

REPORTER'S RECORD

VOLUME OF VOLUMES
TRIAL COURT CAUSE NO. 19785-BH02

KELLY-MOORE PAINT COMPANY, INC.	:	IN THE DISTRICT COURT
	:	
Plaintiff	:	
	:	
VS.	:	BRAZORIA COUNTY, TEXAS
	:	
UNION CARBIDE CORPORATION, ET AL	:	
	:	
Defendants	:	23RD JUDICIAL DISTRICT

* * * * *

JURY VOIR DIRE

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On the 9th day of September, 2004, the following proceedings came on to be heard in the above-entitled and numbered cause before The Honorable J. Ray Gayle, III, sitting as Judge Presiding of the 23rd Judicial District Court, at the Brazoria County Courthouse, Angleton, Texas, and reported by machine shorthand.

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1 PROCEEDINGS

2 MR. LANIER: Comes now the plaintiffs, Mark
3 Lanier. Your Honor, the parties have conferred and agree that
4 the following should be excused under cause under the Court's
5 prior rulings as either working or retiring from Dow or having
6 direct stock ownership in Dow, either the individual themselves
7 or their spouse.

8 The numbers are as follows: Juror number 9,
9 Ms. Ruiz; juror number 21, Ms. Barnett; juror number 23,
10 Mr. Howard; juror number 52, Mr. Rowan --

11 MR. BICKS: 52 is Schroeder.

12 MR. LANIER: I'm sorry. Schroeder.
13 Ms. Schroeder.

14 THE COURT: 52, Schroeder.

15 MR. LANIER: Yes, sir, juror number 52,
16 Ms. Schroeder; juror number 62, Mr. Lesnau.

17 THE COURT: All right.

18 MR. LANIER: Juror 64, Mr. Taylor; juror --

19 MR. BICKS: 64, Judge, we're going to check on.

20 THE COURT: He was in my wedding. He knows all
21 about this case, anyway. Because when somebody said it was six
22 weeks, I saw him later and he said, "I think this is probably
23 that case that you've been on." I don't care if you take him
24 off.

25 MR. BICKS: 64, he's owned stock. He should

1 come off.

2 THE COURT: 64 worked for Dow. He doesn't work
3 now. He retired -- I mean, his wife retired from Dow.

4 MR. LANIER: He owns stock.

5 THE COURT: He owns stock. I could have told
6 you that.

7 MR. LANIER: Number 65, Ms. Taylor; number 66 --

8 MR. BICKS: Let's check 66, Mark. Let us check
9 that.

10 MR. LANIER: Okay. I'll check 66. Number 73,
11 Ms. Saccomanno.

12 THE COURT: Okay.

13 MR. LANIER: Number 84 --

14 MR. BICKS: Not 84.

15 MR. LANIER: No, y'all question 84.

16 MR. BICKS: 85.

17 MR. LANIER: Number 85, Ms. Williams.

18 THE COURT: Okay.

19 MR. LANIER: If someone could read these off to
20 me.

21 THE COURT: I'll read them off. These are the
22 ones that are agreed to be excused because they either work for
23 Dow or retired from Dow or their spouse worked or retired from
24 Dow or they have direct Dow ownership stock: Adriana Ruiz,
25 number 9; 21, Debra Ann Barnett; 23, Roland Lewis Howard; 20 --

1 52, Yolanda Porto Schroeder; 62, Joseph Anthony Lesnau; 64,
2 Randolph Willard Taylor; 65, Joann Elisabeth Taylor; 73,
3 Marilyn Heil Saccomanno; 85, Sharon Lee Williams.

4 Is that it?

5 MR. LANIER: Yeah, we believe there are a couple
6 more, but it's not in agreement, so we'll have to question them
7 out in voir dire.

8 THE COURT: Are you in agreement with those?

9 MR. LANIER: Yes, your Honor.

10 THE COURT: Is the defense in agreement?

11 MR. BICKS: Yes, your Honor.

12 THE COURT: All right. Joe --

13 MR. GILBERT: One last thing, Judge. This will
14 be the last thing you're going to hear about the screen. This
15 is not the correct name of the defendant. If they're going to
16 use it, I'd prefer not to have it on there.

17 MR. LANIER: I'll take this screen off.

18 THE COURT: That's fine with that. Okay, Joe.

19 Did you mark -- did you get those marked?

20 (Discussion off the record.)

21 (Break taken from 9:19 a.m. to 9:24 a.m.)

22 THE COURT: You're a juror on this panel and had
23 called in and indicated that you owned stock in Dow yourself?
24 You were checking that out?

25 PROSPECTIVE JUROR NO. 43: My company owns stock

1 in Dow and I own half of the company.

2 THE COURT: Who's your company?

3 PROSPECTIVE JUROR NO. 43: It's the Rosenberger
4 Company.

5 THE COURT: Does your company do a substantial
6 amount of work for Dow?

7 PROSPECTIVE JUROR NO. 43: We've done work for
8 Dow in the past. Right now we're not.

9 THE COURT: How many owners are in the company?

10 PROSPECTIVE JUROR NO. 43: Two, my dad and I.

11 THE COURT: How much stock do you own?

12 PROSPECTIVE JUROR NO. 43: I own 50 percent and
13 my dad owns --

14 MR. LANIER: He's gone. He's got a financial
15 interest in the case.

16 THE COURT: Is that agreeable with you? I just
17 want to either have the lawyers agree or I'll rule on it, one
18 of the two.

19 MR. BICKS: I think it makes sense.

20 THE COURT: Okay. By agreement, he's excused.

21 Joe, go tell Mr. Rosenberger to go down the hall.

22 (Recess taken from 9:24 a.m. to 9:37 a.m.)

23 THE BAILIFF: Number 28 did not answer and
24 number 69 did not answer.

25 MR. GILBERT: 28?

1 THE BAILIFF: 28 and 69.

2 MR. GILBERT: Is that who you've got?

3 THE BAILIFF: Yes, sir. And there's one guy out
4 there named Arthur Deberry that said he was here the other day.
5 I don't know if he's one of them that Judge Gayle excused.
6 And 28 and 69 didn't report for duty.

7 (Recess taken from 9:38 a.m. to 9:52 a.m.)

8 THE BAILIFF: All rise, please. Be seated,
9 please.

10 THE COURT: Good morning, ladies and gentlemen.
11 Believe it or not, we're fixing to start jury selection on this
12 case. I'm going to take about five minutes and then I'm going
13 to turn it over to the attorneys.

14 I understand Mr. Lanier's going to be doing the
15 voir dire examination on behalf of Kelly-Moore; is that
16 correct?

17 MR. LANIER: It's true, your Honor.

18 THE COURT: Mr. Bicks, you're going to be doing
19 it on behalf of Union Carbide?

20 MR. BICKS: Yes, your Honor.

21 THE COURT: All right. Two or three things I
22 want to reiterate. I told you Tuesday there were no right or
23 wrong answers to the questions that are going to be asked.
24 You're going to be asked a lot of questions directed to you as
25 a group. The lawyers already have the benefit of the

1 questionnaires you filled out, so they know the answers to a
2 lot of questions that they would have otherwise had to have
3 asked, so hopefully we can shorten this voir dire.

4 I'm going to allot each side one hour and a
5 half. Not one hour and 31 minutes, but one hour and a half.

6 If they ask you a question -- and this usually
7 doesn't happen in civil cases, but if they ask you a question
8 that you feel like you need to respond to, but you think it's
9 of such a personal nature that you choose not to answer it in
10 the question -- in the presence of the other jurors, all you've
11 got to do is tell the lawyer that you need to respond to that
12 question and you want to do it privately. And I'll bring you
13 to the bench and we'll talk about it quietly at the bench.

14 It's not my intent nor the attorneys' intent to
15 embarrass any member of this jury panel. Voir dire is
16 necessary, however, to help educate the lawyers so we can get
17 12 fair-minded people on this jury.

18 Now, I need to ask you a series -- a question --
19 a series of questions or question of what the rules say. The
20 question is: Is there anyone here that has a defect in the
21 organs of feeling or hearing or any other bodily defect or
22 mental disease or infirmity that would render you unable to
23 serve on this jury?

24 Now, what that all means in a nutshell, anybody
25 got a medical problem that could prevent you from serving on

1 this jury? Let me be a little more specific.

2 Some of you may be going to specialists and you
3 may have doctors' appointments that you can't break, that
4 you've had to wait weeks to get; some of you may be undergoing
5 cancer treatments or dialysis or things of that nature. I'm
6 not talking about just going down for an annual checkup or
7 something that you might be able to move. Some of you may be
8 taking medication that makes you drowsy or you may have to go
9 to the bathroom frequently.

10 We're going to be working, when we're picked --
11 when you're picked on this jury about an hour and fifteen
12 minutes, 20 minutes at a time and then I'll be breaking you
13 about that every hour, hour and 15 minutes, and we're certainly
14 going to accommodate you if you're selected. But let me make
15 sure if we have anybody that has a medical problem that we're
16 alerted to it in advance.

17 Let me just start on row one. Anybody on row
18 one. Just raise your hand and I'm -- okay. Yes, ma'am.

19 PROSPECTIVE JUROR NO. 4: I've been having blood
20 pressure problems for the last three or four days.

21 THE COURT: You're Ms. Mitchell?

22 PROSPECTIVE JUROR NO. 4: Yes.

23 THE COURT: Ms. Mitchell, let me ask you this --
24 all you're going to have to do -- I'm not going to make this
25 sound easy, because you're going to have to judge the

1 credibility of the testimony in this case and then ultimately
2 answer the questions. We just want to start both sides out
3 equally.

4 First of all, are you taking medication for your
5 blood pressure problems?

6 PROSPECTIVE JUROR NO. 4: I've restarted some
7 medication.

8 THE COURT: Okay. Secondly, do you feel like
9 this is going to be something that could cause a problem with
10 your blood pressure?

11 PROSPECTIVE JUROR NO. 4: I think so.

12 THE COURT: Okay. I may visit with you a little
13 bit later, then. Thank you.

14 PROSPECTIVE JUROR NO. 4: Okay.

15 THE COURT: Thank you. Anyone else on the first
16 row?

17 Okay. How about row two? I'll just call the
18 numbers. Row three. That starts with 25 through 35 -- or 36.
19 Yes, sir. You're Mr. -- -- Mr. Wiginton; is that correct?

20 PROSPECTIVE JUROR NO. 25: Yes, sir.

21 THE COURT: Yes, sir, Mr. Wiginton. Can you
22 just give me a brief overview.

23 PROSPECTIVE JUROR NO. 25: I've got rheumatoid
24 arthritis and gout. I have to go every two weeks for shots. I
25 have trouble sitting and standing for long periods.

1 THE COURT: If during this voir dire you get to
2 hurting and you need to stand up, just stand up. Stretch your
3 legs. I don't want you leaving the courtroom, because if you
4 leave, I've got to send everybody out, because we can't
5 question the jurors unless everybody's here, but if it gets
6 bad, just tell me and I'll break. We're going to make this as
7 easy as I can.

8 I'm not going to go an hour and a half without a
9 break. You've already been here about 20 minutes, so I'm going
10 to shut down briefly in the middle of Mr. Lanier's voir dire,
11 let you go to the restroom or what have. We had another one.

12 PROSPECTIVE JUROR NO. 33: Yes.

13 THE COURT: Yes, sir. Let's see. That's
14 Mr. Palat; is that correct?

15 PROSPECTIVE JUROR NO. 33: Yes, sir.

16 THE COURT: What?

17 PROSPECTIVE JUROR NO. 33: I would like to talk
18 to you in private about it.

19 THE COURT: I'm sorry?

20 PROSPECTIVE JUROR NO. 33: I would like to talk
21 to you in private about it.

22 THE COURT: Okay. Fine, we'll do that a little
23 later. Thank you.

24 Anyone else on row three? Okay. On row four,
25 that's 37 through 48.

1 Okay. Let's see. Mr. Lydic.

2 PROSPECTIVE JUROR NO. 42: Yes, sir.

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR NO. 42: Yes, sir. I suffer
5 from depression and the medication I take, sort of, like, it
6 would not -- it impairs my judgment.

7 THE COURT: You don't think the medication helps
8 you that much?

9 PROSPECTIVE JUROR NO. 42: No, sir.

10 THE COURT: Okay. You feel like it'd be
11 difficult for you to sit on this jury?

12 PROSPECTIVE JUROR NO. 42: It would not be fair
13 to either party, I feel like.

14 THE COURT: I'm sorry. I didn't hear the last
15 part.

16 PROSPECTIVE JUROR NO. 42: I say I don't feel
17 like it would be fair to either party, just because when I do
18 take my medication -- I did not take it this morning, but I
19 have a problem in comprehending what people say.

20 THE COURT: I understand.

21 Let's see. That's Ms. Gaskill; is that correct?

22 PROSPECTIVE JUROR NO. 45: Right. I went to the
23 doctor Saturday, my eye doctor, and she's sending me to a
24 neurophthalmologist, because she said my eyes are not reacting
25 to light properly. I have an appointment with that specialist

1 on the 20th and if I don't -- I don't know what the specialist
2 will find or what -- what his options are or what's going to
3 happen.

4 THE COURT: Okay. That's on the 20th of
5 September?

6 PROSPECTIVE JUROR NO. 45: Correct.

7 THE COURT: Thank you.

8 Mr. Stibal; is that correct?

9 PROSPECTIVE JUROR NO. 46: Yes, sir. I have a
10 diet-controlled, primarily, diabetes mellitus. I've had
11 troubles in court proceedings before, where we're going to take
12 a break but we don't, and if I don't eat promptly, it will
13 cause problems. That's controllable. I also have the
14 precursor to prostate cancer and I've got a very long scheduled
15 appointment at the Department of Veterans Affairs and I believe
16 it's October 17th.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 46: If I miss that, it'll
19 be another three, four months before I can get to that. Other
20 than that, I have no problem.

21 THE COURT: Okay. I'm hoping we're through by
22 October the 17th, but I can't guarantee it. But don't worry
23 about that.

24 Anyone else on the third row, up through 48?

25 Okay. How about the fourth row, which starts

1 49, 49 through 60 -- 61? Anyone on the fourth row with a
2 medical problem? All right. How about the next row? We're
3 winding down.

4 MR. LANIER: Your Honor, number 59.

5 THE COURT: Oh, I'm sorry. I didn't see you,
6 ma'am.

7 PROSPECTIVE JUROR NO. 59: That's okay.

8 THE COURT: Yes, ma'am. You're Ms. Cumbie; is
9 that correct?

10 PROSPECTIVE JUROR NO. 59: That's correct.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 59: I just wanted it to
13 be known that I do have Type II diabetes.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 59: I don't really have a
16 problem, but, you know, you never know what's going to --

17 THE COURT: Yes, ma'am, but that's not giving
18 you any trouble right now, is it, I take it?

19 PROSPECTIVE JUROR NO. 59: No.

20 THE COURT: Are you taking medication for it?

21 PROSPECTIVE JUROR NO. 59: I do take a diuretic.

22 THE COURT: Okay. You need a break or anything,
23 you just raise your hand or stand up or tell the lawyers to
24 shut up and holler and we'll take it.

25 Anyone else on the fifth row? All right. How

1 about -- how about the next one? Yes, ma'am. You're
2 Mrs. Blackstone?

3 PROSPECTIVE JUROR NO. 63: Yes.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR NO. 63: Every three weeks, I
6 do phlebotomies and starting -- I'm not sure when, but I'm
7 going to be starting interferon extremity treatment, but that
8 has not begun yet.

9 THE COURT: Okay. But do you think it'll start
10 within the next three weeks or so?

11 PROSPECTIVE JUROR NO. 63: I don't know.

12 THE COURT: All right. I may visit with you a
13 little bit later. Thank you.

14 Anyone else on that row? Okay. We've got
15 another row and a half. Anyone on the last row and a half?
16 Let's start with 72. Yes, ma'am. You're Ms. Mosher?

17 PROSPECTIVE JUROR NO. 84: Correct.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR NO. 84: I have rheumatoid
20 arthritis and I get -- yes. I take -- I've got my notes with
21 me with my doctor's name.

22 THE COURT: You said you have rheumatoid
23 arthritis and you have to take treatments every six weeks; is
24 that correct?

25 PROSPECTIVE JUROR NO. 84: Yes. And then I

1 have -- the next one's on the 22nd and then I have my six-month
2 check on October the 6th. The doctor sets them and the only
3 reason people miss their appointment is if they're dead.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 84: Then you have to get
6 back in line again.

7 THE COURT: You won't miss your appointments. I
8 have a little bit of authority up here, so we'll take care of
9 that.

10 Yes, ma'am. Mrs. Poole.

11 PROSPECTIVE JUROR NO. 83: Yes, I have Type II
12 diabetes and also migraines and a chemical imbalance. I take
13 medication that makes me real sleepy.

14 THE COURT: I take it obviously you don't know
15 when your migraines are going to come. They can come at any
16 time. Do you have medication you take for the migraines that
17 can pretty well put a --

18 PROSPECTIVE JUROR NO. 83: Yes, sir.

19 THE COURT: -- put a stop on it quickly or do
20 you need to lay down? I know they've changed a lot of that
21 because they've finally found out it's a blood imbalance.

22 PROSPECTIVE JUROR NO. 83: If I know one's
23 coming on, I can take medication and it'll usually knock it
24 out.

25 THE COURT: Okay. All right. Okay. I may

1 visit with y'all later, then. Thank you.

2 Two last things. I'll be brief. I've already
3 told you that the way juries render verdicts in civil cases in
4 Texas is they answer questions. We give legal definitions.
5 You have questions couched about the facts in terms of legal
6 definitions and most of them, you answer them yes or no. And
7 depending on how you answer them, you may be called upon to
8 answer a question pertaining to damages. In other words, if
9 you've answered a question one way, then answer the next
10 question. And then the next question may read along the lines
11 of: What sum of money, if paid now in cash, would fairly and
12 reasonably compensate the injured party, if you found them to
13 be injured, as a result of the incident before you or the
14 incident made the basis of the suit?

15 So you're supposed to start both parties out
16 equally. Listen to the evidence. Judge the credibility of the
17 evidence.

18 You're also supposed to do the same thing on the
19 damage allegations. You start both sides out equally. If you
20 think that the damages, if you do get to the damages, are
21 proven to be nothing, or you don't think there should be any,
22 you write a zero. On the other hand, if you think the damages
23 should be a hundred dollars or a thousand or ten thousand or a
24 million or ten million or a hundred million, if that's what you
25 believe the evidence shows, you have an obligation as a juror

1 to put that figure down.

2 Now, the reason I'm telling you this is
3 occasionally we get jurors that just automatically say, "Well,
4 in any lawsuit, I'm -- I'm not going to just go ahead and write
5 a zero" or "I'm not going to go ahead and write any figure over
6 a certain limit, regardless of whether I believe it or not."
7 So I'm telling you this because your obligation as a juror, the
8 oath you're going to take, is to render a true verdict based on
9 the law and the evidence, and that means whatever you believe
10 the answers to be -- and it's proven to you that you have an
11 obligation to put that down.

12 Is there anybody that feels that they can't do
13 that, right now, without knowing anything about this case?
14 Yes, sir.

15 PROSPECTIVE JUROR NO. 67: Your Honor, are you
16 speaking to actual damages or punitive damages?

17 THE COURT: Well, there's an allegation in this
18 case -- hold your card up just a second, if you will, please,
19 so she can get your name.

20 That's Mr. Brociner. Is that the way you
21 pronounce it?

22 There's an allegation in this case of actual
23 damages and punitive damages, also. Of course, you never get
24 to punitive damages unless certain things are -- are discovered
25 and are found by the jury, but right now, I'm talking actual

1 damages. I'll let the lawyers visit with you on punitive
2 damages, so I'm talking about actual damages.

3 What I want to do is be sure we've got a jury
4 here that can start everybody out and say, "Hey, I've got an
5 open mind. I can be fair. Let's hear it. I'll call it as I
6 see it." You have a problem with that?

7 PROSPECTIVE JUROR NO. 67: Not in terms of
8 actual damages, no, I don't.

9 THE COURT: Okay. We'll talk to you about
10 punitive later. That's up to the lawyers to visit with on you
11 that.

12 Last thing, I promise. You make your decision
13 in this case based on evidence, which starts when the witnesses
14 are called and the trial starts. You can't form any opinions
15 or conclusions as to what happened, who's right, who's wrong,
16 based on anything you are told by the attorneys in voir dire
17 examination or in opening statements. And I'll tell you about
18 that after we have the jury.

19 The lawyers are allowed to tell you a certain
20 amount of what their allegations are and what they allege,
21 purport, to be the facts of the case, but what they tell you is
22 not evidence. So you cannot start forming any opinions or
23 conclusions during voir dire, because you haven't heard
24 anything. And you may even find out that after you hear from
25 one side and after you hear from another side, there's

1 completely opposite concepts of what happened.

2 So, occasionally, we have jurors that during the
3 middle of voir dire, they'll suddenly start saying, "Well, I've
4 reached a conclusion," when they haven't heard any evidence.
5 They've only heard allegations. And you've got two sides in
6 this case and that's why both sides have the right to talk to
7 you. So, basically, you're supposed to open your ears as to
8 what happened when the facts start. So I'm going to ask you to
9 keep that in mind and not start forming any opinions or
10 conclusions.

11 The whole purpose of voir dire is to make sure
12 you know what the case is about and you're able to ask
13 yourself: Am I able to sit on this case fairly and listen to
14 the evidence and call it as fairly as I can based on what I
15 believe the evidence shows me the truth is? If you can do
16 that, fine. If you can't, that's what we want to know.

17 Okay. That's all I have. Plaintiff ready?

18 MR. LANIER: Ready, your Honor.

19 THE COURT: Defendant ready?

20 MR. BICKS: Yes, your Honor.

21 THE COURT: You've got an hour and a half,
22 Counsel.

23 MR. LANIER: Thank you, Judge. May it please
24 the Court.

25 THE COURT: Yeah, I'm probably going to shut you

1 down about 40, 45 minutes, let these people -- hang on a
2 second. Is there anybody on this panel -- don't be bashful --
3 is there anybody on this panel, before we start, because I know
4 you drink coffee in the morning, that needs a restroom break?
5 If you do, raise your hand. Otherwise, we're fixing to start.
6 We're going to go about 40, 45 minutes, or thereabouts.
7 Anybody?

8 Okay. Your panel.

9 JURY VOIR DIRE BY THE PLAINTIFF

10 MR. LANIER: Thank you, Judge. Good morning,
11 ladies and gentlemen. My name is Mark Lanier. And as you were
12 driving to the courthouse this morning, I imagine some of you
13 were wondering just exactly what this case was going to be
14 about. And you -- you filled out the questionnaires, you know
15 some of the parties that are involved and you know some of
16 the -- the concepts, at least, that are in this case, from what
17 you read.

18 This is a case that I know about because I've --
19 I've lived it and breathed it for a number of years, as have
20 the other lawyers. It's a very simple case. This is a case
21 about telling the truth. It's that plain and simple. This is
22 a case about telling the truth and trusting people to tell you
23 the truth.

24 As I told you, my name is Mark Lanier, and I am
25 the lawyer who -- who stands up and does the talking -- there's

1 a number of us who do the work, but I stand up and do the
2 talking for the Kelly-Moore Paint Company. I want to introduce
3 to you Herb Giffins. Herb, if you don't mind standing up.

4 MR. GIFFINS: Thank you.

5 MR. LANIER: Appreciate it. Herb Giffins is the
6 president of the Kelly-Moore Paint Company, and he is here --
7 will be here for a good bit of the trial -- thank you, Herb.

8 MR. GIFFINS: Thank you.

9 MR. LANIER: Y'all need to know him. You need
10 to know me. If you're going to make the jury panel, you'll
11 probably get tired of me. You'll also need to know some of the
12 other folks I've got on my staff, because I've got a cracker
13 jack staff.

14 Assisting me is Jim Bradford. Jim is a local
15 attorney here in Brazoria County, just right down the street
16 there in Angleton, a good personal friend for a number of
17 years, and I appreciate his help in this case.

18 Together with Jim, I've got Dara Hegar. Dara
19 can stand up. She's expecting her baby in March, so if you
20 make the jury, you'll get to watch her grow. It's her first.
21 She has no idea what she's in for. But she's one of my
22 lawyers, and she got out of the heavy lifting for this trial.

23 Harvey Brown will be in and out of the courtroom
24 some. Harvey Brown is a good friend and also a good lawyer who
25 will be helping us in this case.

1 Bob Leone, one of my best friends, also a lawyer
2 with me, will be helping in the case.

3 Steve Foley, who is a lawyer who is in town from
4 California. Steve does a lot of the national work for the
5 Kelly-Moore Paint Company. While y'all may know Kelly-Moore
6 because of their big plant here in Texas, they've also got a
7 home office out in California, and so Steve knows Kelly-Moore
8 from that perspective, as well.

9 Those are my team, and, like I say, we represent
10 the Kelly-Moore Paint Company. We're proud to do it. The
11 Kelly-Moore Paint Company -- who's heard of Kelly-Moore Paint
12 before?

13 (Hands raised.)

14 MR. LANIER: A number. Ms. -- Ms. Geraci, did I
15 say that right? You're painting your house right now. What
16 kind of paint are you using?

17 PROSPECTIVE JUROR NO. 37: Behr paint.

18 MR. LANIER: I'm sorry?

19 PROSPECTIVE JUROR NO. 37: Behr paint.

20 MR. LANIER: Behr paint. Herb will explain to
21 you why that is defective.

22 Right now you've just got to take my word for
23 it. Like the Judge said, what I said is not evidence, so --

24 PROSPECTIVE JUROR NO. 37: "Consumer Reports"
25 says they're good.

1 MR. LANIER: "Consumer Reports," well, I'm not
2 sure they had Kelly-Moore Paint, but I'm going to back off,
3 because I'm getting into an area I don't know too much about.

4 Anyway, a number of you have heard of the
5 Kelly-Moore Paint Company, and it's a delight to represent
6 them.

7 Mr. Moore will not be here. Mr. Moore is the
8 Moore, Bill Moore, in Kelly-Moore Paint Company. He is -- has
9 some serious medical difficulties. His wife, Mrs. Moore, will
10 be here. She will be a witness. You'll get to meet her.

11 Mr. Moore was a war hero in World War II, came
12 back from World War II. We had one juror out there who may
13 actually know him. Who's my University of Georgia juror?
14 Number 48, Ms. Creveling. Yes. University of Georgia, you
15 went to school there?

16 PROSPECTIVE JUROR NO. 48: (Indicated by nodding
17 head.)

18 MR. LANIER: Are you familiar with the Moore
19 Tennis Center or the Moore Career Center?

20 PROSPECTIVE JUROR NO. 48: Somewhat. Just the
21 name.

22 MR. LANIER: Somewhat. Mr. Moore had played
23 tennis in the '30s at University of Georgia and so he and his
24 family have stayed very active with that school and I didn't
25 know if you knew them or not.

1 PROSPECTIVE JUROR NO. 48: (Indicated by shaking
2 head.)

3 MR. LANIER: Okay. Mr. Moore came back from
4 World War II and -- and with a Mr. Kelly started the
5 Kelly-Moore Paint Company. Mr. Kelly was an older gentleman
6 who sold out his interests after a few years, and the
7 Kelly-Moore Paint Company gradually grew and expanded until
8 where today west of the Mississippi, it's a -- it's a fairly
9 large paint company. They are -- are a good, successful paint
10 company that you'll learn about.

11 Does anybody know any of the lawyers or anybody
12 connected with Kelly-Moore, anybody from the Kelly-Moore plant
13 here, anybody from the stores or anything like that? Okay.
14 Yes, ma'am. You are Ms. Yoes.

15 PROSPECTIVE JUROR NO. 60: Yes, I know Lawyer
16 Bradford.

17 MR. LANIER: Oh, you know Lawyer Bradford.

18 PROSPECTIVE JUROR NO. 60: He's a good man.
19 He's okay.

20 MR. LANIER: He is, isn't he? Okay. You don't
21 know him that well, do you?

22 PROSPECTIVE JUROR NO. 60: No.

23 MR. LANIER: I'm joking. Thank you, Ms. Yoes.
24 Someone else held up a paddle. Yes, sir, you are Mr. Rape.

25 PROSPECTIVE JUROR NO. 20: Bob Rape. I know

1 Mr. Bradford, as well. I also have had the pleasure of being
2 at some of your Christmas parties, so --

3 MR. LANIER: Because your wife is Judge
4 Hufstetler's court reporter.

5 PROSPECTIVE JUROR NO. 20: Exactly. Yes, sir.

6 MR. LANIER: Anything about the fact you've been
7 to our home or you know Mr. Bradford going to influence you one
8 way or the other?

9 PROSPECTIVE JUROR NO. 20: I don't think so. I
10 just don't want anybody to think that it might.

11 MR. LANIER: Okay. You'll still call them like
12 you see them?

13 PROSPECTIVE JUROR NO. 20: Yes, sir.

14 MR. LANIER: Did you have fun at my house?

15 PROSPECTIVE JUROR NO. 20: Excellent. Excellent
16 party.

17 MR. LANIER: Okay. You look fair to me.

18 Yes, ma'am, you are Ms. Walthall.

19 PROSPECTIVE JUROR NO. 3: Yes, sir. As a
20 resident of Angleton, I know Mr. Bradford and my son used to
21 play with his grandson, Bryce.

22 MR. LANIER: Well, anything about that going to
23 make you --

24 PROSPECTIVE JUROR NO. 3: No.

25 MR. LANIER: Now, you were Joe Silva's secretary

1 for several years or so.

2 PROSPECTIVE JUROR NO. 3: Five years. I work
3 for Terry & Terry now.

4 MR. LANIER: Okay. He calls you Janie instead
5 of Jane. Thank you, Ms. Walthall. I appreciate it.

6 Yes, sir.

7 PROSPECTIVE JUROR NO. 2: I went to school with
8 Mr. Bradford's daughter, Wendy, his son Body.

9 MR. LANIER: You're Mr. Smith. Anything about
10 that relationship cause you to go one way or the other?

11 PROSPECTIVE JUROR NO. 2: No.

12 MR. LANIER: Okay. Wonderful. Thank you, sir.
13 Anybody else?

14 We have brought this lawsuit against Union
15 Carbide. I imagine a lot of you have heard of Union Carbide.
16 Does anybody have anybody or -- or friends or some -- well,
17 before I ask about Union Carbide, Union Carbide's been around
18 for over a hundred years. It's a chemical company
19 headquartered out of New York fork for most of that time. They
20 are represented by a number of folks and I'll let them
21 introduce their own team when it comes their time to speak.

22 I'm just going to introduce three of them to
23 make sure y'all know at least three of them. Mr. Peter Bicks,
24 whom the Judge introduced earlier. He's come down here to --
25 to help try this case for Union Carbide. Mr. Scott Lassetter,

1 whose office is in Houston, is here, and Mr. John Gilbert, who
2 practices right down the street; in fact, right across the
3 street from Jim Bradford.

4 These three gentlemen and their law firms and --
5 and their people will be representing Union Carbide in this
6 case. The law firms -- Mr. Bicks is with a law firm called
7 Orrick, Herrington. They've got offices in a number of
8 different places around the U.S. and -- and same with the law
9 firm for Mr. Lassetter, Weil, Gotshal. It's got offices all
10 over, I think, the world.

11 Does anybody know them or anyone in those law
12 firms? Yes, sir, Mr. Rape. You obviously would know
13 Mr. Gilbert.

14 PROSPECTIVE JUROR NO. 20: Exactly.

15 MR. LANIER: Okay. John's a good fellow.

16 PROSPECTIVE JUROR NO. 20: Right.

17 MR. LANIER: Nothing about that is going to sway
18 you one way or another? Do you know his wife Nancy?

19 PROSPECTIVE JUROR NO. 20: No, sir.

20 MR. LANIER: You're missing a good part of the
21 family.

22 Yes, ma'am. Again, Mrs. Yoes.

23 PROSPECTIVE JUROR NO. 60: I knew his wife five
24 years ago. I'm sure they're fine lawyers. I'm sure he's a
25 good lawyer, will tell the truth.

1 MR. LANIER: Mrs. Yoes, again, like
2 Mr. Bradford, there's nothing about that knowledge that's going
3 to sway you?

4 PROSPECTIVE JUROR NO. 60: No, sir.

5 MR. LANIER: That's what we want to make sure,
6 everybody starting out clean. Anybody else out there have
7 knowledge of them or -- or family?

8 Yes, ma'am, you are Ms. Creveling.

9 PROSPECTIVE JUROR NO. 48: I know Mr. Gilbert.

10 MR. LANIER: Okay. Do you know him just in
11 passing or is it a close relationship?

12 PROSPECTIVE JUROR NO. 48: Not close, no. Not
13 negatively. I just know him.

14 MR. LANIER: All right. You are an interior
15 designer, right?

16 PROSPECTIVE JUROR NO. 48: Yes.

17 MR. LANIER: You didn't like do his house or
18 something, did you?

19 PROSPECTIVE JUROR NO. 48: No.

20 MR. LANIER: All right. Just checking. Thank
21 you, Ms. Creveling.

22 Ms. Walthall, you'll know John Gilbert.

23 PROSPECTIVE JUROR NO. 3: My husband's aunt used
24 to work for him. I don't know if she still does. Beverly.

25 MR. LANIER: John, does Beverly still work for

1 you?

2 MR. GILBERT: She does not, unfortunately. She
3 works for Mr. Boyd now.

4 MR. LANIER: Nothing about that that -- you'll
5 follow the law, you'll follow the truth, just do what you need
6 to do. Okay.

7 Union Carbide. They call themselves the
8 chemists to the chemical industry. We've got a lot of chemical
9 industry down here. Does anybody have any close, close
10 familiarity with Union Carbide, the chemists to the chemical
11 industry?

12 Mr. Holub.

13 PROSPECTIVE JUROR NO. 14: Yes, my father-in-law
14 was the plant manager there for a number of years.

15 MR. LANIER: Okay. Anything about that
16 influence you one way or the other?

17 PROSPECTIVE JUROR NO. 14: No.

18 MR. LANIER: Are you related to Fred Holub?

19 PROSPECTIVE JUROR NO. 14: No.

20 MR. LANIER: I saw you're from Bay City.
21 Fred's -- you know Fred?

22 PROSPECTIVE JUROR NO. 14: Well, I was born
23 there. I moved to Houston.

24 MR. LANIER: Okay. Thank you, Mr. Holub.

25 Yes, sir, Mr. OSHA Inspector. Hold your card

1 up. Mr. Stibal.

2 PROSPECTIVE JUROR NO. 46: Yes, sir.

3 MR. LANIER: Thank you, sir.

4 PROSPECTIVE JUROR NO. 46: I've had unfortunate
5 dealings with Carbide on a number of occasions, all of them in
6 passing, no specific dealings with any one particular area,
7 usually in the form of a management oversight role rather than
8 direct.

9 And I believe many, many, many years ago, I had
10 some dealings with Kelly-Moore, but there are other paint
11 companies that have similar names and I've forgotten all that,
12 so --

13 MR. LANIER: Fair enough. Would you,
14 Mr. Stibal, be able to set aside your past experiences, listen
15 to the evidence in this case, and make your decisions based on
16 the evidence in this case?

17 PROSPECTIVE JUROR NO. 46: Yes, sir.

18 MR. LANIER: Thank you, sir. Anybody else with
19 familiarity?

20 Okay. Very good. There are going to be lots of
21 people in this case. And by that, I mean, there are going to
22 be lots of witnesses. There are going to be lots of people in
23 the courtroom. As the Judge has told you, this is a historic
24 case. This is an important case. This is a case which will be
25 commanding the eyes not only of industry, but the eyes of the

1 media and the eyes of thousands and thousands of victims and
2 family members of victims, who will be watching this courtroom.

3 And when you sit as a jury in this case, you
4 will have perhaps the temptation to read news reports about
5 what's going on. You will -- you will have a number of people
6 who are watching, because this is a case of great significance.

7 Is there anything about that that causes some of
8 you to feel like maybe this is not a case you could comfortably
9 sit on, you don't want the scrutiny, you don't want the -- you
10 don't want to be involved in that?

11 Okay. Are you -- you are Ms. Morrow?

12 PROSPECTIVE JUROR NO. 37: Geraci.

13 MR. LANIER: You're my painter. You're
14 Ms. Geraci.

15 PROSPECTIVE JUROR NO. 37: I don't want to make
16 this decision for people, for their lives.

17 MR. LANIER: Okay.

18 PROSPECTIVE JUROR NO. 37: I don't want to make
19 a decision on either side.

20 MR. LANIER: You just don't want to be involved.
21 You want to go home and paint your house.

22 PROSPECTIVE JUROR NO. 37: I've been involved
23 for years. I don't want to be involved with anything anymore.

24 MR. LANIER: You're tired.

25 PROSPECTIVE JUROR NO. 37: It's too emotional.

1 I don't want these people -- I worked at a hospital for 18
2 years and I've seen too much. I don't want to -- to do this.

3 MR. LANIER: Okay. I appreciate those feelings
4 and thank you for sharing them.

5 Anybody else have either those kinds of
6 sentiments or maybe other sentiments that make you say, "I
7 don't want to be on a case where there are reporters or I don't
8 want to be on a case where there's attention"? Okay.

9 Kelly-Moore -- let me tell you a little bit
10 about the case, because I've got to talk to you some more --
11 about some more areas that are more specific.

12 Kelly-Moore is a paint company, has always been
13 a paint company, was formed to make paint, has made paint and
14 sold paint and made a living off selling paint. But in the
15 late '50s and the early '60s, Kelly-Moore began expanding a
16 little bit of what it did in an effort to try and be the
17 one-stop shop for contractors and professionals who do a lot of
18 work, like painting.

19 So Kelly-Moore bought a company called the PACO
20 company, which sold wall preparation, tape joint compound and
21 textures and things like that.

22 Has anybody heard of PACO in that sense?

23 Okay. PACO was a division of Kelly-Moore and
24 you will hear that Kelly-Moore, while a paint company, for a
25 short while made an asbestos joint compound and some asbestos

1 texture. Who knows what joint compound is?

2 (Hands raised.)

3 MR. LANIER: Okay. Basically everybody. Except
4 Ms. Duke.

5 PROSPECTIVE JUROR NO. 7: I'm not sure.

6 MR. LANIER: That's fair enough. I appreciate
7 you saying. A joint compound -- it wasn't just you. I was
8 just singling you out to be unfair. A joint compound, when you
9 take drywall -- and I shouldn't be doing this -- I should be
10 asking our drywall professional. Mr. Saldivar, you hung
11 drywall for 29 years.

12 PROSPECTIVE JUROR NO. 34: Right.

13 MR. LANIER: So throw something at me if I get
14 it wrong, but the way I understand it, the little bit I've
15 done, drywall usually comes in those big sheets, unless you're
16 cutting something smaller. And you hang drywall in by putting
17 it together, but when you put drywall together, there's a seam
18 in between the two pieces of drywall. And what's got to happen
19 with that seam is you take a tape and you put the tape over it
20 and you take kind of a mud or a joint compound and you spread
21 it over it. Then you sand it down so it all seems real smooth,
22 so that when you paint over the wall, you don't see that big
23 crack where the boards met up. Okay?

24 Textures are much the same thing. They're
25 something you apply to the wall or you apply to the ceiling

1 before you paint so that it's not just flat; it's got some
2 texture, definition to it. And Kelly-Moore made those for
3 quite a while, and had asbestos in them.

4 Now, Kelly-Moore sold asbestos compound because
5 Union Carbide told us it was safe. Let me repeat that.
6 Kelly-Moore sold asbestos compound because Union Carbide told
7 us it was safe. Union Carbide's been in the asbestos business
8 almost since the beginning. They were selling asbestos
9 products since the 1930s.

10 Union Carbide, in the late '50s, bought the
11 world's largest asbestos mine, and Union Carbide was a
12 long-time supplier to Kelly-Moore of a whole lot of different
13 products and chemicals.

14 The Union Carbide Chemical Company sold all
15 sorts of ingredients to Kelly-Moore for Kelly-Moore's paints.
16 And so Kelly-Moore had a trusted relationship with Union
17 Carbide and Union Carbide told Kelly-Moore not to worry,
18 asbestos compound was not going to hurt anybody, as long as the
19 exposure was below this certain level of 5. It's kind of like
20 aspirin. If you take aspirin, as long as you don't take more
21 than the -- the top dose, it's going to -- it's not going to
22 hurt you. It'll help you.

23 So asbestos, we were told, was going to help our
24 products and wasn't going to hurt anybody as long as we kept
25 the exposure below this level. And we trusted Union Carbide.

1 We believed them. In fact, we started buying their asbestos.
2 As they continued to test our products and help us and -- and
3 court us, we started shifting over and buying their asbestos,
4 more and more and more.

5 And the reason we have this lawsuit is because
6 evidence is uncovered that says, plain and simple, Union
7 Carbide was lying to us. And they knew it. Union Carbide was
8 telling us, as long as people don't breathe asbestos above the
9 level of 5 -- technical jargon, the OSHA man will understand,
10 Mr. Stibal -- 5 was the TLV that we were told, the threshold
11 limit value, 5 million parts per cubic foot. And we were told
12 as long as people breathe below 5, no one's going to get hurt.

13 Internally, while Union Carbide's telling us
14 this, Union Carbide's writing memorandums saying, "We know
15 that's not true. We know Kelly-Moore and other companies like
16 Kelly-Moore are not sophisticated. They wouldn't know any
17 different. Don't we have an ethical obligation to tell them
18 the truth?" But the decision on high was, "No, we need to be
19 making money."

20 So Kelly-Moore sold asbestos compound because
21 Union Carbide told us it was safe. They swore it was safe.
22 And that's what brings us to this lawsuit. That was not true.

23 Who in here has anything to do with sales? Is
24 anybody a salesperson? We have only one. Yes, ma'am, you are
25 Ms. Arias. I'm sorry. Ms. Cumbie. Thank you, Ms. Cumbie.

1 What kind of sales work?

2 PROSPECTIVE JUROR NO. 59: I'm just a
3 salesperson.

4 MR. LANIER: Okay.

5 PROSPECTIVE JUROR NO. 59: I work at Dillard's.

6 MR. LANIER: Okay. No, that's sales work. What
7 department do you work in?

8 PROSPECTIVE JUROR NO. 59: I work in the linens.

9 MR. LANIER: Okay. You sell sheets and --

10 PROSPECTIVE JUROR NO. 59: Towels, comforters,
11 things like that.

12 MR. LANIER: The higher the thread count, the
13 better the sheet. That's what my 15-year-old daughter assured
14 me at Bed, Bath and Beyond.

15 I also noticed the higher the thread count, the
16 more expensive the sheet. Is that true at Dillard's, too?

17 PROSPECTIVE JUROR NO. 59: That's true.

18 MR. LANIER: When you sell people things, do you
19 tell them the truth?

20 PROSPECTIVE JUROR NO. 59: Yes, I do.

21 MR. LANIER: If some dad is in there with his
22 15-year-old daughter, who wants to do her room blue for some
23 reason only the Lord can figure out, would you be honest and
24 tell the dad, "There's really not going to be that much
25 difference between 200 and 250 thread count that would justify

1 an extra \$12?" Would you be honest with the dad?

2 PROSPECTIVE JUROR NO. 59: I would be honest.

3 And it is true that some 250s are nice and soft.

4 MR. LANIER: What?

5 PROSPECTIVE JUROR NO. 59: It's true that some
6 250s are nice and soft.

7 MR. LANIER: Thank you, ma'am. Would you type
8 up that up.

9 PROSPECTIVE JUROR NO. 59: 400 is maybe a little
10 better. It depends on what's in that sheet.

11 MR. LANIER: Okay. Because some of them have
12 like Egyptian cotton.

13 PROSPECTIVE JUROR NO. 59: Right.

14 MR. LANIER: Which is supposedly softer than
15 plain cotton.

16 PROSPECTIVE JUROR NO. 59: Right.

17 MR. LANIER: I really got the sales pitch put on
18 me. I learned it. Any of y'all -- I have five children. Who
19 beats me? Anybody got more? Okay. How many of you have at
20 least four children? Okay. Anybody else have five? Okay.
21 You are Ms. Bingham.

22 PROSPECTIVE JUROR NO. 55: Yes. I actually have
23 eight.

24 MR. LANIER: Eight? How come you're not out on
25 a medical excuse?

1 PROSPECTIVE JUROR NO. 55: Mixed family.

2 MR. LANIER: Ms. Bingham, do you teach your
3 children to tell the truth?

4 PROSPECTIVE JUROR NO. 55: Yes, sir.

5 MR. LANIER: Is that important in your house?

6 PROSPECTIVE JUROR NO. 55: Yes, it is.

7 MR. LANIER: Anybody else have children, they
8 teach them -- everybody else has children. Who teaches their
9 children to tell the truth? For how many of you is that
10 important in your house, an important rule?

11 I'm telling you, my kids can violate a lot, but
12 if they don't tell the truth, that's -- that's a serious issue
13 in our house.

14 Who works with chemicals? A number of y'all do.
15 I need a -- I need a hand. All right. I'm going to -- I
16 picked on you. I'm going to pick on Mr. Smith for a minute.

17 Mr. Smith, you're insurance and electric
18 maintenance out of BP?

19 PROSPECTIVE JUROR NO. 2: Instrumentation.

20 MR. LANIER: Instrumentation. Thank you. What
21 kind of chemicals are you around?

22 PROSPECTIVE JUROR NO. 2: It's an oil refinery,
23 so it's mostly petroleum.

24 MR. LANIER: Okay. Do you trust the people with
25 those chemicals to tell you whether or not the chemicals are

1 safe or dangerous?

2 PROSPECTIVE JUROR NO. 2: I hope so.

3 MR. LANIER: Okay. Now, you're in a position of
4 trust, aren't you?

5 PROSPECTIVE JUROR NO. 2: Right.

6 MR. LANIER: Are you in a position where you go
7 out there and test all those chemicals yourself to see if
8 they're safe?

9 PROSPECTIVE JUROR NO. 2: No.

10 MR. LANIER: In fact, I'll bet -- well, that's
11 fair enough.

12 Who -- who else works around chemicals or
13 something? Yes, sir. You're Mr. Balderaz.

14 PROSPECTIVE JUROR NO. 6: Yes, sir.

15 MR. LANIER: What kind of chemicals do you work
16 around?

17 PROSPECTIVE JUROR NO. 6: I'm not sure the exact
18 name, but I work out in Texas City at Dow Chemical.

19 MR. LANIER: Okay. You're actually working at
20 Dow right now?

21 PROSPECTIVE JUROR NO. 6: Yes, sir.

22 MR. LANIER: And you sure hope they're telling
23 you when something's not safe, don't you?

24 PROSPECTIVE JUROR NO. 6: Yes, sir. I work on
25 the demo projects. We have to cut out a lot of lines and it's

1 important to know what's in there so we don't -- we know how to
2 dress ourselves so we don't get exposed to that certain
3 chemical.

4 MR. LANIER: Okay. Thank you, Mr. Balderaz.

5 Who else works around chemicals? Ms. Wiginton.

6 PROSPECTIVE JUROR NO. 25: Yes, sir. I don't at
7 this moment, but I worked 31 and a half years at BASF around
8 chemicals.

9 MR. LANIER: Okay. And you know how important
10 it is to be told when something's safe or unsafe.

11 PROSPECTIVE JUROR NO. 25: Very.

12 MR. LANIER: Do you want them to be telling you
13 the truth?

14 PROSPECTIVE JUROR NO. 25: You bet.

15 MR. LANIER: Do you want them to fudge a little
16 bit or tell you an untruth just because they can make more
17 money off you?

18 PROSPECTIVE JUROR NO. 25: No, sir.

19 MR. LANIER: That wouldn't be right, would it?

20 PROSPECTIVE JUROR NO. 25: No, sir.

21 MR. LANIER: Who else? Yes, sir, Mr. Wilson?

22 PROSPECTIVE JUROR NO. 50: Yes.

23 MR. LANIER: What kind of chemicals or work do
24 you do?

25 PROSPECTIVE JUROR NO. 50: I work at an oil

1 refinery.

2 MR. LANIER: At Lyondell; right?

3 PROSPECTIVE JUROR NO. 50: Yes.

4 MR. LANIER: Do you trust the people you're
5 around to tell you whether or not those chemicals are safe?

6 PROSPECTIVE JUROR NO. 50: Yes.

7 MR. LANIER: All right. Who else? Yes, sir.
8 You are Mr. Palat?

9 PROSPECTIVE JUROR NO. 33: Palat.

10 MR. LANIER: And what kind of work do you do,
11 sir?

12 PROSPECTIVE JUROR NO. 33: Corrections. Prison
13 systems. I work in a laundry. I have a lot of bleaches and
14 starches and detergents.

15 MR. LANIER: And who were you working for at the
16 time you were doing that work? Was it Dow or --

17 PROSPECTIVE JUROR NO. 33: Texas Department of
18 Criminal Justice.

19 MR. LANIER: Oh, corrections. I got it. I
20 listened to too much loud music growing up. I assume that the
21 Texas Department of Corrections trusts when y'all order all
22 your bleaches and your -- your chemicals or your detergents and
23 all, you trust the suppliers of that to tell you whether or not
24 it's dangerous, don't you?

25 PROSPECTIVE JUROR NO. 33: Yes, sir.

1 MR. LANIER: And Texas Department of Corrections
2 has got a lot of resources, got the resources of the State of
3 Texas, but -- but y'all trust the suppliers, the experts, for
4 example, with the bleach, to tell you whether or not the bleach
5 is harmful. Fair to say?

6 PROSPECTIVE JUROR NO. 33: Correct.

7 MR. LANIER: And when you trust them, you hope
8 they're telling you the truth, don't you?

9 PROSPECTIVE JUROR NO. 33: Yes, sir.

10 MR. LANIER: Okay.

11 Any -- anybody have trouble with that concept?
12 You trust folks to tell you the truth. Is there anything wrong
13 with that? Some of you sit back and say, "Well, you should
14 never trust anybody. It's wrong to trust people, because
15 they'll let you down every time."

16 We've got -- okay. Well, that's what we've got.
17 We sold our asbestos compound because we were told by Union
18 Carbide, "Trust us. We're going to tell you the truth. This
19 stuff is safe. It's not going to hurt anybody."

20 Now, at the time we were doing this -- we
21 started selling it in 1960. By 1964, there was some media
22 attention that started being given to the asbestos issue
23 because of a conference that was held of -- well, in fact,
24 right around the corner, in New York City, from Union Carbide,
25 at one of the big hotels there. It was put on by a New York

1 hospital.

2 Union Carbide came out and was quick to tell
3 everybody not to worry; asbestos was going to be safe as long
4 as, again, you kept your exposure below this level. If -- if
5 you get above, it can be dangerous. That's why you hear media
6 reports it's dangerous, but if you keep it below, everybody's
7 going to be okay. And you'll hear a lot of evidence about
8 that.

9 Now, when I told you this is a simple case about
10 telling the truth, that's -- that's what it is in our language,
11 in lay people's language. The law calls it a little bit
12 different. The law uses a technical legal word that I want to
13 talk to you about. The legal word is -- well, here it is.
14 It's fraud. See, if you -- if you were in law school and you
15 were looking at this case or if you are working for -- for a
16 lawyer -- now, ma'am, Ms. Mitchell? Ms. Mitchell?

17 PROSPECTIVE JUROR NO. 4: Yes.

18 MR. LANIER: You used to work at a law firm,
19 didn't you?

20 PROSPECTIVE JUROR NO. 4: Yes, I did.

21 MR. LANIER: Vinson & Elkins. Who did you work
22 for there?

23 PROSPECTIVE JUROR NO. 4: Ed Osterberg.

24 MR. LANIER: Did you and I ever -- I didn't work
25 at V&E, but I had a lot of projects going at V&E.

1 PROSPECTIVE JUROR NO. 4: No, I never met you
2 there.

3 MR. LANIER: Okay. Good. Anything about your
4 work there that causes you to lean one way or another?

5 PROSPECTIVE JUROR NO. 4: No.

6 MR. LANIER: You're okay? Well, as folks with
7 legal training could tell you, in law offices, we would say
8 this is a fraud case. Because fraud is the legal word. And I
9 expect when this case is over, the Judge is going to ask the
10 jurors whether or not there was fraud committed by Union
11 Carbide against the Kelly-Moore Company. Okay?

12 Fraud, the Judge is going to tell you, I reckon,
13 is basically a couple of things. The first thing involved in
14 fraud is a party, which in our situation we're going to -- we
15 are saying is Union Carbide, a party makes a material
16 misrepresentation. Here we go. In other words, a party says
17 something that's not true.

18 It can't just be, "Oh, it's 10:30," when,
19 really, it's 10:40. That's a rounding error. This has to be
20 something that's material. But a party makes a material
21 misrepresentation.

22 And the next thing is this misrepresentation is
23 made, not by mistake, but it's made with knowledge -- Union
24 Carbide knows when they do it -- it's made with knowledge that
25 it's false, or it's just made recklessly, without having any

1 clue whether it's true or false. They just act like it's true
2 and they don't really have a clue.

3 I -- we're going to argue in this case Union
4 Carbide made material misrepresentations. They told us the
5 asbestos was safe. They told us to trust them, when that
6 misrepresentation was false and Union Carbide knew it was
7 false.

8 Then the third thing we've got to prove is that
9 the misrepresentation, the falsehood, is made with Union
10 Carbide intending that Kelly-Moore would act on it, would rely
11 on it.

12 See, what Kelly-Moore didn't understand is,
13 Kelly-Moore wasn't buying much, if any, asbestos from Union
14 Carbide at the time. Kelly-Moore bought tons of other
15 ingredients from Union Carbide. What Kelly-Moore didn't
16 understand is that Union Carbide had singled out Kelly-Moore
17 out of thousands of companies Union Carbide sold product to.
18 Union -- sold asbestos to. Union Carbide had singled out
19 Kelly-Moore and said, "Let's become their major asbestos
20 supplier, and we'll do what we need to do, because we've got to
21 increase our sales. We're losing money in the asbestos part of
22 our business."

23 And so Union Carbide singled out and, in fact,
24 became the principal supplier of Kelly-Moore's asbestos through
25 all of this. But that's the third thing I've got to prove.

1 And then the fourth thing is the other party
2 acts in reliance on the misrepresentation. In other words, we
3 kept selling our asbestos because Union Carbide told us it was
4 safe. And we trusted them. And that's what we have to prove.
5 That's the fraud.

6 Now, under the law, I have to prove that --
7 that's my other legal definition -- by what's called the
8 preponderance of the evidence. If this was a criminal case,
9 if -- if one of our constables or investigators had -- that
10 we've got in here was investigating a criminal case, they'd
11 know ultimately that to win, you've got to prove it by --
12 beyond a reasonable doubt; okay? That's not true in a civil
13 case. In a case like we've got here, that's not true.

14 In a case like we've got here, what I have to do
15 is I've got to prove it. Kelly-Moore has to prove the fraud to
16 you, to win this case, but the way we prove it is by what the
17 law calls the greater weight of credible evidence. So, what?
18 You put it in the scales. Is the weight greater this way or
19 that way? 51-49. You know, which side has the greater weight?
20 That's what the law requires me to prove.

21 Now, I want to talk to you and ask you some
22 questions about this. First of all, some folks say, in a civil
23 lawsuit, "If you're going to win, I'm willing to let you win,
24 I'm willing to follow the evidence, I'm willing to do whatever,
25 but I want it to be -- I'm going to hold you, Lanier, to

1 something more than just the greater weight of the credible
2 evidence. For you to win and prove your point and win damages,
3 you're going to have to prove it by something more than just
4 the preponderance of the evidence."

5 If you feel that way about these courts --
6 cases, that's fine, but we need to know. The Judge needs to
7 know that. So anybody that feels that way, would you raise
8 your hand.

9 "Lanier, if you're going to prove a fraud case
10 to me, if you're going to win damages, you've got to prove it
11 by more than just the greater weight of the evidence. You've
12 got to prove it by something more significant."

13 Anybody feel that way?

14 Okay. Okay. I want to talk to you about
15 another subject. I want to talk to you about asbestos for a
16 minute.

17 You know from your questionnaires that this is a
18 case that involves asbestos. Some of you have expressed what
19 knowledge you have about asbestos and what knowledge you don't
20 have. Let me first ask this: Who has family where either you
21 yourself or your family have been exposed to asbestos?

22 All right. We're going to do this by row,
23 because I want to make sure I cover everybody. First row.
24 Mr. Smith, in your job, you've got to have been exposed.

25 PROSPECTIVE JUROR NO. 2: Right. Right.

1 MR. LANIER: Okay. How long have you -- how
2 long have you been exposed? How far back timewise?

3 PROSPECTIVE JUROR NO. 2: Probably since '79.

4 MR. LANIER: Okay. '79. So we're looking at
5 right at 25 years right now.

6 PROSPECTIVE JUROR NO. 2: Right.

7 MR. LANIER: Have you had any signs or symptoms
8 or problems from it?

9 PROSPECTIVE JUROR NO. 2: (Indicated by shaking
10 head.)

11 MR. LANIER: Glad to hear that. Anybody else in
12 this front row? Yes, ma'am. Ms. Mitchell.

13 PROSPECTIVE JUROR NO. 4: Uh-huh. The building
14 that we worked in when they went to tear it down, they were
15 also taking the floor up and stuff. They put a big tent around
16 it because it was full of asbestos.

17 MR. LANIER: Okay. I hope the tent kept people
18 out good.

19 PROSPECTIVE JUROR NO. 4: Well, they didn't mind
20 it being like that when we were in it. And when they went to
21 tear it down, it was a problem, so --

22 MR. LANIER: Well, you -- the -- the asbestos
23 is -- the asbestos that will kill you, you can't see it. It's
24 invisible. You have can't smell it. You can't taste it. You
25 can't touch it. You can't feel it. It's so small -- Union

1 Carbide's got an advertisement on their asbestos back then
2 where they'd say, "You take one gram of our asbestos, and if
3 you broke it into little fibers, it would stretch around the
4 world 40 times, just one gram." Because the fibers are that
5 small.

6 So you hope that they put -- that it -- well --

7 PROSPECTIVE JUROR NO. 4: Hope for the best.

8 MR. LANIER: Yes. That's exactly right,

9 Ms. Mitchell. Appreciate it.

10 Anybody else on this front row?

11 PROSPECTIVE JUROR NO. 6: I work around it, but
12 I don't know if I've really been exposed to it.

13 MR. LANIER: All right. All right. Thank you,
14 Mr. Balderaz. This part. Yes. Ms. Duke.

15 PROSPECTIVE JUROR NO. 7: My dad, my grandpa and
16 my stepdad have all been involved in asbestos lawsuits.

17 MR. LANIER: Okay. Aside from the fact I
18 represent the Kelly-Moore Paint Company, I am sure evidence is
19 going to come out, I also represent 250 families who are dying
20 from a cancer called mesothelioma. It's an asbestos cancer.
21 It's very severe. In fact, you will hear evidence ultimately
22 that I have brought claims against the Kelly-Moore Paint
23 Company as well as representing them in this case against Union
24 Carbide.

25 Some of you may be saying, "How did you do

1 that?" And we'll explain these things in opening statement.
2 Now is not the time to do it. But Kelly-Moore -- the evidence
3 ultimately will show you, Kelly-Moore has responsibility for
4 its own product, and if Kelly-Moore sells product that -- that
5 hurts or kills people, Kelly-Moore's responsibility is to step
6 up and to pay those people who are hurt and dying, but then in
7 one big action, Kelly-Moore is allowed, if they choose, to sue
8 the Union Carbide company for it if there's fraud, fraud, in
9 the sale, and that's why this case is of such large
10 proportions. This is one case to hear a lot of issues that
11 could get heard all around the country, otherwise.

12 Ms. Duke, I -- I didn't represent any of your
13 family members, did I, in this case?

14 PROSPECTIVE JUROR NO. 7: I don't know.

15 MR. LANIER: You don't know who the lawyers are?
16 What are their last names?

17 PROSPECTIVE JUROR NO. 7: Filippo, Shadden and
18 James.

19 MR. LANIER: I'm sorry. The last one?

20 PROSPECTIVE JUROR NO. 7: James.

21 MR. LANIER: James. Do you know the first name
22 on the James?

23 PROSPECTIVE JUROR NO. 7: Jim.

24 MR. LANIER: Jim James. Your Honor, I'll let
25 the record reflect I do not represent those families at this

1 time. Thank you, ma'am.

2 Who else in this front row. Yes, sir,
3 Mr. Shatto.

4 PROSPECTIVE JUROR NO. 12: Correct. I've been
5 exposed to asbestos working as a fleet repair mechanic for
6 CenterPoint, Reliant, HL&P, 26 years. They took -- they've
7 taken asbestos out of the brake linings and clutches, but it
8 used to be in the brake linings and clutches.

9 MR. LANIER: It was a chrysotile asbestos that
10 used to be in there and it's now been taken out?

11 PROSPECTIVE JUROR NO. 12: Right.

12 MR. LANIER: But the years it was there, when
13 you'd grind the brakes or when you'd blow out the drums --

14 PROSPECTIVE JUROR NO. 12: Right. Right.

15 MR. LANIER: -- you'd get it.

16 PROSPECTIVE JUROR NO. 12: I used to arc the
17 brakes and --

18 MR. LANIER: Your health okay so far?

19 PROSPECTIVE JUROR NO. 12: So far.

20 MR. LANIER: Okay. See, asbestos is a scary
21 thing, because as Union Carbide knew way back in the 1960s, but
22 failed to tell us, if you breathe the asbestos, it can cause a
23 cancer that doesn't set in for 20 or 30 or 40 years later.
24 Doesn't bother you immediately. It takes decades. But then
25 the cancer, like the mesothelioma cancer and lung cancer and

1 colon cancer and other cancers, those cancers set in after a
2 lot of time has passed. A lot of people wind up getting sick
3 from this and don't even know it was because of asbestos. They
4 think, "I just got lung cancer" or "I just got colon cancer."

5 Second row. Who has had exposure to asbestos.
6 Let's start you, Ms. Bosarge?

7 PROSPECTIVE JUROR NO. 13: Not me, but my
8 husband worked in a plant back in the early '80s. He wasn't
9 exposed to it, but he worked with it.

10 MR. LANIER: Now, Ms. Bosarge brings up an
11 interesting point, because when I asked you who was exposed,
12 Union Carbide in the '60s and '70s was really pushing to get
13 their asbestos in anything that they could. Like I said, they
14 sold it to thousands of different companies. One of the
15 companies they sold it to are paper companies. And a lot of
16 you may not realize this, but Union Carbide was trying to get
17 asbestos and was successful at getting asbestos in a lot of
18 paper, paper that you'd write on.

19 Union Carbide tried to get it in Kleenex, nasal
20 tissues, under the idea that it might be softer to your nose or
21 stay together better when it's wet. That was their reasoning.

22 PROSPECTIVE JUROR NO. 13: They were sued.

23 MR. LANIER: Okay. Good. Thank you,
24 Ms. Bosarge. I appreciate it. Mr. Holub.

25 PROSPECTIVE JUROR NO. 14: I'm sorry. I'm in

1 the electric field, plus the building and commercial, ceiling
2 tile installation, all that.

3 MR. LANIER: Yeah, that's a good point. Another
4 place Union Carbide got their asbestos are in the ceiling tiles
5 that a lot of schools have had to pull out and a lot of people
6 in construction have wound up having to deal with that.

7 We've got a hand back over there that knows that
8 to be true. The -- okay. Thank you, Mr. Holub. Who else?
9 Mr. Lassman.

10 PROSPECTIVE JUROR NO. 15: Uh-huh.

11 MR. LANIER: Tell me about yours, please.

12 PROSPECTIVE JUROR NO. 15: Our school had some
13 ceiling tiles removed, I think some insulation or something.

14 MR. LANIER: Okay. And, again, I'm assuming
15 none of you have had any health problems to this point in time.
16 That's great. The school stuff is difficult. You'll hear
17 testimony that there are -- I've represented 20 -- there are --
18 there are people who get this cancer in their 20s because of
19 their exposure in schools when they were little. And it's --
20 it's -- there's a real tragic story behind a lot of this.

21 Yes, ma'am, Ms. Grant.

22 PROSPECTIVE JUROR NO. 15: Not me personally,
23 but my new daughter-in-law, her father is real sick from
24 asbestos right now.

25 MR. LANIER: I'm sorry to hear that.

1 PROSPECTIVE JUROR NO. 15: I've never met him,
2 but --

3 MR. LANIER: Okay. Again, this is not a -- this
4 is not a case where I represent asbestos victims directly.
5 This is a case where I represent the Kelly-Moore Paint Company.
6 I've got Herb's company and Mrs. Moore's company here. I say
7 Herb. Half the company's owned by the Moore family. The other
8 half is owned by the employees. And Herb as an employee is --
9 is the way I mean it's his company. It's his and a few hundred
10 other people's, but I'm not here -- if you've got friends and
11 family with asbestos cases, don't feel like that makes you
12 disqualified on a jury like this.

13 I'm not bringing up a bunch of asbestos
14 plaintiffs, putting them on the stand and all the rest of the
15 stuff. This is a business case. This is that Kelly-Moore is
16 right in their position. The reason they sold asbestos is
17 because Union Carbide assured them it was safe. It's all we've
18 got. That's all this case is about. It's simple, plain and
19 simple. Mr. Williamson, you've got asbestos exposure?

20 PROSPECTIVE JUROR NO. 17: No.

21 MR. LANIER: Okay. Mr. Williamson, I've got to
22 stop, though. Y'all remember on your questionnaires you listed
23 who you most admired and who you least admired? It was very,
24 very interesting to read. Based, your Honor, upon this
25 courtroom, Mr. Clinton and Mr. Kerry will not get elected

1 president. But there's another one who won't either.
2 Mr. Williamson, one of the three people in the world that you
3 least admire is Neil Frank, the weatherman. All I can figure
4 is you got stuck in the rain one day when it wasn't supposed to
5 happen. Is there a story there we ought to hear?

6 PROSPECTIVE JUROR NO. 17: No just that, you
7 know --

8 MR. LANIER: You don't like that burr haircut,
9 do you?

10 PROSPECTIVE JUROR NO. 17: It's not that. It's
11 just he seems so unpredictable, you know. You watch --

12 MR. LANIER: He's a weatherman. It's supposed
13 to be unpredictable. All right. All right. Fair enough.
14 Thank you, Mr. Williamson.

15 Mr. Dekenipp. Did I say that right?

16 PROSPECTIVE JUROR NO. 18: Dekenipp.

17 MR. LANIER: Dekenipp. Okay. Any asbestos
18 exposure?

19 PROSPECTIVE JUROR NO. 18: Not to my knowledge.

20 MR. LANIER: Okay. Great. On down the row,
21 Mr. Banda?

22 PROSPECTIVE JUROR NO. 19: I worked at Dow from
23 '68 to '71 in the magnesium department. So I'm not sure. I
24 wouldn't say that I did, but --

25 MR. LANIER: Well, the evidence will show Dow

1 had bought some Union Carbide asbestos, had some from Union
2 Carbide, had some from some other companies, as well, but you
3 don't know one way or the other?

4 PROSPECTIVE JUROR NO. 19: No, I never have --
5 I've never been screened or anything for it, so I don't know.

6 MR. LANIER: So Mr. Banda, you'd be able to just
7 sit, call the evidence, call the shots like you see it, see if
8 they were telling the truth to us or not? Fair enough. Thank
9 you, sir.

10 Mr. -- who else? Mr. Rape, you've got exposure?

11 PROSPECTIVE JUROR NO. 20: Yes, sir. Prior to
12 my law enforcement, I was in the automotive repair business and
13 did a lot of --

14 MR. LANIER: Brake jobs.

15 PROSPECTIVE JUROR NO. 20: Sanding, grinding,
16 using 3M products and it's my understanding they had asbestos
17 in them.

18 MR. LANIER: Yeah. You -- so far, no problems,
19 though?

20 PROSPECTIVE JUROR NO. 20: Well, I've got
21 problems, but I don't think it's from the -- the sanding.

22 MR. LANIER: Okay. All right. Well, I hope
23 those work out well for you. Any reason you couldn't --
24 again --

25 PROSPECTIVE JUROR NO. 20: No, sir.

1 MR. LANIER: You could sit and call the shots
2 like you see them. That's what you do for a living.

3 PROSPECTIVE JUROR NO. 20: Yes, sir.

4 MR. LANIER: Okay. Ms. Anderson, you're not
5 secretly -- you're not secretly an asbestos worker, are you?
6 No? Okay. You do radio technology work at Brazosport Memorial
7 Hospital. You -- do you -- are you involved in x-rays and
8 things like that?

9 PROSPECTIVE JUROR NO. 22: That's what I do.

10 MR. LANIER: Do you -- do you actually read
11 them, too, or you just shoot them?

12 PROSPECTIVE JUROR NO. 22: I just shoot them.

13 MR. LANIER: The reason I'm -- I'm asking,
14 Ms. Anderson, is one of the ways they diagnose early stage of
15 asbestos disease is they take pictures of your lungs, x-rays of
16 your lungs, and I'm sure you've seen that -- that done -- done
17 that there at the hospital. Thank you, ma'am.

18 Ms. Romeo, did you hold up your paddle on
19 asbestos?

20 PROSPECTIVE JUROR NO. 24: Yes.

21 MR. LANIER: Okay. Would you tell us about it,
22 please.

23 PROSPECTIVE JUROR NO. 24: I used to work at the
24 VA Hospital -- the old VA Hospital and that place was loaded
25 with asbestos.

1 MR. LANIER: Yeah. Have -- you also process
2 claims for vets, don't you?

3 PROSPECTIVE JUROR NO. 24: Uh-huh.

4 MR. LANIER: Have you had any that you've had
5 to -- to process through the asbestos claims or things like
6 that?

7 PROSPECTIVE JUROR NO. 24: I don't personally
8 work the claims. We have counsel that do that, but I do see a
9 lot of asbestos claims come through with veterans in general.

10 MR. LANIER: Okay. All right. Thank you.
11 Thank you, Ms. Romeo.

12 Let's go to the third row. Who's got exposure
13 to asbestos. Mr. Wiginton, you've told me. Thank you. Who
14 else? Mr. Key? No, you're all right. Ms. Glass?

15 PROSPECTIVE JUROR NO. 27: Yes.

16 MR. LANIER: Yes, ma'am.

17 PROSPECTIVE JUROR NO. 27: Well, the only -- my
18 mother worked at a paper factory during the '60s, where they
19 were making boxes, and the doctors have told us she has
20 scarring in her lungs.

21 MR. LANIER: Sorry to hear that.

22 PROSPECTIVE JUROR NO. 27: So no problems, but
23 that's -- that's all I know.

24 MR. LANIER: That's the honest -- well, not --
25 the mesothelioma cancer, which is -- is what our law firm

1 specializes in, is a cancer that does not afflict everybody.
2 It's -- it's -- there are about 3,000 cases a year. And if you
3 make this jury panel, you're going to learn all sorts of
4 information about this. Because we're bringing in the best in
5 the land to talk to you, a fellow named David Egilman,
6 Dr. David Egilman, and he will explain all of this to you, so I
7 don't want to sound too dismal, and I -- I pray for the best
8 for your mom. I hope that works out well.

9 Yes, sir. You're -- you're the law. I know to
10 be nice to you. Criminal investigator, Mr. Kincheloe.

11 PROSPECTIVE JUROR NO. 29: Yes, sir. My
12 father-in-law worked with asbestos for probably 30 years. He
13 was involved in some type of civil litigation, had to go to New
14 York, where he -- that's where he's from, Long Island. I don't
15 really know the disposition of that. I know that he had to
16 testify after all this testing. And at the age of 71, his
17 health was still good, so he -- you know, I think he got booted
18 from the settlement or the claim or whatever.

19 MR. LANIER: Okay. Okay. Very good.
20 Mr. Bicks' law firm in New York, I understand, has done a
21 number of different cases for Union Carbide against a lot of
22 the victims in the other cases, could have been involved in
23 your father-in-law's case. There's nothing about that that
24 would affect you? You could still call it fair; is that right?

25 PROSPECTIVE JUROR NO. 29: Yeah. I really don't

1 know much about it at all.

2 MR. LANIER: Okay. Now, you run a polygraph?

3 PROSPECTIVE JUROR NO. 29: Yes, sir.

4 MR. LANIER: So the Judge, instead of swearing
5 in the witnesses could just have you sit up there and we could
6 hook them up to the wires?

7 PROSPECTIVE JUROR NO. 29: No, not -- no, that's
8 the Judge's job.

9 MR. LANIER: All right. Thank you,
10 Mr. Kincheloe. Who else, asbestos? Mr. Felder. Tell us about
11 yours.

12 PROSPECTIVE JUROR NO. 30: I've been in and out
13 of chemical plants over the last 30 years and mid '70s, I
14 guess, I used to work with gaskets, Johns-Manville gaskets,
15 stuff like that, periodically.

16 MR. LANIER: Okay. You, in your questionnaire,
17 showed that you have pretty extensive knowledge of asbestos and
18 understand a lot of it. How did you come by the knowledge?
19 Just --

20 PROSPECTIVE JUROR NO. 30: I'm real big on
21 current events. I listen a lot to the news. I follow lots of
22 the cases that have taken place in the States.

23 MR. LANIER: Okay. Fair enough. Thank you,
24 Mr. Felder. Appreciate it.

25 Who else got asbestos exposure? Mr. Flores, you

1 got it or you just --

2 PROSPECTIVE JUROR NO. 31: Just working out in
3 chemical plants over the years. I know it's in a lot of the
4 schools, buildings and stuff still around.

5 MR. LANIER: Okay. Again, you're one who had
6 some good information in your questionnaire that indicated
7 you've got some pretty good knowledge about it. Did you come
8 by that through work?

9 PROSPECTIVE JUROR NO. 31: Paramedic.

10 MR. LANIER: Okay. Makes sense. Ms. Hester?

11 PROSPECTIVE JUROR NO. 32: Yes, I was in a
12 building for 30 years. It was concrete building. When they
13 got ready to tear it down, they came in said there was a lot of
14 asbestos in it. So they came in, they took it out and then
15 when they tore it down, they said they had to have somebody
16 there to water it down as they were tearing it down. They
17 didn't do anything. We were all around, just standing there.
18 And that building was probably built back in 19 -- maybe '30 or
19 '40. It was a concrete building and we did a lot of remodeling
20 inside, which asbestos was inside. At that time, we did not
21 know. And we tore the building down in 2002.

22 MR. LANIER: Okay. All right. Your health is
23 okay to this point?

24 PROSPECTIVE JUROR NO. 32: Yes.

25 MR. LANIER: Good, Ms. Hester. Thank you for

1 that information. Who else? Yes, sir, Mr. Palat.

2 PROSPECTIVE JUROR NO. 33: Well, my father was
3 diagnosed with asbestos-related illnesses.

4 MR. LANIER: Okay. Did he wind up bringing a
5 case out of that?

6 PROSPECTIVE JUROR NO. 33: He was in a case,
7 yes, sir.

8 MR. LANIER: Okay. I was not his lawyer to your
9 knowledge, was I? All right. Thank you, sir.

10 Mr. Saldivar.

11 PROSPECTIVE JUROR NO. 34: I was exposed to it
12 working in downtown Houston.

13 MR. LANIER: When you hung drywall, did you do
14 any of floating and the --

15 PROSPECTIVE JUROR NO. 34: No.

16 MR. LANIER: You just did the hanging?

17 PROSPECTIVE JUROR NO. 34: I did the hanging,
18 but we worked around the building, Driscoll Towers. It had --
19 we did 11 floors, I think. We had to go in there -- we had to
20 go back in and start working on it. After it was abated, we
21 had to wear masks all the time we were in there.

22 MR. LANIER: All right. All right. Good. Your
23 health's okay so far?

24 PROSPECTIVE JUROR NO. 34: So far.

25 MR. LANIER: All right. Excellent. Anybody

1 else on that row? Ms. Bishop, Mr. Crocker, y'all are not
2 asbestos -- okay.

3 And, again, the -- some folks are exposed to
4 this and never know it. They put asbestos in hairdryers, blow
5 dryers that blow across your face. They put asbestos in
6 ironing board covers. A lot of the medical literature will
7 show you and Union Carbide knew this, didn't tell us. But
8 Union Carbide knew that a lot of spouses would get the
9 poisoning, because, say, the husband came home from working
10 around the drywall or something. The spouse, before they put
11 the clothes in the washer, would shake the dust out of the
12 clothes. And it has caused death in that way and disease on
13 the person that didn't even work around it.

14 The fourth row, Ms. Geraci's row, anybody with
15 asbestos work back there? We've got 39. You are Ms. Lejsal.

16 PROSPECTIVE JUROR NO. 39: Lejsal.

17 MR. LANIER: Lejsal. The J is silent. Lejsal.
18 Okay. Tell me about it.

19 PROSPECTIVE JUROR NO. 39: My father-in-law had
20 asbestosis when he died. He actually died of a stroke, but he
21 was involved in some kind of settlement.

22 MR. LANIER: The -- you will hear that asbestos,
23 when it starts affecting your lungs, it affects your heart,
24 because you don't get as much oxygen, and it can affect a lot
25 of different organs and -- and I'm sorry to hear about that

1 with your -- with your father-in-law. Anything about that
2 would make you unfair or can you be fair?

3 PROSPECTIVE JUROR NO. 39: I don't know. I'll
4 have to hear --

5 MR. LANIER: Need to hear the evidence.

6 PROSPECTIVE JUROR NO. 39: Yes.

7 MR. LANIER: I was more concerned, Ms. Lejsal --
8 you got sued wrongfully and I don't mean to embarrass you in
9 front of everybody, but is there anything about the fact
10 that -- in this case, we're claiming that this business didn't
11 tell us the truth. Are you comfortable sitting and listening
12 to that or you -- you already taking sides a little bit?

13 PROSPECTIVE JUROR NO. 39: No, I think I'd have
14 to hear the whole story.

15 MR. LANIER: Great. Thank you, Ms. Lejsal.
16 Any -- Mr. -- is it Leger?

17 PROSPECTIVE JUROR NO. 40: Leger.

18 MR. LANIER: Leger. Tell me about it.

19 PROSPECTIVE JUROR NO. 40: Well, my father was
20 diagnosed with asbestosis.

21 MR. LANIER: Okay.

22 PROSPECTIVE JUROR NO. 40: They had a couple of
23 class action lawsuits, but when he died, it -- it wasn't a
24 factor on him.

25 MR. LANIER: All right. Good. Now, you're

1 trained in asbestos removal.

2 PROSPECTIVE JUROR NO. 40: I was, yeah.

3 MR. LANIER: Okay. They put you in the suit,
4 where you got a --

5 PROSPECTIVE JUROR NO. 40: Whole thing.

6 MR. LANIER: Can't take anything home, can't
7 take your clothes home, can't breathe, can't -- all the rest.
8 Yeah. It sure would have been nice if the world had known that
9 40 years ago instead of now, wouldn't it?

10 PROSPECTIVE JUROR NO. 40: Yeah. Well, I don't
11 think it would have been -- personally, it hasn't been a
12 secret. You know, the danger has been there. They've been
13 knowing it.

14 MR. LANIER: Right. Some groups have known
15 about it. It's just folks in here and -- and some of the
16 smaller businesses may not have. Thank you, Mr. Leger.

17 Who else? Mr. Rogers. Did I see you on that?
18 Tell me about your asbestos experience?

19 PROSPECTIVE JUROR NO. 41: I was a pipefitter
20 from '64 to '86. We used to have asbestos gloves and blankets
21 that we would use to protect us from the heat.

22 MR. LANIER: Yeah. Did you ever take those
23 gloves and slap them together?

24 PROSPECTIVE JUROR NO. 41: Oh, yeah.

25 MR. LANIER: Get tested?

1 PROSPECTIVE JUROR NO. 41: I also had an uncle
2 that died of cancer related to asbestos.

3 MR. LANIER: Okay. All right. Would you be
4 able to -- this is a unique case, because you've got two
5 companies here that -- the Kelly-Moore Paint Company sold
6 asbestos compound; okay? And yet the Union Carbide Company had
7 that asbestos mine and was one of the key companies for the
8 last 70 years doing the research and getting the information.
9 They worked with another company called Johns-Manville, very
10 closely, and the two of them kind of ran neck and neck on doing
11 this.

12 Anybody know Johns-Manville? Okay. Those --
13 you'll -- you'll hear more evidence about it later.

14 Number 42, Mr. Lydic?

15 PROSPECTIVE JUROR NO. 42: Yes, sir.

16 MR. LANIER: Tell me, please.

17 PROSPECTIVE JUROR NO. 42: Just general
18 construction, remodeling. I've run across just all kinds of
19 siding, flooring, ceiling tile, that contained it. In my
20 younger years, it wasn't -- to my knowledge, it wasn't a big
21 deal, but nowadays, I've had to go in and put net over carpet,
22 because I couldn't remove -- or the customer couldn't afford to
23 remove the -- \$8,000 to remove the tiles for the carpet.

24 MR. LANIER: All right. Thank you, sir.

25 Anybody else on that road? Ms. Gaskill?

1 PROSPECTIVE JUROR NO. 45: Yes.

2 MR. LANIER: Tell me --

3 PROSPECTIVE JUROR NO. 45: The house I grew up
4 in had asbestos siding. We would write on it, use it for
5 chalk. It was very chalky and just thin, so he --

6 MR. LANIER: Yeah, it would write like white
7 chalk, wouldn't it?

8 PROSPECTIVE JUROR NO. 45: Uh-huh. Broke real
9 easy when kids --

10 MR. LANIER: Yeah, the -- the kind of
11 asbestos -- there are multiple kinds of asbestos. The kind of
12 asbestos -- it's like in guns, you get 30 different kinds of
13 guns. Actually, you get hundreds of kinds, but asbestos, you
14 can get different kinds. There are three main kinds that have
15 been in the U.S. The white kind, which is the chrysotile, is
16 what was going in a lot of those and that's what would make the
17 good chalk to write on. That's the kind that Union Carbide
18 sold.

19 Okay. Your health's okay?

20 PROSPECTIVE JUROR NO. 45: Fine.

21 MR. LANIER: Okay. Mr. Stibal?

22 PROSPECTIVE JUROR NO. 46: Starting back in at
23 the 1960s, I was exposed when we would have armored vehicles
24 over in Vietnam. Significant portions of the structures were
25 covered with asbestos cloth and would produce a snowstorm on

1 each site and we didn't know any better at the time.

2 Then when I started work with the labor
3 department back in the early 1970s, well, as an example, we
4 were part of the effort down here on the VA Hospital. We
5 represented some of the removal of that.

6 Generally, whenever there's a fatality in
7 asbestos abatement closure, I go in because none of my
8 employees want to go through the protocol to go into it. In
9 those cases, we're following our rules, which limit things
10 pretty strictly.

11 My wife taught in a school for 30 years that had
12 unabated asbestos that was friable and the district refused to
13 remove it until the law came into effect. And she no longer
14 teaches at that district, but they finally abated at that
15 point.

16 MR. LANIER: Thank you. You've got pretty
17 extensive practice and there's some more questions I'm going to
18 ask you about that in a little bit. I'm going to try and see
19 if I can get through a few more before the Judge breaks me
20 here.

21 THE COURT: I'm going to break in about four
22 minutes.

23 MR. LANIER: Okay. Thank you, Judge.

24 Ms. Tavu? How do I say your last name? Sitting
25 next to Stibal.

1 PROSPECTIVE JUROR NO. 47: My name is Cong,
2 C-O-N-G.

3 MR. LANIER: Cong. Okay. Ms. Cong, do you have
4 any exposure with asbestos? No. Okay. Thank you very much.
5 Your son works at Dow; is that right? Okay. Thank you. Thank
6 you, ma'am. Ms. Cong. Got it.

7 Ms. Creveling, you're okay. All right.

8 Next row, Ms. Morrow's row. Yeah, you're clean?

9 PROSPECTIVE JUROR NO. 49: I'm good.

10 MR. LANIER: All right. So far. Thank you.
11 Mr. Wilson, tell me about it, please.

12 PROSPECTIVE JUROR NO. 55: There's a lot of
13 asbestos insulation -- lot of asbestos insulation in the
14 refinery where I work.

15 MR. LANIER: You know better than to go by and
16 slap it when you walk by or something.

17 PROSPECTIVE JUROR NO. 55: Yes, sir.

18 MR. LANIER: Thank you, Mr. Wilson. Who else?
19 Mr. Rowan, tell me about your asbestos experience.

20 PROSPECTIVE JUROR NO. 51: I actually worked for
21 a contractor several years ago on an asbestos removal.

22 MR. LANIER: Okay. How long ago was it?

23 PROSPECTIVE JUROR NO. 51: It's been ten years
24 ago.

25 MR. LANIER: Okay. Your health's still good?

1 PROSPECTIVE JUROR NO. 51: As far as I know,
2 sir.

3 MR. LANIER: As far as you know. Good. Great.
4 Who else? Anybody else back on that row? Coming over here
5 with Ms. -- let's see. Make sure I'm on the right row.
6 Ms. Bingham. No, Ms. Moreno? Tell me, please.

7 PROSPECTIVE JUROR NO. 56: I worked for 32 years
8 for Southwestern Bell. The building I was in was one of the
9 oldest buildings downtown Houston, and they did a massive
10 asbestos abatement and they did it on off hours, but my luck, I
11 worked off hours. I worked -- I think I was one of three that
12 worked 4:00 to midnight. And they had the tents and it was
13 going on outside the building, but it was -- I was -- they had
14 little white suits. And where I had to work was where they
15 were doing the abatement and it got to the point where I would
16 not go down there to work.

17 MR. LANIER: Yeah. What Union Carbide has found
18 out a long, long time ago, and -- and what the EPA has
19 confirmed with the tests is if you drop a fiber of asbestos --
20 it's like a feather. You can't really see it. It's too small,
21 but it's like a feather. If you drop a fiber from six foot
22 high, it takes it eight hours before it'll hit the ground. And
23 it can drift literally over a hundred feet away. And that's
24 why, hopefully, if you're ever around asbestos abatement, you
25 try and stay far away from -- from anything.

1 Because it's -- it's -- there's a lot about
2 this -- even still today, that -- that companies aren't telling
3 people. A lot about it. Number 57, Mr. Wilson.

4 PROSPECTIVE JUROR NO. 57: Back when I worked
5 for Arco Chemical, they came in and removed the insulation --
6 several installation towers that they had. I've been around
7 it.

8 MR. LANIER: Your health is still good?

9 PROSPECTIVE JUROR NO. 57: I've survived my own
10 cooking for this long.

11 MR. LANIER: Okay. So you're not only doing
12 okay from breathing, but -- but you're doing all right on the
13 scales, too; is that fair?

14 PROSPECTIVE JUROR NO. 57: To be perfectly
15 honest with you, I don't know if it'll help y'all's time frame
16 or anything, but I've had dealings with company attorneys and
17 it could not be fair to Union Carbide, because I'm -- you
18 know --

19 MR. LANIER: You're already --

20 PROSPECTIVE JUROR NO. 57: -- probably not one
21 of the people y'all should pick, or they wouldn't want to see
22 me up there anyway.

23 MR. LANIER: Okay. We appreciate your candor,
24 being straightforward about that. Because the goal here is --
25 is truly to get 12 fair people to listen to the evidence. Our

1 concern -- I'm not looking for any advantage from you. I want
2 12 people who will listen to it, because I think the truth will
3 come out.

4 PROSPECTIVE JUROR NO. 57: Y'all have got a lot
5 of stake on both sides and I'm not somebody with an open mind.

6 THE COURT: We'll take a break. We'll take an
7 hour and 15 minutes. That may be pushing it, but see if you
8 can be back in your seats at 1:25. Thank you.

9 (Break taken from 11:12 a.m. to 11:35 a.m.)

10 THE COURT: Mr. Lanier, you've got 30 minutes.

11 MR. LANIER: Thank you, Judge.

12 See, the reason the Judge puts time restrictions
13 on us is I've got about an hour and a half left of material and
14 I've got about 30 minutes to go. Now, the good part about it
15 for you is that question I've been asking so many of you about
16 asbestos is information both sides needed to know, so I've
17 saved them from having to ask those questions. So they may
18 have a chance to redeem some time later on. We'll see. But
19 I'm going to -- I know where I stopped -- I'm going to move on
20 to a new subject area right now after the break, and let's talk
21 for a minute.

22 Of my five children, my oldest is a boy. My
23 next four are all daughters, and two them are in high school
24 and one of those two daughters came to me over the weekend and
25 said, "Dad, I want to go with Katy to look for homecoming

1 dresses." Any of y'all ever experienced that?

2 I said, "Wouldn't you like me to go with you
3 and you and your father can pick out your homecoming dress?"

4 And she said, "No."

5 She wasn't interested in me or Becky, my wife,
6 her mom, in going. So I sat Gracie down and I explained a
7 foreign concept to this young girl and that is: Budget.
8 Because I was going to entrust her with this little piece of
9 plastic that had my name on it. And I explained to her what
10 her budget was for her dress and her shoes and her purse, which
11 does not make sense to me, why she needs a purse. It does not
12 make sense to me why the shoes she has -- I don't even see why
13 she's going. I know this boy and she doesn't even need to be
14 going to homecoming.

15 THE COURT: Counsel, I assume you're fixing to
16 get to something relevant to the voir dire examination.

17 MR. LANIER: I am, Judge. I've got a question
18 coming. I've got a question coming.

19 THE COURT: All right.

20 MR. LANIER: So my daughter goes and she gets
21 the dress and the shoes and the purse and she overspends her
22 budget that I trusted her with. I'd had a real clear
23 communication. I had trusted her to do what we had discussed
24 and she didn't. Now, she's in trouble in my house with all of
25 those things. Is she in trouble in yours? Raise your hand.

1 Well, she has something in addition to her dress
2 and her shoes and her purse and the jewelry she could not pass
3 up because it looked so good. She has something called
4 excuses: "Dad, I didn't do what I told you I would do, but I
5 have very good reasons for it." And we talked about those
6 excuses.

7 I think in this case what you're going to hear
8 from Union Carbide is, "Well, we may have told you it was safe.
9 You may have sold your asbestos because we told you it was
10 safe. But there are excuses that we'd like to proffer or give
11 out for not telling the truth." And I'd like to talk to you
12 briefly about those excuses.

13 Now, I don't have time to go through all of them
14 in great detail, and Union Carbide's got the right to stand up
15 here and come up with all sorts of things that I can't talk
16 about today. I don't know what they're going to say, but come
17 Monday -- those of you who sit on the jury, hear me on this,
18 come Monday, I will have a chance to tell you fully all of
19 these excuses and -- and how they fit and why they're no good.

20 So just know as you hear the Union Carbide side
21 of the story, that I'm taking good notes and I'll be
22 accountable to you come Monday and I will explain everything
23 that they want to offer as an excuse.

24 I'd like to put up a couple that I think they're
25 going to talk about. I think one of the excuses Union Carbide

1 offers is -- is basically: You shouldn't believe us. You
2 should have known we weren't going to tell you the truth.
3 Why -- you shouldn't trust us. We're not trustworthy. Don't
4 trust us.

5 Is that an adequate excuse for someone telling
6 you something that's wrong? They tell you -- they get you to
7 rely on it, to make them some money, and then you -- when you
8 rely on it, they say, "Well, you never should have believed me.
9 You should know better than that. You ought to go find out, do
10 some investigation, hire a private investigator, see if I'm
11 telling the truth, or go take your product to someone else to
12 see if we tested it right."

13 See, Union Carbide even came in and tested our
14 plant for us. They came in to test it, to assure us everything
15 was safe.

16 Now they want to say, "Well, you shouldn't have
17 believed us. You should have known better."

18 Is that an adequate excuse?

19 Gracie came to me and she said, "Dad" -- one of
20 her excuses on the prom dress -- I mean, not prom, it's
21 homecoming -- homecoming dress, was that she had been talking
22 to her sister and her sister, my daughter, Rachel, had
23 evidently informed her that the budget did not need to be
24 followed. Of course, Rachel was going out the next day to get
25 hers, and I'm sure that she wanted this rule established for

1 all of the daughters.

2 Is that an adequate excuse in anybody's book?

3 It wasn't in my house.

4 See, another thing Union Carbide will say is,
5 "Well, Kelly-Moore shouldn't have believed us. We may be the
6 chemist to the chemical industry; we may be the experts; we may
7 have done it and told them that we are the leaders of the
8 field; we may, in fact, be the leaders; we may be the people
9 who are published in the studies; we may be the people who are
10 doing all this work, but Kelly-Moore, you know, you could have
11 read an article in the newspaper, maybe, or in a magazine, or
12 you got a letter from your insurance company that told you
13 you've got to be careful. You should have known not to believe
14 us."

15 Is that kind of an excuse something that --
16 that -- are there good excuses like that? Can you make excuses
17 for telling untruths?

18 Okay. Let me suggest a second excuse.

19 And -- and you hear these and you think there's
20 no way. They don't say them the way I'm putting them down
21 here. I'm putting them -- I'm clearing out all the lawyer talk
22 and I'm putting them straight.

23 The second excuse is: Well, what's the big
24 deal? The Moores are rich. They've got a lot of money.
25 They've got money. They -- so what if we lied to them? It

1 shouldn't matter. They're rich.

2 How's that one fly? Anybody has got -- I mean,
3 it's not okay to lie just because people are -- have got money,
4 is there? Now, the way that excuses comes out is they'll say,
5 "Well, the Moores had lots of money. They should have taken
6 that money and hired their own people to -- to test and to do
7 that kind of stuff instead of trusting the experts."

8 There's going to be some more excuses, but the
9 last one I want to talk about today, and then I'll save the
10 rest for Monday morning, is the biggest one of all, and it's
11 the excuse called confusion.

12 Have any of you ever been in a discussion with
13 someone where you go in to the discussion and you just know
14 you're right, you just know you're right, but you're talking to
15 someone who's able to confuse and bring in all sorts of things
16 that seem kind of -- and in the end, you're just sitting there
17 wondering what you even started talking about. Okay.

18 MR. BICKS: Your Honor, I object to this as
19 being argumentative. It's supposed to be voir dire.

20 THE COURT: I'm going to overrule the objection,
21 because I'm assuming you're fixing to have a question pretty
22 quick.

23 MR. LANIER: Yes.

24 THE COURT: All right. What's your question?

25 MR. BICKS: Thank you, your Honor.

1 MR. LANIER: If Union Carbide comes in here and
2 they start arguing things to try and confuse the issue, are you
3 comfortable trying to find the truth? Anybody out here
4 who's -- who's worried about the confusion? I'm telling you,
5 they're going to come in, they're going to say, "Well, our
6 asbestos was safe. Somehow, out of all of the galactic
7 universe, the one place we mined asbestos in California is the
8 only place where there's safe asbestos, but that asbestos out
9 of the whole galactic universe won't hurt anybody."

10 And sometimes, I mean, Kelly-Moore believed
11 that. Kelly-Moore defended itself in lawsuits for a long
12 time --

13 THE COURT: Counsel, let's get back on
14 questioning the jury about their qualifications to serve on
15 this jury. You're arguing your case. You'll have plenty of
16 time to do that after all of the evidence is presented.

17 MR. LANIER: Okay. Thank you, Judge.

18 THE COURT: You've got 20 minutes.

19 MR. LANIER: Thank you, Judge.

20 The confusion issue is one that I really want
21 you tuned in on and so I want to make sure everybody's
22 comfortable listening to the truth. Anybody have a problem
23 with that?

24 Thank you.

25 Now, the next point I want to talk to you about,

1 any of you have lawyers that work for you? Any of you ever
2 seen lawyers come and try and kind of cover up your tracks, if
3 you've done something wrong? Any of you ever done something --
4 well, I don't want to ask you. Have you ever seen anybody else
5 do something wrong and try and get lawyers to cover their
6 tracks?

7 I think the evidence is going to indicate, and
8 we're going to be talking about, for example, warnings, and
9 the -- Mr. Stibal from OSHA could let you know that in 1972,
10 OSHA required warnings to be put on asbestos products.

11 And some of the asbestos sellers were putting on
12 warnings in their bulk asbestos and starting in '68.

13 What is the purpose of a warning? Ms. Childers,
14 you work at Home Depot. You're like a manager or something;
15 right?

16 PROSPECTIVE JUROR NO. 8: Right.

17 MR. LANIER: I'll bet y'all have warnings
18 throughout Home Depot in different place, don't you?

19 PROSPECTIVE JUROR NO. 8: We do.

20 MR. LANIER: Why do you put those warnings out?

21 PROSPECTIVE JUROR NO. 8: To warn the public.

22 MR. LANIER: Okay. When you put the warnings
23 out there, do you try and write them so people can understand
24 them?

25 PROSPECTIVE JUROR NO. 8: Yes.

1 MR. LANIER: Is it important that the warning
2 truly give them information about what the dangers are?

3 PROSPECTIVE JUROR NO. 8: Yes.

4 MR. LANIER: Do y'all have lawyers that sit back
5 and look at the warnings? Do you run the warnings by lawyers,
6 do you know?

7 PROSPECTIVE JUROR NO. 8: I'm not sure.

8 MR. LANIER: If y'all are mopping the floor and
9 the floor's wet or there's been a spill, do y'all have those
10 yellow things that say, "Caution" or "Warning, you can slip,
11 floor's wet"?

12 PROSPECTIVE JUROR NO. 8: Yes.

13 MR. LANIER: Before you put those out, do you
14 call lawyers to see if you ought to put them out?

15 PROSPECTIVE JUROR NO. 8: No.

16 MR. LANIER: Okay. Have you ever had anybody
17 come up to you at work and say, "Well, don't put that warning
18 on there. If you put that warning on there, people will know
19 too much. You need to -- you need to put the -- water it down
20 so people don't really know what the problem is. Otherwise,
21 it -- it could affect business"? Have y'all had that problem
22 at Home Depot?

23 PROSPECTIVE JUROR NO. 8: No.

24 MR. LANIER: When you do warnings, do you truly
25 do them to try and warn people?

1 PROSPECTIVE JUROR NO. 8: Yes.

2 MR. LANIER: All right. Thank you. Another
3 thing that you're going to hear is you're going to hear
4 evidence, some of the inner workings of the legal department,
5 and we can't get into a lot of that with you, but Union
6 Carbide's got a big legal department and -- and -- or did, and
7 you'll hear testimony about how the lawyers tried to get
8 involved in -- in trying to protect the company as far as
9 warnings or slipping in some language to help them in a
10 contract or something like that.

11 Do any of y'all interact with lawyers on a daily
12 basis? Okay.

13 Mr. Shatto?

14 PROSPECTIVE JUROR NO. 12: Correct.

15 MR. LANIER: What kind of lawyers do you
16 interact with?

17 PROSPECTIVE JUROR NO. 12: Williams & Bailey is
18 representing me in an arbitration with CenterPoint right now.
19 Also Baker & Botts.

20 MR. LANIER: All right. Baker & Botts should
21 have CenterPoint in that fight. No? Or is Baker & Botts with
22 you?

23 PROSPECTIVE JUROR NO. 12: No, Baker & Botts is
24 with CenterPoint.

25 MR. LANIER: Yeah, I started to say. John

1 Eddie -- John Eddie Williams -- he wouldn't be involved. Who
2 has he got working the case?

3 PROSPECTIVE JUROR NO. 12: Byron Buchanan.

4 MR. LANIER: Okay. All right. Good. Yes,
5 ma'am. Ms. Childers?

6 PROSPECTIVE JUROR NO. 8: I don't know if it's a
7 daily basis, but on a weekly basis, for Home Depot defense.

8 MR. LANIER: Okay. Thank you, ma'am. Who else
9 has interaction with lawyers? Yes, sir. Mr. Rape, obviously,
10 because of your job. I know that, and yours, as well,
11 Mr. Kincheloe.

12 Anyone else? Yes, sir, Mr. Stibal.

13 PROSPECTIVE JUROR NO. 46: We meet pretty
14 extensively with the labor department's attorneys that
15 represent us. They're employed by us.

16 MR. LANIER: Okay. All right. Thank you.
17 Ms. Blackstone, number 63. Ms. Blackstone, what kind of
18 interaction with lawyers?

19 PROSPECTIVE JUROR NO. 63: Union relation
20 lawyers and employment lawyers for Albertson's in Atlanta,
21 Georgia.

22 MR. LANIER: Okay. All right. Very good.
23 Okay. Next, I've got a couple of loose ends I've got to clean
24 up, then I've got two more areas to talk about and I'll be
25 done.

1 Ms. Williams, you've got two children, one who
2 works with oil and one who works in pharmacy. Can you tell me
3 what the oil worker does?

4 PROSPECTIVE JUROR NO. 1: His major is
5 chemistry. He works for Ashland Chemicals, not Ashland Oil.

6 MR. LANIER: Okay. Where he's based out of?

7 PROSPECTIVE JUROR NO. 1: Ohio.

8 MR. LANIER: Ohio?

9 PROSPECTIVE JUROR NO. 1: Ohio.

10 MR. LANIER: Okay. Thank you, Ms. Williams.
11 Number 5, Ms. Villarreal?

12 PROSPECTIVE JUROR NO. 5: Yes.

13 MR. LANIER: Now, you own Delia's Mexican
14 Restaurant.

15 PROSPECTIVE JUROR NO. 5: Yes.

16 MR. LANIER: That's where everybody is supposed
17 to go eat as soon as the Judge dismisses us for lunch; right?

18 PROSPECTIVE JUROR NO. 5: Yes.

19 MR. LANIER: How long have you been in that
20 business?

21 PROSPECTIVE JUROR NO. 5: 20 years.

22 MR. LANIER: Was that a family -- were your
23 folks in that business?

24 PROSPECTIVE JUROR NO. 5: They're still in the
25 business.

1 MR. LANIER: Okay. Thank you, ma'am.

2 Ms. Gonzales, your husband was a carpenter. What kind of work
3 did he do, ma'am?

4 PROSPECTIVE JUROR NO. 10: He worked at the
5 plants in Texas City and La Marque.

6 MR. LANIER: Texas City plants?

7 PROSPECTIVE JUROR NO. 10: And La Marque.
8 Whatever. La Marque.

9 MR. LANIER: All right. Thank you, ma'am. And
10 then he went on to become a coach or something?

11 PROSPECTIVE JUROR NO. 10: Teacher.

12 MR. LANIER: Teacher. Thank you. Mr. Conkin,
13 you do construction. Can you give me a clue what kind?

14 PROSPECTIVE JUROR NO. 11: Plumber. Do plumbing
15 work.

16 MR. LANIER: Okay. How long have you done that?

17 PROSPECTIVE JUROR NO. 11: Off and on for 15
18 years now.

19 MR. LANIER: Okay. Great. Thank you.

20 Mr. Key, give me a clue what kind of work you
21 do, sir.

22 PROSPECTIVE JUROR NO. 26: Shipping industry.

23 MR. LANIER: Okay.

24 PROSPECTIVE JUROR NO. 26: I -- computer data
25 entry for all of the --

1 MR. LANIER: Are you in Houston or Galveston?

2 PROSPECTIVE JUROR NO. 26: In La Porte.

3 MR. LANIER: In La Porte?

4 PROSPECTIVE JUROR NO. 26: The unloading of
5 vessels and loading of vessels.

6 MR. LANIER: All right. Have -- great. Good.
7 Thank you, Mr. Key.

8 Ms. Saldivar, you work at Wal-Mart. Is it the
9 one right up the road here?

10 PROSPECTIVE JUROR NO. 34: No, it's the one in
11 Pearland.

12 MR. LANIER: Pearland. All right. Thank you,
13 ma'am.

14 Ms. Roberts, where's Ms. Roberts? There you
15 are. I'm sorry. Number 44, Ms. Roberts. I don't want to ask
16 a personal question, but what kind of cancer did your father
17 pass away from?

18 PROSPECTIVE JUROR NO. 44: Colon.

19 MR. LANIER: Colon cancer. Thank you,
20 Ms. Roberts.

21 Okay. Ms. Morrow, where you work at Brazosport
22 College, do you have any interactions with Dow Chemical or with
23 other companies around here? What kind of work do you do at
24 the college?

25 PROSPECTIVE JUROR NO. 49: I'm the activities

1 director.

2 MR. LANIER: You plan movie night.

3 PROSPECTIVE JUROR NO. 49: I plan movie night.

4 I do all kinds of stuff. Yeah.

5 MR. LANIER: All right. Thank you. Mr. Sidney,
6 here you are. You're an operator out at BSAF?

7 PROSPECTIVE JUROR NO. 53: Yes, sir.

8 MR. LANIER: And you don't like Bill Gates or
9 Tiger Woods?

10 PROSPECTIVE JUROR NO. 53: Not -- not really.

11 MR. LANIER: And Mr. Williamson doesn't like
12 Neil Frank. Y'all have the most interesting comments on that.
13 What kind of work do you do as an operator out there at BASF?

14 PROSPECTIVE JUROR NO. 17: I'm a -- I'm an
15 operator. I run the plant. I make the product.

16 MR. LANIER: Okay. Okay. Thank you.

17 Ms. Ortiz, you work at the Brazoria County jail.

18 PROSPECTIVE JUROR NO. 54: Yes, sir.

19 MR. LANIER: Do you ever -- do you actually --
20 you're involved with the inmates and --

21 PROSPECTIVE JUROR NO. 54: Yes, sir.

22 MR. LANIER: You handcuff them and shackle them
23 and all of that?

24 PROSPECTIVE JUROR NO. 54: Yes. When you have
25 to, yes.

1 MR. LANIER: You ever get in fights with them?

2 PROSPECTIVE JUROR NO. 54: Not here lately.

3 MR. LANIER: Okay. All right.

4 THE COURT: Let me interrupt just a minute.

5 MR. LANIER: Yes, sir.

6 THE COURT: Do you get paid a salary or do you
7 get paid by the hour as a jailer?

8 PROSPECTIVE JUROR NO. 54: By the hour.

9 THE COURT: Okay. The reason I was asking is I
10 didn't know the sheriff's office did not pay you for jury
11 service if you were selected and on your -- on your sheet, you
12 said you weren't sure --

13 PROSPECTIVE JUROR NO. 54: I checked into that.
14 They do.

15 THE COURT: They do not?

16 PROSPECTIVE JUROR NO. 54: They do.

17 THE COURT: They didn't -- pay.

18 PROSPECTIVE JUROR NO. 54: They do pay.

19 MR. LANIER: Yes, they do pay.

20 THE COURT: Okay. They do pay. Mr. Rape, is
21 that the way it was when you were there?

22 PROSPECTIVE JUROR NO. 20: Yes, sir.

23 THE COURT: I thought they did. I wanted to be
24 sure. Thank you very much.

25 MR. LANIER: Okay. New area. I want to talk

1 about the damages in this case.

2 And, like everything else, this is going to be
3 subject to fights, probably, between lawyers, between our
4 witnesses and their witnesses and everybody else, but I want to
5 tell you what we believe the case to show. We believe that
6 this case will show that Kelly-Moore Paint Company today, if
7 Ms. Moore and the employees wanted to sell it, would be worth
8 something in the range of \$500 million. Except for one
9 problem. And the problem is the asbestos liabilities that the
10 Kelly-Moore Paint Company will have -- understand, right now
11 there are 40,000 lawsuits against the Kelly-Moore Paint Company
12 because of asbestos.

13 The Kelly-Moore Paint Company has already paid
14 hundreds of millions of dollars in lawsuits related to
15 asbestos. The asbestos compound we sold, because they told us
16 it was safe, has cost us hundreds of millions so far. There
17 are 40,000 lawsuits pending, and those lawsuits will probably
18 cost somewhere in the range of \$1.3 billion in today's dollars.

19 And because of that, ain't nobody going to pay
20 \$500 million for this company, because this company is not
21 worth anything. This company isn't going to be worth anything
22 as long as that -- it's going to take \$1.3 billion in money set
23 aside for asbestos victims for this company to have its value.

24 Those are what the experts say the damage is to
25 the Kelly-Moore Paint Company, 1.3 -- those are actuals. Those

1 are not punitive damages. \$1.3 billion. You get an
2 understanding of why this is a significant case.

3 Now, there are some people -- now that we're
4 using the figures, as the Judge indicated, there are some
5 people who are going to say, "Well, that may be the evidence
6 and maybe there was the fraud, but I can't sit on a jury
7 verdict where I'm asked to give 1.3 billion in dollar damages,
8 actual damages. That's too much. I can't just sit down and do
9 that based upon just the greater weight of credible evidence.
10 When you're talking that much money, it needs to be something
11 more significant." If you feel that way, I need to know. And
12 we need to talk about it.

13 On the front row, if that's what the truth is,
14 can you do it? If that's what the truth is, down here, can you
15 do it? If that's what the evidence shows, 1.3 billion.

16 How about the second row? If that's what the
17 evidence says, does anybody have trouble with it or can you do
18 it?

19 Second row? You can do it? Third row. If
20 that's what the evidence is -- I'm just talking about -- I'm
21 not talking about anything other than just awarding --
22 Kelly-Moore is not asking for money for damages that have
23 already been paid. Kelly-Moore is not asking to be reimbursed
24 a couple of hundred million. Kelly-Moore is not asking for
25 anything other than this money that can be set aside for the

1 victims. That's it. To restore the value of the company, then
2 the company will have its value.

3 So on the third row, any problem with that?
4 Mr. Kincheloe, you got a problem.

5 PROSPECTIVE JUROR NO. 29: For me, what you're
6 asking, if I have a problem with it, it's -- it can't be that
7 cut and dried for you to just say it's the truth. I'm assuming
8 that -- from what you said so far, that Kelly-Moore, they were
9 deceived, but I don't know. Without all the facts, I can't sit
10 here and tell you that I could do it.

11 MR. LANIER: Fair enough, Mr. Kincheloe. And
12 none of you should -- please understand, everything I've told
13 you, none of this is evidence. This is what Mark Lanier
14 believes the evidence is going to show. I'd be a fool to stand
15 up here and lie to you. Union Carbide's going to come up here
16 and they're going to offer all sorts of explanations and
17 excuses and other perspectives and they'll, to quote Paul
18 Harvey, "Now you'll hear the rest of the story."

19 And they'll -- you know, they're going to get
20 their chance to do all that. And nothing counts till you start
21 hearing the evidence. But if the evidence shows you and
22 persuades you by the greater weight of credible evidence that,
23 in fact, we sold the compound, because they didn't tell us the
24 truth and we trusted them, we proved fraud, and we proved that
25 that's what the damages are, would you be able to write that

1 down if that's what the proof was?

2 PROSPECTIVE JUROR NO. 29: You're asking me?

3 MR. LANIER: Yes, sir.

4 PROSPECTIVE JUROR NO. 29: If the fact was
5 proven that there was deception, but right now, I -- there
6 again, I say I can't say yes or no, because it's -- it's a
7 blind question.

8 MR. LANIER: Right. There's no proof yet. None
9 of you can say yes or no yet. Okay? And I'm not asking you to
10 say yes or no right now. I just want to know, some people will
11 sit there, Mr. Kincheloe, and say, "I don't -- I don't know. I
12 can't write that big. You know, I'm not going to write down
13 that. I don't want to be on a big case that's in the
14 newspapers. I don't want to be on a big case that's on TV or I
15 don't want to -- I'm not going to be involved in something like
16 that." And I'm trying to ferret out anybody who feels that way
17 because we need to know about it.

18 PROSPECTIVE JUROR NO. 29: Well, making big
19 decisions don't bother me. They haven't bothered me for years.

20 MR. LANIER: You do them every day.

21 PROSPECTIVE JUROR NO. 29: But you're asking me
22 a question and I -- sitting here now, I could -- I'd probably
23 have to say no.

24 MR. LANIER: Okay. I appreciate it. All right.
25 Third row, anybody else feel like Mr. Kincheloe? Yes, ma'am.

1 You are Ms. Hester?

2 PROSPECTIVE JUROR NO. 32: Yes. I feel the same
3 way he does. It'd be hard to really be -- say whether I would
4 or not. I know we've got to weigh the difference and that
5 might make had a difference in my decision.

6 MR. LANIER: Okay. Anybody else on that third
7 row?

8 THE COURT: Hang on a minute. I couldn't hear
9 the last part. Did you say, "I'd have to hear the evidence and
10 that might change my position"? I just didn't hear what you
11 said.

12 PROSPECTIVE JUROR NO. 32: That's correct.

13 THE COURT: Well, if you heard the evidence,
14 will you award whatever you think the evidence proves to you?
15 That's the question.

16 PROSPECTIVE JUROR NO. 32: Yes, sir.

17 THE COURT: In other words, if you believe the
18 truth to be a certain figure, can you put that figure down?

19 PROSPECTIVE JUROR NO. 32: I can. I was looking
20 at it, like moneywise, when I just saw that. Yes, sir.

21 MR. LANIER: Okay. It's exactly the way the
22 Judge has said. So I just echo that for the fourth row or the
23 fifth row and anybody that we haven't gotten to. Yes, ma'am,
24 Ms. Creveling.

25 PROSPECTIVE JUROR NO. 48: I find that figure

1 excessive.

2 THE COURT: Again, I'm sorry. I didn't hear the
3 last part. I find that figure what?

4 PROSPECTIVE JUROR NO. 48: Excessive.

5 MR. LANIER: Anybody else feel that way? 38,
6 Ms. Salazar.

7 PROSPECTIVE JUROR NO. 38: I feel that if it was
8 proven to me, I would be able to do it, but it would have to be
9 proven profoundly.

10 MR. LANIER: In other words, not just by the
11 preponderance of the evidence.

12 PROSPECTIVE JUROR NO. 38: It would have to be
13 right on it's certain to a point and it would have to be just
14 flat out proven all the way before I would ever consider that
15 sum, that amount.

16 MR. LANIER: Something more than just the
17 greater weight of credible evidence.

18 PROSPECTIVE JUROR NO. 38: Right. Exactly.

19 MR. LANIER: Thank you, Ms. Salazar. I
20 appreciate your candor. 40, Mr. Leger.

21 PROSPECTIVE JUROR NO. 40: If it was proven to
22 me I felt like they were at fault, then it would have to be
23 proven to me that it would have to be 1.3 billion.

24 MR. LANIER: Which is fine.

25 PROSPECTIVE JUROR NO. 40: That would be my only

1 problem. If, in fact, it's only 75 million --

2 MR. LANIER: Then you write down 75 million.

3 PROSPECTIVE JUROR NO. 40: It wouldn't be
4 1.3 billion. That's where I have a problem.

5 MR. LANIER: Mr. Leger has given the law,
6 evidently, more clear than I am. That's what you've got to do.
7 You've got to sit down and listen to the evidence. You may
8 decide that there was fraud, but the damages were zero. If so,
9 you put down zero. But if the evidence indicates it's
10 1.3 billion, are you able to write that down?

11 THE COURT: Excuse me, Counsel. Not if the
12 evidence indicates it's 1.30. If you believe from the evidence
13 that the damages are 1.30. That's the criteria. You judge the
14 credibility of the evidence. The question is: If you believe
15 the proof is a certain amount, and that certain amount is
16 1.30 billion, can you write that down? And if you believe it's
17 a lesser amount, can you write that down? Are you going to be
18 intimidated or -- or concerned if a figure that you believe is
19 so high and you can say, "Even though I believe it, I won't
20 write it down because it's too high"? That's what he's asking.

21 MR. LANIER: Yeah. Or -- or are you going to
22 say, like Ms. Salazar did, to prove it at those kinds of
23 numbers, you've got to do more than the greater weight of
24 credible evidence. It's going to take more substantial proof
25 than that. Anybody else?

1 Now, we are also asking for punitive damages,
2 because this is not the way business should be run in America.
3 Who out there has -- has issues with punitive damages that
4 would keep you from following the law if the law says that if
5 punitive damages are called for and proven by clear and
6 convincing evidence, it's an appropriate thing to do?

7 Yes, sir. You are Mr. Bingham? I mean, Mr. --
8 Dr. Brociner. All right. We're going to talk to you about
9 that as well. You don't -- you're not -- I read your -- your
10 questionnaire. You're not big on punitive damages, are you?

11 PROSPECTIVE JUROR NO. 67: I don't believe in
12 punitive damages, no.

13 MR. LANIER: Okay. Thank you, sir. Anybody
14 else? Number 33, Mr. Palat. You feel the same way?

15 PROSPECTIVE JUROR NO. 33: Would you define
16 punitive damages?

17 MR. LANIER: Punitive damages. Your Honor,
18 would you want me to define that or would you?

19 THE COURT: Oh, let me define it for you.
20 That'll just solve a lot of problems, problems later.

21 If a company defrauds another company -- and I'm
22 going to use companies, because that's what we're dealing
23 with -- in other words, they intentionally make a false
24 representation which is relied upon and it's material and the
25 intent is to deceive and the company relies on it and is

1 deceived and suffers damages, they're entitled to recover
2 whatever the jury believes from the evidence is their actual
3 damage.

4 If a company commits an act of fraud, which is
5 what's called an intentional tort, or if a company commits an
6 act of negligence and it is done recklessly and it is done with
7 malice, which is another pleading in this case, then the jury
8 has the authority to award what's called punitive or exemplary
9 damages. Now, these are not monetary awards to compensate the
10 injured party. This is an award to punish the offending party.
11 So punitive damages are in those cases where there is an
12 intentional intent to deceive. If you believe that to be the
13 case, it's fraud, or there is a gross act, a conscious
14 indifference to the rights of others committed with malice, and
15 in that case, you have the discretion to award punitive
16 damages.

17 They're punishment damages, not for the purpose
18 of making the injured party whole and compensating the injured
19 party, but punishing the offending party. You have broad
20 discretion. You can look at all sorts of factors. There's
21 about six or eight of them. And you can decide if you want to
22 award punitive damages, if you get to that point, and then you
23 can decide what you think would be a fair punishment or what
24 would be punitive against the offending party. That's what it
25 amounts to. Some cases, you don't get the punitive damages.

1 Some cases, you do get the punitive damages. Go ahead,
2 Counsel.

3 MR. LANIER: Thank you. So the question is:
4 With that understanding, is there anybody out there who's
5 philosophically opposed to punitive damages in such a way that
6 you wouldn't follow the evidence or you wouldn't follow the
7 Court's charge and you wouldn't be able to write it down? Say,
8 that's not -- I don't want to go there.

9 THE COURT: You've got about one more minute.

10 MR. LANIER: Thank you. My last question,
11 ladies and gentlemen, I can't read your hearts and your minds.
12 I'd ask you to search your hearts and your minds. If there's
13 any reason that you perceive you would not be fair to my
14 client, Kelly-Moore Paint Company, I need you to tell me that
15 now. I -- yes, sir. Mr. Kincheloe.

16 PROSPECTIVE JUROR NO. 29: My sister works for
17 Dow. She's been there for 15 years. She's my twin sister. I
18 don't think I could -- I couldn't do this fairly.

19 MR. LANIER: Okay. That's fair enough. Anybody
20 else with a connection like that, with Dow or something, that
21 would keep you from -- from being fair in this case? Thank
22 you, Mr. Kincheloe. I appreciate that.

23 Ladies and gentlemen, you've not heard any
24 evidence yet. I don't want your vote. I don't want you
25 saying, "Hey, I'm on Lanier's side." We want you to hear both

1 sides of this before you make up your mind. Don't lean my way
2 at all. Don't lean their way.

3 THE COURT: Just wrap it up.

4 MR. LANIER: Be fair. Thank you. Thank you,
5 your Honor.

6 THE COURT: Folks, we're going to take a break
7 for lunch. I want to give you two or three instructions,
8 though. Remember where you're seated. I'm going to give you
9 an hour and 15 minutes, in case you want to leave the
10 courthouse. I tell you what. Yeah, let's be back at 1:25.
11 That's a little more than an hour and 15 minutes. And by the
12 time we get everybody seated, it'll be closer to 1:30.

13 Don't talk about the case during the break.
14 You're not even allowed to visit among yourselves about the
15 case. Of course, you don't know any of the facts about the
16 case. All you've heard are the allegations of one side.
17 You'll get to hear the allegations of the other side and then
18 we'll have our jury sometime late this afternoon. So with that
19 admonition in mind, remember where you are; be back at 1:25;
20 don't talk about the case. Thank you very much.

21 (Break taken from 12:09 p.m. to 1:32 p.m.)

22 THE COURT: The bailiff says we have them all,
23 so let's go to work.

24 MR. BICKS: Thank you, your Honor.

25 JURY VOIR DIRE BY THE DEFENDANT

1 MR. BICKS: Good afternoon, everyone.

2 THE COURT: Good afternoon.

3 MR. BICKS: You know my name is Peter Bicks and
4 I want to tell all of you how proud I am to be here for the men
5 and women of Union Carbide. This, for me, is a special room.
6 It's a special room because my granddad was a judge. He's no
7 longer here now, but I still have his robe and the American
8 flag as a keepsake and a memory. And my dad also was a lawyer
9 and he's not here either, but for me, more than anything, my
10 granddad and dad wanted someone to keep the tradition on and
11 that's me.

12 My wife's name is Linda and we've got three
13 kids. Avery is our oldest, Isabelle, and Phoebe. Before I
14 tell you a little bit about them, I want to introduce you to
15 some very important members of the team. You've heard them
16 mentioned before.

17 One of the finest lawyers in Texas, Scott
18 Lassetter. He's from Houston. 22 years he's been doing this
19 and almost all of it has been right here in this county.

20 John Gilbert, a good friend of mine, spent his
21 whole life here. He took over his granddad's practice and now
22 he's turning it over to his son.

23 Siobhan Handley works with me. Siobhan, you can
24 probably tell from that name, she's not from around here.

25 That's an Irish name. But I promise you, I won't ask you to

1 spell it.

2 Now, Mr. Lanier talked about children and -- and
3 what we teach them and what we expect of them and I want to ask
4 all of you a question: Do we teach our children to honor
5 promises that they make? Is there anybody here who thinks that
6 when you make a promise, you shouldn't honor it?

7 Do we also teach our children to do their
8 homework? That's not a task a lot of parents like. But it's
9 something that we teach our children to do.

10 Does anyone here think that a child should not
11 take responsibility and that that's not a lesson that you teach
12 a child, taking responsibility for their conduct?

13 Do people feel that teaching children to take
14 responsibility is the right thing to do?

15 That's what this case is really going to be
16 about for the 12 of you who are going to be on it. It's going
17 to be about Kelly-Moore, whether they did their home work and
18 Kelly-Moore about whether or not they honored a promise that
19 they made to Union Carbide in writing and whether or not
20 Kelly-Moore is going to take responsibility for its conduct.
21 And when I talk to you today, I'm going to tell you a little
22 bit more about that.

23 One of the things I want to let each and every
24 one of you know that we're going to have something in common.
25 For the 12 of you who are going to be asked to do justice here,

1 you are going to be away from your families. And I want you to
2 know that -- that I will, too, and I will know exactly how you
3 feel.

4 Let me talk to you about what really we're here
5 to talk about. I'm not going to deliver to you an opening
6 statement about why Carbide believes that it's right here. I'm
7 going to tell you a little bit about the case.

8 We're here to determine who among all of you are
9 the right jurors for this case. Not every case is the right
10 case for every person. Because we all have inside of us our
11 own beliefs and our own leanings, and the law calls that a bias
12 or prejudice. Outside of this room, those are words that don't
13 always sound that good. No one wants to say, "I have a bias or
14 a prejudice."

15 But when we're in this room together, that's
16 fine. And what it really means is a leaning, a leaning one way
17 or another.

18 And let me give you an example. My daughter
19 Isabelle celebrated her birthday and my wife put me in charge
20 of getting the cake. She turned four. And you can imagine a
21 four-year-old girl, what her favorite color is. Pink. She
22 wanted a cake that had pink icing on it and she wanted her name
23 on the cake. I don't know why my wife put me in charge of it,
24 but she did.

25 Well, I called Cosco, which is near where we

1 live, and I told them that I need for my daughter a pink cake
2 and I wanted her name on it, spelled I-S-A-B-E-L-L-E, Isabelle.
3 The day of the birthday, and I will be -- confess I called that
4 morning of the day. I ran down to Cosco to pick up the cake
5 and I almost fainted when I saw that the cake was not pink, it
6 was blue, and her name was spelled I-S-A-B-E-L. They left off
7 the L and the E at the end.

8 If this was the case that we were all trying to
9 figure out; right -- if this was a case involving Cosco, the
10 baker and someone who bought that cake, you could see that the
11 person who got involved in that, if it were me, which it was,
12 would not be the right juror in that case, and that's what a
13 bias and prejudice means. Because of the experience that I
14 had, I would have a leaning against Cosco. I would try to put
15 it out of my mind, but that's really what the concept of a bias
16 or prejudice means. It's kind of a leaning.

17 So what I want to do is ask some questions and
18 talk about some of the things that Mr. Lanier spoke about.

19 Mr. Smith, can I just visit for you with a
20 minute -- for just a moment here. You were asked some
21 questions about your views on asbestos -- juror number 2; I do
22 this for the court reporter -- and whether you think asbestos
23 is dangerous on a scale of one to ten. And I think you put it
24 up there pretty high.

25 PROSPECTIVE JUROR NO. 2: Right.

1 MR. BICKS: And you've worked around asbestos
2 before?

3 PROSPECTIVE JUROR NO. 2: Yes.

4 MR. BICKS: Okay. And Mr. Lanier was asking you
5 questions about relying on suppliers and lies and things like
6 that. Do you remember that back and forth?

7 PROSPECTIVE JUROR NO. 2: Yes.

8 MR. BICKS: What I'm asking you, Mr. Smith, is
9 hearing that and -- and kind of thinking of things like a foot
10 race where it was Union Carbide and Kelly-Moore getting ready
11 to start the race, in terms of where you feel in your heart
12 now, do you think that Union Carbide because of some of these
13 feelings that you have is a little bit behind Kelly-Moore?

14 PROSPECTIVE JUROR NO. 2: Yes.

15 MR. BICKS: You have a little bit of a leaning
16 or you have a leaning, in other words, against Kelly-Moore --
17 against Union Carbide and in favor of Kelly-Moore?

18 PROSPECTIVE JUROR NO. 2: Yes.

19 MR. BICKS: Okay. And -- and I thank you for
20 being honest, because that's really what all this is about. It
21 can be difficult, but it is so important.

22 Is it fair to say that you have the leaning that
23 I described that the law calls a bias or prejudice?

24 PROSPECTIVE JUROR NO. 2: I think so.

25 MR. BICKS: Okay. Thank you.

1 THE COURT: I'm sorry. I couldn't hear the
2 answer. Did you say, "I think so"?

3 PROSPECTIVE JUROR NO. 2: Yes.

4 MR. BICKS: Yes. And if I had to put it to you
5 yes or no, is it fair to say that your answer would be yes?

6 PROSPECTIVE JUROR NO. 2: Yes.

7 MR. BICKS: Thank you. Ms. Mitchell, you have
8 told us in your questionnaire -- and thank you for sharing that
9 information with us -- about your eye injury and your concerns
10 about that. And I don't want to in any way embarrass you, but
11 I hope you can understand that I need to talk to you a little
12 bit about that.

13 In light of the health concerns that you have
14 and your views about asbestos and the amount of damages that
15 you've heard that Kelly-Moore is asking for in this case, do
16 you feel that this might not be the right kind of case for you
17 to be on?

18 PROSPECTIVE JUROR NO. 4: Probably not.

19 MR. BICKS: As you hear some of the things about
20 Union Carbide, is it fair to say that, as we start this out,
21 that we're a little bit behind Kelly-Moore?

22 PROSPECTIVE JUROR NO. 4: Yes.

23 MR. BICKS: I also think that I saw on your
24 questionnaire that you had an unfavorable view of Dow Chemical.

25 PROSPECTIVE JUROR NO. 4: Yes.

1 MR. BICKS: And thank you for being honest. And
2 is that something that you have strong feelings about?

3 PROSPECTIVE JUROR NO. 4: I've just never heard
4 anything good about them as far as the way that they handle the
5 different lawsuits and things that I've seen.

6 MR. BICKS: Thank you. I will make a commitment
7 to everybody here that I hope at the end of this that you will
8 be happy with the way that we defend this lawsuit, because
9 we're really looking forward to it. But I thank you for
10 sharing that with me.

11 Mr. Conkin, did I pronounce it right?

12 PROSPECTIVE JUROR NO. 11: Conkin, yes.

13 MR. BICKS: I think I read on your questionnaire
14 that you are a plumber and you've actually worked in this
15 courthouse?

16 PROSPECTIVE JUROR NO. 11: I've worked here,
17 yes.

18 MR. BICKS: You heard some things about Union
19 Carbide. What was your reaction to that? What did you think?

20 PROSPECTIVE JUROR NO. 11: I don't really know
21 exactly what the Union Carbide is.

22 MR. BICKS: Well, I promise you that if you're
23 in this case that you'll learn a lot about Union Carbide.

24 Have you heard anything about Union Carbide
25 other than what you heard here today?

1 PROSPECTIVE JUROR NO. 11: No, sir.

2 MR. BICKS: If you ended up being on this jury,
3 how would -- how would you feel being a jury in the same
4 courthouse that you come to work in sometimes?

5 PROSPECTIVE JUROR NO. 11: I worked here for 13
6 years and it was all in the -- you know, it's comfortable to
7 me, really.

8 MR. BICKS: Thank you. If you were in your own
9 mind thinking about your feelings about whether or not you
10 would want to be on a case like this -- some people want to be
11 on a case; other people, they listen and say, "I really don't
12 want to be -- serve on a case like this." What are your
13 thoughts and feelings about that?

14 PROSPECTIVE JUROR NO. 11: My thoughts and
15 feelings is me being a single parent, it's going to be hard for
16 me to be on a case this long. You know, I don't mind doing my
17 duty, but, a long, drawn-out case, it's going to affect me a
18 lot.

19 MR. BICKS: Uh-huh. I think that'll be
20 something that we will take up with the Judge, and I -- I will
21 not go into that, but I appreciate that and I know -- I know
22 how difficult that could be, and I thank you for -- for sharing
23 that with me.

24 Mr. Shatto, you hit on something that's
25 important and that I want to talk about. I think we all

1 probably know today that corporations are under a lot of fire,
2 and you made the comment about the three people who you least
3 admired and they were the three people from Enron.

4 PROSPECTIVE JUROR NO. 12: There's a reason.

5 MR. BICKS: Tell me about that.

6 PROSPECTIVE JUROR NO. 12: The reason is I
7 worked for Reliant. They changed their name to CenterPoint.
8 Number one, I had Reliant-CenterPoint stock that dropped
9 hundreds of thousands of dollars. Both of my neighbors worked
10 for Enron. I saw both of them lose their jobs and their
11 savings. So when you asked who I least admired, those three
12 guys were it. They caused a lot of problems.

13 MR. BICKS: And I'll bet there are other people
14 in this room who feel that way. Just by a show of hands, how
15 many people here share those feelings that Mr. Shatto has
16 discussed with us?

17 (Hands raised.)

18 MR. BICKS: Thank you.

19 Now, Mr. Shatto, you were also a plaintiff in a
20 lawsuit?

21 PROSPECTIVE JUROR NO. 12: Right now, I -- it's
22 a -- it's a job loss grievance against CenterPoint Energy.

23 MR. BICKS: Yes.

24 PROSPECTIVE JUROR NO. 12: We've already had the
25 arbitration and I don't know if the brief has gone in yet. I

1 understand that my attorney has had a hip replacement, so he's
2 been in the hospital, so I don't know if the brief's gone in
3 yet or not. So it's against CenterPoint, Baker & Botts, and
4 it's just an arbitration. Everything's already done, you know.
5 We're just waiting on the briefs, and there's an arbitrator out
6 of New Orleans that's going to make the decision.

7 MR. BICKS: I hope it -- I hope it comes out
8 well for you.

9 Now, focusing on this -- the -- this leaning
10 that I talked about, you've heard about some aspects of this
11 case.

12 PROSPECTIVE JUROR NO. 12: Right.

13 MR. BICKS: If I had to ask you, if we got to
14 the starting line, and -- and where does Kelly-Moore and Union
15 Carbide line up with each other, in your view, does Union
16 Carbide start out a little bit behind?

17 PROSPECTIVE JUROR NO. 12: I would say it was
18 pretty even. I would say that you haven't done your spiel and
19 they have and, you know, I'm listening with both ears.

20 MR. BICKS: Let me ask this. Because you are a
21 plaintiff in a case, do you think that you might be inclined to
22 side with Kelly-Moore, who's the plaintiff here, because you
23 were a plaintiff?

24 PROSPECTIVE JUROR NO. 12: Well, I think it's --
25 I think it's a completely different deal. You know, I know

1 that everybody likes to win. That's the name of the game, I
2 guess, but I don't know that -- I don't believe it would affect
3 my decision.

4 MR. BICKS: You could keep --

5 PROSPECTIVE JUROR NO. 12: It's not --

6 MR. BICKS: You could keep an open mind?

7 PROSPECTIVE JUROR NO. 12: Yeah, I think so.

8 MR. BICKS: Let me ask you this: On a scale of
9 one to ten, if I had to ask you to rate Union Carbide, one
10 being bad and ten being great, where do you think you'd rate
11 them?

12 PROSPECTIVE JUROR NO. 12: I would say probably
13 five. Kind of middle of the road. I'm not real familiar with
14 Union Carbide, but I think I do remember their -- their name on
15 the batteries I used to play with when I was little.

16 MR. BICKS: The Eveready batteries.

17 PROSPECTIVE JUROR NO. 12: Something like that.
18 Other than that, I'm not real familiar with them.

19 MR. BICKS: Thank you.

20 Ms. Anderson. Can I visit with you for a
21 minute.

22 First of all, I want to congratulate you,
23 because I think congratulations are in order. If I read your
24 questionnaire right, you are engaged.

25 PROSPECTIVE JUROR NO. 22: I've been engaged for

1 a long time.

2 MR. BICKS: Well, congratulations. Do you have
3 a date set?

4 PROSPECTIVE JUROR NO. 22: No.

5 MR. BICKS: Well, congratulations. I also read
6 that you work hard on the weekends. Tell me about that.

7 PROSPECTIVE JUROR NO. 22: I work 40-hour
8 weekends, two 16-hour shifts and an 8-hour shift.

9 MR. BICKS: When I read that, I got out a piece
10 of paper and I tried to figure out how you do that. How do you
11 do it?

12 PROSPECTIVE JUROR NO. 22: I go in Friday night
13 at 11:00 and get off on Saturday day at 3:00 in the afternoon
14 and come back Saturday night at 11:00. I get off Sunday at
15 3:00 in the afternoon. I work Sunday night at 11:00 and I get
16 off at 7:30 on Monday morning.

17 MR. BICKS: I think it -- is it fair to say it
18 would be difficult for you to come in here Monday morning --

19 PROSPECTIVE JUROR NO. 22: Yeah. I can't take
20 both Friday and Saturday -- Sunday off, but if I have to take
21 something off, I have to take my own personal vacation. So
22 they're not going to pay me.

23 MR. BICKS: Yeah. I understand.

24 PROSPECTIVE JUROR NO. 22: And I'd rather not be
25 here all day and go in and work a 16-hour shift. I'd rather --

1 I'd rather take a Friday off, so that I can only have to work
2 an 8-hour shift Saturday day and an 8-hour shift Sunday night
3 or Saturday night and then another 8-eight hour shift Saturday
4 day. I'd rather do it where I don't have to -- I'd rather do
5 it where I don't have to work a full 16-hour shift with no
6 sleep on Friday after I've been here all day.

7 MR. BICKS: I completely understand. And I can
8 also imagine if you came here Monday morning at 9:00 --

9 PROSPECTIVE JUROR NO. 22: I'd be asleep.

10 MR. BICKS: Particularly if we had some boring
11 science expert up there --

12 PROSPECTIVE JUROR NO. 22: I'm a night person.
13 I'm not a day person.

14 MR. BICKS: Okay. Well, thank you for sharing
15 that.

16 Sir, help me out and pronounce your last name,
17 please.

18 PROSPECTIVE JUROR NO. 20: Rape. Just like the
19 offense.

20 MR. BICKS: Okay. Thank you, Mr. Rape. And
21 this is juror number 20. I want to talk to you a little bit
22 about this concept of bias and prejudice.

23 You mentioned to us about Mr. Lanier's party or
24 parties.

25 PROSPECTIVE JUROR NO. 20: Yes, sir.

1 MR. BICKS: Do you -- and I'll come back to that
2 in a minute. Do you have a concern about being exposed to
3 asbestos?

4 PROSPECTIVE JUROR NO. 20: I could be exposed to
5 it, but I'm not aware of it.

6 MR. BICKS: Okay. I guess what I -- let me ask
7 it to you this way. Can you see that from my perspective,
8 representing a client on the other side of a case with
9 Mr. Lanier, that I might be a little bit concerned about you
10 going to a Christmas party --

11 PROSPECTIVE JUROR NO. 20: Sure. That's why I
12 brought it up.

13 MR. BICKS: Yes. And I really appreciate that.
14 If you were in my position, would you be a little uncomfortable
15 about something like that?

16 PROSPECTIVE JUROR NO. 20: Yes, sir.

17 MR. BICKS: Was it a great party, by the way?

18 PROSPECTIVE JUROR NO. 20: They're absolutely
19 wonderful.

20 MR. BICKS: I was also trying to understand
21 this, but I may have trouble piecing it together. Your wife is
22 a court reporter?

23 PROSPECTIVE JUROR NO. 20: Yes, sir.

24 MR. BICKS: And she works for a judge?

25 PROSPECTIVE JUROR NO. 20: Yes, sir.

1 MR. BICKS: And I'm sorry. What is the judge's
2 name.

3 PROSPECTIVE JUROR NO. 20: Randall Hufstetler.

4 MR. BICKS: And is the judge a good friend of
5 Mr. Lanier's?

6 PROSPECTIVE JUROR NO. 20: I assume.

7 MR. BICKS: Okay. Thank you. Thank you.

8 Mr. Banda, can I visit with you for a moment.

9 PROSPECTIVE JUROR NO. 19: Okay.

10 MR. BICKS: I think on your questionnaire --
11 remember the question about your views on asbestos, one through
12 ten, ten being the most dangerous, I think you had it at a ten.

13 PROSPECTIVE JUROR NO. 19: Yeah, because I
14 believe it's dangerous from what I've heard and read about it.

15 MR. BICKS: And I think I also read that you
16 felt that you were supposed to asbestos at Dow.

17 PROSPECTIVE JUROR NO. 19: Well, I wouldn't say
18 that I was, because I'm not sure, you know, but I worked -- I
19 think it was used, you know.

20 MR. BICKS: And is that something that is of a
21 concern to you?

22 PROSPECTIVE JUROR NO. 19: Yeah. My wife keeps
23 telling me go get tested for it, you know, but I've never had
24 the time to go.

25 MR. BICKS: Do you think, based on what you

1 heard about Union Carbide and the things you've told us, that
2 you might have a leaning against Union Carbide in favor of
3 Kelly-Moore?

4 PROSPECTIVE JUROR NO. 19: Well, I don't know.
5 I think I can stay in the middle, you know, because I don't
6 know that much about either side, so I'm not going to rule
7 out -- you know, try to say one's worse than the other, because
8 I don't know.

9 MR. BICKS: In terms of where you are right now,
10 as we sit here, is Union Carbide -- if we do the foot race, I
11 guess, since it's okay to do that since the Olympics -- we just
12 had the Olympics and we lined up on the starting line, do you
13 put us a little bit behind?

14 PROSPECTIVE JUROR NO. 19: Probably -- probably
15 would.

16 MR. BICKS: Do you think that we have to prove
17 to you that we didn't do anything wrong?

18 PROSPECTIVE JUROR NO. 19: Right.

19 MR. BICKS: Yes. Thank you. The answer would
20 be, yes, we would have to prove that?

21 PROSPECTIVE JUROR NO. 19: Right.

22 MR. BICKS: Ms. Bosarge. Did I pronounce it
23 right?

24 PROSPECTIVE JUROR NO. 13: Thank you.

25 MR. BICKS: You heard the comments that

1 Mr. Shatto made about Enron. How do you feel about all of the
2 attention and what's come out on the whole Enron situation?

3 PROSPECTIVE JUROR NO. 13: Well, I think it's
4 sad that all those people lost their jobs and, you know, it's a
5 sad situation --

6 MR. BICKS: And I'm sorry.

7 PROSPECTIVE JUROR NO. 13: -- for those people.

8 MR. BICKS: Union Carbide is a big company. Do
9 you have any leanings to put Union Carbide behind Kelly-Moore?

10 PROSPECTIVE JUROR NO. 13: I can't really say
11 until, you know, I understand what it's all about, because I
12 really don't know.

13 MR. BICKS: Uh-huh. Well, let me ask you this.
14 Union Carbide mined asbestos. No question about that. And
15 Union Carbide sold asbestos to companies like Kelly-Moore that
16 put asbestos in their products and then made products and then
17 sold them. Because Union Carbide mined asbestos, do you have
18 feelings at all that lean against Union Carbide because it was
19 doing that?

20 PROSPECTIVE JUROR NO. 13: What I can see is
21 when it was being mined back then, maybe people did not know
22 back then, and, you know, know now -- so I don't know much
23 about the -- Union Carbide or any of that.

24 MR. BICKS: You would want to know more.

25 PROSPECTIVE JUROR NO. 13: Yeah.

1 MR. BICKS: Mr. Wiginton.

2 PROSPECTIVE JUROR NO. 25: Yes, sir.

3 MR. BICKS: Did I pronounce it right?

4 PROSPECTIVE JUROR NO. 25: Yes, sir.

5 MR. BICKS: Thank you. I must say I got up
6 early and went through all the names, everybody here, so I
7 could pronounce them right, and I -- I know I'm going to miss a
8 couple, but you are -- I thought from your questionnaire that
9 you were a plaintiff in a lawsuit or somebody in your family is
10 a plaintiff?

11 PROSPECTIVE JUROR NO. 25: My wife has a
12 lawsuit, a class action lawsuit with Phenaphen. As far as me,
13 I'm trying to get my disability, so I've got some Yankee
14 lawyers for that.

15 MR. BICKS: How are they doing? Are they nice?

16 MR. LANIER: Not the same one, is it? They
17 doing a good job?

18 PROSPECTIVE JUROR NO. 25: I'm not sure yet.

19 MR. BICKS: Well, let me tell you something. If
20 they don't, you let me know, because -- let me talk to you
21 about this concept of the bias/prejudice, this leaning concept.
22 Because of your family's involvement and your involvement on --
23 on the plaintiff's side, do you think, in your mind, you might
24 have a tendency to sympathize with Kelly-Moore because they're
25 a plaintiff?

1 PROSPECTIVE JUROR NO. 25: Not in that sense. I
2 probably might sympathize with Kelly-Moore on the basis of what
3 I know after 31 and a half years in a plant and the effects of
4 asbestos, whether it's an open area, closed-in area, whatever.

5 MR. BICKS: That's an area -- a topic that
6 you're fairly knowledgeable about, based on what I've heard.

7 PROSPECTIVE JUROR NO. 25: Fairly.

8 MR. BICKS: Based on that knowledge that you've
9 brought into the courtroom with you, is it fair to say that
10 Union Carbide starts out behind Kelly-Moore because of what you
11 know?

12 PROSPECTIVE JUROR NO. 25: I'm afraid, yes, sir.
13 Yes, sir.

14 MR. BICKS: I could tell you there really is
15 nothing to be afraid about. I mean, in a sense that that's --
16 this is all just about being open and being honest and it's
17 important, really, to both sides, but is it fair to say that
18 you have that leaning against Union Carbide that the law would
19 call a bias or a prejudice?

20 PROSPECTIVE JUROR NO. 25: Yes, sir.

21 MR. BICKS: Thank you.

22 THE COURT: Counsel, I can't see where we are.
23 Is that Mr. Wiginton?

24 MR. BICKS: Yes, your Honor.

25 THE COURT: Okay. That's what I need to know.

1 While we're on this, did you tell me that you've
2 got rheumatoid arthritis and you've got to go get shots every
3 two weeks for it?

4 PROSPECTIVE JUROR NO. 25: Yes, sir.

5 THE COURT: Okay. I just wanted to be sure.
6 Thank you.

7 MR. BICKS: Thank you. Ms. Glass.

8 PROSPECTIVE JUROR NO. 27: Yes.

9 MR. BICKS: Did I see in your questionnaire that
10 your most admired person was Jerry Lewis?

11 PROSPECTIVE JUROR NO. 27: Yes.

12 MR. BICKS: I've got to be honest with you, as a
13 kid, I loved the Jerry Lewis movies. Are you a fan of Jerry
14 Lewis because of the telethons?

15 PROSPECTIVE JUROR NO. 27: Yes, because he's
16 sick himself.

17 MR. BICKS: Yes.

18 PROSPECTIVE JUROR NO. 27: And he's trying to
19 keep on going and trying to raise money for his children.

20 MR. BICKS: Yes.

21 PROSPECTIVE JUROR NO. 27: I feel like he's
22 still going on, even though he does look sick. That's --

23 MR. BICKS: Uh-huh. On the ranking that we had
24 on asbestos, you had it up there at the highest, at ten.

25 PROSPECTIVE JUROR NO. 27: Yes. Yes, sir.

1 MR. BICKS: And I think you had talked a little
2 bit about, I think, your mother was a factory worker.

3 PROSPECTIVE JUROR NO. 27: Well, my mother had
4 worked at a paper factory and then, of course, that was in
5 the '60s, and they didn't have a lot of screening. And then
6 later on, as she got older, she had had chest x-rays and she
7 has some scarring and stuff in her lungs and that may have been
8 from working with paper in the factory and stuff like that,
9 secondhand smoke and -- so I don't know if it had anything to
10 do with it, but --

11 MR. BICKS: Yeah.

12 PROSPECTIVE JUROR NO. 27: -- but I do know that
13 the paper had, you know, -- factories had asbestos.

14 MR. BICKS: Based on that experience that you
15 have --

16 PROSPECTIVE JUROR NO. 27: Yes.

17 MR. BICKS: And you've heard the discussions --

18 PROSPECTIVE JUROR NO. 27: Yes. Yes.

19 MR. BICKS: -- with -- with some of the other
20 folks here. Is it fair to say that you have a similar kind of
21 leaning against Union Carbide?

22 PROSPECTIVE JUROR NO. 27: I probably would have
23 to say yes.

24 MR. BICKS: Uh-huh.

25 PROSPECTIVE JUROR NO. 27: Because, you know,

1 unless I know all the facts, you know, just initially.

2 MR. BICKS: Yeah. In terms of where you sit
3 right here --

4 PROSPECTIVE JUROR NO. 27: Yeah.

5 MR. BICKS: -- do you have that leaning --

6 PROSPECTIVE JUROR NO. 27: Yes.

7 MR. BICKS: -- against Union Carbide that the
8 law would call a bias or prejudice?

9 PROSPECTIVE JUROR NO. 27: Yes.

10 MR. BICKS: Thank you.

11 Mr. Felder, are you concerned about your health?

12 Thank you, Mr. Felder. This is the kind of juror I like.

13 Gives me a card when I need it. I want to talk to you a little
14 about the gaskets and your exposure to those gaskets. Were
15 those -- did I hear you mention Johns-Manville? Tell me about
16 that.

17 PROSPECTIVE JUROR NO. 30: I used to work for a
18 fabricator back in the early '70s. We used gaskets as part of
19 the fabrication process. We worked with them not on a daily
20 basis, but on an infrequent basis, JM 60, particularly, and
21 they contained asbestos in them.

22 MR. BICKS: Uh-huh. Hearing what you've heard
23 so far, and knowing that Union Carbide mined and milled
24 asbestos, does Union Carbide in your mind start out a little
25 bit behind here?

1 PROSPECTIVE JUROR NO. 30: In my mind, no. I
2 give equal representation to both sides.

3 MR. BICKS: Great. Great. One of the things
4 that actually will come up in this case is that Johns-Manville
5 was a significant supplier of asbestos to Kelly-Moore. And
6 Union Carbide was a minor supplier. Kelly-Moore actually got
7 into the business of asbestos before Union Carbide even came on
8 the scene and -- and for those of you who will be in the case,
9 we will talk about that.

10 Let me talk kind of about -- about some
11 different areas. Where was my librarian here? Tell me about
12 the library that you work at. Juror number 7.

13 PROSPECTIVE JUROR NO. 7: It's at an
14 intermediate school in Lake Jackson, seventh and eighth grade,
15 all -- all abilities, all races, a little bit of everything
16 there.

17 MR. BICKS: Is it the kind of library where if a
18 younger person wanted to learn something, they could come into
19 the library and go check out a book and learn about what was --
20 what's in the book?

21 PROSPECTIVE JUROR NO. 7: Yes.

22 MR. BICKS: I want to talk to everyone here
23 about this -- this idea. I told you up front the story about
24 my children and the three lessons that -- that we teach them,
25 and I'll be the first one to say, the one about doing homework,

1 I wouldn't say that I've got a hundred percent success rate,
2 but it is an important lesson.

3 By a show of hands here, who believes that a
4 company that manufactures a product, okay, takes a bunch of
5 ingredients from different suppliers, different areas, and
6 takes all those ingredients and then mixes them together, and
7 then puts it in their own package and then sells it -- who here
8 thinks that that company ought to test and research what it is
9 that they're selling? By a show of hands.

10 THE COURT: Counsel, I'm sorry. I didn't hear
11 your question. Your voice tailed off. What was the last part
12 of the question?

13 MR. BICKS: The basic question was, Judge: Who
14 agrees among the jury panel that a company that buys
15 ingredients from different suppliers, mixes them together --

16 THE COURT: Yeah, I heard that. It was the last
17 part.

18 MR. BICKS: Yes. And then who agrees with that,
19 that they should test and research.

20 THE COURT: Okay. I didn't hear the test and
21 research.

22 MR. BICKS: They should test and research their
23 product before they sell it. And let me do it a bit
24 differently, because it looks like almost everybody agrees.

25 Who disagrees and thinks that a manufacturer in

1 that situation doesn't have to test or research what it is that
2 they're selling? Yes, sir. And help me out with your name.

3 PROSPECTIVE JUROR NO. 36. Number 36.

4 MR. BICKS: Yes.

5 PROSPECTIVE JUROR NO. 36: I agree with the
6 point you're getting to, the fact that Kelly-Moore or
7 whoever -- I used to be an engineer. I used to work in
8 engineering and research and design before I became an oil and
9 gas consultant. And we relied on our suppliers to give us
10 accurate information about what was in the product and that was
11 our research.

12 Now, what you're getting at is Kelly-Moore
13 should have done independent research outside of what you told
14 them. And I disagree with that entirely, because they're
15 relying on you as the expert and leading person in the field to
16 tell them how it's going to act. And you have a responsibility
17 to be truthful in that to them.

18 MR. BICKS: Uh-huh. Yes. And I tell you now
19 that -- I mean, to cut to the chase right now, that there were
20 comments made about lies and -- and things like that. Union
21 Carbide will present evidence to those of you who are in this
22 case that Union Carbide was completely truthful, but I
23 appreciate -- I appreciate where you're coming from.

24 Let me ask something similar to this. Who
25 thinks that something that is in a library, that is in a

1 newspaper, that is in a magazine, that is on TV -- who thinks
2 that that could be a secret?

3 I -- I know I'm not going to pronounce, sir,
4 your name correctly. Did I hear -- there was discussion -- did
5 you make a comment about the amount of information that you saw
6 about asbestos?

7 PROSPECTIVE JUROR NO. 40: Who, me?

8 MR. BICKS: Yes.

9 PROSPECTIVE JUROR NO. 40: I say I was involved
10 in a course on abatement of asbestos.

11 MR. BICKS: Yes. And how much information was
12 there about the risks of asbestos?

13 PROSPECTIVE JUROR NO. 40: I -- I don't remember
14 the hours that were required to complete the course, but it
15 was -- it was, if I recall, it was a two-week, 40-hour a week
16 course, something like that.

17 MR. BICKS: Uh-huh. Devoted all towards
18 learning about asbestos?

19 PROSPECTIVE JUROR NO. 40: Safety and -- yeah.
20 Yeah. Yes, sir.

21 MR. BICKS: I guess we were calling, you, sir,
22 the OSHA guy. Number 46. Tell me what your thoughts are about
23 the kind of job you think OSHA has done in terms of regulating
24 workplace issues.

25 PROSPECTIVE JUROR NO. 46: OSHA's purpose

1 according to the law is to supervise employers' compliance with
2 the act. Nothing in the act that says OSHA makes the workplace
3 safe. We, in fact, punish those who do not obey the law is the
4 point that needs to be made. With asbestos, there has been a
5 changing target. We started out originally with a level that
6 was set at one height and that's based upon scientific research
7 over many years.

8 The hazards of asbestos were known to the Romans
9 in part. By the time we got to 1970, we were basically
10 reflecting 1930s, 1940s technology. The law that was set at
11 that point set the exposure levels at a certain degree.
12 Subsequent to 1970, there were further thoughts on it and the
13 level was reduced and further restrictions were put in place.
14 The agency follows what is recognized by a group called the
15 American Conference of Governmental Industrial Hygienists and
16 they're the one that actually set the levels. I'm not involved
17 in that in any way, shape, or form.

18 MR. BICKS: And what you -- your experience
19 and -- and I can tell that it's -- it's -- you're an expert.
20 Are you aware of, in your experience, anything which shows that
21 corporations have corrupted the OSHA process?

22 PROSPECTIVE JUROR NO. 40: It's a very difficult
23 question to answer. I can only speak from my viewpoint, which
24 is limited to working in five states over a period of 30 -- 27
25 years, I guess it is, at this point. And, certainly, there are

1 those employers that attempt to do that. Some of them do it
2 rather innocently and almost amusingly. Others go to great
3 lengths to do it. Our purpose is not to be clever about it.
4 Our purpose is to cut down the middle and administer the law
5 fairly and our attorneys, in effect, do that for us once it
6 gets to that level.

7 There's a -- let's put it this way. I get lied
8 to by both sides. My men lie to me. I try not to lie to my
9 employees.

10 MR. BICKS: Tell me what your views are about
11 Union Carbide.

12 PROSPECTIVE JUROR NO. 40: I have a very high
13 opinion of Union Carbide. When I was 12 or 13 years old, I
14 bought Union Carbide stock from my grandfather. Several years
15 later, I sold it, made a killing to the extent I was able to
16 buy an expensive bicycle. Union Carbide is a large company
17 just like many others. I have feelings about many companies.
18 They're based on things probably that you wouldn't even
19 consider.

20 I have thought Union Carbide to be a relatively
21 good corporate citizen in my exposures to them, no better, no
22 worse than many other corporations.

23 MR. BICKS: I've got to ask you this because my
24 son is bugging me for a bike. What kind of bike did you get?

25 PROSPECTIVE JUROR NO. 40: Back then it was a

1 French racing back, back in the early 1960s.

2 MR. BICKS: I think he has in mind something
3 much fancier. But, thank you.

4 Mr. Crocker, let me come back to you, if I
5 could. Juror 36. Based on your feelings and really looking
6 into your heart, do you see Union Carbide as starting out
7 behind in this case?

8 PROSPECTIVE JUROR NO. 36: My research and my
9 opinion of Union Carbide over the years of being in MBA school,
10 et cetera, to me, Union Carbide epitomizes corporate greed.

11 MR. BICKS: Okay. Thank you. And I appreciate
12 that. It's fair to say that --

13 PROSPECTIVE JUROR NO. 36: They will never catch
14 up to Kelly-Moore.

15 MR. BICKS: And I can tell you that I thank you
16 for that honest answer. And that's what this is really --
17 really all about.

18 Let me ask people about contracts. Has anyone
19 here tried to get out of a contract because they were unhappy
20 with the way things worked out? Anybody in here have any
21 experience about something like that or feelings about that?

22 Yes, sir.

23 PROSPECTIVE JUROR NO. 42: Yeah, I've had
24 dealings with leases in a business my wife owns and what's in
25 the contract and what really happens are two different things.

1 In ours, they would maintain the buildings and everything.
2 When they left, both ceilings in the bathrooms had collapsed.
3 These are totally unusable, but that's not their problem. But
4 in our contract, it says they would maintain all maintenance.
5 So, yes, I've had the experience, but also being the
6 contractor, I've been on both ends of it.

7 MR. BICKS: For the record, it's juror 42.

8 PROSPECTIVE JUROR NO. 42: Sorry.

9 MR. BICKS: Anybody else have any experiences
10 like Mr. Lydic? Yes, sir.

11 PROSPECTIVE JUROR NO. 46: When I'm not doing
12 the government's dirty work, I have a musical group that I
13 quite frequently contract with weddings, charities, things of
14 that nature. And quite a few people think that because they've
15 signed a contract, they've done all they need to do. And when
16 they don't live up to their terms in the contract, they get
17 kind of upset when I set the union's lawyers on them. So we
18 will break the contract if we don't have the deposit up front
19 like that's required. And they think that that date is theirs
20 exclusively. If I get -- someone else comes to me with a check
21 in their hand, that's too bad for the first party and I'm
22 pretty ruthless about it because my -- my contractors that work
23 for me are pretty ruthless.

24 MR. BICKS: Thank you. Juror 46. I think there
25 was another hand. Yes, sir.

1 PROSPECTIVE JUROR NO. 67: Well, I think you
2 asked if anybody here had ever tried to get out of a contract
3 and while I've not done that personally, I have been party to
4 other contracts, professionally and otherwise, where the other
5 party attempted to do that.

6 MR. BICKS: And how did you feel, Dr. Brociner,
7 when somebody tried to get out of a contract?

8 PROSPECTIVE JUROR NO. 67: Well, obviously, I
9 wasn't very happy, because that's the point of having a
10 contract. You sign a contract with specific terms and you
11 should live up to them, both parties.

12 MR. BICKS: In this case, the evidence will be
13 that Union Carbide and Kelly-Moore signed a contract where
14 Kelly-Moore said they knew everything about the hazards of
15 asbestos and wouldn't bring a lawsuit just like the lawsuit
16 that we're here today defending.

17 Anyone have feelings that, with a contract like
18 that, that Kelly-Moore should still go ahead and bring a
19 lawsuit like this?

20 This, to us, is important -- an important
21 question. This is a company-against-company case. But there
22 are going to be claims by Kelly-Moore that there are going to
23 be future sick people and that Union Carbide should be
24 responsible for that. What I want to hear from people about is
25 who -- if they're on this case, is -- has the potential for

1 saying to themselves, "I don't really care what the dispute is
2 between Union Carbide and Kelly-Moore. All I'm concerned about
3 is that in the future, there might be some sick people and, no
4 matter what, Union Carbide should pay for that"? I want to
5 know if people, in listening to this today, that that kind of
6 thing has gone through their mind, that this is maybe a dispute
7 between two companies, but you may want to put that aside and
8 only think about and be concerned about future sick people.
9 Does anyone feel that way at all in listening to this?

10 PROSPECTIVE JUROR NO. 7: I do.

11 MR. BICKS: Ms. Duke?

12 PROSPECTIVE JUROR NO. 7: Yes.

13 MR. BICKS: Tell me about how you feel.

14 PROSPECTIVE JUROR NO. 7: Well, you know, three
15 of my family members have gone through a lawsuit and been
16 awarded money from asbestos and I never even thought where the
17 money came from. I just knew that they got the money. So, you
18 know, if they were sick, then I would certainly want them to be
19 awarded what they were due, but I don't know who should pay. I
20 know that y'all will try to prove who should pay, but at this
21 point I don't know and I just want them to get the money, but I
22 don't really care.

23 MR. BICKS: Right. Right. Knowing that Union
24 Carbide mined asbestos, do you think you might hold that
25 against them a little bit and lean against them?

1 PROSPECTIVE JUROR NO. 7: Yeah, I could.

2 MR. BICKS: If I had to just say to you, yes or
3 no, is it fair to say that you do have that leaning against
4 Union Carbide?

5 PROSPECTIVE JUROR NO. 7: Yes.

6 MR. BICKS: And that leaning that the law would
7 call a bias or prejudice against Union Carbide?

8 PROSPECTIVE JUROR NO. 7: I would say so, yes.

9 MR. BICKS: Thank you, Ms. Duke, for being so
10 honest.

11 THE COURT: Let me be sure I understand this.
12 Counsel, are you talking about you have a leaning against Union
13 Carbide because they mined asbestos or are you saying you have
14 a leaning against Union Carbide in this case as opposed to
15 Kelly-Moore, because they mined asbestos? I mean, the reason
16 I'm asking you this and I want everybody to understand it.
17 This is not an asbestos case. These are two companies that
18 were involved in asbestos and one company is alleging that the
19 other company committed fraud and made negligent
20 misrepresentations and caused damages and injuries to be
21 suffered.

22 So if you've got a leaning because of asbestos,
23 the leaning's got to be either in favor of Union Carbide over
24 Kelly-Moore or in favor of Kelly-Moore over Union Carbide.
25 That's what I'm interested in. Or can you start both sides out

1 equally in this case and listen to the evidence and answer
2 those questions about fraud and negligent misrepresentation, if
3 any, and damages, if any, based on the evidence? And I
4 reiterate this because it makes me no difference. But with
5 that background in mind, we're only concerned with fraud
6 allegations and misrepresentations. That's the causes of
7 action that are alleged in this case.

8 Now, with that in mind, I want to reiterate what
9 he said. Do you have a leaning in favor of Union Carbide and
10 would you start them out ahead over Kelly-Moore in this case
11 because Union Carbide mined asbestos? I want to be sure we
12 fully understand the question as it is supposed to be asked.

13 PROSPECTIVE JUROR NO. 7: No, I wouldn't start
14 them out ahead.

15 THE COURT: You wouldn't what?

16 PROSPECTIVE JUROR NO. 7: I would not start them
17 out ahead.

18 THE COURT: Well, when you said you have a
19 leaning, you disfavor Union Carbide basically with what you
20 said a while ago, in essence. I'm not talking about as a
21 company. I'm talking about versus Kelly-Moore.

22 PROSPECTIVE JUROR NO. 7: I thought he was
23 talking about a different -- a leaning against them and that's
24 what I was saying yes.

25 THE COURT: Against them in this case is what I

1 want to know. And I'm going to ask everyone of you that when
2 we finish that, so I just want you to be thinking about that.
3 What I'm interested in everybody starting both sides out
4 equally in this case. And if you're going to put one side
5 ahead a little bit before we start or behind, I need to know
6 that, but I'm talking about between these two companies. Okay.

7 PROSPECTIVE JUROR NO. 7: Okay.

8 THE COURT: Okay. Go ahead.

9 MR. BICKS: To kind of bring it back in light of
10 what the Judge was saying, is it fair to say that Union Carbide
11 starts out behind?

12 PROSPECTIVE JUROR NO. 7: At this point, yes.
13 That's the way I see it.

14 MR. BICKS: Thank you.

15 THE COURT: In this case?

16 PROSPECTIVE JUROR NO. 7: Yes, sir.

17 THE COURT: Okay.

18 MR. BICKS: Your Honor, I've been going for
19 about an hour.

20 THE COURT: 58 minutes, to be exact.

21 MR. BICKS: Would it be a good time --

22 THE COURT: You've got 32 minutes left.

23 MR. BICKS: -- for a short break?

24 THE COURT: No, but that probably means somebody
25 needs to go to the restroom, so what we'll do -- I see some

1 hands up there. Okay, folks. Let's be back in 15 minutes to
2 3:00, then.

3 (Break taken from 2:29 p.m. to 2:45 p.m.)

4 THE COURT: Remain seated, please. Mr. Bicks.
5 You have 32 minutes left. It's the other two that -- your
6 panel.

7 MR. BICKS: Mr. Palat? A few questions for you,
8 sir.

9 MR. LANIER: I'm sorry. Who are we asking for?

10 MR. BICKS: Mr. Palat, juror 33.

11 MR. LANIER: Thank you. Mr. Palat.

12 MR. BICKS: Did I pronounce it right? Palat. I
13 want to explore with you this leaning question and talk to you
14 a little about that.

15 Tell me, your dad --

16 THE COURT: Let me -- let me interrupt you just
17 a second.

18 MR. BICKS: Yes.

19 THE COURT: You got -- you asked to come to the
20 bench because of a medical condition earlier, did you not, sir?

21 PROSPECTIVE JUROR NO. 33: I just wanted to
22 explain to you something about going more frequently than
23 others. That's all.

24 THE COURT: Okay. Only reason I was going to
25 ask, if you thought this medical condition was going to create

1 a problem with you sitting, there wasn't any reason to worry
2 about questioning.

3 PROSPECTIVE JUROR NO. 33: No, sir. No, sir.

4 THE COURT: Okay. I'm sorry. Go ahead.

5 MR. BICKS: Sir, tell me, did I read that your
6 father has been a plaintiff in an asbestos lawsuit?

7 PROSPECTIVE JUROR NO. 33: Class action lawsuit.

8 MR. BICKS: Yes. I'm going to try to get this
9 right. Help me out. Did anybody in your family work for Dow?

10 PROSPECTIVE JUROR NO. 33: My father and my
11 brother. One of them does now.

12 MR. BICKS: To your knowledge, does your wife
13 have any survivor type benefits from Dow?

14 PROSPECTIVE JUROR NO. 33: She may. I don't
15 know where her first husband worked at. He may have worked at
16 Dow. He passed away from heart -- he had a heart transplant
17 and it wasn't successful and he passed away. I don't remember
18 if he worked for Dow or not, but I know she gets a pension from
19 his employer.

20 MR. BICKS: From Dow?

21 PROSPECTIVE JUROR NO. 33: It may have been Dow.

22 MR. BICKS: What is his name, sir?

23 PROSPECTIVE JUROR NO. 33: Just Konopaki is all
24 I know.

25 MR. BICKS: Konopaki.

1 Ms. Bishop, juror 35, can I just visit with you
2 for a moment? You are -- you work as a budget analyst at
3 Shell?

4 PROSPECTIVE JUROR NO. 35: No, for USA, United
5 Space Alliance, space shuttle contract.

6 MR. BICKS: Okay. And I think I read from your
7 questionnaire that you put asbestos as -- on the scale of ten
8 when it came to danger.

9 PROSPECTIVE JUROR NO. 35: Yes.

10 MR. BICKS: I don't really want to go into the
11 details of anything that's private to you, but I read about
12 some health issues that you have. Is that something that
13 you're concerned about when it comes to whether or not this is
14 the right case for you?

15 PROSPECTIVE JUROR NO. 35: I don't think so.
16 And I had cancer. I don't think the cancer I had was related
17 to asbestos.

18 MR. BICKS: What about the care and treatment
19 that you may or may not need, to make sure that you get as well
20 as you can be? Is that something that you're going to need to
21 deal with and could be a problem for this case?

22 PROSPECTIVE JUROR NO. 35: Well, I have to go in
23 and I have to go in two days this month for my six-month
24 checkup, but I go in for blood work. Two days this month, I
25 need to go to M.D. Anderson for follow-up on my treatments. I

1 have to have blood work, CAT scans, chest x-rays, which takes
2 one day, and then the next day I go back to see a doctor. And
3 I do that every six months, so it's not anything that I'd like
4 to postpone.

5 MR. BICKS: In materials of what we've been
6 talking about here on this leaning, you've heard what the Judge
7 has -- has explained. Is it fair to say that Union Carbide
8 is -- starts out behind in this case in your heart and mind?

9 PROSPECTIVE JUROR NO. 35: No, right -- right at
10 this point, I'm kind of confused, because we keep talking about
11 asbestos, but the Judge says this case is not about asbestos.
12 It's about two companies against each other. And as far as I'm
13 concerned, I haven't heard enough from both sides to lean one
14 way or the other. I'm just in the middle of the road until
15 somebody tells me something that can change my mind or make up
16 my mind for me.

17 THE COURT: Let -- let me clear up, make sure
18 you understand this. Asbestos is in this case. That's -- both
19 of these are companies that obviously dealt in asbestos. But
20 one company is suing the other company, alleging
21 misrepresentations and fraud. So that's what the case is
22 about. The product involved was an asbestos or an
23 asbestos-type product. That's the allegation, but this is not
24 an asbestos case where an individual is suing a company for
25 damages for asbestos exposure. That's what I wanted to be sure

1 and understand.

2 PROSPECTIVE JUROR NO. 35: And I'm not leaning
3 one way or the other on that.

4 MR. BICKS: Great. Thank you. If you had to
5 put Carbide on a scale of one to ten -- one is a -- a bad
6 company, ten is a -- a really good company -- where would you
7 put Carbide?

8 PROSPECTIVE JUROR NO. 35: I -- I personally
9 don't know anything about Union Carbide to -- to grade it.

10 MR. BICKS: Thank you. What about -- do you
11 have any -- tell me how you feel about big corporations. What
12 are your feelings about that?

13 PROSPECTIVE JUROR NO. 35: Well, I've worked for
14 several big corporations that I think are fair and just to
15 their employees and take safety into consideration, but then
16 you have the Enrons that give you a bad taste. I think there
17 are good ones and bad ones out there.

18 MR. BICKS: Thank you.

19 Ms. Creveling, I wanted to come bank to you.
20 Did I pronounce it right?

21 PROSPECTIVE JUROR NO. 48: Yes.

22 MR. BICKS: Juror 48. I wanted to talk to you
23 about damages. I think you said that, in listening to
24 Kelly-Moore's damage claim here, that it seemed to you to be
25 excessive. I think you will see in this case that -- I wrote

1 down when the Judge said it -- that there are two things that
2 really were going to happen here. That the jury was going to
3 be seated here and listen to the evidence in that box where the
4 witness comes and look at the documents and the jury was going
5 to decide the facts and there's one person who is in charge of
6 the law and he's -- it's Judge Gayle.

7 Do you feel comfortable, if Judge Gayle
8 instructs you on what the law is on damages and you wait and
9 listen to the evidence, which you haven't heard yet, do you
10 think that you could listen to the evidence and listen to what
11 the Judge instructs you to do?

12 PROSPECTIVE JUROR NO. 48: Well, the answer is,
13 yeah. I mean, I can follow the law. Yes.

14 MR. BICKS: Thank you. And by the same token,
15 if the evidence showed that Kelly-Moore was entitled to
16 nothing, would you have any problem awarding Kelly-Moore
17 nothing?

18 PROSPECTIVE JUROR NO. 48: No.

19 MR. BICKS: Juror 15, Mr. Lassman. You've
20 been -- I haven't gone over -- I guess, picked on you is the
21 way to say it. I just want to visit with you for a second.

22 PROSPECTIVE JUROR NO. 15: Sure.

23 MR. BICKS: What are your thoughts about Union
24 Carbide?

25 PROSPECTIVE JUROR NO. 15: I really don't know

1 enough to form an opinion. I mean, I've heard of the
2 corporation before, but I don't know anything about it.

3 MR. BICKS: Uh-huh. How do you feel about a
4 company that mined asbestos? What -- what's in your heart when
5 you hear about that?

6 PROSPECTIVE JUROR NO. 15: Well, I'm a little
7 bit embarrassed because I didn't know that asbestos was mined.
8 That was something I learned today. I mean, to me, I mean, I
9 don't -- I don't know anything about asbestos.

10 MR. BICKS: Uh-huh. Uh-huh. Any -- I mean, if
11 you were in my position --

12 PROSPECTIVE JUROR NO. 15: Uh-huh.

13 MR. BICKS: -- and trying to figure out and get
14 into your heart and mind, I mean, what -- is there something
15 you think I should know about, about you, that would help us
16 see if you were the right juror for this type of case?

17 PROSPECTIVE JUROR NO. 15: I think that I'm
18 honest and fair. I mean, being a school teacher, I -- I'm used
19 to hearing both sides, because I hear arguments all the time.

20 MR. BICKS: Now, do I read, you teach sixth
21 grade?

22 PROSPECTIVE JUROR NO. 15: That's correct.

23 MR. BICKS: Is it boys and girls or --

24 PROSPECTIVE JUROR NO. 15: It's a little bit
25 of -- mostly the girls arguing back and forth.

1 MR. BICKS: Yes.

2 PROSPECTIVE JUROR NO. 15: I've dealt with some
3 playground fights, too.

4 MR. BICKS: Are you -- I remember some of my
5 teachers. Some were kind of the tough disciplinarian types.
6 Some were the more kind of let things go type. Where do you
7 put yourself?

8 PROSPECTIVE JUROR NO. 15: Well, I'm the only
9 male on campus, and I hope that I'm a strong role model for a
10 lot of the kids. I mean, some, I'm the only male figure in
11 their lives.

12 MR. BICKS: Thank you.

13 PROSPECTIVE JUROR NO. 15: Uh-huh.

14 MR. BICKS: Ms. Grant. 16. Thank you. You've
15 heard a fair amount of discussion that we've all been having.
16 What -- what's your reaction to Union Carbide, listening to
17 this?

18 PROSPECTIVE JUROR NO. 16: I'm -- I don't know
19 too much about Union Carbide either, except for what I hear at
20 work. I have a friend's husband that works at Union Carbide
21 and they talk about how good it is, great it is. My uncle used
22 to work at Dow, before he passed -- for many years, and it
23 was -- Dow was excellent for him.

24 MR. BICKS: Uh-huh. Do you think people should
25 honor contracts? How do you feel about that?

1 PROSPECTIVE JUROR NO. 16: Oh, yeah. I think
2 so.

3 MR. BICKS: Mr. Williamson, I didn't have a
4 chance to talk to you too much, juror number 17. How do you
5 really in your heart feel about Union Carbide?

6 PROSPECTIVE JUROR NO. 17: I don't know very
7 much about them. So right now, you know, I don't have a
8 opinion, favorable or unfavorable, right now.

9 MR. BICKS: Uh-huh. If I asked you to tell me
10 what your thoughts are about, you know, do companies try to
11 take advantage of other companies and customers, what do you
12 think about that?

13 PROSPECTIVE JUROR NO. 17: I guess I've never
14 had to deal with any situation like that, so I'm not really
15 sure what -- what I would say.

16 MR. BICKS: It's funny, because when I tried to
17 pronounce where you work the first time I said it, it was going
18 to be Schlumberger. But I know it's Schlumberger; right?

19 PROSPECTIVE JUROR NO. 17: Yes, sir.

20 MR. BICKS: Thank you.

21 Ms. Mitchell, let me just come back to you.

22 Because I was trying to keep my notes and I didn't do them, I
23 don't think, too well, but fair to say that based on your
24 feelings that we talked about that you have that leaning that
25 the law calls a bias or prejudice against Union Carbide?

1 PROSPECTIVE JUROR NO. 4: I don't know anything
2 about the company itself. We've only heard the one side of
3 what he said y'all did.

4 MR. BICKS: Yes.

5 PROSPECTIVE JUROR NO. 4: So if y'all did do
6 that, then I would lean his way. If y'all didn't do that, I
7 don't know.

8 MR. BICKS: The question is: Sitting here
9 today, right now.

10 PROSPECTIVE JUROR NO. 4: I don't know. I don't
11 know.

12 MR. BICKS: Do you have that leaning against
13 Union Carbide?

14 PROSPECTIVE JUROR NO. 4: I have a leaning
15 against asbestos, but I don't know anything about your company.

16 MR. BICKS: Okay. For everyone and -- and one
17 of the things that everyone has to appreciate here is that I
18 can't, as much as I would like to, talk to every single person,
19 because I just don't have the time. And it may be at this
20 point you're probably a little tired of hearing me.

21 But my question is really by a show of hands, to
22 the folks who I haven't spoken to, let us know by a show of
23 hands if you have that leaning against Union Carbide. Hold on
24 a minute. Could you just identify your juror number. Put them
25 up, please. Juror 45, juror -- I'm sorry, sir -- 57 and juror

1 79. Is it fair to say that you have that leaning against Union
2 Carbide that the law calls a bias or prejudice?

3 PROSPECTIVE JUROR NO. 57: Yes, sir.

4 PROSPECTIVE JUROR NO. 45: I work for the
5 infectious disease office and I -- I just feel like there's a
6 great burden of proof when you are offering something as solid
7 to people as that. So I -- I just really feel -- the doctor I
8 work with -- the doctors I work for do research and they have
9 to depend on their technicians to provide them with information
10 that is valid and not --

11 MR. BICKS: Could you hold up your paddle again
12 so I -- juror number 45.

13 And, Mr. Wilson, you answered the question yes,
14 that you have that leaning against Union Carbide that the law
15 would call a bias or prejudice.

16 PROSPECTIVE JUROR NO. 57: Yes, sir.

17 MR. BICKS: And, Ms. Gaskill, is it fair to say
18 that you also have that leaning against Union Carbide that the
19 law would call a bias or prejudice?

20 PROSPECTIVE JUROR NO. 45: Yes.

21 MR. BICKS: Thank you, ma'am.

22 THE COURT: I'm sorry. I couldn't hear that
23 answer.

24 PROSPECTIVE JUROR NO. 45: Yes.

25 MR. BICKS: There was one other paddle that I

1 tried to -- 79, Mr. Shefts.

2 PROSPECTIVE JUROR NO. 79: Right.

3 MR. BICKS: Do you have that -- the leaning
4 against Union Carbide that the law would call a bias or
5 prejudice?

6 PROSPECTIVE JUROR NO. 79: I think if Dow
7 doesn't kill us, then Union Carbide will, so --

8 MR. BICKS: And -- and as hard as that is to
9 hear, we appreciate your honesty. Everyone here is entitled to
10 their opinion and -- and that's really why we're here.

11 Cosco would not want me on that case, the case
12 of the cake.

13 Mr. Stibal, let me come back to you for a
14 moment, because -- juror 46. Tell us what you meant when you
15 said that the hazards of asbestos were known back to the Roman
16 times.

17 PROSPECTIVE JUROR NO. 46: There were
18 indications in the historical records that those involved with
19 the -- I believe it was primarily woven cloth at that time, had
20 contracted some sort of disease. They had the same problem
21 with those that were involved in mining the silica. And it was
22 pretty tenuous, but there are mentions of it, as I understand
23 it, in historic literature.

24 MR. BICKS: Thank you. What I'd like everyone
25 now to do is I'm just going to ask really kind of a wrap-up

1 question. Take a second, just think to yourself, and -- and
2 I'm going to ask folks that if there's something that we should
3 know that we really haven't talked about that you're thinking
4 is important for us to know about. Then -- then -- and I would
5 say, other than hardships, because the Judge is going to talk
6 about that. Can I just have a show of hands of who thinks that
7 there's something that -- that we really ought to know about?

8 UNIDENTIFIED PROSPECTIVE JUROR: I misunderstood
9 the question. I recall my hand.

10 MR. BICKS: Okay. Mr. Stibal, give -- what,
11 sir?

12 PROSPECTIVE JUROR NO. 46: Stibal.

13 MR. BICKS: Yes, sir.

14 PROSPECTIVE JUROR NO. 46: Although it's
15 mentioned in the questionnaire, I didn't quite understand how
16 Dow bears on this. I'm one of the Agent Orange people and I'm
17 drawing a substantial amount of money from the government,
18 probably also the proximate cause of prostate cancer and to
19 that extent Dow produced a good part of the herbicide that was
20 involved in Vietnam. So I don't quite understand how Dow ties
21 into this, quite frankly. That's not been explained to me, but
22 I'm just making you aware of that.

23 MR. BICKS: That would be something, if we're
24 going the talk about, we'd talk about it with the Judge. This
25 case is a case that --

1 THE COURT: Let me solve it for you. Dow's in
2 that questionnaire, because I wanted them put in that
3 questionnaire and there's a reason for it. It's got no bearing
4 whatsoever on this case, on the fraud allegation and on the
5 negligent misrepresentation, but I did have a reason for
6 putting them in there. That was my approved question.

7 PROSPECTIVE JUROR NO. 46: I don't bear a grudge
8 against Dow, anyway. I bear a grudge against the United
9 States. They're all -- you're all at fault.

10 MR. BICKS: Including me?

11 Well, I really want to thank everybody for
12 taking the time to talk to me. I learned a lot and for those
13 of you who are going to be on this case, I hope it's going to
14 be a fun case. And -- and we're going to do our best to
15 present it that way to you, but thank you very, very much.

16 THE COURT: Folks, I want to ask you some
17 questions. This may take 10 or 15 minutes. We're almost
18 through.

19 I want to go through the medical, the medical
20 problems first, but as I understand it, Ms. Mitchell, you
21 indicated you had high blood pressure and that would be a
22 problem for you --

23 PROSPECTIVE JUROR NO. 4: Correct.

24 THE COURT: -- sitting on this panel. Do you
25 still feel like it'd be difficult for to you sit on this panel

1 because of your high blood pressure?

2 PROSPECTIVE JUROR NO. 4: Yes, sir. Yes, sir.

3 THE COURT: Okay. Thank you, ma'am.

4 Mr. Wiginton, let's see, where is -- you had rheumatoid
5 arthritis; I think you had gout; you've got to go every two
6 weeks for shots. You're the only one that can tell me this.
7 This case could go four to six weeks. I said six weeks,
8 because I like to put an outside figure on it so the jurors can
9 prepare. It's going to be going full days with the exception
10 of Monday, when we'll have to wait till the courtroom clears
11 out. We may shut down a little bit on Fridays, a little early,
12 but we're going to be going full days.

13 Do you feel like your rheumatoid arthritis, your
14 gout and the shots that you have to get is going to create a
15 problem for you, sir, being on this jury?

16 PROSPECTIVE JUROR NO. 25: Yes, sir, if I don't
17 get them regular, then I can't -- I can't walk.

18 THE COURT: Okay. Thank you very much.

19 Mr. Palat --

20 PROSPECTIVE JUROR NO. 33: Yes, sir.

21 THE COURT: Where is Mr. Palat? Is that the way
22 you pronounce that, sir?

23 PROSPECTIVE JUROR NO. 33: Yes, sir.

24 THE COURT: You said earlier you wanted to
25 approach the bench. You told me earlier you may need some

1 breaks. Without the necessity of having to approach the bench
2 and without having to go into detail on this, do you think
3 serving on this jury would make it difficult for you, sir,
4 because of your medical condition?

5 PROSPECTIVE JUROR NO. 33: No, sir.

6 THE COURT: Okay. Thank you very much. Do you
7 still want to visit with me at the bench later?

8 PROSPECTIVE JUROR NO. 33: No.

9 THE COURT: Okay. Thank you.

10 Ms. Bishop?

11 PROSPECTIVE JUROR NO. 35: Yes.

12 THE COURT: We were talking about some medical
13 problems you had earlier, if I recall.

14 PROSPECTIVE JUROR NO. 35: Yes.

15 THE COURT: I'm not going to go into them. You
16 told us what they were. Same question. You've got to have
17 these treatments and you think that it's going to be difficult
18 for you to serve on this panel, if you're selected?

19 PROSPECTIVE JUROR NO. 35: I'm finished with my
20 treatments. I just have to go back for checkups and it's a big
21 inconvenience for me to have to reschedule my checkups.

22 THE COURT: When are your checkups, ma'am?

23 PROSPECTIVE JUROR NO. 35: I have two scheduled
24 for this month, I think it's September the 21st and the 2nd.

25 THE COURT: Okay. Fine. Thank you very much.

1 I think the next medical I had was Mr. Lydic, Paul Lydic.

2 PROSPECTIVE JUROR NO. 42: Yes, sir.

3 THE COURT: Where is he? You've been through
4 the whole voir dire, sir, and you indicated you were taking
5 medication. And same question. You're the best judge of your
6 medical condition. Do you feel like it'd be difficult for you,
7 sir?

8 PROSPECTIVE JUROR NO. 42: There are several
9 different types of medications they have me on, okay.

10 THE COURT: Well, Ambien will make you go to
11 sleep, won't it?

12 PROSPECTIVE JUROR NO. 42: Well some of them
13 make me where I cannot comprehend any -- any language
14 whatsoever, I mean --

15 THE COURT: Let me just -- let me just throw a
16 leading, suggestive question out there. It's true, then, I
17 take it, that it would be difficult for you to serve on this
18 jury and to stay completely alert during a four- to six-week
19 period?

20 PROSPECTIVE JUROR NO. 42: Correct, sir.

21 THE COURT: Is that fair?

22 PROSPECTIVE JUROR NO. 42: Yes, sir.

23 THE COURT: Thank you.

24 Ms. Gaskill, you, I think, had the -- the
25 problem, did you not, ma'am, the eye problem?

1 PROSPECTIVE JUROR NO. 45: Right.

2 THE COURT: Same question to you. Do you feel
3 like serving on this panel -- you've also got an appointment on
4 the 20th of this month?

5 PROSPECTIVE JUROR NO. 45: I do and I really
6 would like to find out what it is and take care of it.

7 THE COURT: Okay. So bottom line is, you don't
8 want to miss your appointment and you have a medical condition
9 that --

10 PROSPECTIVE JUROR NO. 45: I have a specialist
11 I'd like to see.

12 THE COURT: So it'd be difficult for you to
13 serve. Thank you. Mr. Stibal.

14 PROSPECTIVE JUROR NO. 46: Yes.

15 THE COURT: Okay. Yeah. You had several
16 conditions. My question to you is: Do you feel like it would
17 be difficult for you to serve on this panel four to six weeks,
18 sir?

19 PROSPECTIVE JUROR NO. 46: Well, my main concern
20 is the appointment I finally got scheduled for the 19th of
21 October. I got that scheduled four weeks ago. It is extremely
22 difficult to get into the Department of Veterans Affairs
23 medical system and the appointment would have to be deferred at
24 least until December. I'd rather not let it go that long.

25 THE COURT: I take it, in your opinion, this

1 appointment is critical as far as your evaluation of your
2 medical condition?

3 PROSPECTIVE JUROR NO. 46: Yes, sir.

4 THE COURT: Thank you. Ms. Cumbie, Patsy
5 Cumbie. Where's Ms. Cumbie?

6 PROSPECTIVE JUROR NO. 59: Right here.

7 THE COURT: Okay. Ma'am, you indicated to me
8 you had Type II diabetes. Do you feel like -- I think you also
9 indicated you were taking some medication. Do you feel like it
10 would be difficult for you to serve on this panel due to your
11 medical condition?

12 PROSPECTIVE JUROR NO. 59: As long as you do
13 like we did today, I think it'll be fine.

14 THE COURT: You think it'll be okay if we break
15 every hour and 15 minutes. Okay. Thank you, ma'am.
16 Ms. Blackstone.

17 PROSPECTIVE JUROR NO. 63: Yes, sir.

18 THE COURT: Where's Ms. Blackstone? I think you
19 told me you're fixing to start your treatments and you may
20 start soon and you're going to have to go every three weeks; is
21 that correct?

22 PROSPECTIVE JUROR NO. 63: I go every three
23 weeks right now for phlebotomy and we're fixing to cease those
24 and then start interferon.

25 THE COURT: All right. So my question is: Do

1 you feel like it'd be difficult for you to serve each day, five
2 days a week, for four to six weeks on this panel?

3 PROSPECTIVE JUROR NO. 63: On Mondays, it's a
4 half day?

5 THE COURT: Well, it's not really a half day.
6 We're going to start about 10:15 or 10:30, as soon as we can
7 get out of -- as soon as the big courtroom is available. We're
8 going to start on Monday. We may be going to 4:30 or 6:00,
9 somewhere in there. You're the best judge, because once we
10 start, I don't want to have to shut down a day here and a day
11 there. That's the thing.

12 PROSPECTIVE JUROR NO. 63: I think it would be
13 difficult.

14 THE COURT: Okay. Thank you very much. And,
15 Ms. Mosher, I think you have said you had rheumatoid arthritis.
16 You've got treatments on September the 22nd and October the
17 6th; is that accurate?

18 PROSPECTIVE JUROR NO. 84: That's accurate.

19 THE COURT: I take it that those are treatments
20 you can't afford to miss; right?

21 PROSPECTIVE JUROR NO. 84: If I want to get up
22 and down, I've got to have them.

23 THE COURT: I take it, it would be difficult for
24 you to serve.

25 PROSPECTIVE JUROR NO. 84: Yes, sir.

1 THE COURT: Thank you, ma'am. I think that's
2 all the medical excuses or reasons I had. Is there anyone on
3 the panel who has a medical problem that I did not address?
4 Okay.

5 MS. HANDLEY: 83, Judge.

6 MR. LANIER: Ms. Poole.

7 THE COURT: 83? I'm sorry. I'm sorry,
8 Ms. Poole. I just overlooked you. I think you said you had
9 diabetes and you were on medication; is that correct?

10 PROSPECTIVE JUROR NO. 83: Correct.

11 THE COURT: You've heard the question. Same
12 question.

13 PROSPECTIVE JUROR NO. 83: I don't think it'll
14 be a problem.

15 THE COURT: Won't be a problem. Thank you,
16 ma'am. Anybody else? Okay. I've been through all the
17 questionnaires and just bear with me on this just a moment, and
18 these are the people -- excluding the medical people that I
19 talked about, these are the people that have indicated that
20 they do not get paid and they will suffer a financial hardship
21 if they have to be on this jury panel.

22 I'm going to call your names out and then I want
23 to know if -- if I missed anybody. I think I've got everyone.
24 Maria Villarreal, Nathan Paul Balderaz, James Robert Conkin,
25 Scott Shatto, Victor Holub, Robert Banda, Susan Anderson, Frank

1 Key, Jonell Glass, Ted Alan Felder, John Jason Flores, Diane
2 Hester, Anthony James Crocker, Ashley Marie Salazar, Gwendolyn
3 Ray Lejsal -- I think I pronounced it -- is that correct -- is
4 that close?

5 PROSPECTIVE JUROR NO. 39: Close enough.

6 THE COURT: Okay. Richard Larry Leger.

7 PROSPECTIVE JUROR NO. 40: Leger.

8 THE COURT: Leger. Thank you, sir.

9 Leslie Elaine Ortiz, Michelle Lou Bingham,
10 Armond Lamond Davis, Margarito Chaver, Glen R. Ford -- not the
11 movie actor, I take it. Okay.

12 Jeffery Alan Alexander, Amanda Renee Deleon,
13 David Lamar Casper, Mary Catherine Young, Michael John Shefts,
14 Gary Glenn Coffman, Aquita Michelle Robertson -- or Robertson,
15 excuse me, and Kandy Kay Poole.

16 Is there anyone else whose name I did not call
17 that is -- that is not getting paid and will suffer a financial
18 hardship? I think I've got everybody, but if I missed anybody,
19 let me know. Hold your card up, please.

20 PROSPECTIVE JUROR NO. 54: My name is on the
21 list, but I do get paid. I didn't know Tuesday.

22 THE COURT: Okay. You do get paid, yeah.

23 PROSPECTIVE JUROR NO. 14: Same here.

24 THE COURT: Okay. Thank you, ma'am. You were
25 the jailer. All right. 14. Yes, sir. Mr. Holub.

1 PROSPECTIVE JUROR NO. 14: That's correct.

2 THE COURT: Okay. I think I called your name.

3 PROSPECTIVE JUROR NO. 14: Right. I do get
4 paid. I didn't find that out till --

5 THE COURT: Oh, you do get paid. Okay. 57, let
6 me see. That's Mr. Wilson; is that correct?

7 PROSPECTIVE JUROR NO. 57: Yes, sir. Far as I
8 know -- I will have to call and check, but as far as I know, we
9 can take off for jury duty, but I'm not certain we get paid for
10 it.

11 THE COURT: Okay. Fine. Thank you, sir.

12 Let's see. Mrs. Chaver? Was that who held
13 the -- 72? I'm sorry. Mr. Ford.

14 PROSPECTIVE JUROR NO. 72: Yes.

15 THE COURT: Yes, sir. I've got that you don't
16 get paid, but you're a corrections officer. I was going to ask
17 you about that. Do you not get paid?

18 PROSPECTIVE JUROR NO. 72: I'm paid as
19 administrative leave every hour for jury service.

20 THE COURT: Okay. All right. Thank you, sir.
21 Ms. Deleon.

22 PROSPECTIVE JUROR NO. 76: My name is on the
23 list, but I do get paid.

24 THE COURT: You do get paid?

25 PROSPECTIVE JUROR NO. 76: Yes, sir.

1 THE COURT: Okay. Thank you. And I think I had
2 one more. And that is Mr. Coffman.

3 PROSPECTIVE JUROR NO. 80: My understanding, I
4 do get paid.

5 THE COURT: Which college are you a professor
6 at, sir?

7 PROSPECTIVE JUROR NO. 80: Alvin Community
8 College.

9 THE COURT: Okay. Thank you. Okay. Anybody
10 else? This is going to be the last series of questions I ask.

11 The legislature determines who does and doesn't
12 get summoned for jury duty and what the excuses are. The
13 legislature provides that because you have to work and you may
14 suffer a financial hardship, that does not excuse you from jury
15 service. I guess their theory is that everybody has to work
16 and since jury service is a -- is a responsibility that goes
17 along with the rights that we have to have a jury trial, as
18 provided in the U.S. Constitution, that we've got to have
19 working people available; otherwise, we'd have a small segment
20 available.

21 Now, bottom line, I have no authority to excuse
22 you if you don't get paid by your employers. We asked two
23 questions in that questionnaire for a reason: One, do you get
24 paid if you're working? Two, if you don't get paid, will you
25 suffer a financial hardship?

1 Suffering a financial hardship does not excuse
2 you from jury service for the reasons I just gave you. I
3 always ask this question with a little bit of trepidation, but
4 there's one more thing I want to tell you. I know how
5 difficult it is, as do the lawyers, to sit up here when you're
6 not receiving any income and you're more worried about that
7 than you are about listening to the evidence. So what I want
8 to know, and I'm going to go down the list, is for those of you
9 that are not getting paid and are suffering a financial
10 hardship, if you're required to sit on this case, would the
11 fact that you're up here sitting on this case affect you to the
12 point that you would be unable to concentrate and render a fair
13 decision because you'd be worried about the -- your family or
14 the money you're losing or the fact that -- that you don't know
15 how you're going to make ends meet? Bottom line, would your
16 financial situation for those who are going to suffer a
17 financial hardship affect your ability to make a decision in
18 this case? If it will, tell me. If it won't, tell me. Just
19 tell me the truth.

20 Mrs. Villarreal, will the fact that you could
21 suffer a financial hardship affect your ability to decide this
22 case if you're picked, ma'am?

23 PROSPECTIVE JUROR NO. 5: No.

24 THE COURT: Mr. Balderaz, same question to you.
25 Would your decision be affected if you're picked on this jury?

1 PROSPECTIVE JUROR NO. 6: Yes, sir, I think it
2 would.

3 THE COURT: Mr. James Conkin, same question to
4 you, sir.

5 PROSPECTIVE JUROR NO. 11: Yes, it would be a
6 problem.

7 THE COURT: It'd be a problem?

8 PROSPECTIVE JUROR NO. 11: Yes, sir.

9 THE COURT: In other words, you'd be concerned
10 about the income you're losing, wouldn't be able to
11 concentrate; is that correct?

12 PROSPECTIVE JUROR NO. 11: Yes, sir.

13 THE COURT: Thank you, sir. Mr. Shatto, same
14 question to you. Would -- would the situation affect your
15 ability to -- to listen to the evidence and concentrate and
16 reach a verdict?

17 PROSPECTIVE JUROR NO. 12: I'm living off my
18 savings right now, so, you know, pulling out of my savings and
19 buying gas and coming here, it may.

20 THE COURT: Okay. You're going to get 25 bucks
21 a day for sitting up here. That's what the county pays, but, I
22 mean --

23 PROSPECTIVE JUROR NO. 12: I heard some people
24 pay mileage and some don't.

25 THE COURT: Brazoria County doesn't. If you get

1 picked, you get ten bucks for coming up here. If you're on the
2 jury, you get 25. That's set by Commissioners Court.

3 Mr. Holub, you've already said you get paid; correct?

4 PROSPECTIVE JUROR NO. 14: Yes, sir.

5 THE COURT: All right. Mr. Banda, would the
6 financial situation affect your ability to listen to the
7 evidence and make a decision in this case?

8 PROSPECTIVE JUROR NO. 19: Yes, sir.

9 THE COURT: You say it would, sir?

10 PROSPECTIVE JUROR NO. 19: Yeah.

11 THE COURT: Thank you. Ms. Anderson, same
12 question. Do you, ma'am --

13 PROSPECTIVE JUROR NO. 22: No, sir.

14 THE COURT: It would not affect your ability to
15 decide the case. Thank you. Mr. Key, would it affect your
16 ability to decide this case, sir?

17 PROSPECTIVE JUROR NO. 26: Yes, sir, it would.

18 THE COURT: In other words, you'd be worrying
19 more about how you're going to make a living than you would be
20 concentrating on the case. Is that a fair statement?

21 PROSPECTIVE JUROR NO. 26: Yes, it is.

22 THE COURT: Thank you. Ms. Glass, Jonell Glass,
23 how about you, ma'am?

24 PROSPECTIVE JUROR NO. 27: I'm newly retired, so
25 right now, I'm okay.

1 THE COURT: Okay. Thank you. Mr. Ted Felder,
2 how about you?

3 PROSPECTIVE JUROR NO. 30: No, sir.

4 THE COURT: It would not affect your ability to
5 listen to the evidence. Is that what you're telling me?

6 PROSPECTIVE JUROR NO. 30: No, sir.

7 THE COURT: Mr. John Flores, how about you?

8 PROSPECTIVE JUROR NO. 31: Yes, sir, it would
9 affect me.

10 THE COURT: It would have an effect on your
11 ability to reach a decision?

12 PROSPECTIVE JUROR NO. 31: Yes, sir.

13 THE COURT: I don't mean to repeat this, but I
14 just want to be sure I'm getting the answers right. And,
15 again, Mr. Felder, to go back to you when you said no, sir, the
16 last time, it won't have -- what you're telling me is it
17 wouldn't affect your ability to decide; is that correct?

18 PROSPECTIVE JUROR NO. 30: That's correct.

19 THE COURT: Okay. Thank you. Ms. Hester, would
20 this have a --

21 PROSPECTIVE JUROR NO. 30: Yes, sir, definitely.

22 THE COURT: It would affect your ability to
23 decide this case?

24 PROSPECTIVE JUROR NO. 30: Yes, it would.

25 THE COURT: Thank you. Mr. Crocker, Anthony

1 Crocker, same question to you. Would it affect your ability to
2 decide this case?

3 PROSPECTIVE JUROR NO. 36: My lack of income
4 would affect my ability to decide this case. Yes, sir.

5 THE COURT: "My lack of income would affect my
6 ability to decide this case." Wasn't that your word-for-word
7 response?

8 PROSPECTIVE JUROR NO. 36: Yes, sir.

9 THE COURT: Ms. Ashley Salazar. You also have
10 transportation problems, I think.

11 PROSPECTIVE JUROR NO. 38: Yes, sir:

12 THE COURT: How about it? Do you think sitting
13 in that jury box for four to six weeks, that you'd be worried
14 more about -- about your lack of income and financial straits
15 than you would about making a decision in this case?

16 PROSPECTIVE JUROR NO. 38: Yes, sir, I believe
17 it would, considering I wouldn't have anywhere to live, so --

18 THE COURT: Okay. We can put you in that jury
19 room.

20 (Laughter.)

21 THE COURT: I wouldn't do that to you.

22 Ms. Gwendolyn Lejsal, where -- ma'am, I -- I
23 read your -- correct me if I'm -- if I'm wrong on this, but as
24 I understand it, you're not getting paid -- you're a decorator,
25 but you indicated there would not be a financial hardship; is

1 that correct?

2 PROSPECTIVE JUROR NO. 39: We don't depend on my
3 salary, no.

4 THE COURT: Okay. Thank you, ma'am. Mr. Leger.
5 Was I close?

6 PROSPECTIVE JUROR NO. 40: Close.

7 THE COURT: Close, okay. How about you, sir?
8 Would putting you on a panel affect your ability?

9 PROSPECTIVE JUROR NO. 40: Yes, sir. I just
10 opened a business two weeks ago. I've got money invested in
11 it. If I miss this much time, it's going to really --

12 THE COURT: I take it what you're telling me if
13 you're on this jury for six weeks that there are going to be
14 times when you're worried about what's going on and you're
15 going to lose concentration on some of the evidence. Is that a
16 fair statement?

17 PROSPECTIVE JUROR NO. 40: Yes, sir.

18 THE COURT: Thank you. And, let's see. Leslie
19 Ortiz. You get paid, I think you just told me; correct?

20 PROSPECTIVE JUROR NO. 54: Yes, sir. That's
21 correct.

22 THE COURT: Michelle Bingham. What's the
23 scenario with you? Would that affect your ability, ma'am, to
24 serve on the jury?

25 PROSPECTIVE JUROR NO. 55: It wouldn't affect my

1 ability, your Honor, but I'd lose clients and then that would
2 affect our financial situation.

3 THE COURT: Well, my question is -- and I think
4 you answered it, but I know you can serve and can sit there,
5 but I just need to know if your concentration would be affected
6 to the point that you'd be worried you couldn't make a
7 decision.

8 PROSPECTIVE JUROR NO. 55: My concentration
9 wouldn't be affected, but my financial situation would.

10 THE COURT: Okay. Thank you.

11 We're almost through, folks. Armond Davis.
12 Mr. Davis, would the fact that you would suffer a financial
13 hardship because you don't get paid, if you were on this jury,
14 would that affect your ability to concentrate and make a
15 decision on this case?

16 PROSPECTIVE JUROR NO. 70. Yes, it would.

17 THE COURT: Thank you, sir. Ms. Chaver,
18 Margarito Chaver.

19 PROSPECTIVE JUROR NO. 71: Yes, sir.

20 THE COURT: Ma'am, would it have -- or excuse
21 me. Mr. Chaver, would it have a -- would it have an effect on
22 your ability to reach a decision in this case?

23 PROSPECTIVE JUROR NO. 71: Yes, sir.

24 THE COURT: Mr. Ford, I think you've already
25 told me that you get paid, sir. Thank you.

1 Jeffery Alexander.

2 PROSPECTIVE JUROR NO. 74: Yes, sir.

3 THE COURT: Mr. Alexander, same question. If
4 you were selected to this jury, would your financial hardship
5 affect your ability to concentrate and reach a decision fairly
6 in this case?

7 PROSPECTIVE JUROR NO. 74: Yes, sir. We just
8 bought a house. I'm afraid I'd be thinking about that a lot.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR NO. 74: Yes, sir.

11 THE COURT: Ms. Deleon, I believe you told me
12 that you corrected your questionnaire and you got paid;
13 correct?

14 PROSPECTIVE JUROR NO. 76: Yes, sir.

15 THE COURT: Thank you. David Casper.
16 Mr. Casper, would it have your -- would it have an effect on
17 your ability to reach a decision and concentrate?

18 PROSPECTIVE JUROR NO. 77: Yes, sir.

19 THE COURT: Ms. Young, Mary Young, would that
20 affect your ability to concentrate and listen to the evidence
21 and reach a decision in this case?

22 PROSPECTIVE JUROR NO. 78: Not to concentrate,
23 but I'd be worried about having a job when I got back, so it
24 would make a difference.

25 THE COURT: I'm sorry. I didn't hear the tail

1 end of your --

2 PROSPECTIVE JUROR NO. 78: It would make a
3 difference, probably.

4 THE COURT: You think you'd lose your job is the
5 bottom line; right?

6 PROSPECTIVE JUROR NO. 78: I'm a contractor.
7 They can boot me any time.

8 THE COURT: Ma'am, let me ask this and I just
9 don't have your questionnaire in front of me, but I need to ask
10 this in light of your answers. Do you have a spouse that's
11 employed?

12 PROSPECTIVE JUROR NO. 78: No. No. Single,
13 divorced mother, just put a son in college.

14 THE COURT: Okay. Thank you. I think you
15 answered my question. And Mr. Shefts, Michael Shefts, how
16 about you, sir?

17 PROSPECTIVE JUROR NO. 79: Yes, sir, I just
18 started a new job about a month ago. I'm not making -- I'm not
19 there, I can't make any money.

20 THE COURT: Well, if you can't make any money,
21 are you going to worry more about that than concentrating on
22 the case? That's my question.

23 PROSPECTIVE JUROR NO. 79: Yes, sir.

24 THE COURT: Thank you. And Mr. Coffman I think
25 that you told me that you get paid.

1 Ms. Robertson, ma'am --

2 PROSPECTIVE JUROR NO. 81: Yes, sir.

3 THE COURT: You said that you're not going to
4 get paid, you'd suffer a financial hardship if you're selected
5 on this jury. Would you be worried about that to the point
6 that it would affect your ability to reach a verdict?

7 PROSPECTIVE JUROR NO. 81: Yes, sir.

8 THE COURT: Is your answer yes?

9 PROSPECTIVE JUROR NO. 81: Yes.

10 THE COURT: Thank you. Ms. Poole, you indicated
11 your medical condition wouldn't create any problem, but what
12 about the financial hardship? I didn't notice whether you said
13 you did or didn't get paid, but you indicated you would suffer
14 a financial hardship. Would it be to the point that you would
15 be unable to concentrate and give your full attention to the
16 case and reach a verdict?

17 PROSPECTIVE JUROR NO. 81: Yes, sir.

18 THE COURT: Thank you. Okay, folks. That's it
19 now. One -- one last -- I said one last group a while ago. I
20 want to ask -- to confirm something. This is a case between
21 Kelly-Moore and Union Carbide. I've had several of you tell me
22 that you have a bias against Union Carbide. I want to know if
23 you mean you have a bias against Union Carbide to the effect
24 that it would start Union Carbide behind in this case; in other
25 words, if they wouldn't get a fair shake because they would

1 start off behind?

2 Mr. Smith, you said earlier it would. You still
3 feel that way?

4 PROSPECTIVE JUROR NO. 2: No, I would be able to
5 listen to the evidence and be fair.

6 THE COURT: Well, can you start Kelly-Moore and
7 Union Carbide out equally?

8 PROSPECTIVE JUROR NO. 2: Yes, sir.

9 THE COURT: And Kelly-Moore has the burden of
10 proof in this case. They've got to prove it. Union Carbide
11 doesn't. Kelly-Moore proves the allegations, you answer the
12 questions based on the proof. If they don't, then you answer
13 the questions based on the lack of proof. With both sides
14 starting out equally and listening to the evidence. Can do you
15 that?

16 PROSPECTIVE JUROR NO. 2: Yes, sir.

17 THE COURT: All right. Ms. Duke, I believe you
18 said that you had a bias against Union Carbide. Now, I'm
19 talking about this case of Kelly-Moore versus Union Carbide.
20 Are you going to start Union Carbide out behind in this case?

21 PROSPECTIVE JUROR NO. 7: Yes, sir.

22 THE COURT: Okay. Thank you. Mr. Banda,
23 Roberto Banda, same question to you, sir. In this case, with
24 Kelly-Moore on one side and Union Carbide on the other, are you
25 going to -- you still have a bias that would start Union

1 Carbide out behind? Mr. Banda.

2 PROSPECTIVE JUROR NO. 19: You said Banda?

3 THE COURT: Yes.

4 PROSPECTIVE JUROR NO. 19: No, I think I can
5 start them off equally.

6 THE COURT: Okay. But you indicated you'd be
7 worried more about your lack of money, though, to concentrate.

8 PROSPECTIVE JUROR NO. 19: Right. Right.

9 THE COURT: Okay. Thank you.

10 Mr. Rape --

11 PROSPECTIVE JUROR NO. 20: Yes, sir.

12 THE COURT: You going to give Kelly-Moore a leg
13 up because of Mark Lanier?

14 PROSPECTIVE JUROR NO. 20: No, sir.

15 THE COURT: You going to start Union Carbide
16 behind because of --

17 PROSPECTIVE JUROR NO. 20: No, sir.

18 THE COURT: -- your relationship with Mark
19 Lanier?

20 PROSPECTIVE JUROR NO. 20: Haven't heard any
21 evidence yet.

22 THE COURT: Ms. Jonell Glass. Where's
23 Ms. Glass? Okay. Ms. Glass, you indicated earlier that you
24 had a leaning against Union Carbide in this case against
25 Kelly-Moore. That's what I need to know. Are you going to

1 start them off behind or even?

2 PROSPECTIVE JUROR NO. 27: I'm going to start
3 off even, because I don't know either side.

4 THE COURT: You understand that Union Carbide
5 has no burden to prove anything. The burden of proof is on
6 Kelly-Moore.

7 PROSPECTIVE JUROR NO. 27: Yes.

8 THE COURT: We want them both started out on an
9 equal playing field and want you to listen to the evidence.
10 Can you do that?

11 PROSPECTIVE JUROR NO. 27: (Indicated by nodding
12 head.)

13 THE COURT: Okay. That's a yes, correct?

14 PROSPECTIVE JUROR NO. 27: Yes, sir.

15 THE COURT: She needs to take down -- she can't
16 take down nods.

17 PROSPECTIVE JUROR NO. 27: Yes.

18 THE COURT: I'm skipping some of you that I've
19 already talked to about the financial problems and the medical
20 problems. Mr. Robert Wilson. Mr. Wilson, 57. Where's
21 Mr. Wilson?

22 PROSPECTIVE JUROR NO. 57: Yes, sir.

23 THE COURT: You indicated earlier that you
24 didn't like Union Carbide. You had a bias against them. Still
25 feel that way, sir?

1 PROSPECTIVE JUROR NO. 57: Absolutely, sir.

2 THE COURT: Okay. Thank you. We really are
3 almost through. Just -- just bear with me.

4 PROSPECTIVE JUROR NO. 37: I talked to you
5 Tuesday about the fact that we just bought a house and we
6 have -- are having to put our other house up for sale. Now I
7 have two house payments and I don't think I can take six weeks
8 and not be able to take care of this.

9 THE COURT: Okay. Let -- you're Mrs. Geraci; is
10 that correct?

11 PROSPECTIVE JUROR NO. 37: Yes.

12 THE COURT: Let me ask this question. You're
13 retired.

14 PROSPECTIVE JUROR NO. 37: I am.

15 THE COURT: But you also are the lady that told
16 me early on that you just don't think you can make a decision,
17 period, dealing with a case like this or dealing with people, I
18 think you said. Do you --

19 PROSPECTIVE JUROR NO. 37: Well, I can deal with
20 people, but I don't like to make -- I don't want to make
21 decisions anymore. I've made decisions for years. I don't
22 want to make anymore decisions.

23 THE COURT: Let me ask it this way. I don't
24 think anybody wants to make a decision on this case.

25 PROSPECTIVE JUROR NO. 37: I -- I can make it if

1 I -- if I -- I could, yes, I could make a decision. I could
2 look at both sides and I could make a decision.

3 THE COURT: If you had to?

4 PROSPECTIVE JUROR NO. 37: If I had to.

5 THE COURT: But you don't want to?

6 PROSPECTIVE JUROR NO. 37: If I -- no, I -- I
7 would prefer not to, yes. I would prefer not to have to make
8 the decision.

9 THE COURT: Okay. Thank you, ma'am.

10 PROSPECTIVE JUROR NO. 37: But I can make one.

11 THE COURT: Okay. Thank you very much. Okay,
12 folks. We're going to break. Now, you're going to love this,
13 but I guess you can blame me for this. We're going to need a
14 little bit of time. I'm going to break until 5:15. That's an
15 hour and a half. 5:15, we're going to have our jury. We
16 can -- we can shut it down now and come back tomorrow, but I
17 don't think you want to do that, so -- I need some time to go
18 over with the lawyers. Yes, ma'am.

19 UNIDENTIFIED PROSPECTIVE JUROR: Can't you call
20 us at home and tell us?

21 (Laughter.)

22 THE COURT: I'm sorry. I know they all heard
23 it.

24 MR. LANIER: She said, "Can't you call us at
25 home and tell us?"

1 THE COURT: Well, we had to do that on two
2 jurors that didn't show up this morning. I'm afraid they're in
3 hot water, so I'd kind of ask that you stay reasonably close.
4 We need everybody back at 5:15, and then we'll get our 12.

5 Thank you very much, folks. Don't talk about
6 the case.

7 (Break taken from 3:41 p.m. to 3:45 p.m.)

8 THE COURT: These are the ones I'm excusing:
9 Number 4, Diana Mitchell is excused for medical
10 reasons.

11 Number 6, Nathan Paul Balderaz is excused for
12 financial hardship reasons.

13 And when I say financial hardship reasons, on
14 all of these, that extends to the fact that they're unable to
15 give full concentration to this case, because their financial
16 situation is at the point they would be more worried about that
17 than concentrating and able to make a fair decision.

18 MR. LASSETTER: Not to interrupt, Judge, but
19 he's also a Dow employee.

20 THE COURT: Balderaz? I don't have him as a Dow
21 employee.

22 MR. LASSETTER: It showed up on the
23 questionnaire.

24 MR. LANIER: I was going to move to strike him
25 for cause.

1 THE COURT: 4 is excused. 6 is excused.

2 9, Adriana Ruiz is excused. She's a Dow
3 employee. That was a preexcused.

4 James Robert Conkin is excused under the
5 financial hardship.

6 MR. LANIER: What was his number?

7 THE COURT: 11. I'm sorry.

8 12, Scott Shatto is excused for financial
9 hardship.

10 19, Roberto Banda is excused under financial
11 hardship.

12 21 is already excused, Dow employee.

13 25, Everett Eugene Wiginton is excused on
14 medical reasons.

15 26, Frank Key is excused for financial hardship.

16 32, Diane Hester is excused for financial
17 hardship.

18 35, Pansy Bishop is excused on medical reasons.

19 36, Anthony James Crocker is excused for
20 financial hardship.

21 38, Ashley Marie Salazar is excused for
22 financial hardship.

23 40, Richard Larry Leger is excused for financial
24 hardship.

25 42, Robert Paul Lydic is excused for medical

1 reasons.

2 45, Cynthia Ann Gaskill is excused for medical
3 reasons.

4 46, Terry Lynn Stibal is excused for medical
5 reasons.

6 MS. HANDLEY: Judge, I don't mean to interrupt,
7 but do you have 31 as a hardship?

8 THE COURT: Huh-uh. He said he was okay. He
9 had a hardship, but he said he was okay.

10 MS. HANDLEY: Okay.

11 MR. GILBERT: He said yes, he could not serve.

12 MS. HANDLEY: Right. That's what I have down.
13 He said yes, he could not serve.

14 MR. LANIER: That's not what I have.

15 THE COURT: Well, I'll bring him back in, but
16 I've got exactly the opposite. I had him saying, yes, that it
17 wouldn't affect his decision.

18 MR. LANIER: Yeah.

19 THE COURT: But -- Joe.

20 THE BAILIFF: Yes, sir.

21 THE COURT: Go track down John Jason Flores.

22 THE BAILIFF: Okay.

23 THE COURT: Robert Edward Wilson -- I'm sorry.
24 Wait a minute. No. Forget that. He's going to be challenged,
25 but I'm not --

1 Jackie Gail Blackstone is excused for medical
2 reasons.

3 MR. LANIER: Number what?

4 THE COURT: 63. I'm sorry.

5 MR. BROWN: Did you say medical? I'm sorry,
6 your Honor.

7 THE COURT: Medical. 64 and 65 are already
8 excused because of the Dow connection.

9 70, Armond Lamar Davis is excused for financial
10 hardship.

11 71, Margarito Chaver is excused for financial
12 hardship.

13 74, Jeffery Alan Alexander is excused for
14 financial hardship.

15 77, David Lamar Casper is excused for financial
16 hardship.

17 78, Mary Catherine Young is also excused for
18 financial hardship.

19 79, Michael John Shefts is excused for financial
20 hardship.

21 81, Aquita Michelle Robinson is excused for
22 financial hardship.

23 83, Kandy Kay Poole is excused for financial
24 hardship.

25 84, Sue Mosher is excused for medical reasons.

1 85 is excused because she was an employee of
2 Dow.

3 So the ones that are off, again, are: 4, 6, 9,
4 11, 12, 19, 23, 25, 26, 28, 32, 35, 36, 38, 40, 42, 45, 46, 52,
5 62, 63, 64, 65, 69, 70, 71, 73, 74, 77, 78, 79, 81, 83, 84 and
6 85.

7 Ms. Reporter, which was the one we were
8 questioning that Joe was trying --

9 THE BAILIFF: Yes, sir, number 31. Evidently
10 he's left the courthouse. Security said that they --

11 THE COURT: See, when I went through at the tail
12 end, one of the ones I talked to was John Jason Flores, 31, and
13 that would be right at -- that would be the last series of
14 questions. Find his response to my question about the
15 financial hardship. Isn't that the one y'all were talking
16 about?

17 MS. HANDLEY: Yes, sir.

18 THE COURT: Okay. We'll just see what he said.
19 It won't take her five minutes.

20 MS. HANDLEY: That was the one -- everyone from
21 this morning.

22 THE REPORTER: "THE COURT: Mr. John Flores, how
23 about you?"

24 "PROSPECTIVE JUROR NO. 31: Yes, sir, it would
25 affect me."

1 "THE COURT: It would have an effect on your
2 ability to reach a decision?"

3 "PROSPECTIVE JUROR NO. 31: Yes, sir."

4 THE COURT: He's excused. Thanks for correcting
5 me. What was the --

6 MS. HANDLEY: 31, your Honor.

7 THE COURT: Thank you. These are the ones that
8 are still left. I'll go through these and make sure there's no
9 question. 1, 2, 3, 5, 7, 8, 10, 13, 14, 15, 16, 17, 18, 20,
10 22, 24, 27, 29, 30, 33, 34, 37, 39, 41, 43, 44, 47, 48, 49, 50,
11 51, 53, 54, 55, 56, 57, 58, 59 -- 59, yeah, Ms. Cumbie said
12 she -- her medical condition wouldn't affect her, didn't she?
13 That's what I've got.

14 MR. LANIER: True. She said she was okay as
15 long as we took breaks.

16 THE COURT: Yeah. Right.

17 60, 61, 66, 67, 68, 72, 75, 76, 80, 82, 86.

18 THE BAILIFF: Judge --

19 MR. LANIER: Judge, we show 43 gone, Dara does.

20 MS. HANDLEY: For what reason?

21 MS. HEGAR: I had it down from before.

22 MR. LANIER: That was that Dow this morning.

23 THE COURT: Oh, was it a Dow this morning? Both
24 sides got 43 down?

25 MR. LANIER: Yeah.

1 MS. HANDLEY: That was the one that showed up --

2 THE COURT: Oh, that was the guy that found out
3 he had stock. Okay. You're right. 43 is gone. Rosenberger.

4 MR. GILBERT: Judge, could you check your notes
5 on 55. I've got yes on hardship. Ms. Bingham.

6 THE COURT: Michelle Lou Bingham.

7 MR. LANIER: She gave a squirrely answer.

8 THE COURT: No, what she said was she said it
9 wouldn't -- she's the one I tried to get to give me a yes and
10 finally she said, no, it wouldn't affect her verdict, but she'd
11 sure like to be off. Why don't we just excuse her by
12 agreement, 55? There's about three I want to get excused by
13 agreement, if we can. But I tell you what let's do. Let's
14 make our challenges for cause. We may not even reach her.

15 MR. BICKS: 66, I have down as a person with Dow
16 stock. We talked about that person that morning.

17 THE COURT: What's the defense got? Connie
18 Irene Aubrey? You got them with Dow stock?

19 MS. HANDLEY: Yes.

20 THE COURT: Okay.

21 MS. HANDLEY: Well, your Honor --

22 THE COURT: I didn't have her marked off. Okay.

23 MR. LEONE: She's retired Dow.

24 MS. HANDLEY: 66 is one you wanted us to check
25 on.

1 MR. BICKS: Right. We did not have her down,
2 Judge. You wanted us to check it.

3 MR. LANIER: It says it on the questionnaire.
4 It says she's retired from Dow. That's what we've done with
5 everybody else.

6 MR. BICKS: Let's look at the questionnaire.

7 THE COURT: Well, make your challenges for
8 cause. I'll leave her on right now. When we come back, we'll
9 take care of this. If we can't agree on it, I'll rule it on.

10 Yes, sir.

11 THE BAILIFF: 16 and 61 are telling me they
12 would like to talk to you outside. They have a hardship with
13 children.

14 THE COURT: I'm going to get to that. Let's
15 hear what the challenges for cause are. I'll give you -- how
16 about ten minutes? It's not going to take you that long to
17 decide how who you're going to challenge for cause.

18 MR. BROWN: Can we go back --

19 THE COURT: Remember, I've been listening to
20 this, too. I have notes, too. It shouldn't take you that
21 long. We're talking about challenges for cause.

22 MR. LANIER: We're ready whenever you are.

23 THE COURT: Yeah, that's not going to take
24 anytime. 5:15 -- no, 5:10. That's 15 minutes.

25 MR. BROWN: It's only 4:00.

1 THE COURT: 15 minutes. Challenges for cause at
2 10 after.

3 (Break taken from 3:58 p.m. to 4:13 p.m.)

4 THE COURT: Okay. Let's hear the plaintiff's
5 challenges for cause. Just tell me who and the number.

6 MR. LANIER: Number 66, retired Dow,
7 questionnaire.

8 THE COURT: Okay. Is that it?

9 MR. LANIER: No. Number 14, your Honor. It was
10 off the record, but he came up to us after I finished voir dire
11 and in front of you on the bench with the other counsel said he
12 couldn't be fair. His father-in-law's with Dow and that was
13 starting out --

14 THE COURT: That's Holub.

15 MR. LANIER: Yes, sir. Number 29. On -- on the
16 damage issue and, also, said his sister was at Dow and there's
17 no way he could be fair. You didn't want argument. You just
18 wanted numbers. I apologize, Judge.

19 THE COURT: That's all right.

20 MR. LANIER: Number 40, on damages and --

21 THE COURT: That's Leger. He's already off.

22 MR. LANIER: I mean, sorry, number 48 on
23 damages, Ms. Creveling, yes. Harvey Brown tells me, should be
24 rehabilitated off damages.

25 Number 67 said he wouldn't award punitive

1 damages. He's the noted tort reformer on his questionnaire.

2 THE COURT: That's Dr. Brociner.

3 MR. LANIER: Yes. So those are my -- did I say
4 number 66 also?

5 THE COURT: Yeah, you've already got 66.

6 MR. LANIER: Those are mine, your Honor.

7 THE COURT: Hang on just a second.

8 Okay. Who are the defendant's challenges for
9 cause?

10 MR. BICKS: 2, 7, 27, 57, and then 33, that's
11 the one who's got the Dow -- the wife that's got the Dow
12 survivor benefits that I asked about. The wife's ex-husband
13 has Dow benefits -- has benefits that now go to the wife.

14 THE COURT: Okay. Is that it, 2, 7, 27, 57, and
15 33?

16 MR. LASSETTER: Yeah, there's also 37.

17 MR. LANIER: 37? Oh, we're going to both agree
18 to take her off.

19 MR. LASSETTER: She's coming off?

20 MR. LANIER: She's not going to come off for any
21 rule. She's --

22 THE COURT: Y'all agree to take Ms. Geraci? All
23 right. Bear with me just a second.

24 All right. Let me ask this question of both of
25 you. 66, Connie Irene Aubrey, that the plaintiff challenged

1 for cause, you're contending that she is retired from Dow;
2 correct?

3 MR. LANIER: True.

4 THE COURT: So you're saying that she's got a
5 financial interest through her retirement?

6 MR. LANIER: True.

7 THE COURT: And for the defendants, number 27,
8 Jonell Glass, is she the one you said receives survivor
9 benefits?

10 MR. BICKS: No, that was 33.

11 THE COURT: That was 33, William Palat. You
12 said he received survivor benefits; right?

13 MR. BICKS: His wife receives survivor benefits.

14 THE COURT: Okay.

15 MR. BICKS: And on 66, Judge, the response that
16 I had to Mr. Lanier is we do not believe that this person is a
17 retired Dow employee.

18 THE COURT: Okay.

19 MR. LANIER: Your Honor, if you want to hear
20 from me.

21 THE COURT: Yeah. Go ahead.

22 MR. LANIER: I'm looking at the questionnaire
23 and I'm not sure that the questionnaire actually proves retired
24 from Dow, 66. I know for a fact the record does not prove on
25 33 that the wife has survivor benefits. The fellow said he

1 didn't have a clue. Dow knows that. Evidently Dow's done
2 their independent research, but there's nothing to that on the
3 record.

4 So I had offered to trade the two off, and let's
5 get rid of both of them. That offer was rejected. But I will
6 state on the record that I don't believe that -- that the
7 record necessarily proves it for either of the two.

8 THE COURT: All right. Let me ask one question.
9 Tell me what Ms. Creveling said, because that's the other one I
10 had a question.

11 MR. LANIER: Ms. Creveling said that she could
12 not be fair on the damages and would hold me to a greater
13 burden of proof. She said that the 1.3 billion figure is
14 excessive and not something she would award.

15 THE COURT: Oh, she's the one out here at the
16 far end on the fourth row.

17 MR. LANIER: Yes, sir. That's right.

18 THE COURT: Give me just a second.

19 MR. BICKS: Right, Judge, she made the comment
20 that she thought damages were excessive. Then I asked her
21 could she follow the instruction, the law, and apply it to
22 facts and it was unequivocal that she would.

23 THE COURT: Okay.

24 MR. LANIER: He tried to rehabilitate her.

25 THE COURT: Okay, guys. Just give me just a

1 minute and I'll rule.

2 MR. BICKS: So it's also -- I'm advised by
3 people whose expertise, Judge, is far beyond mine that the Dow
4 thing is fine with Mr. Lanier, the swap.

5 MR. BROWN: That you're fine with it, you're
6 saying?

7 MR. BICKS: Yes.

8 THE COURT: Okay. Start over then. Does that
9 mean we're agreeing to excuse --

10 MR. BICKS: 33 and 66.

11 THE COURT: -- 33 --

12 MR. BICKS: And 66.

13 THE COURT: -- and 66. Is that agreeable with
14 you, Mr. Lanier?

15 MR. LANIER: Yes, your Honor. For the record,
16 both sides have agreed that Ms. Geraci, number 37, can be
17 excused.

18 THE COURT: Hang on a minute. Agreed on 66.
19 Agreed on 33. And Ms. Geraci, we've already got excluded.

20 MR. LANIER: Correct.

21 THE COURT: Now, let me rule on the challenges
22 for cause. So let me make sure where we are. On the
23 plaintiff's, I've got their challenges for cause as 14, 29, 48,
24 and 67.

25 MR. LANIER: True.

1 THE COURT: For the defendant, I've got 2, 7, 27
2 and 57.

3 MR. BICKS: Correct.

4 THE COURT: All right. Plaintiff: 14, that's
5 granted; 29, granted; 48, granted; 67, granted.

6 For the defendant: 2, granted; 7, granted; 27,
7 granted; 57 -- Ms. Wilson; right?

8 MR. BICKS: Yes.

9 THE COURT: -- granted. Okay. We have to do
10 one more thing. We've got these two ladies out here that need
11 to talk to us about their child scenario. I'm going to bring
12 them in. I'm going to voir dire them right here, so then we'll
13 decide on the peremptory challenges. Joe.

14 THE BAILIFF: Yes, sir.

15 MR. BROWN: Your Honor, before you do, could I
16 have one minute on alternates, just one.

17 THE COURT: Yeah, but I was going to give you
18 that after we talk to these ladies.

19 MR. BROWN: Oh, okay.

20 THE COURT: Joe --

21 THE BAILIFF: Yes, sir.

22 THE COURT: Bring Sandra Grant in.

23 Okay. You're Ms. Sandra Grant?

24 PROSPECTIVE JUROR NO. 16: Right. Uh-huh.

25 THE COURT: Ms. Grant, it's my understanding you

1 have a problem with picking up children.

2 PROSPECTIVE JUROR NO. 16: Well, I don't have a
3 problem picking them up. I mean, I am the one that picks my
4 son up all the time and my granddaughter. And this week, I
5 planned on who was picking them up, but, I mean, I don't think
6 that -- every day I'm going to try and have to find out who's
7 going to -- who's going to be able to pick them up and I'm
8 thinking, that's all I'm going to be thinking about.

9 THE COURT: What time do they have to be picked
10 up, ma'am?

11 PROSPECTIVE JUROR NO. 16: They get out of
12 school about 2:45.

13 THE COURT: How old are the children?

14 PROSPECTIVE JUROR NO. 16: Ryan's 14 and Jackie
15 is 7.

16 THE COURT: Okay. So you've got a 7-year-old.

17 PROSPECTIVE JUROR NO. 16: She's my
18 granddaughter. She lives with us part of the week. I don't
19 have full custody of her, but she does stay with us quite
20 often. I pick her up every day. I have been for three years.

21 THE COURT: If you're on this jury, is there
22 somebody else who can pick her up?

23 PROSPECTIVE JUROR NO. 16: My husband's at work
24 all the time. Her mom works, her dad works. I mean, I've made
25 a commitment to pick them up and all of a sudden I don't know

1 what I will do to try -- this -- like I said, this week I was
2 calling around to try to get somebody to pick them up Tuesday
3 and today.

4 THE COURT: Let me ask you this question.

5 PROSPECTIVE JUROR NO. 16: Uh-huh.

6 THE COURT: If I keep you on this jury, are you
7 going to be worrying about picking them up to the point that
8 the it'd be difficult for you to concentrate?

9 PROSPECTIVE JUROR NO. 16: I worry about them
10 all the time. I think about them, so I would think, who am I
11 going to call for today, who am I going to -- you know, the
12 next day.

13 THE COURT: Mr. Lanier, you want to ask
14 Ms. Grant any questions?

15 MR. LANIER: No, your Honor.

16 THE COURT: Mr. Bicks, you want to ask any
17 questions?

18 MR. BICKS: No, your Honor.

19 THE COURT: Thank you, ma'am. Just wait
20 outside. I'll let you know.

21 PROSPECTIVE JUROR NO. 16: Thank you.

22 THE COURT: Y'all want to agree to excuse her?

23 MR. LANIER: Yeah, I'll be glad to, Judge.

24 THE COURT: Peter?

25 MR. BICKS: That's fine.

1 THE COURT: 16 is excused by agreement.

2 Okay. Joe, bring in Mary Kay Hoffman.

3 MR. LANIER: What number is she, Judge?

4 THE COURT: 61.

5 Ms. Hoffman, my bailiff tells me that you
6 indicated you have a problem picking up your children or
7 grandchildren? Will you elaborate on that, ma'am.

8 PROSPECTIVE JUROR NO. 61: Yes, my
9 daughter-in-law is a lieutenant commander in the Naval
10 Reserves. On the 16th of September, she'll be gone for two
11 weeks and I'll be in charge of those four children, along with
12 their father. Now, their father is a paralegal in Houston. He
13 doesn't get home till 7:00, 7:30 at night.

14 THE COURT: How old are the children, ma'am?

15 PROSPECTIVE JUROR NO. 61: Eight, six, four and
16 two.

17 THE COURT: You're the only means of
18 transportation they have?

19 PROSPECTIVE JUROR NO. 61: Yes, I'll be bathing
20 them and I'll be feeding them and everything.

21 THE COURT: Bottom line is, you'll ultimately
22 have custody of them for the two weeks you're lieutenant
23 commander daughter is gone into the finest branch of service in
24 the United States?

25 PROSPECTIVE JUROR NO. 61: Yes, sir. Yes.

1 THE COURT: Correct?

2 PROSPECTIVE JUROR NO. 61: Yes. She's doing
3 training and they'll be -- this group of men that she's helping
4 to train will be going to Kuwait.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 61: So she doesn't have
7 much choice.

8 THE COURT: Is she a line officer? Do you know
9 what that is?

10 PROSPECTIVE JUROR NO. 61: She -- no.

11 THE COURT: Okay. That's all right.

12 PROSPECTIVE JUROR NO. 61: She's was ROTC up
13 through college and she's an RN.

14 THE COURT: Okay. Mr. Lanier, you want to ask
15 Ms. Hoffman any questions?

16 MR. LANIER: No, your Honor, just wish her the
17 best.

18 THE COURT: Mr. Bicks, do you?

19 MR. BICKS: No, your Honor.

20 THE COURT: Thank you, ma'am. If you'll just
21 wait outside. Ms. Hoffman?

22 PROSPECTIVE JUROR NO. 61: Yes, sir.

23 THE COURT: Let me ask you one last question.

24 PROSPECTIVE JUROR NO. 61: Sure.

25 THE COURT: If you're on this jury --

1 PROSPECTIVE JUROR NO. 61: Yes.

2 THE COURT: -- while your daughter is gone to
3 her naval reserve training duties, will your mindset be such
4 that you'd have difficulty concentrating, listening to the
5 evidence, because you'd be worrying about who's going to pick
6 your grandchildren up?

7 PROSPECTIVE JUROR NO. 61: Definitely, sir.
8 Yes.

9 THE COURT: Think it'd make it difficult for you
10 to listen to the evidence sufficient to make a decision?

11 PROSPECTIVE JUROR NO. 61: It would.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 61: Yes.

14 THE COURT: Wait outside, please.

15 PROSPECTIVE JUROR NO. 61: Okay. Thank you.

16 MR. LANIER: We'll certainly agree to let her
17 off.

18 THE COURT: How about you, Counsel?

19 MR. BICKS: She's got important things to do,
20 Judge. She should be off.

21 THE COURT: Okay. She's off by agreement.
22 Okay, Harvey, let's hear what you've got real quick. I'm going
23 to give you guys a full hour to strike. Don't worry. Let's
24 hear what you've got about the alternate juror that you said
25 you wanted to present.

1 MR. BROWN: I know the hesitation of the Court
2 and I know many courts are the same. My one suggestion that I
3 had somebody suggest in the case that I was involved in that I
4 thought worked was for there to be a 13th juror who would
5 actually sit through the deliberations and would -- at the end,
6 we would decide who was the 13th juror only by drawing a name
7 out of the hat. Therefore, that person feels like a full juror
8 during the entire process and actually can participate in the
9 deliberations so they feel like they're a meaningful part of
10 the case.

11 I've seen this done on two different occasions
12 and I thought it was a good idea, because as the Court has
13 interpreted the disabled cases, you've interpreted them that if
14 somebody is going to have any difficulty with concentration or
15 worrying, that constitutes a disablement. We might have
16 something happen during this trial, given a four-week trial and
17 that standard, so I would humbly suggest that it be proper and
18 wise in this case to have an extra juror to do it that way.

19 THE COURT: If I do that, I've got to allot an
20 extra strike for each side.

21 MR. BROWN: You do.

22 THE COURT: What's the position for the
23 defendants? What the rules are in Texas is you take the 13th
24 juror and that's your alternate. And they don't get to
25 participate. It's not a matter of a draw. Y'all want to agree

1 to it or not? That doesn't mean I'll give it to you, but I
2 just want to know.

3 MR. BROWN: They did ask last week, you
4 remember, for an alternate themselves.

5 THE COURT: I don't like that, but let's hear
6 that --

7 MR. LANIER: Now that we want one, they'll
8 change their mind.

9 MR. LASSETTER: Judge, could we take five
10 minutes. This hit me by surprise. Just five minutes.

11 THE COURT: Well, it hit me by surprise.

12 MR. LASSETTER: Okay. Because we've got a lot
13 of --

14 THE COURT: Let me tell you something. Y'all
15 are both going to have to do a hell of a lot of convincing to
16 get -- convince me to get an alternate juror on this case, even
17 if you agree to it. But if you agree to it, I'll give it
18 stronger consideration than I have otherwise. And you don't
19 have to humbly request it. I mean, just request it.

20 You want five minutes to think it over?

21 MR. LASSETTER: Yes, sir.

22 THE COURT: Okay.

23 (Break taken from 4:30 p.m. to 4:32 p.m.)

24 THE COURT: Go ahead, Scott.

25 MR. LASSETTER: We've considered it and

1 discussed it with our client and we would not agree to a 13th
2 juror.

3 THE COURT: Okay. Mr. Brown, Judge Brown --
4 jury's not in the box; I can call you that -- your request is
5 denied.

6 MR. BROWN: Thank you.

7 THE COURT: Two more things. One, I want to put
8 on the record that we had two jurors that did not appear this
9 morning and we agreed, both sides did and I don't think it's on
10 the record, that those jurors would be excused. This was prior
11 to voir dire, and those jurors were 28, Wendy Suzanne Hoppens,
12 who subsequently called in and was throwing up and was ill. I
13 believe she was the one that Mr. Lanier and Mr. Bicks agreed to
14 excuse; is that correct, Mr. Lanier?

15 MR. LANIER: True.

16 THE COURT: Mr. Bicks? The one that didn't show
17 this morning, Ms. Hoppens?

18 MR. BICKS: Yes. Yes.

19 THE COURT: And then the other one was -- I just
20 want to get this on the record. The other one was juror 69,
21 Sabas Cantu, who was a no-show, and we agreed that we would
22 commence voir dire and he would be excused. Plaintiff agree?

23 MR. LANIER: True.

24 THE COURT: Confirm that?

25 MR. LANIER: Agreed, your Honor.

1 THE COURT: Defendant?

2 MR. BICKS: Yes.

3 THE COURT: All right. One last thing, we have
4 one juror, Susan Lanae Anderson, who was the young lady that
5 when I questioned her about the severe financial hardship, she
6 said that that wouldn't affect her, but she also said she's
7 working nights and she's the one that gave a long explanation
8 as to how she would fall asleep on Monday. And I thought we
9 said earlier, before we made the challenges for cause, that we
10 would agree to excuse her. I just want to know if both sides
11 will agree to excuse her.

12 MR. LANIER: True, your Honor. We agree. And
13 if not, we'd move to supplement our motion for cause, because
14 clearly someone sleeping on Monday would not pay attention.

15 THE COURT: Well, let's see what the defendant's
16 position is.

17 MR. BICKS: We agree, your Honor.

18 THE COURT: Okay. She's off. Now, that's 22.
19 We have gotten -- the clerk has prepared the list, if you want
20 to update it. Let's go through who -- who's on here. These
21 are the ones that I've got that are on.

22 And have you got more copies of these?

23 THE CLERK: I'm fixing to make them, Judge.

24 THE COURT: Okay. We'll give you these, if you
25 want. It might make it easier.

1 Loretta Marie Williams, juror 1; Jane Alice
2 Walthall; Maria Anadelia Villarreal; Wendy Lee Childers;
3 June Elizabeth Gonzales; Veronica Herbst Bosarge; Michael Allen
4 Lassman; Wayne Allen Williamson, 17; 18, Artie Hamilton
5 Dekenipp; 20, Robert Howard Rape; 24, Cindy Gail Romeo; 30, Ted
6 Alan Felder; 34, Gabriel Bernardo Saldivar; 39, Gwendolyn Ray
7 Lejsal; 41, Glenn Houston Rogers; 44, Sharon Ruth Roberts; 47,
8 Cong Nguyen Tavu; 49, Cheri Lynn Morrow; 50, Gregory Warren
9 Wilson; 51, Robert Garland Rowan. After Rowan, which is 51,
10 Bruce Wayne Sidney; Leslie Elaine Ortiz; Michelle Lou Bingham;
11 Mary Moreno.

12 That should be the panel. Then we've got --
13 let's make sure the record is clear. Cynthia Anderson Arias;
14 Patsy Ann Cumbie; Charlotte Mae Yoes; Jane Blanchard; Glen
15 Ford; Terri Carpenter-Simon; Amanda Renee Deleon; Gary Glenn
16 Coffman; Kevin Sidlo; Willie Lee Sullivan.

17 The last juror should be juror -- according to
18 my calculations, Mary Moreno, juror 56. Is that what y'all
19 have?

20 MR. LANIER: Yes, your Honor.

21 THE COURT: If y'all want her to make a copy of
22 this for each side, she'll do it.

23 MR. LANIER: Please, from us.

24 THE COURT: Make a bunch of them. And what time
25 is it? I'll give you until 5:40 to get your list together.

1 MR. LANIER: It won't take us long at all.

2 THE COURT: Six strikes each. Do you need that
3 much time?

4 MR. LANIER: We don't. 15, 20 minutes will do.
5 We'll be ready when they come back in, whatever time.

6 THE COURT: All right. 5:15. We'll just shoot
7 for then.

8 MR. LANIER: Yeah, when they get back.

9 (Break taken from 4:39 p.m. to 5:22 p.m.)

10 THE COURT: Have we got everybody here?

11 THE BAILIFF: They say we do.

12 THE COURT: Your job is on the line if anybody's
13 missing.

14 Okay. Ladies and gentlemen, we have our jury
15 panel. When your name is called, would you please come up and
16 have a seat in the jury box. Doesn't make any difference which
17 seat you take.

18 June Elizabeth Gonzales, Michael Allen Lassman,
19 Wayne Allen Williamson, Artie Hamilton Dekenipp, Cindy Gail
20 Romeo, Ted Allen Felder, Gabriel Bernardo Saldivar, Gwendolyn
21 Ray Lejsal, Glenn Houston Rogers, Sharon Ruth Roberts, Cheri
22 Lynn Morrow, Gregory Warren Wilson. That should be 12.

23 THE BAILIFF: Better be. I'm out of badges.

24 THE COURT: I hope it is. Let me make doubly
25 sure. I've got June Gonzales. Okay. Michael Lassman. Wayne

1 Williamson. Artie Dekenipp. Is that the way you pronounce
2 that, sir?

3 JUROR ARTIE HAMILTON DEKENIPP: Yes.

4 THE COURT: Thank you. Cindy Romeo. Ted
5 Felder. Gabriel Saldivar. Gwendolyn Ray Lejsal. How do you
6 pronounce that?

7 JUROR GWENDOLYN RAY LEJSAL: Lejsal.

8 THE COURT: Lejsal. Glenn Houston Rogers.
9 Sharon Ruth Roberts. Cheri Lynn Morrow. Gregory Warren
10 Wilson. Okay.

11 Okay, ladies and gentlemen. In just a minute,
12 I'm going to excuse you and give you some instructions, but
13 before that, would the members of the jury please stand, raise
14 your right hand and take the oath as jurors?

15 (The jury was sworn.)

16 THE COURT: Be seated, please. The jury needs
17 to just sit there a minute and have been given some handouts
18 called Instructions to the Jury. Take a few minutes and read
19 those, if you will.

20 During the meantime, folks, your jury service is
21 over. Finished. Completed. You're fixing to be allowed to
22 go. Feena, the clerk, she'll have your time slips for you, if
23 you need to take them back to your respective employer. She's
24 going to be in the hall outside. I'm going to give the jury
25 some instructions in just a few minutes. They're standard

1 instructions given to all jurors.

2 Any of you want to remain and listen to them,
3 you're certainly free to do so. You get paid ten bucks a day
4 for the two days that you spent up here. If you would have
5 gotten selected, well, you would have gotten promoted to 25,
6 but you don't get to 25 unless you're actually selected on the
7 jury.

8 I have been instructed by the county treasurer
9 not to tell you when to get your jury checks, because I did
10 that once -- this is a true story -- told the jurors they'd get
11 them in a couple of weeks and when they didn't, she started
12 getting a lot of calls, so the check's in the mail.

13 Subject to those final instructions of picking
14 up your -- oh, one last thing. You can talk about the case
15 with anyone you want to once you leave this courtroom. You can
16 visit with the lawyers, if you want to hang on till they leave.
17 You can talk among yourselves. You can't talk to the jury,
18 though.

19 Subject to that, you're free to go. Thank you
20 very much for being with us today.

21 Okay. Ladies and gentlemen, I need to give you
22 some instructions and then we're going to break for the day.
23 We're going to actually start this case Monday. You're not to
24 come back tomorrow. We're going to start it fresh Monday
25 morning. I'm going to ask that you be here at 10:00, Monday.

1 We've got to have the big courtroom available for this trial,
2 so we're going to have to clear all the jurors out. Sometimes
3 they're out by 9:30, 10:00; sometimes not till 10:15.

4 So what I'd like for you to do is just gather
5 right out there in the hall, and then as soon as we can get you
6 in here, we'll get started, but I anticipate it'll be around
7 10:15. So please be here by 10:00 Monday morning.

8 The way we will start this case is both sides
9 will be afforded the opportunity to make what's called an
10 opening statement. An opening statement is where the lawyers
11 are allowed to state the nature of their case. They can tell
12 you the witnesses they're going to call, what their testimony
13 is going to purportedly be, whatever they want to tell you
14 about the proof that's coming as a guideline, so to speak, to
15 aid you in following the evidence, if the opening statement
16 does aid you.

17 The plaintiff's attorney, Mr. Lanier or one of
18 the members with him, will be allowed to make the opening
19 statement for the plaintiff and then following that opening
20 statement, Mr. Bicks or one of the defense attorneys will be
21 allowed to either make an opening statement at that time or
22 they can defer the opening statement until after the plaintiff
23 has put on all of his witnesses and rested its case. And then
24 they'll be afforded the opportunity to make the opening
25 statement then. So the defendant has the option either to

1 follow the plaintiff immediately or wait until the plaintiff's
2 witnesses are presented.

3 Opening statements will probably take a large
4 part of the day. But they'll lay out the case for you.

5 Now, you've been given these instructions. I'm
6 not going to read them verbatim. You can take them and read
7 them at your convenience, but these are jury instructions and
8 they're common sense, most of them, what you can and can't do.

9 You're going to be calling the shots in this
10 case and we want your decision made strictly and solely on what
11 you see and hear in this courtroom, not on some conversation in
12 the hall, not on something that happens on the way to the
13 parking lot. Strictly and solely upon what you see and hear
14 from this witness stand and documents, if any, that are
15 submitted in evidence for your perusal and review so you can
16 judge the credibility of the witnesses and the documentation in
17 this courtroom. That's what these are designed to do.

18 Summarizing the instructions, the first three
19 simply say don't mingle with or talk to the lawyers, the
20 witnesses -- you'll see them as they're brought in -- the
21 parties or anybody connected with this case except for casual
22 greetings. Don't give to or accept from those people any
23 favors, regardless of how slight, such as rides, food or
24 refreshments. In other words, you can say good morning and
25 good afternoon to the lawyers and the witnesses and the people,

1 if you recognize them as you pass by, but leave it at that.
2 Whether you're talking about the case or not, they're off
3 limits to you.

4 You're not allowed to discuss the case with
5 anyone, not even your wife or your husband, or allow anyone to
6 talk about it in your hearing until you're discharged as a
7 juror. Now, that's kind of a hollow instruction, because the
8 first thing that's going to happen when you get home tonight,
9 you're going to be asked what kind of a case you're on. Tell
10 them you're on a case in which Kelly-Moore is the plaintiff,
11 Union Carbide is the defendant. You can tell them what the
12 allegations are and then you can tell them how long you think
13 the case will take.

14 You can tell them who the lawyers are, who
15 everybody connected with the case is and then leave it at that.
16 What these instructions are designed to do is to prevent you
17 from going home after you've heard evidence and discussing
18 facts of the case with your spouses and having one of them say,
19 "Well, you know, I don't know how you would feel, but this is
20 what I think about that." So we don't want you getting any
21 help on your decision in this case, except from among the 12 of
22 you.

23 You're not even allowed to discuss the facts of
24 the case among yourselves once we start this case, not even
25 while you're in the jury room waiting to come out and have a

1 seat on -- in the jury box.

2 Once the case is over, I'll give you a written
3 charge. You'll be allowed to take it into the jury room. I'll
4 define all the law for you and give you the questions and then
5 for the first time, you'll be allowed to start discussing the
6 facts of the case in your deliberations.

7 You're not allowed to go out and make any
8 investigation about the facts of the case. You're told in the
9 instructions that occasionally we have a juror who privately
10 seeks out information and this is improper. Well, the reason
11 is because we want everybody to hear everything in open court
12 without any interruptions.

13 You can't make personal inspections,
14 observations, or experiments -- of course, that goes hand in
15 hand -- nor view premises, things or articles not produced in
16 court. And, of course, you can't let anybody do any of these
17 things for you.

18 The next instruction says you can't tell the
19 jurors any of your personal experiences and you can't relate
20 any special information. Some of you may know something about
21 asbestos, for example. It's improper for you to go into the
22 jury room or for you to privately tell the other jurors what
23 you know, because that puts you in the position of being a
24 witness who's not under oath, not subject to cross-examination
25 where your credibility can be tested.

1 We're not asking you to leave your common sense
2 at home. Whatever you may have learned or know, you can
3 certainly use that in helping you judge the credibility of the
4 evidence in this case, but what you can't do is become an
5 expert and share that expertise with the other jurors.

6 Don't discuss or consider attorneys' fees unless
7 evidence about attorneys' fees is presented. Don't consider or
8 discuss whether one side or the other has insurance coverage of
9 any kind. That has no bearing on -- on the facts of this case.
10 And fraud allegations and a negligent misrepresentation
11 allegations are what we call causes of action. Don't try to
12 find information in law books, dictionaries, any type of
13 records. All the legal things you need to know and legal
14 definitions, I'll give to you. If you're not given a legal
15 definition, and if it's some technical definition, you'll have
16 a witness testify as to the meaning of those types of things
17 and you can give whatever credibility or credence you choose to
18 them.

19 If it's just some phrase or some word that's not
20 defined for you, you just use your common, everyday
21 understanding of what you think that means. It'll be pretty
22 simple.

23 In bold type in these instructions, it says, "At
24 the conclusion of all the evidence, I may submit to you a
25 written charge asking you specific questions." I've already

1 told you about that. You're not going to be asked and you
2 should not consider whether one side or the other should win.
3 You simply answer the questions based on what you think the
4 evidence proves or doesn't prove.

5 The next to last instruction simply says, "Texas
6 law permits proof of any violation of the rules of proper jury
7 conduct." What this means in a nutshell is that when you go in
8 a jury room or whether you're in the jury room or not, if you
9 violate any of these instructions, I have the authority to have
10 you brought back at a subsequent or a later time, place certain
11 jurors under oath, to see if these instructions were violated.
12 This is a required instruction the Supreme Court wants to give
13 to every juror so you'll know what the checks and balances
14 system is to make sure the jurors are fair and impartial.

15 You're a self-governing body. We're not going
16 to have a bailiff in the room with you or anyone to make sure
17 you follow the instructions. You govern yourselves. And
18 that's why that instruction is in there, to let you know how we
19 handle that if it turns out that some juror does stray and does
20 things they're not supposed to.

21 I've been on the bench quite a few years and I
22 think I've only had -- had to bring a juror back two or three
23 times in all that time, and that's -- that's 31 years, because
24 jurors are real good about following instructions.

25 We want a fair trial. We want you to be as fair

1 as you can be and call it exactly as you think the evidence and
2 the truth establishes in your mind.

3 We're going to work full days, Monday through
4 Thursday. And full days means we'll shut down sometime between
5 4:30 and 6:00, as a general rule. If we get to a witness and
6 that witness is going to finish and it's going to take till
7 5:15 or 5:30, I'm going not going to shut it down at 4:45. On
8 the other hand, if we get to 4:30 or 4:45 and the next witness
9 is going to be a four-hour witness, we'll probably shut it down
10 a little bit early, but sometime between 4:30 and 6:00 will be
11 our working hours.

12 On all days but Monday, I want you here by 9:00.
13 I'll give you at least one 20-minute break in the morning and
14 one in the afternoon. We'll break every hour and 15 or 20
15 minutes. I'll give you at least an hour, maybe an hour and 10,
16 15 minutes, for lunch. You'll be on your own at all times that
17 you're not in trial. I'm not going to sequester or lock you
18 up.

19 On Fridays, I'll probably shut down a little
20 early. We may shut down at 2:00 or 3:00. I don't anticipate
21 going past 3:30 or 4:00 on Fridays. I know some of you have
22 kids who play football or are in the band or you go -- go to
23 various things on Friday, but that's going to be pretty well
24 our working hours.

25 We're going to do everything we can not to waste

1 time. The lawyers are good lawyers. We've done all the
2 pretrial preparation, so starting Monday, we're going to be
3 ready to start -- start this case with the opening statements
4 and the witnesses.

5 That's all the instructions that I have, so --
6 oh, one final instruction. I am probably -- and I have not
7 made up my mind on this yet, but I am probably going to allow
8 you to take notes during the course of this trial, if you elect
9 to do so, in which case if I do, we'll provide you with legal
10 tablets and pencils.

11 But what the rules are in Texas is jurors can
12 take notes if the Court so decides. But once the case is
13 concluded and you go into the jury room, you're not going to be
14 allowed to take those notes into the jury room to refer to them
15 during your deliberations, because they're not evidence. The
16 evidence is what comes from the witness stand and the documents
17 that are admitted in evidence, and if they will help you from
18 day to day to remember what was testified to, that's fine, but
19 once you start deliberations, your notes will have to be turned
20 over to the clerk or to the Court.

21 You'll not be allowed to refer to them. That's
22 not quite as harsh as it sounds, because under the rules, if a
23 witness testifies to something and the jury disagrees as to
24 what that witness testified to, you have the right to have the
25 disputed portion of that witness read back to you verbatim.

1 You simply send a note out saying "We can't agree on this
2 particular point." We have the court reporter search her notes
3 for everything related to that point by that witness. We put
4 you back in the box. And we read that to you verbatim. So you
5 hear it exactly as it is.

6 But if you choose to take notes, you'll
7 certainly be allowed to do so. If I -- if I decide to let you
8 do that, which I -- I'll let you know Monday, provided you
9 can't take them into the jury room once you start your
10 deliberations.

11 That's all the general instructions that I have,
12 so you're excused until Monday. We'll see you in the hall out
13 here at 10:00 Monday. Do not come in the courtroom until Joe's
14 ready to bring all 12 of you in. Thank you very much.

15 Oh, one last thing. Wear your jury badges at
16 all times that you're in the courthouse. This is for the
17 benefit of the lawyers and the people connected with the case,
18 because they're under the same instructions you do and -- you
19 are and they don't want to be talking about the case down in
20 the hallway or in the coffee shop or somewhere and not
21 recognize you by sight. So if they see that jury badge,
22 they'll know to quit and cease and desist discussing whatever
23 they're discussing about the case.

24 Have a good weekend. We'll see you Monday.
25 Pinky, walk out in the hall and make sure the jurors get down

1 without anybody talking to them. There's some people who just
2 left the courtroom. I don't know who they are.

3 Okay, gentlemen and ladies, thank you very much.
4 We'll see you Monday.

5 MR. LANIER: Monday morning at --

6 THE COURT: Be here by 10:00. We're not going
7 to get this started till 10:30. It's going to take till at
8 least 10:00, 10:15 before they clear the courtroom.

9 (Proceedings recessed at 5:41 p.m.)

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TRIAL COURT CAUSE NO. 19785-BH02

THE STATE OF TEXAS)
COUNTY OF BRAZORIA)

I, Peggy Ann Antone, Deputy Official Court Reporter in and for the 23rd Judicial District Court of Brazoria County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$ and was paid/will be paid by .

WITNESS MY OFFICIAL HAND this the 9th day of September, 2004.

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