartial juror in the case that might not be covered by the other questions.

MR. BOHLMAN: Along these lines, Your Honor, I'm a little concerned about the length of the trial and understand that the clerk's office has advised each of the prospective jurors about the length of the trial but it might be appropriate to ask them for any reason they would have problems in sitting through a trial of this length.

THE COURT: They have been informed in the notice that went out that it's going to be a four-week trial. There

have been a lot of them excused because of hardship arising out of a four-week trial and I'm not going to reopen that question because they have had opportunities to respond at this time.

The jury may be brought in. I hope the whole panel.

(Whereupon, the following was within the hearing of the jury.)

THE COURT: I have just a few more questions to ask of you folks and then I will be through questioning you and I will at that time excuse you for the day and ask you to come back tomorrow morning and I will then go on with another group of 14 prospective jurors, question them this afternoon and I will not ask you to stay through that questioning.

EXAMINATION OF CONRAD ANDERSON

BY THE COURT

Q. Mr. Anderson, I was asked to ask you if you have any difficulty hearing.

A. I have some, yes.

Q. Have you had any difficulty hearing me?

A. Once, when I was sitting here and quite a bit more from the back there.

Q. Sitting in the jury box. If you were selected as a member of the jury and you would be sitting in the jury box, the 14 people who will be sitting in that box, are you having

any trouble hearing me now?

A. Not a great deal. I have some trouble hearing. I was going to mention that because I think you might want to...

Q. I might want to what?

A. You might not want me here.

Q. You feel that your hearing problem, if you were sitting in the jury box, would interfere with your ability to be a juror and to hear the proceedings in court?

A. Not from what I have experienced today. There could be times when I miss out on something that I shouldn't.

Q. Are you asking to be excused because of your hearing?

A. If it's going to bother me, I think I'd rather be excused.

Q. Are you telling me it's going to bother you or not going to bother you?

A. It appears right now like it will.

Q. That it will?

A. Yes.

THE COURT: Got some additional questions now that I'm going to ask of the 14 of you. If you were selected as a juror in the case, are any of you likely to believe the statements of a law enforcement official more than the statements of someone who is not in law enforcement work? Your answer is yes, you should tell me so, if there is no answer I will assume that it would not.

There is no response.

Another question that I'm going to ask is has any member of your family ever lost his or her life as a result of a motor vehicle accident?

Would you tell me who it was.

EXAMINATION OF MARY COTE

BY THE COURT

A. I have a sister that was in an automoble accident in Arizona.

Q. And when did that happen?

A. About seven years ago.

Q. She lost her life as a result of the accident?

A. Right. Later. She lived about six weeks.

THE COURT: Do any of you know -- now the alleged victim in the case is someone by the name of Edward or Eddie Peltier. Apparently he lived on the Fort Totten Indian Reservation which is south of Devils Lake. Do any of you know Eddie Peltier or his family.

Record may show no response.

Are there any of you who do not regularly subscribe to a newspaper? You do not. You do not. Four of you do not regularly subscribe to the newspaper. Just so the record may show.

Vicky Hassler you raised your hand.

VICKY HASSLER: No, I didn't.

THE COURT: Mary Dickey you raised your hand, Elaine Cummins raised your hand and Mr. Soderstrom you raised your hand and Luella Brown you raised your hand. You do not regularly subscribe?

LUELLA BROWN: I don't subscribe to any, no.

THE COURT: very well. Four of you I think that raised your hand. Now that means that there are ten of you that do take a newspaper. How many of the ten of you take the Fargo Forum? One, two, three, four, five, six. Thank you.

And then the other four must take some other paper. What paper do each of the four subscribe to?

JEFFERY NELSON. The Daily News at Wahpeton.

DORIS NELSON:. Jamestown Sun.

RODNEY WALCKER:. Grand Forks Herald.

VICKEY HASSLER:. Jamestown Sun.

THE COURT: Thank you.

How many of you regularly watch local television news broadcasts? That is local and national.

How many of you regularly listen to radio news broadcasts? Raise your hands again, would you. There is one, two, three, four, five, six. And how many of you regularly watch local television news broadcasts? One, two, three, four, five, six, seven, eight, nine, ten, 11. Thank you.

MR. SOGARD: Excuse me, Your Honor, because of

the hands and my position, could you tell me who did not regularly watch TV so they can raise their hands.

THE COURT: All right. Which of you do not regularly watch radio or news broadcasts.

You get it there, Mr. Sogard?

MR. SOGARD: Yes. Thank you.

THE COURT: Very well.

As I mentioned to you at the opening of these proceedings today, in the case these 11 defendants are all charged with a serious charge. The charge is murder. Does the subject matter of the allegation of a violent death make it difficult, with the subject matter of the allegation of a violent death make it difficult for any of you to fairly and impartially serve as a juror in the case?

LUELLA BROWN: I had a son that was killed by a trucker in Alabama, when he was in the service, by a colored boy. He was stabbed to death.

THE COURT: Would that experience that you have had in your family make it difficult for you to be a fair and impartial juror if you were selected as a juror in the case?

LUELLA BROWN: No.

THE COURT: It would not?

LUELLA BROWN: No.

THE COURT: You know what I mean when I speak of

the duties and responsibilities of a fair and impartial juror?

LUELLA BROWN: (Juror nods affirmatively.)

THE COURT: You nod your head, that means yes?

LUELLA BROWN: Yes.

THE COURT: Thank you.

Court reporter, you see, takes down everything that's said and sometimes you nod your head it doesn't make any noise.

LUELLA BROWN: Put an extra dot or something.

THE COURT: Can any of the 14 of you think of any reason that I have not covered which might in any way affect your ability to be a fair and impartial juror if you were selected as a juror in this case?

JEFFERY NELSON:. I feel because of my obligations at home I don't know if I could keep my mind on the case for --

THE COURT: That doesn't answer my question. The question is if you are required to be on the jury, is there anything I have not covered which would in any way make it difficult for you to be a fair and impartial juror; in other words, be fair and impartial to both sides and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

JEFFERY NELSON: Not that.

THE COURT: That is my question.

I'm going to excuse the 14 of you at this time from, for the afternoon and ask that you be back in court at 9:00 o'clock tomorrow morning. Actually, if you arrive back in court by 10:30 tomorrow morning that would be early enough because we probably would not have, probably would not have completed our questioning of jurors by that time. So I will excuse the 14 of you until 10:30 tomorrow morning and I would ask that now that you are potential jurors in the case that you keep in mind the admonitions that I will give to the jurors in the case when the jury has been selected, and that is that you must not discuss the case with anyone, with any member of your family, between yourselves or with anyone else from now on until the case is submitted to the jury for its deliberation and verdict and you must refrain from reading or listening to any news reports relating to the case. If there should be some news reports in the paper, you must not read that report and if there should be some news report over the radio or TV, I would ask that you not listen to the report. In other words, if you hear something on TV relating to the case, turn it off or walk out of the room or do something, and if you should inadvertently read or hear something, remember that you must disregard it and base your verdict based on, and render a verdict based on the evidence and the law presented in the courtroom during this trial. So that admonition takes effect as of right now and those of you who

are not ultimately selected, of course, once you are excused then it is no longer applicable. As long as you are potential jurors, that is in effect. So the 14 of you may leave the courtroom now and return to your home or wherever you wish to go and please plan to be back in court by 10:30 tomorrow morning.

Clerk will now draw the names of 14 additional jurors.

THE CLERK: Number 148, Keith Behrens. Number 164, Noel Gunderson. Number 114, Deborah Hagen. Number 32, Brenda Grindberg. Number one, Rueben Obenauer. Number 104, Mary Markley. Number 112, Mark Sherven. Number 187, Edward Duden. Number 19 Marilyn Bronken. Number 13, Robert Munsey. Number 38, Beth Brewer. Number 230, Mark Helfter. Number 34, Gloria Storrusten. And the 14th juror drawn on the second draw is Donna Kreie, or Kreie, how do you pronounce that?

DONNA KREIE: Kreie.

THE CLERK: Thank you.

EXAMINATON OF KEITH BEHRENS

BY THE COURT

Q. Keith Behrens, where do you live?

A. Fargo.

Q. How long have you lived here?

A. Four years.

Q. Where did you live prior to coming to Fargo?

A. Iowa.
Q. What is your occupation?
A. Food service at VA hospital.
Q. I didn't hear the first part.
A. Food service.
Q. At the VA Hospital?
A. Right.
Q. How long have you been in that occupation?
A. Four years.
Q. What other occupations, if any, have you had?
A. I was self employed in Iowa as a bartender, bar room.
Q. Are you married?
A. Yes, I am.
Q. Is your wife employed out of the home?
A. Yes, she is.
Q. Where is she employed?
A. Doublewood Inn.
Q. What is the nature of her employment?
A. She is in housekeeping.
Q. Do you have children?
A. Yes.
Q. Are any of them at home?
A. Yes.
Q. Are any of them employed outside the home?
A. No.

Q. How many children do you have?
A. Just one.
Q. What is your education?
A. Twelve years.
Q. And your wife's education?
A. Twelve years.
Q. Have you ever served as a juror before?
A. No, I haven't.

THE COURT: Deborah Hagen, where do you live? Sorry, I skipped somebody here. Noel Gunderson.

EXAMINATION OF NOEL GUNDERSON

BY THE COURT

A. I live here in Fargo.
Q. You live in Fargo also.
What's your occupation?
A. I just recently retired from Northwestern Bell.
Q. And how long were you with Northwestern Bell?
A. Thirty-five years.
Q. What was your position at the time of your retirement?
A. I was manager of pricing.
Q. What other occupations, if any, have you had?
A. None.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?

A. She is retired.
Q. And I gather from that that she was at one time employed out of the home?
A. Yes. She was service representative for Northwestern Bell.
Q. How long was she with Northwestern Bell?
A. Twenty-seven and a half years.
Q. Either of you had any other occupations?
A. No.
Q. I guess I asked you that. Has your wife had any other occupation?
A. No.
Q. How many children do you have?
A. Three.
Q. Are any of them at home?
A. No.
Q. Are there any persons other than your wife and you who live in your home and are employed out of the home?
A. No.
Q. And what is your education?
A. I have high school and about one year of college.
Q. Your wife's education?
A. High school.
Q. Have you served on a jury before?
A. No.

EXAMINATION OF DEBORAH HAGEN

BY THE COURT

Q. Deborah Hagen, where do you live?

A. In Fargo.

Q. I asked you that before, didn't I? How long have you lived here?

A. Twelve years.

Q. What is your occupation?

A. Homemaker.

Q. Have you at any time been employed out of the home?

A. Yes, I have.

Q. What was the nature of that employment?

A. I was a drapery seamstress for three years.

Q. Speak up. There are people way over there.

A. I was a drapery seamstress for three years.

I was a drapery seamstress for three years.

Q. You got it now.

What is your husband's occupation?

A. He's a civil engineer.

Q. And to your knowledge has he had any other occupation?

A. No, he has not.

Q. Have you had any other occupation?

A. No, I have not.

Q. You have children?

A. Yes.

Q. How many?
A. Three.
Q. Do they live at home?
A. Yes.
Q. Are any of them employed outside the home?
A. No.
Q. What is your education?
A. College degree.
Q. And your husband's education?
A. A master's degree.
Q. Have you served on a jury before?
A. No, I have not.
Q. Are there any other persons presently in your household who are employed out of home?
A. No.

EXAMINATION OF BRNDA GRINDBERG

BY THE COURT

Q. Brenda Grindberg, where do you live?
A. Fargo.
Q. How long have you lived here?
A. Twenty-five years.
Q. What is your occupation?
A. Gaming, pull tabs. Gambling pull tabs.
Q. Gaming pull tabs, is that what you said?
A. Yeah.

Q. Have you had any other occupation?
A. Sales clerk.
Q. Where are you presently employed?
A. Multiple sclerosis.
Q. Where else have you been employed?
A. Shirt Works Incorporated.
Q. Are you married.
MR. DALEY: Your Honor, I'm having a difficult time hearing.
A. No, I'm not married.
THE COURT: Mr. Daley did you hear all her answer?
MR. DALEY: Yes.
THE COURT: Very well.
Q. Have you served on a jury before?
A. No.

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

Q. Rueben Obenauer, where do you live?
A. Jamestown.
Q. How long have you lived in Jamestown?
A. Thirty-seven years.
Q. What is your occupation?
A. Recently retired from Northwestern Bell.
Q. How long were you with Northwestern Bell?
A. Thirty-four years.

Q. What was your position at the time you retired?
A. Communications channel tech.
Q. Are you married?
A. Yes.
Q. Is your wife employed out of the home?
A. No.
Q. Has she at any time to your knowledge been employed out of the home?
A. Yes.
Q. Where was she employed?
A. She was a listened practical nurse in Jamestown Hospital.
Q. How long was she employed at the Jamestown Hospital?
A. About 23 years.
Q. Has she had any other occupation to your knowledge?
A. No.
Q. What is your education?
A. High school.
Q. What is your wife's education
A. High school.
Q. How many children do you have?
A. Two.
Q. Are either of them living at home?
A. No.
Q. Is there anyone else, member of your household who's

employed out of the home?

A. No.

Q. Have you served on a jury before?

A. No.

EXAMINATION OF MARY MARKLEY

BY THE COURT

Q. Mary Markley, where do you live?

A. Fargo.

Q. How long have you lived here?

A. Five years.

Q. What is your occupation?

A. I'm a supervisor at Blue Cross and Blue Shield.

Q. And how long have you been with Blue Cross and Blue Shield?

A. Four years.

Q. What other occupations, if any, have you had?

A. None.

Q. Are you married?

A. Yes, I am.

Q. What is your husband's occupation?

A. He works for Cargill Incorporated.

Q. What is his position with Cargill?

A. He's a commodity trader.

Q. How long has he been with Cargill?

A. Five years.

Q. What other occupations, if any, has he had to your knowledge?
A. None.
Q. What is your husband's education?
A. He has a degree from Kansas State University.
Q. A degree in what?
A. Ag Econ, business.
Q. What is your education?
A. I graduated also from Kansas State University.
Q. Do you have any children?
A. Yes, one.
Q. Is your child living at home?
A. Yes.
Q. Is he or she employed out of the home?
A. No.
Q. Are there any other members of your household living with you that are employed out of the home?
A. No.
Q. Have you served on a jury before?
A. No. I have not.

EXAMINATION OF MARK SHERVEN

BY THE COURT

Q. Mark Sherven, where do you live?
A. Wahpeton.
Q. How long have you lived at Wahpeton?

A. Three years.
Q. Where did you live prior to that?
A. Fargo.
Q. And how long did you live here?
A. Three years here also.
Q. What is your occupation?
A. I'm a sales manager.
Q. For whom?
A. For Sherven Livestock Equipment.
Q. How long have you been working for that company?
A. In total probably ten, 15 years.
Q. Have you had any other occupation?
A. Yes. I worked for Mac's Incorporate in Fargo as a salesman.
Q. What do they sell?
A. Downtown Main here, Macs. I worked for Pamida in Wahpeton for about a year.
Q. Are you married?
A. Yes, I am.
Q. Is your wife employed out of the home?
A. At present, no.
Q. I would assume from that answer that there was a time when she has been?
A. She is at Blue Cross, Blue Shield in Fargo here and also works for Kelly Services in Fargo here.

Q. What is your education?
A. I have a college degree in business management.
Q. And what is your wife's education?
A. She is in college.
Q. Do you have any children?
A. one.
Q. He or she living at home?
A. At home.
Q. Employed out of the home?
A. No.
Q. Any other members of your household that live were you and employed out of the home?
A. No.
Q. Have you served on a jury before?
A. No.

EXAMINATION OF EDWARD DUDEN

BY THE COURT

Q. Edward Duden, Mr. Duden, where do you live?
A. South of Jamestown.
Q. LaMoure County?
A. You bet.
Q. What is your occupation?
A. Farmer.
Q. Have you had any other occupations?
A. No. I worked for others before.

Q. Are you married?
A. You bet.
Q. Is your wife employed out of the home?
A. Yes. Postal department for 32 years.
Q. That's, she works in the post office?
A. She is a clerk.
Q. Clerk in the post office.
Do you have children?
A. Two.
Q. Either of them living at home?
A. No.
Q. What is your education?
A. High school.
Q. And your wife?
A. Same.
Q. Any other members of your household presently living with you that are employed out of the home?
A. No.
Q. Have you served on a jury before?
A. Yes. In LaMoure County.
Q. LaMoure County, district court in LaMoure County?
A. Yeah.
Q. At LaMoure?
A. Yes.
Q. How long ago did you serve?

A. Twenty-five years.

Q. Twenty-five years ago?

A. Yeah. For sure I can't even remember.

Q. Approximately.

You remember how many cases you served on?

A. I served on one. I remember the case.

Q. What was the nature of that case?

A. Well, they were rebuilding 13 and there was only three routes and they were each in two of them and they couldn't get out when they met and so -- the man was, he had to have it court settled, he was safety engineer and his occupation demanded that he prove that he was in the right.

Q. I won't ask you how it came out.

EXAMINATION OF MARILYN BRONKEN

BY THE COURT

Q. Marilyn Bronken?

A. Yes.

Q. Where do you live?

A. Fargo.

Q. How long have you lived here?

A. I have been in the Fargo-Moorhead area for 32 years.

Q. What is your occupation?

A. I'm a medical technologist.

Q. Where are you employed?

A. I'm laboratory supervisor in the Fargo Clinic

laboratory.

Q. How long have you been with Fargo Clinic?

A. Thirty-one years.

Q. Are you married?

A. Yes.

Q. What is your husband's occupation?

A. He's unemployed. The company he worked for went out of business.

Q. What company was he employed with?

A. Smith, Follett & Crowl.

Q. That's a drygoods?

A. Yes.

Q. What is your education?

A. College graduate.

Q. And your husband's education?

A. Business college graduate.

Q. Do you have children?

A. No.

Q. Any members of your household presently living with you employed out of the home?

A. No.

Q. Any other members of your household -- had your husband had any other occupation other than his former occupation with Smith, Follett & Crowl?

A. In a plumbing firm, general office work, and he was in

the Navy for four years.

Q. And have you had any other employment other than your --

A. No.

Q. -- present employment?

Have you served on a jury before?

A. No.

EXAMINATION OF ROBERT MUNSEY

BY THE COURT

Q. Robert Munsey, where do you live?

A. Jamestown, North Dakota.

Q. How long have you lived in Jamestown?

A. Thirty-five years.

Q. What is your occupation?

A. I operate a motel. Manage a motel.

Q. How long have you been manager of a motel?

A. About nine months.

Q. What was your occupation prior to that?

A. Owner and operator of a restaurant, Jamestown.

Q. Restaurant?

A. Yes.

Q. How long were you in the restaurant business?

A. About 30 years, 34 years.

Q. Are you married?

A. Divorced.

Q. And when you were married, was your wife employed out

of the home?

A. Yes.

Q. What was the nature of her employment?

A. She worked as a clerk at the Glascoe Hotel.

Q. You have children?

A. Nine.

Q. Do any of them live with you?

A. No.

Q. Is there any other member of your household presently living with you that is employed out of the home?

A. No.

Q. What is your education?

A. Two years of college.

Q. Have you served on a jury before?

A. No, sir.

EXAMINATION OF BETH BREWER

BY THE COURT

Q. Beth Brewer, where do you live?

A. West Fargo.

Q. How long have you lived at West Fargo?

A. Eighteen years.

Q. What is your occupation?

A. I'm a distribution clerk for the Fargo post office.

Q. How long have you been employed in the postal service?

A. Eight months.

Q. What was your employment prior to your postal service?
A. I was a school bus driver.
Q. And how long did you, you were in that capacity? Were you an employee of the school district contractor with the school district?
A. I was an employee.
Q. How long were you employed with the school direct?
A. Five years.
Q. What other occupations, if any, have you had?
A. A waitress and a store clerk.
Q. Are you married?
A. Yes.
Q. What is your husband's occupation?
A. He's a laborer at Held Beef in West Fargo.
Q. Has he had any other occupation or employment to your knowledge?
A. Yes.
Q. What is that?
A. He was a hired hand on his uncle's farm and he's had miscellaneous jobs around town.
Q. Do you have children?
A. One.
Q. And is that person at home?
A. Yes.
Q. Is that person employed out of the home?

A. Nope.

Q. Are there any other members of your household presently living with you that are employed out of the home?

A. No.

Q. What is your education?

A. Twelve years.

Q. And your husband's education?

A. Twelve years.

Q. Have you served on a jury before?

A. Nope.

EXAMINATION OF MARK HELFTER

BY THE COURT

Q. Mark Helfter, where do you live?

A. Fargo.

Q. How long have you lived at Fargo?

A. Sixteen years.

Q. What is your occupation?

A. I do appliance repairs.

Q. And where are you employed?

A. Right now I'm unemployed. I worked at Center Appliance, TV and appliance for the past 16 years.

Q. What other occupations have you had?

A. I serve with National Guard.

Q. Are you married?

A. Yeah.

Q. Is your wife employed out of the home?

A. Yes. She works at the language department at NDSU on work study program.

Q. And how long has she been on the faculty of NDSU?

A. Not faculty. She is a student. Full-time student and --

Q. Works part-time?

A. She is a four year college and she is on work study program.

Q. Has she had any other employment outside of the home to your knowledge?

A. Yes. She has been, she washed dishes and she was a nurse's aide.

Q. Do you have children?

A. Three.

Q. Any of them at home?

A. Two, the younger two.

Q. Are they employed outside of the home?

A. No.

Q. Are there any other individuals, members of your household who are employed out of the home?

A. No.

Q. What is your education?

A. High school plus two years.

Q. Your wife's education?

A. She is in fourth year of college.

Q. I guess I knew that from your prior answer.
A. Okay.
Q. Have you served on a jury before?
A. Yes, twice.
Q. Where did you serve?
A. Here.
Q. In the Court?
A. In the Court.
Q. How long ago?
A. I'm trying to remember. About ten or 11 years. I remember the two cases.
Q. Was I here at that time?
A. Yes. You want to know which cases?
Q. No.
A. Okay.
Q. Yes, I would like to know the nature of the case, not necessarily the names of the case.
A. Okay. One was fuel dealer having a disagreement with major oil company, having to do with supplying him fuel and a difference of opinion between whether he was supposed to have a wholesaler or retail service contract
Q. Was that a Jamestown case?
A. Right.
Q. What other case?
A. The other one had to do with some people that were at

friend's house and had a snowmobile accident and she had her leg damaged and it was a permanent damage on her leg.

Q. That was a case that arose in the legal area here?

A. Yes.

Q. Were both what we call civil cases?

A. Right.

EXAMINATION OF GLORIA STORRUSTEN

BY THE COURT

Q. Gloria Storrusten, where do you live?

A. West Fargo.

Q. How long have you lived here?

A. Thirteen years.

Q. What is your occupation?

A. I work at General Nutrition.

Q. And what's the nature of your employment at General Nutrition?

A. Packager.

Q. What other occupations, if any, have you had?

A. Housewife.

Q. Housewife. What's your husband's occupation?

A. He's an engineer at the Fargo Holiday Inn.

Q. How long has he been so employed?

A. Since they opened up, 14 years or 13 years.

Q. What other occupations, if any, has he had to your knowledge?

A. Superintendent of carpentry.
Q. Do you have children?
A. Five.
Q. Are any of them presently living at home?
A. Three of them.
Q. Are those three employed out of the home at all?
A. Two are working part time.
Q. Where?
A. One at the Holiday Inn and one at Hornbachers.
Q. What is your education?
A. Twelve.
Q. Your husband's education?
A. Twelve years.
Q. Any other members of your household presently living with you that are employed out of the home other than you, your husband and your children?
A. No.
Q. Have you served on a jury before?
A. No.

EXAMINATIO OF DONNA KREIE

BY THE COURT

Q. Donna Kreie?
A. Kreie.
Q. Where do you live?
A. Fargo.

Q. How long have you lived here?
A. Twenty-one years.
Q. What is your occupation?
A. I'm a registered nurse.
Q. Where are you presently employed?
A. St. Luke's Hospital.
Q. How long have you been there?
A. Little over a year.
Q. And what employment did you have prior to your St. Luke's employment?
A. When I was away to school, I did office type work, typing.
Q. Are you married?
A. Yes.
Q. What is your husband's occupation?
A. He works for Burlington Northern Railroad.
Q. How long has he been with BN?
A. Nine years.
Q. What's the nature of his work with the railroad?
A. Brakeman.
Q. Has he to your knowledge had any other occupation?
A. No, sir.
Q. Do you have children?
A. No.
Q. Have you served on a jury before?

A. No.

Q. Any other member of your household presently living with you that is employed out of the home?

A. No, sir.

THE COURT: I'm going to ask some general questions of the 14 of you in the same effect as the 14 preceded you, and I'm going to ask, were there any of you who were not in the courtroom or did not hear me when I named off the names of the defendants and their lawyers in the case? Any of you that didn't hear that?

Record may show no response.

Are there any of you then who are acquainted with any of the 11 defendants or their lawyers in this case?

Record may show no response.

Any of you desire that I reread those names? Any of you have any question who I'm talking about?

Record may show no response.

Are any of you acquainted with any of the attorneys in the office of the United States Attorney, that would be the United States Attorney, First Assistant United States Attorney who are not in the courtroom and the three Assistant United States Attorneys who are in the courtroom. Any of you acquainted with any of those? Yes.

BRENDA GRINDBERG: Gary Annear.

EXAMINATION OF BRENDA GRINDBERG

BY THE COURT

Q. What is the nature of your acquaintance?

A. I went the high school with his daughter.

Q. I suppose you have been in his home?

A. Yes.

Q. Numerous times?

A. Yes.

Q. Is there anything about this social relationship that you had with the Annear family, specifically the daughter, that would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. When you nod your head this way, what does that mean?

A. No.

Q. You know what I mean when I speak about the duties and responsibilities of a fair and impartial juror?

A. Yes.

Q. Would you be able to set aside and disregard, if you were selected as a juror in the case, would you be able to set aside and disregard the fact that Mr. Annear's daughter was a friend of yours?

A. Yes.

Q. And if you found that the United States had failed to prove the charges it has made against any one of these

defendants or all of the defendants, would you have any difficulty returning a verdict of not guilty?

A. No.

Q. And if you found that the United States had proved the charges against any of these defendants or all of the defendants, would you have any difficulty returning a verdict of guilty as against the individual that you found that the United States had proved its charges?

A. No.

Q. Did you understand my question?

A. No.

Q. I didn't think so. It was worded rather clumsily. What I have been saying is that throughout these proceedings is that the jurors who are selected as jurors in the case must render a verdict based solely on the evidence which is presented in the courtroom during this trial. I have also said that it is the duty and responsibility of each juror who is selected as a juror in the case to consider the case against each of the defendants separate and apart from the rest of the defendants. The jury must consider all the evidence that has been presented, that will be presented in the case and must apply that evidence against the one or more or in favor of one or more of the Defendants or all of them, depending upon what you determine, and the jury, the jury will have to be, is required, constitutionally required to be

fair and impartial and render, as I stated, render a verdict bearing in mind that it is the burden of the United States to prove the charges which it has made beyond a reasonable doubt and the jury must consider to each individual defendant whether the charges have been proved beyond a reasonable doubt. And if the jury should find that as against one or more of the defendants the United States has proved the charges beyond a reasonable doubt, it would be the duty of the jury to return a verdict of guilty against that defendant or whichever of the defendants they found the United States had proven the charges. If the jury should determine that it had not proved the charges against one or more of these defendants beyond a reasonable doubt, it would be the duty of the jury to return a verdict of not guilty against the defendant or defendants that it found the United States had failed to prove the charges. In making the determination as to whether or not the United States had proved the charges, the jury must, as I stated, be impartial, must listen to the evidence, must base it on the evidence and the law, and then my question was in making that, if you were selected as a juror in the case, in making that determination, if you found the United States had proved the case against a particular defendant beyond a reasonable doubt, it would be your duty to return a verdict of acquittal disregarding and setting aside the fact that you were a friend of the First Assistant United

States Attorney and not allow that to interfere with your decision in any way. On the other hand, if you had decided that the United States had proved the charge against a defendant or the defendants it would be your duty to return a verdict of guilty against that defendant or defendants, and again setting aside and disregard the fact that you were a friend of the Annear family. And you must, in other words, not give any consideration at all as an impartial juror to your friendship with the Annear family and must render a verdict solely on the evidence and the law presented in the courtroom during this trial. Would you be able to do that? Would you be able to set aside and disregard the fact that you are a friend of the Annear family?

A. Yes.

Q. And I gave you that long explanation not only for the benefit of you but for the benefit of all the prospective jurors in the case because, as I have indicated, constitutionally requires that somebody charged with a criminal offense have the case heard by a fair and impartial jury, so that is why we lay so much stress on that because the conviction or acquittal must be based only on the evidence and law presented in the courtroom during the trial.

EXAMINATION OF BETH BREWER

BY THE COURT

Q. You are acquainted with one of the Assistant United

States Attorneys or the --

A. Gary Annear's wife.

Q. Mr. Annear?

A. Yes.

Q. And you are Beth Brewer?

A. Yes.

Q. What is the nature of your acquaintanceship with Mr. Annear?

A. Three years ago I took ceramics from his wife.

Q. And through that course you became acquainted with both Mr. and Mrs. Annear?

A. No. Just Mrs. Annear.

Q. Just Mrs. Annear. So you are acquainted with Mrs. Annear?

A. Yes.

Q. Would your acquaintanceship with Mrs. Annear in any way affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, sir.

Q. You understand based on what I earlier said and what I said again now what the duties and responsibilities of a fair and impartial juror would be?

A. Yes, sir.

Q. And is?

A. Yes.

Q. And you know of any reason why your acquaintanceship with Mrs. Annear would in any way interfere with your ability to be a fair and impartial juror?

A. No, sir.

THE COURT: Anybody else know any of the attorneys in the United States Attorney's office?

Record may show no further response.

Do any of you know any of the attorneys representing the Defendants in the case?

Record may show no response.

I named off a whole list of possible witnesses, possible maybe would be more accurate to say potential witnesses in the case, in this case. Are any of you acquainted with any of those persons that were named when the prior group was in here when questioning the prior group of 14? Any of you know any of those witnesses? Any of you didn't hear me name those witnesses?

Record may show no response to either of those questions.

Are any have you related to or any of you have close personal friends who are law enforcement officials?

Now you have answered my question. You have answered the question with reference to Mr. Annear.

Now do any of you -- yes, Mr. Obenauer.

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

A. We have a CB club in Jamestown and we go out on crime watch and converse with police department but that's more or less the extent of it.

Q. So in effect you are in law enforcement yourself?

A. In a way, yes.

Q. Would be a fair statement?

A. On the crime watch.

Q. What you call --

A. We go in each individual unit, two per unit and we patrol the Jamestown, different areas in Jamestown.

Q. And in doing that work, that's voluntary work on your part?

A. Yes.

Q. How long have you been active in that activity?

A. About five years.

Q. And in doing that work, you work quite closely then with the Jamestown police department I would assume?

A. We report to the police department.

Q. What's the nature of your activity? What do you do?

A. Prevent vandalism, crime.

Q. If you see somebody committing vandalism, what do you do?

A. Report it. Each of us has a CB in a unit and report it to the police department. They also have a CB at the

department.

Q. You do not try to apprehend anybody yourself?

A. No, sir.

Q. You have no official police authority?

A. Right.

Q. But you do work in cooperation with the police department and assist in law enforcement, would that be a fair statement?

A. Yes.

Q. Would this activity on your part in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, sir.

Q. Do you know what I mean when I speak of the duties and responsibilities of a fair and impartial juror?

A. Yes, I do.

Q. If you after hearing all the evidence in the case concluded that the United States, let's say, had not proved beyond a reasonable doubt the charges it has made against one or more of the defendants, would the fact that you are in the crime watch in any way interfere with your ability to do your duty as a fair and impartial juror and return a verdict of not guilty?

A. No, sir.

Q. And in determining whether or not the United States

had proved its charges, would you be influenced in any way by the fact you have been active in crime watch and could have cooperated with the police?

A. No, sir.

THE COURT: Any of the other of the 14 of you that have close personal friends or relatives in law enforcement?

BRENDA GRINDBERG: Lieutenant Harvey Gruel.

EXAMINATION OF BRENDA GRINDBERG

BY THE COURT

Q. I beg your pardon?

A. Lieutenant Harvey Gruel.

Q. Who's he?

A. Lieutenant for the Fargo police.

Q. Fargo police department?

A. Yeah.

Q. What's the nature of your acquaintanceship with the lieutenant?

A. My girlfriend's father.

Q. How often do you actually see the police lieutenant

A. Couple times a month probably.

Q. Visiting in the home?

A. Yes.

Q. You ever discuss law enforcement with him?

A. No.

Q. Do you and his daughter ever discuss law enforcement?
A. No.
Q. I won't ask you what you do discuss.
Is there anything about this relationship which would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. No.
Q. Could you, I have asked you that question before. Could you render a verdict based solely on the evidence and the evidence presented in the course of the trial and set aside the fact that your girlfriend's father is a police lieutenant, you set aside and be uninfluenced in any way by that?
A. Yes.
THE COURT: Anybody else have close personal friends or relatives who are in law enforcement?
Record may show no further response.
Any of you or any member of your family ever been in law enforcement?
MARILYN BRONKEN: My brother was a municipal judge.

EXAMINATION OF MARILYN BRONKEN

BY THE COURT

Q. Your brother is a municipal judge?
A. Six years.

Q. Where was that?
A. Tennessee.
Q. Tennessee?
A. Yes.
Q. How long ago was that?
A. About 15 years ago.
Q. Were you living -- where were you living at that time?
A. Living in North Dakota.
Q. So you were not very close to him when he was a municipal judge?
A. No.
Q. He ever talk to you about his work as a municipal judge?
A. I don't recall talking about it. I don't think so.
Q. Of course, a municipal judge would have the same responsibility of all judges and that is, have the same responsibility as the jurors to be fair and impartial. Would the fact that you have a brother who was a municipal judge in any way affect your ability to be a fair and impartial juror?
A. No, sir.

THE COURT: Anybody else have any close personal relatives or friends who are in law enforcement, have been in law enforcement?

Record may show no further response.

Have any of you or any member of your family to

your knowledge ever been the victim of a crime?

MARILYN BRONKEN: Our house was burglarized once two years ago.

EXAMINATION OF MARILYN BRONKEN

BY THE COURT

Q. How long ago?

A. Two years.

Q. Was it damaged?

A. Two locks were broken and one window.

Q. Was property taken?

A. No.

Q. Just somebody entered your house unlawfully?

A. And opened drawers and cupboards and threw things in disarray but no damage other than that.

Q. Did you report it to the police?

A. Yes.

Q. Would this experience that you have had in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

THE COURT: Anybody else? Yes.

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

A. Obenauer.

Q. Problem with your name.

A. About a year and a half ago my daughter was involved in a traffic accident. She got a DWI.

Q. She was then not the victim of a crime, she was charged with --

A. Yes.

Q. -- with the offense of driving under the influence?

A. Uh-huh.

Q. Would this in any way enter in with your ability to be a fair and impartial juror

A. No.

Q. How was this disposed of?

A. She had to go through the training and the fine and license suspension.

Q. Then my question, you have answered the next question I was going to ask. My question is have you or any member of your family ever been the victim of a crime?

A. No.

THE COURT: Anybody else have an answer to that question, have you or any member of your family ever been the victim of a crime?

BETH BREWER:. Two years ago somebody broke into our garage and stole any husband's motorcycle.

EXAMINATION OF BETH BREWER

BY THE COURT

Q. You're Beth Brewer?

A. Yes.
Q. Was the property ever recovered?
A. No, sir.
Q. Was it reported?
A. Yes, sir.
Q. Would this experience in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. No, sir.

THE COURT: Anybody else ever been the victim of a crime?

Record may show no further response.

Have any of you ever participated in a criminal case as a complainant to, as a witness for either the prosecution or the defense or any other capacity other than as a juror? I have asked you already about your jury service. Any of you ever participated in a criminal case as a complainant, as a witness for either side or in any other capacity other than as a juror?

Record may show no response.

Have any of you ever been, or member of your family to your knowledge ever been arrested, indicted or accused of a crime?

Mr. Obenauer you have answered that question

Mr. Gunderson?

EXAMINATION OF NOEL GUNDERSON

BY THE COURT

A. I have a nephew who was convicted of an assault charge.

Q. What was the nature of the alleged assault with which he was convicted?

A. He thought someone had stolen a wallet from him and he chased him with his car and fired a shotgun at him.

Q. Were there any injuries resulted from that?

A. No injuries.

Q. Were there any consequences of that?

A. He served a jail sentence.

Q. Would this experience that this relative of yours had in any way interfere with your ability to be a fair and impartial juror in the case?

A. No.

THE COURT: Somebody else raised their hand. Mr. Munsey.

EXAMINATION OF ROBERT MUNSEY

BY THE COURT

A. I had a, I had a son that was in the court about six years ago.

Q. Speak up a little louder so everybody can hear you.

A. In the court on a check charge, a son.

Q. In the court?

A. In the court.

Q. In the Court. Was it a government check?
A. Yes.
Q. And what was, how was this person related to you?
A. My son.
Q. Your son. I don't remember the case, but maybe I didn't handle it.
A. You handled it.
Q. I did. Would this experience which your son had in this court in any way interfere with your ability as a father to be a fair and impartial juror if you were selected as a juror in the case?
A. No.

THE COURT: Anybody else have an answer to that question? Any of you, any member of your family ever been arrested, indicted or accused of a crime?

Record may show no further response.

Has any member of your family ever lost his life, his or her life as a result of a motor vehicle accident? Mr. Munsey.

EXAMINATION OF ROBERT MUNSEY

BY THE COURT

A. I had a brother.
Q. Your brother was in a motor vehicle accident?
A. Motor vehicle accident about two years ago.
Q. And he died as a result of it?

A. Yes, sir.

THE COURT: Do any of you know the alleged victim in the case, Eddie Peltier, or his family?

Record may show no response.

If you were selected as a juror to hear this case, would any of you be likely to believe the statements of a law enforcement official more than the statements of someone who is not in law enforcement work?

Record may show no response.

Have any of you ever lived on or near an indian reservation? Mr. Gunderson.

EXAMINATION OF NOEL GUNDERSON

BY THE COURT

A. I lived in Detroit Lakes which would be on the White Earth Indian Reservation.

Q. How far is Detroit Lakes from the indian reservation?

A. Several miles.

Q. How long did you live in Detroit Lakes?

A. About 15 years.

Q. Is there anything about your living in a community that's fairly adjacent, not adjacent but very close to an indian reservation that would in any way affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No. No.

Q. Have you had any transactions or any contacts or dealings with indians which would in any way affect your ability one way or the other to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. Have you had any substantial business or personal dealings with indians?

A. Well, we went to school together.

Q. You got to know them pretty well going to school, did you not? This was throughout grade school and high school that you were in school?

A. Primarily high school.

Q. Primarily high school. Did you have friends among the indian, native American people?

A. Yes.

Q. If you were selected as a juror in this case, would your contact and friendship with the indian people in any way either cause you to be prejudice against or prejudice in favor of the indians?

A. No prejudice.

Q. No prejudice difficulties at all. And you could be objective and render a verdict based on the evidence and the law presented in the courtroom during this trial?

A. Yes.

THE COURT: Anybody else that has lived on or

near an indian reservation?

EXAMINATION OF MARILYN BRONKEN

BY THE COURT

A. I haven't lived near a reservation but my husband's cousin was married to an indian.

Q. Where did they live?

A. At Oklee, Minnesota.

Q. Oklee, Minnesota?

A. Oklee.

Q. I suppose that you have had some social relationships with --

A. Family gatherings.

Q. Family gatherings?

A. Several times a year.

Q. Is there anything about this interfamily relationship that would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. Would it cause you to be sympathetic, prejudice or in any way find either for or against the indian people if you were selected?

A. No, I don't believe so.

Q. And you could render a verdict based solely on the evidence and the law presented in the courtroom during this

trial?

A. Yes.

THE COURT: Anybody else had any significant or substantial contacts with the native American people? Yes.

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

A. Nine years ago I worked in the same building with an indian only in two different departments.

Q. Is there anything about that working relationship which would in any way interfere with your ability to be a fair and impartial juror if you were slected as a juror in the case?

A. No.

Q. How long did you work in proximity or within the same building with --

A. About a year and a half to two.

Q. Pardon?

A. About a year and a half to two.

Q. Year and a half to two.

THE COURT: Do any of you have any past or present dealings at all with indians, whom we sometimes refer to as native American, which would in any way make it difficult for you to be a fair and impartial juror? In other words, which might affect you either for or against the indians and might cause you to allow your feelings either for or against to

affect your ability to render a verdict based solely on the evidence and the law presented in the courtroom during this trial? Have any of you had any dealings with the indians that might in any way affect your ability to render, to be objective and render a verdict solely on the evidence and the law presented in the courtroom during this trial?

Record may show no response.

How many of you take a daily newspaper? How many of you take the Forum? Three, four, five, eight.

How many of you -- I don't know, that maybe probably covers everybody.

RUEBEN OBENAUER:. Jamestown Sun.

THE COURT: One Jamestown Sun and eight Forums. That's nine. And the other five do not take the daily newspaper, is that correct?

How many of you regularly watch local television news broadcasts? The five of you in the back row except for the gentlemen in the number one chair, first chair and now the front row. How many of you daily watch television news broadcasts? The front row, what we would refer to as eight, nine and ten, jurors eight, nine and ten. We number you one, two, three, four, five, six, seven and then eight, nine, ten, 11, 12, 13, 14. Jurors eight, nine and ten in the first row regularly watch local television news broadcasts.

How many of you regularly listen to radio news

broadcasts? One in the back row and four in the front row.

Then I will come to the very important question, two very important questions. Has anyone talked to you, any of you about this case prior to your coming in to court today? Anyone talked to any of you about this case prior to your coming into court? Yes. Mr. Behrens.

EXAMINATION OF DEITH BEHRENS

BY THE COURT

A. Right.

Q. What was the circumstances under which someone talked to you about this case?

A. Co-worker.

Q. How long ago did that take place?

A. Two days ago.

Q. Who initiated the conversation, you or the co-worker?

A. He did.

Q. Do you know why your co-worker may have talked to you about this case?

A. No, I don't, Your Honor.

Q. Where was the discussion held?

A. At work.

Q. At work?

A. Yes.

Q. What was the extent of the discussion. Not asking you what was said but what was the extent of the discussion?

A. How long was it you mean?
Q. Yes.
A. Maybe two minutes.
Q. Was there anything said to you at that time which would in any way influence your ability to be a fair and impartial juror in the case?
A. No, Your Honor.
Q. What was your co-worker's job assignment?
A. Basically the same job I have.
Q. That's the reason that you worked in proximity with him I suppose?
A. Right.
Q. If you were selected as a juror in this case, would what, would the conversation that you had with this co-worker in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. Absolutely not.
Q. And I gather from that statement that you would be able to and willing to disregard and set aside and give no attention at all to anything that may have been said by your co-worker with reference to this case?
A. No. I could form my own conclusion.
Q. Uninfluenced by what the co-worker may have said?
A. Absolutely.
THE COURT: Anyone else have an answer to that

question as to whether anyone talked to you about this case before coming into court? Yes, Mr. Gunderson.

EXAMINATION OF NOEL GUNDERSON

BY THE COURT

A. Yes. I just got, been mentioned in talking with co-workers.

Q. How many times has this been mentioned?

A. I can remember once and just primarily someone said, "have you read, did you read about it in the paper," and it was --

Q. What was your answer?

A. Yes.

Q. Did you discuss then what you had read?

A. Briefly.

Q. Would this discussion which you had in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. And you do understand that if you are selected as a juror, your duty to render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

Q. And you'd be willing, you would be willing and able to set side and disregard anything that you may have previously

heard or read or anything that maybe might have been said to you about the case?

A. Yes.

THE COURT: Next question, have any of you heard or read anything about the case, either from the news media or from any other source prior to your coming into court today? Let's see. There are three of you.

EXAMINATION OF KEITH BEHRENS

BY THE COURT

Q. Mr. Behrens, I assume the fact you didn't raise your hand, the only contact that you have had or the only thing that you've heard about the case was your co-worker?

A. That's correct.

Q. So you have not read or heard anything from the news media, is that correct?

A. Like I said, Your Honor, I like to form my own conclusion. I believe the news media tends to be biased.

Q. I guess my question was have you read or heard anything, have you read anything in the news media or heard anything over the news media, you obviously wouldn't be influenced by what the news media said and apparently you wouldn't be influenced even if you had read what the news media had given and put out?

A. Yes.

EXAMINATION OF DONNA KREIE

BY THE COURT

Q. And then I noticed that Donna Kreie, you have not heard or read anything about this case prior to coming into court today?

A. No, sir.

Q. You have not. What you're telling me, you have not heard or read anything about it?

A. That's correct.

Q. I reached that conclusion because you didn't raise your hand.

A. That's right.

EXAMINATION OF MARK HELFTER

BY THE COURT

Q. And, Mark Helfter, you have not heard or read anything about this case prior to your coming into court today?

A. I heard that there was an incident and that's all I really knew about it.

Q. Have you heard -- where did you hear that?

A. Either in the paper or on the radio. I can't remember.

Q. You had heard that, you don't remembered specifically?

A. Right.

EXAMINATION OF NOEL GUNDERSON

BY THE COURT

Q. Mr. Gunderson you indicated that you have read or heard something about this case prior to coming into court

today and I will ask you, have you read anything about this case before coming into court today?

A. Yes, I did.

Q. And where did you read it?

A. In the Forum.

Q. And how many times have you seen or read something in the Forum relating to this case?

A. At least once but not more than three times. I remember the article, it's been probably about two months ago, that was in the Forum.

Q. Was there anything about what you have heard or read that caused you to be particularly interested in the case?

A. Not particularly.

Q. Was there anything that you have read in any of those articles which would in any way influence your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. And along with that question, as a part of the same question, would you if you were selected as a juror in the case, assuming you did remember something that you have read or heard, would you be willing and able to set it aside and disregard it and return a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.
Q. Did anything that you have read or heard about this case cause you to form an opinion in the case?
A. No.

EXAMINATION OF DEBORAH HAGEN

BY THE COURT

Q. Deborah Hagen, you raised your hand?
A. Uh-huh.

THE COURT: By the way, before I leave you, Mr. Gunderson, have you heard anything, have you heard any news reports on the radio or television relating to this?

MR. GUNDERSON: I remember once walking by the television and there was just a little excerpt on about, I think there was a hearing or something in Grand Forks and just, this is on the television, but I didn't stop to watch it.

THE COURT: You did not watch or listen to it?

MR. GUNDERSON: No.

Q. Deborah Hagen, have you read news articles relating to this case?
A. Yes, I did.
Q. How many have you read?
A. I remember one, I may have read two. When it happened.
Q. You may have read one when it happened, is that what you're saying?

A. Yes.
Q. You remember specifically having read one article?
A. Yes.
Q. When was that?
A. At the time it happened.
Q. At the time it happened?
A. Yes.
Q. You remember having read more than one article?
A. Not, no.
Q. Have you heard any news media reports over television or radio relating this case?
A. Yes.
Q. How many times have you heard, to the best of your estimate, how many times, give me your best estimate as to how many times you have heard or read, I mean, heard radio or television news reports relating to this case?
A. I remember hearing it twice.
Q. Twice?
A. Uh-huh.
Q. Has anything that you have heard or read about this case caused you to form an opinion in the case?
A. No.
Q. If you were selected as a juror in the case, would you be willing and able to disregard and set aside anything that you may have heard or read about this case prior to coming

into court and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

Q. Did anything that you heard or read about the case cause you to take a particular interest in the case?

A. Well, I originally lived in --

Q. I beg your pardon?

A. I originally come from Wales, North Dakota which is close to Devils Lake, in the area of Devils Lake.

Q. Because of the proximity to your former home?

A. It's 75 miles. But we did a lot of shopping there and had gone there a lot.

Q. Now would that interest by reason of your prior living in that general area in any way affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No.

Q. And based on the statements that I have made in court many times over today, you understand what the duties and responsibilities of a fair and impartial juror are?

A. Yes.

EXAMINATION OF BRENDA GRINDBERG

BY THE COURT

Q. Brenda Grindberg, have you read or heard something about this case before coming into court?

A. Yes. I read an article about a couple months ago.
Q. You read an article about two months ago?
A. Uh-huh.
Q. Have you read an article since then?
A. No. I remember seeing one yesterday in the Forum but I didn't read it.
Q. You remember seeing an article?
A. A headline.
Q. The headlines on an article but you did not read it?
A. No.
Q. Have you heard any radio or television reports of this case?
A. No, I haven't.
Q. Is there anything about the article that you read a couple months ago which would in any way interfere with your ability to be a fair and impartial juror in the case?
A. No, it wouldn't.
Q. Was there anything about that article that caused you to form an opinion in the case?
A. No, there wasn't.

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

Q. Rueben Obenauer, you have read or heard something about this case prior to your coming into court today, is that right?

A. It's been quite a while ago. An article in the newspaper and couple TV reports in the evening news.
Q. Now the article in the newspaper then was in the Jamestown Sun?
A. Right.
Q. And how long ago was that?
A. Couple months at least.
Q. How many articles have you read?
A. Just that one.
Q. Just that one. And how many newspaper or how many television or radio reports have you heard relating to this case?
A. Oh, maybe three, possibly four, whatever, evening news.
Q. You remember anything specifically that you have read or heard about this case?
A. Just the case.
Q. Is there anything about what you have heard or read which would in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?
A. No, sir.
Q. Would you, if you were selected as a juror in the case, be willing and able to set side and disregard anything that you have previously heard or read about the case and return a verdict based solely on the evidence and the law presented in

the courtroom during this trial?

A. Yes, sir.

EXAMINATION OF MARY MARKLEY

BY THE COURT

Q. Mary Markley, have you, you apparently have heard or read something about this case prior to your coming into court?

A. Yes. My contact has been with TV. I remember a few months ago being something on regarding it.

Q. You have not read anything in the newspaper relating to this case?

A. No, sir.

Q. And how many radio or TV accounts, news accounts have you heard?

A. One, maybe two, can't recall.

Q. You remember specifically what you heard?

A. No.

Q. Is there anything about what you heard on radio or TV which would in any way interfere with your ability at this time to be a fair and impartial juror if you were selected as a juror in the case?

A. No, sir.

Q. And if you should recall something that you had previously heard or read, would you be willing and able to set that aside and disregard it and not allow it to influence

you in any way in your being, in your service as a juror in the case?

A. Yes, I would.

Q. And would you return a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, I would.

EXAMINATION OF MARK SHERVEN

BY THE COURT

Q. Mark Sherven, you apparently have heard or read something about this case before coming into court?

A. Saw it on the 10:00 news one night.

Q. One night?

A. Yes. The night, about the time it happened or very close to that. And I didn't take any --

Q. About the time that it was alleged, about the time, were you say about the time it happened?

A. Yeah.

Q. I think the evidence will show that this incident which is alleged to have taken place will show that it was alleged to have taken place on August 27, 1983. Now when you say about the time it happened, are you referring to about that time?

A. Yes.

Q. There was some news reports that referred to it in the

latter part of 1985?

A. Yes. In '85. I could be wrong.

Q. Now my comment as to what the evidence will show, that is my understanding, but the jury must go on the basis of what, make their determination. But in any event sometime the latter part of 1985 you heard something?

A. I heard something in regards to it. But I couldn't remember for sure, no.

Q. You don't remember what it was you heard?

A. No.

Q. Except you know it related to this case, is that what you're telling me?

A. I think it was.

Q. You think it related to this case. Would that in any way interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, sir.

Q. And if you are selected as a juror in the case, would you rendered a verdict, would you be willing to and would you be able to render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, sir.

EXAMINATION OF GLORIA STORRUSTEN

BY THE COURT

Q. Sometimes I can't read my own writing. But, anyhow, I

didn't want to mispronounce your name. Gloria Storrusten. Is that pronounced correctly?

A. Right.

Q. Apparently you have heard or read something about this case prior to your coming into court today?

A. Yeah. Sunday Forum.

Q. This past Sunday, today's Monday, yesterday's Forum. Is that the only time you have read or heard anything about this case prior to coming into court?

A. Yeah.

Q. Have you heard any newspaper, I mean, any radio or television reports relating to this case?

A. No.

Q. Have you seen any prior newspaper articles relating to this case?

A. No.

Q. If you were selected as a juror in the case, could you set aside and disregard anything that you may have read in yesterday's Forum relating to this case?

A. Yes.

Q. Would you be willing to do that?

A. Yes.

Q. And would you be able to do that?

A. Yes.

Q. Is there anything about, which you read about the case

that would in any way affect your ability to be a fair and impartial juror?

A. No.

Q. And you understand what I mean when I talk about the requirements of a fair and impartial juror?

A. Yes.

EXAMINATION OF BETH BREWER

BY THE COURT

Q. Beth Brewer, you have read or heard something about this case before coming into court?

A. Yes, sir.

Q. And what is it that you, have you read any newspaper articles relating to this case?

A. No, sir.

Q. That means then that you have heard some radio or television reports relating to the case?

A. Yes, sir.

Q. How long ago?

A. I don't remember.

Q. Recently?

A. No.

Q. So relatively speaking, it was not recently?

A. No.

Q. Do you remember what you may have heard?

A. Something about a hearing.

Q. If, would anything that you have heard on the news relating to this case in any way interfere with your ability to be a fair and impartial juror?
A. No, sir.
Q. And if you should be selected as a juror in this case and if you should remember something about something that you had heard on the radio or television relating to this case, would you be willing and able to set aside and disregard anything that you had previously heard and render a verdict based solely on that which is presented in the courtroom during this trial?
A. Yes.

THE COURT: Gloria Storrusten, I neglected to ask you, would anything that you did, did anything that you read about this case in the newspaper yesterday cause you to form an opinion in the case?

GLORIA STORRUSTEN: No.

EXAMINATION OF ROBERT MUNSEY

BY THE COURT

Q. Robert Munsey, you apparently have read something about this case prior to your coming in or heard something?
A. The Fargo Forum.
Q. Fargo Forum?
A. Article yesterday.
Q. Yesterday's article?

A. yes.

Q. Have you read any prior articles in the Fargo Forum relating to this case?

A. No.

Q. Only the one yesterday?

A. Only the one yesterday.

Q. Did that cause you to form an opinion in the case?

A. No.

Q. I think your answer was no. You didn't say it very loudly.

A. No.

Q. If you are selected as a juror in the case, would you be able to set side and disregard what you have read in the Fargo Forum yesterday and render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes, sir.

Q. And would what you read in the Forum yesterday in any way interfere with, in your opinion interfere with your ability to be a fair and impartial juror if you were selected as a juror in the case?

A. No, sir.

EXAMINATION OF MARILYN BRONKEN

BY THE COURT

Q. Marilyn Bronken, you have heard or read something

about this case prior to your coming into court?
A. Yes. I have read the articles in the Fargo Forum.
Q. How many?
A. At least two.
Q. You say at least two. Is it possible you may have read more than two?
A. Or three.
Q. Two or three?
A. Yes.
Q. Is there anything that you read in the two or three articles that caused you to be particularly interested in the case?
A. No, sir.
Q. Is there anything that you read in the two or three articles that caused you to form an opinion in the case?
A. No, I don't believe so.
Q. Do you have some doubt about it whether or not --
A. Some.
Q. That caused you to form an opinion?
A. Some.
Q. Would you if you were selected as a juror in the case be willing and able to set aside and disregard anything that you have previously heard or read about the case and render a verdict based solely on the evidence that is presented in the courtroom during this trial?

A. Yes. I believe I could.

Q. Is there any likelihood that what you have read or heard about this case prior to coming into trial, is there any likelihood that that may cause a bias in your, either for or against one side or the other?

A. No, sir.

Q. And you would, in thinking about it can you tell me in good conscience that you would not allow it to affect your ability to be a fair and impartial juror?

A. I would not allow it to affect my --

Q. You would render a verdict based solely on the evidence and the law presented in the courtroom during this trial?

A. Yes.

Q. Have you heard any reports relating to this case on television or radio?

A. Yes.

Q. How many?

A. At least twice.

Q. Twice?

A. Yes.

Q. Recently?

A. No. Not recently.

Q. And would you be willing and able to set side and disregard everything and anything that you may have heard or

read about this case prior to coming into court?

A. Yes.

Q. You think you'd be able to do that?

A. Yes, I do.

EXAMINATION OF EDWARD DUDEN

BY THE COURT

Q. Edward Duden, you have read or heard something about this case before coming into court?

A. I haven't read an article or anything on TV. But my wife, I had some.

Q. Your wife has said something to you?

A. Yes. She said --

Q. Don't tell me what she said. Let me ask the questions. Has she said anything to you about this case?

A. Just that this was probably going to be the case today.

Q. This relation to your having received a jury summons?

A. You bet.

Q. Did she say anything about the nature of the case?

A. No, she didn't. They thought I knew what it was and I said fine. I didn't know.

Q. You're telling me you have not read or heard anything about this case before coming into court.

A. No, I thought Peltier was on trial. I didn't know. You know, she keeps tracks of the other.

Q. Do you know of any reason if you were selected as a

juror in the case why you could not be a fair and impartial juror?

A. No.

THE COURT: Trying to make up my mind how I'm going to do this. Going to ask counsel to approach about bench.

(Whereupon, the following was had outside the hearing of the prospective jury.)

THE COURT: Ask Dennis, do you have any another questions you wish me to ask?

MR. FISHER: The general overall catchall question, the question that hasn't been asked.

THE COURT: Okay. I guess I overlooked that one again.

Start with you, Mr. Haga, do you have any other questions you'd like to have me request of this group?

MR. HAGA: No, I don't.

THE COURT: Mr. Daley.

MR. DALEY: I don't believe that the Court has asked on the alcohol questions, 24 through 27 and number 28 in the requested instructions.

THE COURT: You're right. Thank you.

MR. BOHLMAN: Nothing further.

THE COURT: Mr. Vogel.

MR. VOGEL: Judge, one question you asked the

other group is if the Government failed to establish its case beyond a reasonable doubt as instructed by the Court that the jurors would agree to bring in a verdict of acquittal.

THE COURT: I think I asked this group the same thing.

MR. HAGA: In a different context. related to their friendship with the law enforcement people.

THE COURT: Okay. Well, I'll ask a general question, but I'll ask both ways.

Mr. Sogard.

MR. SOGARD: I believe Mr. Daley already picked up on the alcohol.

THE COURT: Yes.

MR. SOGARD: There was one juror you didn't ask, if I can find it, the educational background. Juror number 32, Brenda Grindberg.

THE COURT: I didn't ask about the education?

MR. SOGARD: You moved on and didn't pick up on that one question.

THE COURT: Can happen. I'll ask it now.

MR. SOGARD: She went to high school with Mr. Annear's daughter. I think that's how we know about her education.

(Whereupon, the following was within the hearing of the jury.)

EXAMINATION OF BRENDA GRINDBERG

BY THE COURT

Q. Brenda Grindberg, I was told that I did not ask you as to your education.

A. High school.

Q. High school. Had I asked that question?

A. No.

THE COURT: I asked the other group questions relating to alcoholic beverages and I did not, I overlooked asking the 14 of you that question, those questions. Are there any, I'll, first question I'll ask, are there any of you who do not on occasion use alcoholic beverages?

EXAMINATION OF RUEBEN OBENAUER

BY THE COURT

Q. Mr. Obenauer, you do not at any time use alcoholic beverages?

A. Haven't for about 23 years.

Q. Did you drink prior to that?

A. Yes.

Q. Why did you quit?

A. Doctors's orders.

Q. Doctor's orders?

THE COURT: Anybody else that -- Mr. Duden.

EXAMINATION OF EDWARD DUDEN

BY THE COURT

A. I don't.

Q. Any reason why you don't?

A. Yeah. My dad was an alcoholic and left my mother so I didn't want to have much to do with it.

THE COURT: Anyone else that doesn't use alcoholic beverages on occasion? And I will ask Mr. Obenauer and Mr. Duden, would the fact that the evidence may indicate that there was some use of alcoholic beverages relating to this incident in any way affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

EDWARD DUDEN: Never.

RUEBEN OBENAUER: No, sir.

THE COURT: Your answers were the same, Mr. Obenauer?

Have any of you or any member of your family ever been treated for alcoholism? You have answered that question. I will address the question --

RUEBEN OBENAUER: I have a sister.

THE COURT: I beg your pardon?

RUEBEN OBENAUER: I have a sister that was an alcoholic.

THE COURT: Anybody else would have an answer to that question?

MARILYN BRONKEN: Have a cousin.

EXAMINATON OF MARILYN BRONKEN

BY THE COURT

Q. Who was an alcoholic?

A. Yes.

Q. Been treated?

A. Yes.

Q. Presently an alcoholic. I don't know much about alcoholism except that I have been told that once, if you become an alcoholic you never get over it except if you are going to, if you're an alcoholic if you want to be relieved of the problem you must abstain. Is this member of your family presently an alcoholic or an alcoholic who is in abstention?

A. Presently in abstention.

Q. Presently in abstention. But somebody who is afflicted with the disease of alcoholism?

A. Yes.

THE COURT: Anybody else that has any members of their family who have the disease of alcoholism?

Are there any of you who feel that it is morally wrong for a person to drink alcoholic beverages?

Record may show no response.

Are there any of you who feel that if there is evidence of alcohol consumption, excess of alcohol consumption in this case that that would in any way interfere

with your their ability to be a fair and impartial juror and render a verdict based solely on the evidence presented in the courtroom during this trial and unbiased by reason of evidence of alcoholism?

Record may show no response.

I may mention that if there is evidence of alcoholism, the Court might very well give an instruction relating to alcoholism. But that is the duty and responsibility of a fair and impartial juror to rendered a verdict based solely on the evidence that is presented in the courtroom and the law that is applicable to that evidence and to the charges as that law is given to the jury by the presiding judge of the court. So it is the duty of the jury, would be the duty of the jury to follow the law, even though they may disagree with the law, or it's the duty just as it is the duty of the jury to render a verdict based on the evidence even though they previously had some idea, notion or concept that was contrary to it. They must be able and willing to set aside any previous ideas, notions and beliefs they may have and render a verdict based solely on the law and the evidence presented in the courtroom during this trial.

This case involves a serious charge of murder. Does the subject matter of an allegation, involves an allegation of murder and does the subject matter of an allegation of a violent death, would it make it difficult for

any of you to be fair, to judge the evidence and the law fairly and impartially, render a verdict based solely on that evidence and the law?

Record may show no response.

Can any of you think of any reason that I may not have covered which might in any way affect your ability to be a fair and impartial juror if you were selected as a juror in the case?

The record may show no response.

Have any of you formed an opinion as to the guilt or the innocence of any of the defendants in the case?

Record may show no response.

As I have mentioned, the jury's responsibility is to hear all the evidence in the case, hear it with an open mind, hear it without any preconceived ideas, notions or beliefs about the case and render a verdict based solely on that evidence. And I've also told you that it is the burden of the United States to prove the charge it has made against these defendants beyond a reasonable doubt, and I have told you that you must consider the case against each, presented against each defendant individually. You must consider all the evidence in the case, but insofar as determining the guilt or innocence of the defendants, you must consider each defendant separately and you must give separate consideration as to whether or not the united states has proved the charges

it has made against a particular defendant and if you determine that the United States had failed to prove the charges it has made against a particular defendant, it is your duty to return a verdict of not guilty as against that defendant. If you determine that the United States has proved the charges beyond a reasonable doubt against a particular defendant, it is your duty as fair and impartial jurors to render a verdict of guilty as against that particular defendant. Now do any of you have any doubts about your ability to serve as a fair and impartial juror in that context?

Record may show no response.

There is one thing that I haven't mentioned and that is all of you have heard the charge made in the Indictment, and I told you that the Indictment is not evidence of guilt, it is simply a statement of the charges that have been made against these defendants and it is the way that the United States brings this case into court. And most of the discussion here has been against, as related to the alleged murder charge, but also remind you, and you have heard the reading of the Indictment that some of the defendants have been charged with additional charges. One of them is assault, alleged assault, and I think that one of them is charged with perjury and one of them is charged with what we call misprision, it would be covering up offense.

One of them is charged with witness tampering, one of them is charged with, another one is charged with perjury and misprision and, in any event, the only point I'm making is that the jury that is selected to hear the case is going to have to make a determination, an independent determination as to each of the defendants, make a determination as to the guilt or innocence of each of the defendants on each of the charges that have been made against each of the defendants, and in doing so must make that based on the evidence and the law presented in the courtroom during this trial. And to be a juror in the case, you must be willing and able to, as I have said so many times, render a verdict as to each of the defendants based on the evidence and the law, based on whether the United States has proved the charges it has made. If you find in some or all the case the United States has failed to prove the charges, then it's your duty to bring in a verdict of not guilty. If you find the United States in some of the case or all the case has proved the charges beyond a reasonable doubt, then it's your duty to bring in a verdict of guilty, and you must reach that verdict unbiased, and in fairness to both sides, based on the evidence and the law presented in the courtroom during this trial. You must set aside and disregard anything you may have heard outside of the trial courtroom. And now I'm going to excuse you for the evening until 10:30 tomorrow morning, the same as I

excused the other group of 14, and I'll give you the same admonishment I gave to them and that is that you must not discuss the case with anyone, among yourselves or with anybody else. If there should be any news reports relating to it, you must not read any such reports, and if there, you should inadvertently hear something come on the TV or radio, you should either turn the TV or radio off or leave the room and not listen to what is being said. It is your responsibility from this point on not to be influenced at all by anything that you may have heard or read outside of this courtroom because you are potential jurors. If you're not selected, then, of course, you are discharged from any further service on this case, and I expect we will make that determination tomorrow sometime. So the 14 of you are now, and the balance of the jurors who have been in the Court all day are now excused until 9:00 o'clock tomorrow morning, but these 14 are excused until 10:30 tomorrow morning. The rest of you must return to court by 9:00 o'clock tomorrow morning. So you may leave at this time and I will meet with the lawyers for a few moments after the jury, prospective members of the jury panel have left the courtroom.

(Whereupon, the following was had outside the presence of the prospective jury.)

THE COURT: Mr. Vogel, you are still standing. I presume you have something to say.

MR. VOGEL: I don't know what procedure Your Honor wishes to follow but I do wish at some point this afternoon to make a motion in limine with respect to the opening statements which I presume will probably begin starting tomorrow afternoon before we finish up the jury selection process.

THE COURT: What is your motion?

MR. VOGEL: Your Honor, the motion that I wish to make is that with respect to the prosecution opening statement, I would like the Court to order the prosecutor at that opening statement not to make any reference to rhetoric like code of silence or conspiracy of silence or similar rhetoric which has been utilized in the detention hearings, at least from what I have seen in the transcripts. This is language which is also repeated in the Fargo Forum articles which some of the prospective jurors I think alluded to. I don't think it's appropriate in opening statement to make reference to rhetoric like that because it's argumentative, and I want to bring that up at this time.

Second thing I'd like to bring up with reference to a motion in limine would be to order the prosecution not to make any reference to the defendants' previous criminal records. There is a motion in limine which, as I understand, now has been filed with the Court with respect to that. It's my recollection that none of the criminal defendants here have

any felony records but some of them do have tribal court records, and again the purpose of making my motion at this time would not be to contaminate the trial by making it clear, at least until there is evidence that arises that justifies, that those things not be allowed to come into the opening statements.

THE COURT: I would doubt that the United States would make any such motions. I don't know I have ever heard them make such motions in a criminal case. I mean, any such, not motions but comments. Certainly not relating to defendants' prior criminal record, if the defendant is not going to take the stand. And, of course, the Defendant takes the stand and has a prior criminal record, that prior criminal record may or may not be admissible, and the Court has never given a lot of weight to tribal records, tribal court records in its determination as to whether or not any reference should be made to those. I'm not making any advanced ruling, I'm going to ask for a response from the United States.

MR. ANDERSON: Your Honor, none of the things that Mr. Vogel has mentioned are going to be brought up in the government opening.

MR. THOMPSON: Your Honor --

THE COURT: Mr. Thompson.

MR. THOMPSON: I believe this Court has ordered

that defense counsel in the presentation of their opening statement may not engage in argument as such and may only describe what they anticipate that the evidence will show. I have been involved in one case with Mr. Fisher before and another case with the United States Attorney's office. It's been my experience a great deal of rhetoric has been used in opening statement by the Government and I just the Court admonishes -- an order was made concerning that defense counsel, I believe, if my memory serves me, this was also mentioned, although less explicitly, while the government counsel were present in open court. I would like it to the extent the government is not being, has not been required in open court to refrain from engaging in argument in the presentation of opening statement. I will motion the Court for an order directing it to conform to the same standards imposed upon the defense.

THE COURT: Of course, any standards imposed on the defendants relating to that are applicable to the United States, but I would ask that the United States has any response to make to Mr. Thompson's comments.

MR. ANDERSON: Your Honor, I suggest if any of the defense counsel have problems with the opening statement tomorrow, then they object at that time.

MR. THOMPSON: Obviously, Your Honor, at that point there is a potential for contamination of a panel that

we have laboriously selected today and partially tomorrow. That type of response is totally unsatisfactory. To the extent that the Government wishes to assure the Court there will be no opening argument on that --

THE COURT: Both sides are entitled to present, tell the jury the evidence that they expect to be presented and both sides are entitled to state their theory of the case and my comments relate to making argumentative presentation, which I do not favor, and particularly in the case where we have so many involved, I think would be time wasting and improper. Bolt sides should be quided accordingly.

MR. THOMPSON: Thank you, Your Honor.

MR. SOGARD: Your Honor, normally I'm the optomistic individual in the case. Mr. Vogel has made an optomistic observation which is that we will be completed in time tomorrow afternoon to probably do much more than, if it were to take place, allow the government to make opening statement, and I would like to raise to the Court my concern that I would object and request that the Court adopt a procedure so that we don't have a situation where the government would make an opening statement and we would close the day and there would be no defense statements until the next morning, and I may be premature but I want to raise the concern with the Court because I know normally the Court likes to keep to steady business hours and keep us moving

along. I do have a concern that I really would have very strong feelings about the fact that I think it would be unfair to split the arguments in a fashion in which we are going to be sending the jury home with only one presentation. I understand that because of the number of defense presentations we may not be able to include all of those in one day or afternoon.

THE COURT: I think that's a reasonable request. I will try to depending upon how the time works out, we may, I will try to meet that request. I will meet that request and may result in our staying here sometime little after 5:00. I don't know what that will do, probably develop some additional overtime.

MARSHAL WIGGLESWORTH: We were notified by the jail that they feed at the jail from the hospital at 5:00 o'clock and they are having trouble keeping the defendants' meals warm until they get back to the jail for supper.

THE COURT: That's been mentioned to me earlier by Mr. Vokes.

What are you telling me?

MARSHAL WIGGLESWORTH: If they stay late they are going to eat cold supper.

THE COURT: That isn't what I understand you to say. I understand you to say that they would, assume they would try to keep it warm, would they not?

MARSHAL WIGGLESWORTH: They are trying the best they can to keep it warm.

THE COURT: Well, we'll try to meet the problems as they arise.

MR. ZIMNEY: I don't want my client to have a cold supper. I want to get clarification on the motion in limine filed on behalf of Jesse Cavanaugh relative to tirbal court records. The reason I'm asking for the clarification, I don't want to find myself in the position where Jesse takes the stand and there is an attempt to introduce records, Court might rule against me at that point with the idea being that there are going to be a number of government witnesses that I may want to make the same inquiry about and I don't want the Court to say you asked that question of this witness and therefore you have waived your argument on tribal court records. I would like to get some clarification on that point sometime before the witnesses take the stand.

THE COURT: Well, I don't know the United States is willing to state what if any use they contemplate of tribal court records in the case.

MR. FISHER: Judge, we can't think of any use that we could make of tribal court records.

THE COURT: As I say, I can't, I have presided at a great many trials of criminal cases, I can't remember any cases where tribal court records have come into, have been

presented to the jury.

MR. ZIMNEY: My concern is this, Your Honor. I do not want to be placed in a position of the Court later on ruling that tribal court records, and specifically pointed out the types of court records I'm referring to for Jesse Cavanaugh, ruling that those could be introduced against Jesse Cavanaugh and I have waived my right then, or with that thought in mind waived any right to raise those same issues with some of the government witnesses. Or if I ask the government witnesses," have you been convicted of assault and battery or theft," something in tribal court that is the same type that Jesse Cavanaugh has allegedly, or has been convicted of, that I have somehow waived my right and therefore Jesse's records can go in. I'm not sure I made myself very clear.

THE COURT: You have now. You didn't at first. Either that or it's getting late in the day and I wasn't following.

MR. ZIMNEY: Late for me, too.

THE COURT: You're saying you want to use tribal court records for cross examination of --

MR. ZIMNEY: No. No. If I know that they are going to be allowed against Jesse, certainly I'm going to try to use them against the government witnesses.

THE COURT: I have indicated I'm not, I am not at

all favorable to an attempt to use tribal court records for impeachment.

On the other hand, I can't just flatly say because I don't know what, depends how things develop. But my concern is that I will not and certainly would not have waived. I wouldn't consider that you have waived any rights.

MR. ZIMNEY: Okay.

THE COURT: But I can't think of a case where we have ever allowed tribal court records to go before the jury.

MR. ZIMNEY: Then there is one other point.

THE COURT: I just think, if I may expand on that a little bit. I think there is too much possibility, whatever happened in tribal court may have taken place without due consideration for due process.

MR. ZIMNEY: I certainly agree with you, Your Honor, that's the purpose for my filling a motion.

THE COURT: That's why I have been sceptical of tribal court records.

MR. ZIMNEY: The other matter -- I'm not speaking on behalf of all the defendants, as least I have no authority to do that. But as far as potential awards that have been allegedly granted or given to some of the police officers who made investigations on this case, it seems to me would be highly prejudicial for the government to attempt to elicit any testimony have you been given any awards as a result of

your investigation on this case, and we would ask for a ruling to prevent government from doing that because we can object --

THE COURT: I find it very hard to find any relevancy in any awards that were handed out.

MR. ZIMNEY: I certainly do, too, but we want to prevent that.

THE COURT: I understand. I didn't know there was any such thing, any such possibility.

MR. FISHER: I know of no awards. Mr. Zimney may have information about awards. I know of none.

THE COURT: I don't think it would be admissible even if there had been some awards.

By the way, I would like to have counsel, if you have any questions, anything you want to present to the Court tomorrow morning relating to legal matters, going to have to be presented at 8:30. If you don't come in at 8:30 all of you better be available at 8:30 in case one side or the other has something to present here in the building because my practice is on the cases of this kind to get those matters out of the way before the jury is brought in and not interrupt the jury after they have come in.

MR. VOGEL: May I bring up one additional matter?

THE COURT: Isn't even dark yet.

MR. VOGEL: What's going to be the procedure with

respect to the use of peremtory challenges from a mechanical standpoint so we all know in advance how is this going to be?

THE COURT: As I think I may have indicated, or at least I had in mind if I didn't indicate it, the attorneys for the defendants, something that they should decide among themselves and if they are not able to agree on how peremtories are to be exercised, then they each get two. That's one reason why I allowed 22 peremtories. Now, then, as far as the procedure is concerned, I think Larry has worked out a procedure which he has shown to me.

MR. BOUCHEE: I would like to relate to you how many the government gets. The government gets two peremtories on each of their first two chances and one thereafter and the defendants will take two at a time. That's all that I have got.

THE COURT: Well, if you can't agree, I'll allow the defendants to exercise them alphabetically or by lot or however you want to do it.

MR. FRAASE: Let's go by lot because I'm in the middle.

THE COURT: You work that among yourselves if you're able to.

MR. VOGEL: I think we will be able to do that, Your Honor. I would ask we be given sometime after the jury has been qualified to get together and confer with our

clients so we'll have an adequate opportunity to decide who we want to strike.

THE COURT: That's a reasonable request. But the procedure that Mr. Bouchee has just mentioned I think will be the procedure. First, how many there will be first?

MR. BOUCHEE: The first time it will be the government and they will take two and then the defendants will then take two, the government will take two, the defendants will take two, and then from then on it will be the government taking one and the defendants taking two until the end, the government has taken, I believe, 13 and the defendants have taken 22.

MR. FRAASE: At the end who gets the last one?

MR. BOUCHEE: The defendants get the last two.

MR. FRAASE: Sounds good to me.

THE COURT: Larry has worked it out. If you don't like it, you take it up with him.

MR. SOGARD: I'll take the Court up on that. My calculation results in 12 instead of 13 but I'll figure that out with Larry.

(Court adjourned for the day.)

REPORTER'S CERTIFICATE

I, Douglas T. Ketcham, a general shorthand reporter, 1122 1/2 First Avenue North, Fargo, North Dakota, do hereby certify that the foregoing two hundred twenty-five (225) pages of typewritten material constitute a full, true and correct transcript of my original stenotype notes, as they purport to contain, of the transcript of proceedings reported by me at the time and place hereinbefore mentioned.

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Dated this 29th day of October, 1986.