

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

3 FUNCTION MEDIA * Civil Docket No.
 * 2:07-CV-279
4 VS. * Marshall, Texas
 *
5 * January 4, 2010
6 GOOGLE * 2:00 P.M.

6 TRANSCRIPT OF VOIR DIRE PROCEEDINGS
7 BEFORE THE HONORABLE CHAD EVERINGHAM
8 UNITED STATES MAGISTRATE JUDGE

8 APPEARANCES:

9 FOR THE PLAINTIFFS: MR. MAX TRIBBLE
 MR. JEREMY BRANDON
10 MR. JOE GRINSTEIN
 Susman Godfrey
11 1000 Louisiana St., Suite 5100
 Houston, TX 77002
12 MR. JUSTIN NELSON
 Susman Godfrey
13 1201 Third Avenue, Suite 3800
 Seattle, Washington 98101
14 MR. ROBERT M. PARKER
 Parker Bunt & Ainsworth
15 100 East Houston, Suite 1114
 Tyler, TX 75702
16 FOR THE DEFENDANTS: MR. CHARLES VERHOEVEN
 MS. AMY CANDIDO
17 Quinn Emanuel
 50 California St., 22nd Floor
18 San Francisco, CA 94111
 MR. ED DEFRANCO
19 Quinn Emanuel
 51 Madison Avenue, 22nd Floor
20 New York, New York 10010
 MR. GIL GILLAM
21 Gillam and Smith
 303 South Washington Avenue
22 Marshall, TX 75670
COURT REPORTER: MS. SUSAN SIMMONS, CSR
23 Official Court Reporter
 100 East Houston, Suite 125
24 Marshall, TX 75670
 903/935-3868

25 (Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

P R O C E E D I N G S

1
2 THE COURT: Please be seated.

3 Good afternoon, Ladies and Gentlemen, and
4 Happy New Year to all of you.

5 My name is Chad Everingham, I'm a
6 Magistrate Judge who sits here in Marshall. I share the
7 building with Judge T. John Ward who is the resident
8 District Judge.

9 We're here today for the purposes of jury
10 selection in a case that I'm handling, it is a case that
11 is going to trial later this month, and it is a civil
12 case. I believe all of you have seen the patent video
13 that is prepared by the Federal Judicial Center today,
14 that is the type of case that we're here to pick a jury
15 on.

16 It is not a criminal case, no one is
17 going to go to prison as a result of your service here
18 today, but it is nonetheless a very important case to
19 the Court as well as to the parties, and I appreciate
20 your patience throughout the day. I will do my best to
21 expedite the process, but it is a process that will take
22 us a little while to get through today.

23 But I need to tell you a few things about
24 the process itself right now. In just a few moments
25 each of you is going to be called upon to stand and

1 raise your numbers when you do and give the information
2 that is up there on the screen.

3 And just to tell you -- or to show you
4 rather that I wouldn't ask you to do anything that I
5 wouldn't do first: My name is Chad Everingham. I live
6 up Highway 154 in Diana. I have got two small children.
7 I work here in Marshall at the courthouse. I have been
8 a Judge now for about -- a little over two-and-a-half
9 years, since April of 2007. My educational background,
10 I went to high school in Longview and graduated from
11 Pine Tree High School. I went to undergraduate school
12 at Stephen F. Austin down in Nacogdoches and then to law
13 school at Baylor. My wife's name is Wendi. She is a
14 part-time employee for the CASA organization here in
15 Marshall, for the Harrison County CASA organization.
16 She has been there for about three months now. And
17 prior jury services, I have served on a civil case. It
18 was a landlord/tenant dispute over in Gregg County when
19 we used to live over in Gregg County.

20 Those are my answers to the questions on
21 the board, and you can see how the process works. When
22 it's your turn, you'll just stand and give the answers
23 to the questions on the board and then pass the
24 microphone on down the row to the juror who is sitting
25 -- seated next to you.

1 After each of you has given your answers
2 to the questions, then the lawyers are going to get a
3 chance to ask you some additional questions. Each side
4 has been given 30 minutes to ask questions, and the
5 lawyers are entitled to ask a few questions about your
6 background and experiences in order to determine whether
7 or not you would be a fair and impartial juror for this
8 type of case. The lawyers are not trying to pry unduly
9 into your personal affairs, but as I said, they are
10 entitled to ask you a few questions and get some
11 information from you. You have given them quite a bit
12 of information already in the questionnaires, and they
13 will have a chance to gather some more information by
14 virtue of your answers to the questions, but they have a
15 certain amount of time that they are given to ask some
16 follow-up questions to you.

17 After the lawyers are through answering
18 (sic) questions, then we will take a break and we will
19 do the actual selection process. Then I will call you
20 back into the courtroom and those of you who are
21 selected to serve on the jury will be seated and sworn
22 in, the rest of y'all are done with jury selection for
23 this term of Court. You don't need to come back until
24 you are called the next time.

25 Now, I don't think that it will happen in

1 this case, but it has happened in some other cases, but
2 when you are answering questions that the lawyers are
3 asking you, they are not trying to pry unduly into your
4 affairs, and if they ask you a question that you are
5 embarrassed by or that you're uncomfortable answering in
6 front of the panel as a whole, just say, that is
7 something that I would rather talk to the Judge in
8 private about, and when we break, I will call you up
9 here and you can visit with the lawyers and me in
10 private. So, we're not trying to embarrass anybody.

11 I don't think it will happen in this
12 case, but just as an example, there was a case that was
13 tried several years ago over here that involved a death
14 that happened in a jail. It wasn't the Harrison County
15 Jail, but it was a death that happened in a jail and the
16 lawyers were interested in examining or finding out
17 about what the jurors' experience with jails had been,
18 and that brought back some memories that some of the
19 jurors didn't really want to talk about in public in
20 front of the rest of the folks on the panel. That is
21 the type of thing that I'm talking about. But certainly
22 anything that the lawyers touch upon that you think is
23 embarrassing to you, just raise your hand and say that
24 is something that I would like to talk about in private,
25 and we will be happy to accommodate you.

1 Michael Dean and Lucinda Stone, his wife, from Tyler.

2 And also helping us later in the trial,
3 other lawyers from my firm, Susman-Godfrey, we have
4 Jeremy Brandon, Justin Nelson and Joe Grinstein.

5 THE COURT: Thank you, Mr. Tribble.

6 The Defendant?

7 MR. GILLAM: Yes, Your Honor. My name is
8 Gil Gillam and on behalf of our client, Google, I want
9 to say hello to you today and I would like to introduce
10 some folks to you.

11 First of all with our client today,
12 Google, is Ms. Shana Stanton.

13 I would like to introduce to you some
14 other members of the Google trial team that you will be
15 meeting and working with during the trial of this case
16 at the table with me. First, Mr. Charlie Verhoeven, Ed
17 DeFranco and Amy Candido; and we're ready to proceed,
18 Your Honor.

19 THE COURT: Thank you, Mr. Gillam.

20 One last thing, Ladies and Gentlemen, as
21 far as scheduling goes, I told you the case would be
22 tried later during the month of January. I anticipate
23 that we're going to start trial at 8:30, Tuesday,
24 January the 19th, and that your service will be
25 completed no later than Wednesday, January the 27th.

1 File those dates away for me, and I will
2 come back to them toward the end of the process. What I
3 need you to be thinking about during the course of jury
4 selection is whether jury service during that time
5 period would impose an undue burden or hardship on you.
6 And by undue hardship or burden what I'm talking about
7 is do you have a prepaid vacation somewhere or do you
8 have, for instance, a surgery scheduled either for you
9 or for someone with whose care you have been entrusted.

10 I will tell you generally work related
11 and employment related excuses do not constitute undue
12 hardship or undue burden such that you would be excused
13 from jury duty. However, under some circumstances I
14 might decide otherwise, so if you have a serious problem
15 either by virtue of a vacation, health issues or in
16 certain limited instances, a job-related issue, I'll
17 listen to those once we get through and take a break
18 after the lawyers have finished asking you questions.
19 And those dates again are January the 19th through
20 January the 27th. Okay? And I promise you I will come
21 back to those after while.

22 With that if you will pass the microphone
23 to Mr. Grammer.

24 Thank you, Mr. Grammer. If you will give
25 the information called for by the questions on the

1 overhead.

2 JUROR GRAMMER: My full name is Richard
3 Gene Grammer. I live in Longview, Texas. I have three
4 children. I am retired, previous employment primarily
5 was military service, and also almost four years with
6 PAC-R in Seattle, Washington. Well, I mentioned four
7 years with PAC-R, I worked there. Thirty-two-and-a-half
8 years in the military.

9 Educational background is undergraduate
10 degree at our local East Texas Baptist University, BS,
11 MBA with the George Washington University.

12 Spouse name is Lois Virginia Grammer.
13 She is a retired housewife, she was originally a
14 teacher.

15 I had to take my glasses off to read
16 this, Your Honor.

17 THE COURT: How long did she teach?

18 JUROR GRAMMER: First year -- let's see
19 about three years, and then filled in intermittently
20 with different type of teaching.

21 THE COURT: All right. Did you ever
22 serve on a jury before today?

23 JUROR GRAMMER: Never served in a
24 civilian jury, federal. Military life there was a few
25 court-martials, comparable type decision making perhaps.

1 THE COURT: All right. Thank you.

2 You may pass the microphone down. I
3 appreciate it.

4 JUROR PERKINS: My name is William
5 Perkins. I have got five children, four of those are
6 step-children, all of them is grown. I'm self-employed,
7 I'm a contractor, building contractor. I have been
8 doing that work since 1975.

9 My educational background is high school.

10 My wife's name is Shirley Cecile Perkins.
11 We have been married 38 years. She has been a housewife
12 for 38 years.

13 That's about it.

14 Prior jury service, I haven't -- I have
15 been down here several times, but I never have had the
16 opportunity to serve on a jury.

17 JUROR BUSH: My name is Wendy Bush. I'm
18 from Pittsburg, Texas. I have two children, a 10-year
19 old and a seven-year old.

20 My place of employment is Pittsburg ISD
21 where I'm a first grade teacher. I have worked there
22 for six years, and I was off for six years having
23 children, and I have been back for two years now. So,
24 eight total.

25 My educational background is I graduated

1 from Daingerfield High School. I went to college at
2 Northeast Texas Community College and got a associates
3 degree. Then I got a -- received a bachelors degree
4 from East Texas State University in Commerce.

5 My spouse's name is Douglas Todd Bush,
6 and he was a teacher for Pittsburg ISD for seven years,
7 and he now owns his own business. We have a contracting
8 business where we put in septic systems and maintain
9 septic systems. And he's had that business probably for
10 about ten years.

11 Prior jury service, zero, none.

12 JUROR STALLINGS: My name is Allen
13 Stallings and I live in Atlanta, Texas.

14 I have zero children.

15 I work for WalMart, and I have been
16 working there for two-and-a-half years.

17 I am a high school graduate out of
18 Houston, Texas.

19 My spouse's name is Vicky. She is
20 unemployed.

21 And I have done -- I have been on a
22 criminal jury before.

23 JUROR GRAVES: My name is Betty Graves.
24 I have two children. I am a housewife, have been for 33
25 years.

1 I have a GED and college in New Mexico
2 and some in Texarkana College, I studied art.

3 My husband's name is Roy, he is deceased.
4 He worked for the postal service in Texarkana for 32
5 years.

6 And I have served on a civil case before
7 one time.

8 JUROR THOMASON: My name is Barbara
9 Thomason. I have two sons. I consider myself to be
10 self-employed. I manage our office work and bookkeeping
11 work for our black angus cattle ranch and also for my
12 husband's oil business. I have been doing that for
13 about 18 years. Prior to that I was a mother for the
14 boys.

15 I have a college degree in dental
16 hygiene.

17 My husband has his own oil business,
18 semi-retired. He has had that for 23 years.

19 I have never served on a jury before, I
20 have been called many times.

21 JUROR STEVENS: My name is Clyde L.
22 Stevens. I have one son. My place of employment is --
23 I'm semi-retired. I work for the Local 256, pipefitter.
24 I worked there for probably 14 years.

25 Education, two years of high school.

1 Spouse's name, Betsy R. Stevens. She is
2 a housewife for 40 years -- 43 years.

3 And I have never served on a jury.

4 JURY SMITH: My name is Vandell Smith. I
5 live in Hallsville, Texas.

6 I have three children.

7 And right now, currently, I'm the pastor
8 at St. Paul Baptist Church in Longview, Texas. Previous
9 to that I worked for 31 years with Southwestern Bell
10 Telephone Company, you probably know it now as AT&T. I
11 retired from there and I just picked up the ministry as
12 I went on.

13 Okay. Like I said, I stayed there about
14 31 years.

15 My educational background, I graduated
16 from the original Galilee High School in Hallsville.
17 You may know it as Hallsville High School now. And from
18 there I went to Wiley College, I graduated from there.
19 I did work a little bit on my Masters of Divinity, but I
20 did not complete the course.

21 My wife's name is Evelyn, Evelyn Smith.
22 Previously Evelyn worked at Eastman Chemical Company and
23 she was there for some 29 years. And Evelyn worked in
24 the IT Department of Eastman Chemical Company, and she
25 retired from that in 2004. I think she stayed there

1 about 29 years.

2 And no, I have never served on any type
3 of jury whatsoever.

4 JUROR STARLING: My name is Phyllis
5 Starling. I'm from Atlanta, Texas. I have five kids,
6 four girls and one boy.

7 I work at a place called Evergreen
8 Ministries. We work with the mentally challenged. I
9 work at St. Michael Rehab, I'm a CNA nurse, and I work
10 home health with my mother-in-law. I have been at
11 Evergreen Ministries for 15 years, and I have been at
12 St. Michael Rehab for four years, and I just started the
13 home health.

14 I graduated Atlanta High School. I went
15 to college for cosmetologist. Did have my shop for
16 about 13 years, but I closed it down and started working
17 at the rehab.

18 My husband is Dennis Starling, Sr. He
19 works with Evergreen Ministries too. He has been there
20 for about 10, 11 years. He was working at a glove
21 factory. He retired from there. He worked there for
22 about 21 years.

23 And no, I haven't did a jury duty before.

24 JUROR MOON: My name is Dana Moon. I'm
25 from Gilmer. I have two adult children, a boy and a

1 girl. I am a consultant forester, self-employed. I
2 have been a consultant for about 27 years.

3 I have a bachelors degree from the
4 University of Texas, a masters from Stephen F. Austin.

5 My wife's name is Julie. She works for
6 the Gilmer Independent School District. She is a fifth
7 grade school teacher. She has been working there for
8 about 27 years.

9 And I have no prior jury service.

10 JUROR THORNBURGH: My name is Susan
11 Thornburgh. I live on Farm-to-Market 1844, Gilmer,
12 Texas. I have three grown children, two daughters, one
13 son.

14 I am a housewife now. In the past I have
15 worked at a bible book store, I managed a dress shop,
16 and I also worked in a gift shop. Had a lot of
17 experience with people. I worked for 10 years, I stayed
18 at home for 33.

19 My educational background is through one
20 year of college and then I married.

21 My spouse is Neil Thornburgh. He is the
22 pastor at the Church at West Mountain, Gilmer, Texas.
23 He has been a pastor 42 years. We have been in this
24 church seven.

25 And I have been called to jury duty many

1 times, but never had an opportunity to serve.

2 JUROR HATTEN: My name is Debra Hatten.
3 I'm from Hughes Springs, Texas. I have two children. I
4 work for Hughes Springs Independent School District as a
5 teacher's aide and I'm also a Pilgrim's Pride chicken
6 grower. And I worked three years as a teacher's aide,
7 five years as a Pilgrim's grower.

8 I graduated from Hughes Springs High
9 School, two years of Kilgore Junior College.

10 My husband's name is Ronald Hatten. He
11 works for United States Steel. He has been there for 32
12 years. He is a supervisor.

13 And I have no jury experience. I haven't
14 served on a jury.

15 JUROR CROW: My name is Katherine Crow
16 from Atlanta, Texas. I have two sons.

17 I am a nursery worker at the United
18 Methodist Church in Atlanta for the last two-and-a-half
19 years.

20 I'm a high school graduate from Atlanta,
21 Texas.

22 I'm divorced.

23 And I have no jury service history.

24 JUROR WEBB: My name is Betty Webb. I
25 live off of 134 from Jonesville, Texas. I have one son.

1 I work for the LSU Health Science Center
2 in Shreveport, Louisiana and I have worked there for 15
3 years.

4 I have a GED, got a degree in nursing.

5 I am widowed.

6 I have been called many times to serve on
7 a jury, picked once, but the case was settled out of
8 court.

9 JUROR NEWMAN: My name is Donnie Floyd
10 Newman. I have two children.

11 I'm employed at C. Wright's Machine Tool.
12 I'm a production supervisor. I have worked for Morton
13 Thikol and I have worked for Lone Star Steel.

14 My wife, Vickie Sue Newman, is a
15 housewife, but she has worked at WalMart and she has
16 worked at Rollie-Pollie Sandwich Shop.

17 Two years of college, I had a degree in
18 drafting.

19 And I have served on a civil trial and I
20 have served on a criminal trial.

21 JUROR PRESTIDGE: My name is Guindolyn
22 Prestidge. I have three children, two sons and a
23 daughter. The youngest son, which was the middle child,
24 is deceased.

25 I worked at Stanco and Guardline for

1 18-and-a-half years. I had a day care in my home for
2 eight years.

3 I have a high school education.

4 My husband was a route salesman for
5 Frito-Lay for 26 years. He's retired.

6 I have been on a civil jury case in
7 Linden, Texas and one over here.

8 JUROR DEEL: My name is Ervin Deel. And
9 I live out in the sticks out of Linden. I have four
10 grown children, eight grandbabies.

11 I work for U.S. Steel for the last 29
12 years. Before that I worked for the Chrysler
13 Corporation for 15, and I did a little truck driving and
14 everything else when I was laid off. But anyway...

15 I have had a high school education. I
16 graduated from Haysi High School in Haysi, Virginia.

17 My spouse's name is Helen Deel, and she
18 is a housewife.

19 And I have served on two or three civil
20 cases in the Linden court there.

21 JUROR DILLARD: I am Jerry Dillard from
22 Hallsville. I have three children.

23 I am an ag/science teacher at Hallsville
24 High School, been there 31 years.

25 I graduated from Waskom High School,

1 Texas Tech University.

2 My wife's name is Dawn. She is the choir
3 director at Hallsville High School, and been there for
4 six years.

5 The only prior jury service I've had was
6 justice of the peace, somebody contested a traffic
7 ticket. That was it.

8 JUROR SHIELDS: I am Gary Shields. I
9 live in Daingerfield, Texas. I have two children. I
10 work for Lone Star Transportation, also Cox Logistics.
11 I have been there for five years.

12 I'm a high school graduate.

13 My wife works for Cox Logistics.

14 And before that I had 25 years with
15 Tuboscope which is out of Houston.

16 And I have served on one jury, it was
17 criminal.

18 JUROR CARROLL: My name is Kenneth
19 Carroll, and I reside in Gilmer, about four miles north.
20 I have three children.

21 My place of employment was Stroh Brewery,
22 but I'm retired at this time.

23 My education was high school.

24 My spouse's name is Dortha L. Carroll.
25 She worked for the U.S. Postal Service, but she is

1 retired.

2 And I have served on a civil and a
3 criminal case.

4 JUROR BAKER: My name is Wesley Baker. I
5 have four awesome children, all teenagers.

6 I work at Priefert Manufacturing in Mount
7 Pleasant, been there really since high school, probably
8 about 22 years.

9 My educational background formally is
10 high school with about a year at the community college,
11 but mainly I'm a self study.

12 My wife's name is Tanya. We have a small
13 business that we have been operating about three years,
14 and prior to that -- she takes care of the books and all
15 of the records on that. Prior to that she worked at a
16 foundry there in Pittsburg for 20 years or so, mainly
17 part time.

18 And no prior jury service.

19 JUROR YOUNGBLOOD: My name is Donna
20 Youngblood, and I live in Gilmer, Texas. I have two
21 children.

22 I am employed for Gilmer ISD, and I have
23 worked there 28 years.

24 My husband works for --

25 I have a high school education.

1 My husband's name is Jimmy. He works for
2 WalMart. He's worked there for 15 years.

3 And I have never served on a jury.

4 JUROR BROWN: I'm Karen Brown. I have
5 two adult children.

6 I was a teacher for 22 years, and I'm
7 retired.

8 I went to Arizona State University and
9 then UT Tyler.

10 My husband, Duane Brown, has been an
11 electrical engineer for rural cooperatives, rural
12 electric cooperatives in Iowa and Texas. He's retired.

13 I have no prior experience in a jury.

14 JUROR LEWIS: My name is Margery Lewis.
15 I have one daughter.

16 I work at WalMart here in Marshall as an
17 ICS worker. I have worked here for nine years.

18 I graduated from Jefferson High School
19 and Wiley College with a Bachelor of Science degree.

20 I don't have a spouse.

21 And I have never been on a jury.

22 JUROR OGLE: My name is Crystal Ogle. I
23 have one nine-year-old son, a single mother.

24 I worked for Schlumberger Artificial Lift
25 in Shreveport, Louisiana as a field service dispatcher.

1 And high school education, I graduated
2 from Marshall High School, some college at Panola Junior
3 College.

4 And never served on a jury.

5 JUROR SCHMIDT: My name is Kirby Schmidt.
6 I have two step-children.

7 I work for TXU Luminant for right at 30
8 years.

9 I got a high school education.

10 My spouse's name is Diane Schmidt. She
11 works for Hallsville High School, been there for about
12 20-some-odd years.

13 And I have never been picked for a jury.

14 JUROR WHITE: My name is Alene White. I
15 live here in Marshall, Texas. I have four children.

16 I was employed there at Kroger's, I am
17 now retired. I was there 25 years. I do some home
18 health care right now.

19 I have a high school education.

20 Spouse is Frank White. He was employed
21 with Royal Brick and Kroger's for 37 years total.

22 And no prior jury services.

23 JUROR SMITH: My name is Michael Smith.
24 I live in Pittsburg, Texas. I have two grown daughters.

25 I'm retired from Enbridge Processing. I worked there

1 about 15 years.

2 High school graduate.

3 My wife's name is Brenda Marie. She
4 works for Marshall School District as a diagnostician.
5 She has been there -- this is her second year.

6 I have served on two prior juries. One
7 grand jury and one civil case in Camp County.

8 JURY RINEHART: I'm Nancy Rinehart. I
9 live in Atlanta, Texas. I have a son that is 13 and a
10 daughter that is 9.

11 I work at Atlanta High School. I have
12 been there for 10 years. Before that I worked at some
13 other schools as a teacher and now I'm an assistant
14 principal.

15 I have a high school degree from Carthage
16 High School in Missouri, Carthage, Missouri. Missouri
17 Southern State College for my bachelor and A&M in
18 Texarkana for my masters.

19 My spouse's name is Mark Rinehart. He
20 works for the Department of Public Safety. He's a
21 sergeant of license and weight. He has been there -- he
22 has been with the department for about 15 years.

23 And I was on a civil case when I was in
24 Missouri.

25 JUROR CLASSEN: My name is Steve Classen.

1 I live in Longview, Texas. I have one son.

2 I work for Univar USA, it's a chemical
3 distributor. I have been there for 22 years.

4 I have three years of college.

5 My wife's name is Patricia. She is on
6 medical disability. She is retired, if you will, from
7 IBM. She was there for 10 years, but has been disabled
8 for 23.

9 I have no prior jury service.

10 JUROR MOORE: My name is Marsha Moore and
11 I live in Linden, Texas. I do not have any children.

12 I work at International Paper Company at
13 the Texarkana Mill. I have been there for five years,
14 and I work an administrative job there.

15 I graduated high school from Atlanta, and
16 I have a bachelors and masters degree from East Texas
17 State University.

18 My spouse's name was Albert Moore, but he
19 is recently deceased.

20 And I do have some prior jury service.
21 It was here and it was a civil case.

22 JUROR SMITH: My name is Charlotte Smith.
23 I live right outside of Waskom. I have two grown
24 children.

25 I have had various small jobs. I got

1 married and was married for 30 years.

2 I went to high school.

3 My spouse's name was Kenneth D. Smith.

4 He worked for General Motors for 30 years.

5 Yes, I did serve on a jury here in a
6 civil case.

7 JUROR BYERS: Yes, my name is Derous
8 Byers. I have one adult child.

9 I also work at International Paper,
10 Texarkana. I have been there for 26 years, it will soon
11 be 27.

12 High school education.

13 My spouse's name is Lisa. She is a
14 registered nurse and she has been doing that for 17
15 years.

16 And I have no prior jury service.

17 THE COURT: All right. Thank you, Ladies
18 and Gentlemen.

19 Before we call on the lawyers to ask you
20 some follow-up questions, I want to give you a little
21 bit more information about the type of case that you are
22 here on today. As you know, it is a patent infringement
23 case. The plaintiff in the case is contending that its'
24 patents were infringed by the Defendants. And the
25 Plaintiff is seeking money damages to compensate it for

1 the alleged infringement.

2 Now the Defendant denies that it
3 infringed the patents and contends that the patents are
4 not valid for one or more reasons.

5 Those of you who are selected to serve on
6 the jury will be responsible for deciding these types of
7 factual questions, and in doing so you are going to be
8 required to apply the burden of proof as given to you by
9 the Court.

10 Now, patent cases are a little bit
11 different from ordinary civil cases in that the jurors
12 are often called on to apply two different burdens of
13 proof. In patent cases, juries apply the burden of
14 proof known as the preponderance of the evidence burden
15 of proof, as well as the burden of proof known as the
16 clear and convincing burden of proof.

17 Now, I'm giving you this information
18 because when the lawyers stand up here in just a moment
19 they may want to ask you certain questions about your
20 attitudes regarding certain burdens of proof and whether
21 or not you can apply the burdens of proof. So I want to
22 instruct you as to how the law defines those burdens of
23 proof so that you will have that background when
24 responding to the lawyers questions.

25 Now, when responding to the lawyers

1 questions about burdens of proof, you are instructed
2 that when a party has the burden of proof on any claim
3 or affirmative defense by a preponderance of the
4 evidence, it means that you must be persuaded by the
5 evidence that the claim or affirmative defense is more
6 probably true than not true.

7 Now, when a party has the burden of
8 proving any claim or defense by clear and convincing
9 evidence, it means that you must have an abiding
10 conviction that the truth of the parties factual
11 contentions are highly probable. Such evidence requires
12 a higher standard of proof than proof by a preponderance
13 of the evidence.

14 I just give you those instructions again
15 to help you in answering any of the questions that the
16 lawyers might ask you with respect to the burdens of
17 proof.

18 With that, Plaintiff, you may address the
19 jury.

20 MR. TRIBBLE: Your Honor, you said we
21 could do just a five minute --

22 THE COURT: Yes, sir, Mr. Tribble.

23 MR. TRIBBLE -- outline of the case, and I
24 will do that part.

25 Good afternoon. I am Max Tribble from

1 Houston, and I represent the Plaintiff, Function Media
2 in this case, as well as its two owners, Michael Dean
3 and his wife, Lucinda Stone. They are the inventors on
4 the patents in this case.

5 You'll hear from Michael Dean as the very
6 first witness in this case, and you will also hear at
7 trial from Lucinda Stone.

8 Now, this is a case about property
9 rights, intellectual property rights.

10 The evidence will show that since the
11 1990s, these two inventors have run an internet
12 advertising website for bed and breakfast hotels. And
13 back in 1998 as part of their operation of that
14 business, they conceived of a new way to handle internet
15 advertising and sales and reservation and other things.

16 And we're here today -- they applied for
17 and received six patents on their inventions. And we're
18 here today about two of those patents. These two
19 patents (indicating), you will hear about these as the
20 case progresses.

21 The evidence will show that Google is
22 using this patented technology without permission of the
23 owner, their company, Function Media. Use of patented
24 technology without permission, that is called patent
25 infringement, and Function Media has filed this lawsuit

1 in order to protect these patent rights.

2 Prior to these inventions, the way of
3 doing internet advertising was very slow and difficult
4 to use, and it didn't allow the websites that were
5 displaying the ads very much control over how the ads
6 looked on their websites.

7 But Michael Dean and Lucinda Stone
8 conceived of a revolutionary new way to handle internet
9 advertising that cut through all of the steps that were
10 previously required, and implemented a special
11 centralized computer system that would serve as a middle
12 man between the people who wanted to advertise and the
13 websites that wanted to display ads for a fee. And it
14 would allow -- it would provide easy to use
15 self-service, automated input interfaces for the
16 advertisers and the websites to use, and would provide
17 automated formatting of customized ads for each of the
18 websites. And it would do it in a way that unlike
19 before, it would allow thousands, millions, even
20 billions of websites to display ads that were being
21 input by thousands, millions, even billions of
22 advertisers. That patented technology is exactly the
23 technology that Google is using today in an advertising
24 system that it calls AdSense.

25 Now, this case will not focus on whether

1 Google copied our patents. You don't have to copy a
2 patent in order to infringe it. But the evidence will
3 show that we conceived of this technology first, we
4 obtained the patents to protect the right to this
5 technology, and Google infringes those patents.

6 And I just want to say a few words about
7 damages. If a company uses your patent without your
8 permission, they must pay damages.

9 In a patent case that is called a
10 reasonable royalty. And the amount of damages awarded
11 is totally in your discretion. It is up to you based
12 upon the evidence and the law as instructed by the
13 Court.

14 But the evidence, if you are selected for
15 this jury, the evidence you will hear will include
16 testimony from Google's own expert that you need to
17 consider what is the fair value of this technology to
18 Google. And the evidence will show that Google has made
19 extensive use of this technology, so much so that it has
20 generated about five billion -- with a B -- five billion
21 dollars using this technology.

22 And you will also hear expert testimony
23 that the standard royalty rate in this industry is 12
24 percent. And that if you apply that standard rate of 12
25 percent to the five billion dollars in revenues, that

1 yields reasonable royalty damages of 600 million
2 dollars. I want to get that number out on the table
3 right up front to impress upon you that this is a
4 serious case involving huge revenues of Google, huge
5 profits to Google and very substantial reasonable
6 royalty damages to Function Media.

7 Thank you.

8 THE COURT: Mr. Parker, you may address
9 the jury.

10 MR. PARKER: Thank you, Your Honor.

11 Ladies and Gentlemen, as you have heard,
12 my name is Robert Parker and I am one of the lawyers for
13 Function Media.

14 This process is designed to help us
15 decide whether each of you is appropriate to sit this on
16 this case as a juror.

17 I'm asking you to do the same thing,
18 because I'm going to ask you a question when I get to
19 the end whether there is any reason whether I have asked
20 it or not, whether Mr. Gillam -- Gillian (sic) -- has
21 asked it or not, that you think in your own mind you
22 should not sit on this case as a juror, that you
23 couldn't be completely fair and impartial to both sides.

24 Mr. Grammer, I am relying on an old man's
25 memory, but in the late '40s or early '50s as I recall

1 there was a Gene Grammer that graduated from Hallsville
2 High School.

3 JUROR GRAMMER: Yes, sir, Mr. Parker, I
4 remember that name.

5 MR. PARKER: What happened to the Gene?
6 When did the Richard take over?

7 JUROR GRAMMER: Court action perhaps, and
8 perhaps military with first name, middle name, last
9 name.

10 MR. PARKER: I thought you might be
11 acquainted with that gentleman even though the hair
12 color was different.

13 JUROR GRAMMER: Well, I don't know, maybe
14 I'm trying to conceal myself as Richard because the only
15 person I remember later years, my mother called me that
16 when she was angry at me.

17 (Laughter.)

18 MR. PARKER: Thank you, sir.

19 Let me just repeat one thing the Court --
20 I am through, thank you.

21 JUROR GRAMMER: Yes.

22 MR. PARKER: There are not any right or
23 wrong answers. This is simply a process about
24 information, and so I would greatly appreciate and I am
25 sure Google will appreciate your candor in answering

1 both our questions and their questions.

2 Regarding Google, any of you advertise on
3 the internet or have a web page that runs
4 advertisements? Jury box?

5 Mr. Baker?

6 Is that through your employment, sir,
7 through your company?

8 JUROR BAKER: No, the business that we
9 started a few years ago, we have a small foundry and we
10 do customs and we do the MSN deal and the Google one and
11 Yahoo! as well.

12 MR. PARKER: So, you do use Google to
13 some extent with that?

14 JUROR BAKER: That's correct, we place
15 pay per click ads on all three.

16 MR. PARKER: Thank you.

17 Did I catch all of the hands?

18 Yes, sir.

19 JUROR SCHMIDT: I have a website through
20 UI.com. I'm No. 26.

21 I raise bucking bulls, I have a website
22 on showing off and selling my bucking bulls.

23 MR. PARKER: All right. Thank you, sir.

24 Anyone happen to own any Google stock,
25 individually or in your retirement plan?

1 Thank you.

2 Mr. Gil Gillam seated right here to my
3 left is one of the lawyers for Google. He's -- these
4 others are out-of-state lawyers, Mr. Gillam is local.
5 Some of you may know Mr. Gillam. Anybody know Mr.
6 Gillam?

7 Thank you.

8 Yes, sir?

9 JUROR SMITH: When you say own any Google
10 stock in your retirement plan. Now, I do own American
11 Funds, and I don't know if Google --

12 MR. PARKER: They may or may not?

13 JUROR SMITH: And whether that is
14 relevant or not, I don't know, but --

15 MR. PARKER: Thank you very much.

16 You have heard this is a patent case,
17 this is a property rights case. The particular property
18 involved here is called intellectual property. It's
19 property created through the intellect of individuals in
20 inventing something.

21 There are two thoughts about patent
22 cases, the Founding Fathers thought they were important,
23 they provided protection in the Constitution. They
24 encourage innovation, to keep us competitive in a world
25 market.

1 There is some people who say we shouldn't
2 have this type of property that is protected. We should
3 have a complete free and open market, and the government
4 or our laws should not protect patent rights or treat
5 them differently than other property rights.

6 Anybody have a problem with this case
7 because it's a patent case? Because patents are
8 protected under our laws?

9 Anybody disagree with the notion that
10 they should have this special treatment?

11 You have seen the film, you know that the
12 Patent and Trademark Office can issue patents, but they
13 can't enforce patents. This is the only place patents
14 can get enforced, and that is the Federal Courthouse in
15 this room, which is why we are here.

16 Mr. Baker, your employee -- your employer
17 has patents. Have they had to protect any of those
18 patents in actual trials?

19 JUROR BAKER: Not to my knowledge. We
20 have one time had a -- is it called a cease and desist
21 letter sent out, and that was the end of it, is all I
22 know.

23 MR. PARKER: All right, sir. But they
24 view patents as valuable rights and would protect them
25 if they needed to?

1 JUROR BAKER: Certainly.

2 MR. PARKER: Thank you.

3 And since this is the place that patents
4 get protected that brings us to what this is, this is a
5 lawsuit, and that is why we're at the courthouse. Some
6 people think that most lawsuits involve plaintiffs
7 seeking a lot more money than they deserve.

8 How many of you have ever said that,
9 thought that or think it today?

10 Come on now, you said you were going to
11 be candid with me?

12 Mr. Grammer. Mr. Baker. I have
13 forgotten the other names over here.

14 Yes, sir.

15 Who else?

16 Is that it?

17 How many have the attitude that, well,
18 there are a lot of frivolous cases, there are some cases
19 that shouldn't be filed, particularly there is some
20 personal injury cases, but you have to kind of look at
21 it on a case by case basis, there are some good cases,
22 some cases that shouldn't be filed. Who looks at it
23 that way?

24 I see a lot more hands. I see a lot more
25 hands.

1 Okay. Well, let me go back to just that
2 first question, and those first four or five that we had
3 the numbers up, the hands up.

4 What if you owned a piece of land, family
5 farm or a little piece that you bought in the country,
6 and you found that somebody came in and cut timber off
7 of it. Do you think it would be okay for you to go to
8 the courthouse to recover damages for the timber they
9 stole off of your property?

10 Mr. Grammer?

11 JUROR GRAMMER: I think I would be.

12 MR. PARKER: That wouldn't bother you,
13 right?

14 JUROR GRAMMER: Cutting timber off of my
15 land?

16 MR. PARKER: Yes, sir.

17 JUROR GRAMMER: That would bother me.

18 MR. PARKER: And bother you to the point
19 you would be willing to file a lawsuit?

20 JUROR GRAMMER: And maybe more.

21 (Laughter.)

22 MR. PARKER: Mr. Baker?

23 JUROR BAKER: I'm with No. 1, might be
24 more.

25 MR. PARKER: All right.

1 Anybody disagree with that? Those of you
2 who said that most plaintiffs are trying to get more
3 money than they deserve. I may not disagree with you,
4 by the way. But is that an exception? Is that type of
5 a case that you think would be okay?

6 Anybody disagree with that?

7 What if they drilled on your property and
8 started producing your oil and gas? Any of you first
9 group would be reluctant to file a case or think
10 somebody else who had that happen to them should not go
11 in court and try to recover damages?

12 What about if they damaged your
13 intellectual property, your patents? Do you think -- do
14 you think that is the type of case that it is okay to
15 have a lawsuit about? Any of you first group think you
16 just shouldn't have a patent case?

17 Thank you.

18 You heard the Judge mention burden of
19 proof. I like to think of -- the Plaintiff has the
20 burden, Function Media has the burden of proving they
21 owned a patent, the patent got infringed and they were
22 damaged.

23 Google has the burden, they say, they
24 contend in this case, these patents are not any good,
25 the Patent and Trademark Office made a mistake, they

1 should never have even issued these patents.

2 I notice they have a good bit of
3 confidence in the Patent and Trademark Office when they
4 file applications to get their patents. But they say
5 these patents are invalid, they shouldn't have been
6 issued.

7 Function Media has the burden of proving
8 infringement and entitlement to damages by a
9 preponderance of the evidence. I like to use this as an
10 example. It's a burden of proof scale (indicating),
11 one-foot ruler.

12 Preponderance of the evidence, you have
13 to go to six, plus a notch, just barely past six.

14 Judge didn't mention it, but reasonable
15 doubt in a criminal case, you have to go way down here
16 to the end (indicating).

17 The burden for clear and convincing
18 evidence, you don't have to go as far as reasonable
19 doubt, but you have to get pretty close to it.

20 Now do any of you think it is just not
21 basically fair for Google to have a harder burden than
22 Function Media in this case? Anybody have any trouble
23 applying the law that requires that?

24 Anyone?

25 JUROR SMITH: In the case of Google

1 defending its position in the case -- in the case of
2 Google defending its position in the case, you asking
3 that?

4 MR. PARKER: Yes, sir.

5 JUROR SMITH: Huh, huh, that is tough.

6 MR. PARKER: All right. Let me tell you
7 why they have the harder burden. Because the Courts and
8 the law and the Congress have declared that patents are
9 presumed to be valid. That the people who work at the
10 Patent and Trademark Office are highly qualified
11 technicians and their work product should receive some
12 deference.

13 Does that make any difference to you?

14 JUROR SMITH: It clarified it a little
15 bit.

16 MR. PARKER: Mr. Smith, if take you on
17 this jury, am I going to have to worry about you, when
18 you are sitting back there shaking your head when I was
19 explaining that.

20 JUROR SMITH: Well, I'm not shaking my
21 head at the system, I'm confused. I'm not shaking my
22 head at the system, I'm just -- it's just that gray
23 area.

24 MR. PARKER: It comes down to -- well,
25 there is nothing gray about the burden of proof, and

1 there is nothing gray about what the Court is going to
2 instruct the jury. And the real question to you is can
3 you follow the Court's instructions after you have heard
4 all of the evidence and can you apply the clear and
5 convincing burden of proof to what Google has to prove
6 in this case?

7 JUROR SMITH: No doubt about it.

8 MR. PARKER: Pardon?

9 JUROR SMITH: No doubt it.

10 MR. PARKER: Thank you. I believe you.

11 That brings us to damages. You have
12 heard about damages and you heard about a big number.

13 The concept that is applied in patent
14 cases is reasonable royalty.

15 I assume since you are in East Texas most
16 of you know about oil and gas royalties, whether you
17 have had production yourself or are generally familiar
18 with it.

19 Ms. Thomason, what kind of oil business
20 is your husband in?

21 JUROR THOMASON: Trading and
22 transportation.

23 MR. PARKER: Okay. He is not a
24 producer?

25 JUROR THOMASON: No, sir.

1 MR. PARKER: He doesn't drill?

2 JUROR THOMASON: No, sir.

3 MR. PARKER: Okay. All right.

4 In the oil and gas business field over
5 the past 60 years, Mr. Grammer's and my timespan,
6 typically reasonable royalty dictated by the marketplace
7 for oil and gas was 1/8th, 12-and-a-half percent.
8 Thousands of leases executed in East Texas at
9 12-and-a-half percent.

10 Then they, because of market demand, they
11 inched up to 3/16ths, a lot of leases at 3/16ths. Then
12 we started seeing some 20 percent royalty rates in oil
13 and gas leases.

14 And this last flurry they have had in
15 recent years, in this particular area, there were even
16 some 25 percent royalties contained in some leases.

17 And you will hear testimony in this case
18 that a 12 percent royalty is what the market demands in
19 this case. And you will hear testimony that the sales
20 attributable to this technology was just a hair under
21 five billion dollars. So any way you look at it, that
22 comes down to an awful lot of money.

23 The hard question to you is what you
24 think about it.

25 Do any of you fall in this category: I

1 can see and I think it would be okay for one large, huge
2 corporation in a dispute against another large, huge
3 corporation --

4 MR. GILLAM: Your Honor, we would object
5 at this time to this question. It is not a question, we
6 are going into argument.

7 MR. PARKER: I'm trying to ask a
8 question.

9 THE COURT: Well, let's -- tie it into a
10 question. Ask a question preceding the answer.

11 MR. PARKER: They have a suit against one
12 another. Well, maybe I could award hundreds of millions
13 of dollars in a case like that, but I just don't think I
14 can award hundreds of millions of dollars to a small
15 company owned by a husband and wife team.

16 Who feels that way?

17 Come on now, you told me you were going
18 to be candid. Anybody feel that way?

19 Yes, sir?

20 May not get to you, so I am not going to
21 follow up.

22 What about in the jury box, first row?

23 Anybody feel that you just couldn't do
24 it? You would try real hard to follow the Court's
25 instructions, you would listen to the evidence, but you

1 just don't think you could award hundreds of millions of
2 dollars to a small, little company owned by a husband
3 and wife team?

4 Second row?

5 First two rows over here?

6 Mr. Dillard, you are a pretty
7 conservative guy, can you do that if the evidence
8 justifies it?

9 JUROR DILLARD: I think so.

10 MR. PARKER: What about you, Mr. Baker?

11 JUROR BAKER: I don't see that the -- I
12 don't see the company size as relevant at all.

13 MR. PARKER: Thank you.

14 THE COURT: You have got five minutes
15 remaining.

16 MR. PARKER: Thank you, Your Honor.

17 I take your answer to be then, Ladies and
18 Gentlemen, and if you disagree with me, tell me. That
19 if the evidence justifies it, you could award hundreds
20 of millions of dollars to a small company owned by a
21 husband and wife team.

22 Mr. Perkins, what did you invent?

23 JUROR PERKINS: I never have invented
24 anything.

25 MR. PARKER: I thought you said you

1 invented something on your questionnaire.

2 JUROR PERKINS: No, sir, no, sir.

3 MR. PARKER: I misread it. Thank you.

4 Mr. Moon, you involved in some kind of
5 legal dispute over some property in Gilmer, right?

6 JUROR MOON: Yes.

7 MR. PARKER: What type of dispute?

8 JUROR MOON: It was a liability suit. I
9 was the defendant, smoke on the highway and there was
10 damages involved.

11 MR. PARKER: Okay. Affect your ability
12 to be fair and impartial in this case?

13 JUROR MOON: No, it would not affect me.

14 MR. PARKER: Thank you.

15 Mr. Newman, you worked with some
16 invention at your employment, correct?

17 JUROR NEWMAN: Yes, sir, the owner of our
18 company, he is a smart individual, he can go and see a
19 problem in a place where we do business, and he figured
20 out a way to improve something, he fixed it, made it for
21 them, but he never pursued --

22 MR. PARKER: Did get a patent?

23 JUROR NEWMAN: Didn't get a patent on
24 it.

25 MR. PARKER: Okay. Thank you.

1 All right. I am to that question that I
2 told you to be thinking about that I was going to ask
3 you.

4 Is there any reason, any reason, whether
5 you have heard it or not, whether you have heard the
6 question or not, that you think you could not be a fair
7 and impartial juror to both sides in this case?

8 First row? I don't see any hands.

9 Mr. Grammer?

10 JUROR GRAMMER: I will have to go back to
11 the initial introduction. I have known this gentleman
12 for some time. He was just behind me in Hallsville High
13 School. I just want the Court to let that be known, but
14 I don't think that -- our relationship, Bobby, would
15 interfere with making a good decision.

16 MR. PARKER: I appreciate that.

17 Of course, you know what I think a good
18 decision is.

19 (Laughter.)

20 MR. PARKER: What about the second row?
21 The first row over here? Second?

22 Thank you very much for your attention
23 and courtesy, Ladies and Gentlemen.

24 THE COURT: Thank you, Mr. Parker.

25 Defendants may address the jury.

1 MR. GILLAM: Yes, Your Honor.

2 Good afternoon again everybody.

3 Let me first ask you, how many were
4 excited that this is the way that you get to begin your
5 New Year? Let me see a show of hand?

6 (Laughter.)

7 MR. GILLAM: Good, Mr. Grammer is, Mr.
8 Smith on the back row.

9 Let me introduce myself to you again, my
10 name is Gil Gillam. And I have been practicing law here
11 in Marshall for about the last 25 years or so. Not as
12 long as Bob Parker, but quite honestly there is a lot of
13 lawyers in this room, and none of them have been
14 practicing law around here as long as Bob Parker has
15 been.

16 My job this afternoon is going to be to
17 ask you some questions, and to not listen to myself
18 talk. In other words, the only way that anybody here
19 today is going to be able to get useful information from
20 you to allow us to make the decisions that we need to
21 make, is for you to visit with us.

22 And so I want to encourage you in a few
23 moments when I begin to ask you some questions, let's
24 have a conversation about some things, let's talk about
25 some things, be honest with me about how you feel about

1 things.

2 But before I begin, I want to turn the
3 microphone over for just a moment to my friend, Charlie
4 Verhoeven. I introduced him to you a few moments ago.
5 He is one of the lawyers representing Google in this
6 case. He is going to spend about five minutes with you,
7 and talk with you a little bit about the positions and
8 the contentions of Google in this case. And then I'll
9 be back and talk to you some more after that.

10 THE COURT: Mr. Verhoeven.

11 MR. VERHOEVEN: Thank you, Your Honor.

12 Good afternoon, Members of the Jury. My
13 name is Charlie Verhoeven, and I will give you a little
14 bit of the answers here so you will know a little bit
15 about myself as well, real quickly.

16 I was born and raised in Ames, Iowa.
17 Since then I moved to California, I live in the Bay
18 area. My wife's name is Deanna, and we have two
19 children. A son, age 6 and a daughter, age 4.
20 Obviously, I'm a lawyer. I, too, have not served on a
21 jury, although I have been called several times.

22 Let me use my few minutes here just to
23 give you a general summary of how Google, my client,
24 sees the case.

25 Google, as you guys may know, was founded

1 by two students when they were in Stanford University
2 several years ago. And it has now grown to be a
3 worldwide company. Many of you are perhaps familiar
4 with it because Google has one of the most popular
5 search engines on the internet. You can go there and
6 find things, type in key words and you can get useful
7 information back and it doesn't cost you, the user,
8 anything.

9 There is a number of other things that
10 Google does just by way of background. You can set up
11 an e-mail with Google called g-mail, I don't know if any
12 of you have ever done that.

13 You can also -- the one thing I find
14 useful is if your are trying to get from Point A to
15 Point B, they have a map function where you click on the
16 map function and you type in addresses and it gives you
17 directions for how to get there.

18 There is many, many other things,
19 services that Google provides for consumers for free.

20 Google also sells advertising. And so,
21 for example, if you were to go to a website, you might
22 see some advertisements on it. Well, chances are as
23 good as not that Google is the engine that is providing
24 those advertisements in conjunction with what we call
25 the content provider, the person, the entity that

1 provides the web page.

2 So, for example, if you went on to
3 cnn.com, there might be some ads displayed and those
4 might be powered by or provided by Google, and the
5 advertisers pay Google some money in order for that
6 service. Google has been doing that since long before
7 either of the two patents in this case issued.

8 Now, there are two main reasons -- we're
9 here today because we disagree with Function Media and
10 their attorneys that Google infringes any valid patent.
11 And there is two main reasons why Google believes it is
12 not liable here, and you heard His Honor tell you what
13 those reason were.

14 First, Google contends that the two
15 patents at issue in this case weren't validly issued.
16 And I will get to the reasons why in a second.

17 The second main reason is that the
18 accused Google system which is called AdSense does not
19 practice many of the alleged claims in the patent, and
20 as the Judge -- I believe the Judge will tell you when
21 we get to jury instructions or at the outset of the
22 case, in order for there to be infringement, there has
23 to be an exact match between the accused technology and
24 each element of the claims at issue, which gets a little
25 technical, but we'll get into that later.

1 Let me just two seconds to explain a
2 little bit more what I mean by the patents not being
3 issued validly.

4 As you all saw that video this morning
5 about how a patent gets issued, and that explained to
6 you that just because the patent is issued a patent,
7 that doesn't necessarily mean that it is valid. The
8 patent -- there is requirements for the patent to be
9 valid. It must be new and unique. If all you are doing
10 is patenting something somebody else did before, that's
11 not going to be new and unique.

12 Well, here when we get to trial, we're
13 going to present evidence which we believe will show,
14 and we certainly do contend this, that the inventors in
15 this case, that their patent was done by others. And we
16 are going to present evidence that those others had
17 already done this exact same thing that's in this
18 patent, but they did it before the inventors in this
19 case.

20 Now, you may ask yourself, well, why did
21 the patent office issue a patent, if that is true, Mr.
22 Verhoeven? Well, the answer is because the patent
23 office didn't know about it.

24 Now, the Examiner in the patent office
25 tries to do his or her best job, there is no question

1 about that, and the law provides that there is a
2 presumption that -- and that is why we have this clear
3 and convincing standard instead of the preponderance of
4 evidence standard.

5 But in this case, we're going to show you
6 evidence, undisputed evidence, that the Patent Examiner
7 did not know about some other inventors who did the same
8 thing before the inventors in this case.

9 And one of the questions that I am going
10 to ask you to bear in mind as we present that evidence
11 is what would the patent office have done if they had
12 known about these other inventors? Would they have
13 found this patent new and unique? And Google's
14 contention is they will not have, and we ask that you
15 keep an open mind and look at the evidence with that
16 question in your mind.

17 Now, let's turn to the second reason why
18 Google believes it is not liable, that is Google does
19 not infringe the two patents that are asserted in this
20 case.

21 To show infringement the Plaintiff here,
22 Function Media, must show that each and every element of
23 each asserted claim is met or infringed by the accused
24 technology.

25 Now, that gets complicated, and I can't

1 get into it in two more minutes, but just so you know
2 our contention, we contend that Google's accused
3 technology doesn't just not meet one element, it doesn't
4 meet several elements of the accused technology here.

5 So to go back to the analogy that you
6 heard from counsel for Plaintiffs about a property
7 right, it would be Google -- Google isn't on the
8 property. Google is not cutting the timber on the
9 property. In intellectual property parlance, that means
10 Google's not infringing. What it's doing is not covered
11 by the patent. And we intend to prove that to you
12 through solid evidence.

13 Now, really briefly to finish off here.
14 You have heard Mr. Tribble say that these inventors --
15 that they are going to present evidence that these
16 inventors are entitled to 600 million dollars.

17 Now, I'm not going to take a long time on
18 this, but I just want to point out that the evidence
19 we'll present will show that the inventors in this case,
20 which are also the owners of Function Media, were unable
21 to and did not build a working prototype that embodied
22 their patents.

23 The evidence will show that they did not
24 ever sell any prototype of their invention to anyone.
25 And the evidence will show that they tried and weren't

1 able to. Yet now they contend that they are entitled to
2 600 million dollars.

3 The evidence will also show, undisputed
4 evidence --

5 THE COURT: Mr. Verhoeven?

6 MR. VERHOEVEN: Yes, sir.

7 THE COURT: You have used up your time
8 for your opening statement, but I appreciate it.

9 MR. VERHOEVEN: Thank you, Your Honor.

10 THE COURT: Mr. Gillam, you may continue
11 to address the jury.

12 MR. GILLAM: Your Honor, if you would
13 tell me when I have about five minutes to go?

14 THE COURT: Will do.

15 MR. GILLAM: Thank you.

16 Folks, I know you understand as we begin
17 here today that what the lawyers are telling you is not
18 the evidence in this case. And what the lawyers have to
19 say to you about the burden of proof and things such as
20 that are not the instructions that the Court is going to
21 give to you.

22 The question I want to ask to you with
23 respect to the burden of proof is simply this: Can each
24 one of you, whether it is preponderance of the evidence
25 for the Plaintiff, whether it is clear and convincing

1 evidence for the Defendant, follow the Court's
2 instruction with respect to burden of proof? Taking
3 aside any kind of lawyer argument about rulers and
4 things like that that I don't believe you are going to
5 hear from the Judge, can you follow what the Judge has
6 to say with respect to his instructions on who has the
7 burden of proof and then apply the facts to that to see
8 whether these parties met them.

9 Can I see a show of hands by those who
10 will do that for me?

11 JUROR GRAMMER: Repeat that question.

12 MR. GILLAM: Yes, sir. Is there anyone
13 -- I will ask it the other way. Is there anyone who
14 will not follow the Court's instruction, not listening
15 to lawyer argument, but follow the Court's instruction
16 with respect to burden of proof, who has the burden of
17 proof and whether the parties have discharged that
18 burden? Is there anyone that cannot follow that
19 instruction as given to you by the Court?

20 All right. Now, Mr. Parker introduced to
21 you or maybe Mr. Tribble did, Ms. Stone and Mr. Dean.
22 Is there anyone on the panel who knows either one of
23 these individuals? Mr. Dean who is sitting up here and
24 Ms. Stone (indicating).

25 Yes, sir. Mr. Grammer, you do?

1 JUROR GRAMMER: Mr. Parker.

2 MR. GILLAM: Well, you know Mr. Parker,
3 correct, but do you know either one of the Plaintiffs,
4 Mr. Dean here or Ms. Stone over here (indicating)?

5 JUROR GRAMMER: Oh, no.

6 MR. GILLAM: Okay. Is there anyone that
7 knows any of them?

8 Okay. I think Mr. Parker described them
9 as a mom and pop operation. I would like to ask you a
10 little bit about the lawyers that represent them in this
11 case.

12 Now, Mr. Tribble introduced to you a few
13 moments ago the lawyers with his office. Again, it is
14 Mr. Max Tribble, here, Mr. Brandon, over here, Justin
15 Nelson over here and Ed (sic) Grinstein (indicating).
16 They are from the Houston area, but they spend some time
17 up in this area. They all stood up for a few moments
18 ago. Does anyone know any of these individuals or have
19 any work done for you by them in the past?

20 The lawyers hired by Function Media in
21 this case run from Houston up to Tyler. They have also
22 hired in this case the law firm of Parker, Bunt and
23 Ainsworth. And I would ask that these gentlemen --
24 well, you met Bob Parker here a few moments ago. Also
25 with this law firm is Mr. Chris Bunt. Is Chris out

1 here?

2 (Mr. Bunt stands.)

3 MR. GILLAM: Anybody recognize Mr. Bunt?
4 He's from Tyler. He practices law with Charlie
5 Ainsworth and with Bob Parker. Anyone recognize or have
6 had any work done by these lawyers?

7 In addition to the Susman firm and the
8 Parker firm, they have also hired the law firm out of
9 Tyler of Ireland, Carroll and Kelley. Anybody recognize
10 that law firm or have had any work done by that law
11 firm? Now I think the only representative here today
12 with that firm is Mr. Otis Carroll. Sometimes a face
13 will help you see things better than just a person.

14 Mr. Carroll, would you stand up back
15 there?

16 (Mr. Carroll stands.)

17 MR. GILLAM: Anyone recognize Mr. Otis
18 Carroll from Tyler? He is with this law firm, Ireland,
19 Carroll and Kelley.

20 Well, in addition to the Susman firm and
21 the Parker firm and the Ireland, Carroll and Kelly firm,
22 they have also hired the Longview firm of Capshaw and
23 DeRieux, a little closer to this area. Mr. Capshaw is
24 here, I believe, today as well as Ms. DeRieux.

25 Is Calvin here?

1 (Mr. Capshaw stands.)

2 MR. GILLAM: And Betty DeRieux.

3 (Ms. DeRieux stands.)

4 MR. GILLAM: They are from Longview.

5 Does anyone recognize either one of these two lawyers or
6 have had any work done by that firm for them?

7 I don't see any hands. All right.

8 Now, Mr. Moon, I noted that you noted on
9 your questionnaire that you knew Todd Parish in Gilmer,
10 is that correct, sir?

11 JUROR MOON: Yes.

12 MR. GILLAM: How do you know Mr. Parish?

13 JUROR MOON: He is a friend.

14 MR. GILLAM: A close personal friend?

15 JUROR MOON: I would say, yes, he is a
16 close personal friend.

17 MR. GILLAM: Do the two of you socialize
18 from time to time?

19 JUROR MOON: From time to time. It is
20 somewhat rare, but yeah, we know each other real well.
21 I have known him for years.

22 MR. GILLAM: Is there anyone else that
23 knows Mr. Todd Parish from Gilmer?

24 Yes, sir, that would be Mr. Carroll. Mr.
25 Carroll how do you know Mr. Parish, sir?

1 JUROR CARROLL: Well, I just know him as
2 a -- you know, I'm not real close friends or anything,
3 but I do know him and he knows me.

4 MR. GILLAM: Okay. Now, Mr. Parish is
5 seated back on the second row back here (indicating).
6 Can you wave your hand there, Todd?

7 (Mr. Parish complies.)

8 MR. GILLAM: Thank you. Does anybody
9 recognize his face?

10 Yes, ma'a.

11 And you are Ms. Thomason?

12 JUROR THOMASON: Yes.

13 MR. GILLAM: How do you know Mr. Parish?

14 JUROR THOMASON: Just as an acquaintance.
15 We owned a gate operator --

16 MR. GILLAM: I'm sorry?

17 JUROR THOMASON: We owned a gate operator
18 business at one time and he was a customer of ours.

19 MR. GILLAM: All right. Mr. Moon, I'm
20 going to come back to you.

21 There was a lawyer involved in this case
22 at one time named Franklin Jones, Jr. Did you know Mr.
23 Jones?

24 JUROR MOON: Yes, sir.

25 MR. GILLAM: Did you do some work for

1 him?

2 JUROR MOON: Yes.

3 MR. GILLAM: Were you working for him at
4 the time that he passed away?

5 JUROR MOON: No.

6 MR. GILLAM: How long in the past has
7 that been?

8 JUROR MOON: I'm really not sure, I think
9 two or three years.

10 MR. GILLAM: All right.

11 He was a lawyer at one time that was
12 representing the Plaintiff in this case. Anything about
13 that relationship which should cause us any concern
14 here?

15 JUROR MOON: No, sir.

16 MR. GILLAM: Thank you.

17 Let me ask this question: Does anyone on
18 the jury panel know each other? If you look around and
19 you see your folks that you may know, let me see.

20 Mr. Grammer, who do you know on this jury
21 panel, sir?

22 JUROR GRAMMER: I know this gentleman,
23 Mr. Jerry Dillard quite well.

24 MR. GILLAM: Okay. And who else, sir?

25 That is about it? Mr. Dillard, and Mr.

1 Dillard, I'm assuming you know Mr. Grammer.

2 JUROR DILLARD: I know Mr. Grammer real
3 well.

4 I know Susan Thornburgh.

5 MR. GILLAM: All right. Now, let me make
6 sure I get this right now. Ms. Thornburgh's number is
7 No. 11, right?

8 JUROR DILLARD: Right.

9 MR. GILLAM: And you know Ms. Thornburgh?

10 JUROR DILLARD: Yes.

11 MR. GILLAM: And who else, sir?

12 JUROR DILLARD: No one else, sir.

13 JUROR GRAMMER: I should admit that I
14 know Neil Thornburgh somewhat, and I have met her but
15 she probably doesn't remember me.

16 MR. GILLAM: Okay. Mr. Stevens, who do
17 you know, sir, here on the jury panel?

18 JUROR STEVENS: I know Ms. Prestidge
19 through her husband.

20 MR. GILLAM: Okay. And Ms. Prestidge is
21 No. 16 on the first row here, is that correct?

22 JUROR PRESTIDGE: Yes.

23 MR. GILLAM: How well do you two know
24 each other?

25 JUROR STEVENS: Not real well, I just met

1 her a time or two through her husband.

2 MR. GILLAM: Thank you. Anybody else
3 that I may have missed?

4 Yes, ma'am. That is Ms. Lewis back here.

5 JUROR LEWIS: I know her (indicating)
6 from church.

7 MR. GILLAM: And you are pointing to,
8 what is the name?

9 JUROR LEWIS: 27.

10 MR. GILLAM: That is Ms. White, correct?

11 JUROR LEWIS: Yes. I used to attend the
12 church that she goes to now.

13 MR. GILLAM: Okay. Thank you.

14 THE COURT: You have got another hand,
15 Mr. Gillam, it is Juror No. 22.

16 MR. GILLAM: I'm sorry, which one did I
17 miss? No. 22, and that is Ms. Youngblood?

18 JUROR YOUNGBLOOD: Yes, sir, I know Todd
19 Parish.

20 MR. GILLAM: Okay. How do you know
21 Mr. Parish?

22 JUROR YOUNGBLOOD: Well, I knew his dad,
23 and I have just always known him.

24 MR. GILLAM: All right.

25 Yes, sir. Number 33?

1 JUROR BYERS: I know Mr. Jerry Dillard.

2 MR. GILLAM: All right. And you are Mr.
3 Byers?

4 JUROR BYERS: Yes, sir.

5 MR. GILLAM: And, Ms. Moore, I don't want
6 to leave you out. I think you said you knew somebody
7 over there.

8 JUROR MOORE: I work with Mr. Byers.

9 MR. GILLAM: You work with Mr. Byers. So
10 the two of you certainly know each other.

11 JUROR MOORE: Yes.

12 MR. GILLAM: All right. And Number 30 is
13 Mr. Classen is it?

14 JUROR CLASSEN: I know Mr. Dillard and
15 Mr. Grammer.

16 MR. GILLAM: So we're all sort of
17 acquainted here.

18 All right. You were kind enough to give
19 us some information on your questionnaires about
20 computers and about your uses of computers and you list
21 some background information. I would like to ask you a
22 little bit more about that.

23 Primarily we asked you, I think, what you
24 used it -- how much you used it at work and that type of
25 thing.

1 Ms. Hatten, let me ask you. I think you
2 said you used your computer at work or was it at home?

3 JUROR HATTEN: Both.

4 MR. GILLAM: All right. Can you tell me
5 what you use your computer for at work?

6 JUROR HATTEN: I use it for --

7 MR. GILLAM: We need to get this
8 microphone for her, I'm sorry. And you're number --

9 JUROR HATTEN: 12.

10 MR. GILLAM: 12.

11 JUROR HATTEN: To type a letter or
12 modifying school work is what I use it for at work.

13 MR. GILLAM: All right. Modifying school
14 work at work. And what do you use a computer for at
15 home mostly?

16 JUROR HATTEN: A lot of things.

17 MR. GILLAM: Just everything.

18 JUROR HATTEN: Yes.

19 MR. GILLAM: All right. And if you would
20 pass the microphone down there, I would appreciate it.

21 Ms. Starling, can you tell me what you
22 use your computer for at work?

23 JUROR STARLING: At work I just started
24 unit clerk at the rehab, and I just put doctors orders
25 and blood orders and stuff like that in the computer.

1 MR. GILLAM: Okay. On a little bit of a
2 different subject, you know we asked you folks things
3 about traits, various traits that you saw in yourself.
4 And since I'm with you, Ms. Starling, let me ask you
5 this. The one trait that you circled on there was
6 other, and didn't circle any of the other ones. I was
7 just curious, could you tell us what you meant by other,
8 if you wouldn't mind.

9 JUROR STARLING: I just couldn't identify
10 myself. I don't know, I'm just a friendly person, get
11 along with everybody, just, you know, do anything.

12 MR. GILLAM: All right. Other than the
13 type of things such as entering data, letters that have
14 been described, can you tell me what -- just raise your
15 hand or raise your number if you will, what else do you
16 used your computer for at work? Those of you that put
17 that you use it regularly at work.

18 How about on the first row? Just give me
19 an idea as to what you do with your computer at work.

20 Yes, ma'am, that is Ms. Busch.

21 JUROR BUSCH: We use an eno board.

22 MR. GILLAM: I'm sorry, what is that?

23 JUROR BUSCH: We use an eno board for
24 teaching, so we do a lot of teaching through our eno
25 board, which we can look up programs and different sites

1 on our computer that projects up to a board where we can
2 teach.

3 MR. GILLAM: Okay. And you use that
4 quite regularly in your teaching?

5 JUROR BUSCH: Everyday.

6 MR. GILLAM: Okay. Thank you. Who else
7 in the front row that may have used your computer for
8 different purposes other than entering data and that
9 type of thing?

10 Yes, sir. Mr. Perkins?

11 JUROR PERKINS: The only way I know how
12 to turn a computer off is unplug it.

13 (Laughter.)

14 JUROR PERKINS: My wife is the computer
15 literate, but she uses it basically to find out when
16 soldiers is going off to Iraq, when they are coming
17 home, whether they are walking or coming in a box. We
18 always meet them and that is basically what we use it
19 for, military-type functions.

20 MR. GILLAM: Well, and I will tell you
21 that as a father of a son serving overseas, just want to
22 tell you how much I appreciate that.

23 Any other uses that you can come up with
24 other than the types of uses perhaps that we are talking
25 about here.

1 The second row back here. Any other
2 unique uses that you might see for your computer at
3 work?

4 JUROR MOON: I use Google maps.

5 MR. GILLAM: You use Google maps. All
6 right. And you use that as part of your work, your land
7 work.

8 JUROR MOON: Yes.

9 MR. GILLAM: Yes, sir. And that was
10 Mr. Moon, No. 10.

11 What about over here on the first couple
12 of rows here? Who can tell us a little bit about what
13 they use their computer at work for?

14 Yes, sir. Mr. Newman?

15 JUROR NEWMAN: We have a system on our
16 computer called e2 system and it tracks our jobs that we
17 do. It can tell us how much we're bidding on a job, how
18 much it costs to do this job. We have employees clock
19 in on clocks that the computer keeps up with how many
20 hours they spend on this job. We can download -- like
21 we make a purchase order, it will track the job and keep
22 that price with that job. It can tell us how we're
23 doing on the job, you know, as far as timewise.

24 MR. GILLAM: Yes, sir.

25 JUROR NEWMAN: It's a good system, it's

1 really helped me out a lot.

2 MR. GILLAM: Thank you, sir.

3 Who else on the front row that might use
4 it a little bit differently than the general types of
5 things we have talked about so far? Or perhaps in the
6 next row back. Let me go at least back that far.

7 No. 26, would it be Mr. Schmidt?

8 JUROR SCHMIDT: Schmidt, 26.

9 Well, as far as myself, I use it like I
10 said, I have a bucking bull business. I do a lot of
11 trading and buying and selling bucking bulls, rigging
12 and stuff, sell to other people and to use as my own.

13 As far as myself, I go in there and look
14 at it all, but I do hire someone to handle all of that
15 for me because I can turn a computer on and I can come
16 to find a few things I'm looking for, but as far as
17 doing what I need to do, I hire someone else to do it
18 for me.

19 MR. GILLAM: Okay, sir. I appreciate
20 that.

21 I have got a few individual questions I
22 would like to ask a few of you.

23 Mr. Deel, No. 17.

24 JUROR DEEL: Yes, sir.

25 MR. GILLAM: I was kind of intrigued.

1 Did I read on your questionnaire that you have been on
2 six juries?

3 JUROR DEEL: Yeah, at least.

4 MR. GILLAM: At least six juries.

5 JUROR DEEL: Yeah.

6 MR. GILLAM: Well, you are going to need
7 a prize or something probably for that.

8 JUROR DEEL: I usually go get a lotto
9 ticket after every one.

10 (Laughter.)

11 MR. GILLAM: I understand. Did any of
12 those juries that you served on involve a property
13 dispute?

14 JUROR DEEL: Yes.

15 MR. GILLAM: Okay. What type of property
16 dispute?

17 JUROR DEEL: It was concerning payment of
18 metal, payment for metal acquired from Quality Steel out
19 of Atlanta.

20 MR. GILLAM: All right.

21 JUROR DEEL: That was -- I guess that was
22 the last one I was on as a matter of fact.

23 MR. GILLAM: Okay.

24 JUROR DEEL: It was last year.

25 MR. GILLAM: Okay. Did any of the juries

1 that you served on involve patent disputes?

2 JUROR DEEL: No, sir.

3 MR. GILLAM: Thank you. And Mr. Deel,
4 are you a member of the union, sir?

5 JUROR DEEL: Do I remember what?

6 MR. GILLAM: Are you a member of the
7 union?

8 JUROR DEEL: Yes.

9 MR. GILLAM: Yes, sir, you are? Thank
10 you.

11 Ms. Thomason. Did we ask you earlier,
12 did you say you were involved in a property dispute
13 currently?

14 JUROR THOMASON: Yes.

15 MR. GILLAM: Did we ask you about that
16 earlier?

17 JUROR THOMASON: No.

18 MR. GILLAM: Okay. I would like to ask
19 you about that, if I could.

20 Are you the person doing the complaining
21 or are you the person being complained about?

22 JUROR THOMASON: I guess we are doing the
23 complaining.

24 MR. GILLAM: Okay. Has it proceeded into
25 a lawsuit yet?

1 JUROR THOMASON: We're in the discovery
2 phase.

3 MR. GILLAM: Okay. So you have already
4 filed a lawsuit then?

5 JUROR THOMASON: Yes.

6 MR. GILLAM: All right. And where is
7 that lawsuit filed, ma'am?

8 JUROR THOMASON: Upshur County.

9 MR. GILLAM: Upshur County. And can you
10 tell me generally what the dispute is about?

11 JUROR THOMASON: We own some property, it
12 was not fenced off and the property owner behind us
13 built a driveway across the property.

14 MR. GILLAM: All right. Now, you
15 understand that the Plaintiffs in this case are
16 contending, although we dispute it, that their property
17 rights have been violated.

18 JUROR THOMASON: Yes, sir.

19 MR. GILLAM: Anything about the fact that
20 they sort of line up with you as far as somebody
21 complaining about property rights and the fact that
22 you're complaining about property rights that might give
23 them a leg up on us as we begin here today?

24 JUROR THOMASON: I don't believe so.

25 MR. GILLAM: Well, is that a yes or a no?

1 Not a believe so, sometimes it gets us a little
2 concerned.

3 JUROR THOMASON: I don't think that would
4 be a factor, no, sir, I don't.

5 MR. GILLAM: All right, ma'am. Thank
6 you.

7 Ms. Webb. I'm always curious when
8 someone puts as far as one of their character traits
9 that they are skeptical, and you circled skeptical, I
10 think, on your particular questionnaire. Can you give
11 me a little bit more about that or tell me some more
12 about how you view yourself in that way?

13 JUROR WEBB: Well, at times I think we
14 all at some point may be a little skeptical about
15 certain things, you know, and once you find out more
16 about it, you may be okay with it.

17 MR. GILLAM: Have you had any experiences
18 with lawyers in the past?

19 JUROR WEBB: Somewhat.

20 MR. GILLAM: Are you ever skeptical of
21 lawyers?

22 JUROR WEBB: At times.

23 MR. GILLAM: Okay. That is what I'm
24 talking about as far as opening up and being honest
25 here.

1 That has been one of the feelings that
2 you have had in the past though as far as your dealings
3 with lawyers?

4 JUROR WEBB: I mean it has not been that
5 much of dealings with them to -- I mean -- it doesn't
6 necessarily have to be with lawyers, it can be anybody.

7 MR. GILLAM: Okay. I appreciate that.

8 THE COURT: You have about five minutes
9 left, Mr. Gillam.

10 MR. GILLAM: Thank you, Your Honor.

11 Mr. Newman. Well, I tell you what, I
12 think we asked you that question, I don't need to go
13 back there.

14 Mr. Shields, No. 19, I think is what I
15 have got here.

16 JUROR SHIELDS: Yes.

17 MR. GILLAM: You are currently a
18 supervisor, sir?

19 JUROR SHIELDS: Yes.

20 MR. GILLAM: How many employees do you
21 supervise, sir?

22 JUROR SHIELDS: Oh, it varies in
23 situations. We work a lot of pipe line work.

24 MR. GILLAM: All right.

25 JUROR SHIELDS: So, it changes from day

1 to day.

2 MR. GILLAM: All right. And are you a
3 union member as well, sir?

4 JUROR SHIELDS: No, sir.

5 MR. GILLAM: Is your particular job
6 considered to be a management position?

7 JUROR SHIELDS: Yes, sir.

8 MR. GILLAM: All right. Thank you.

9 Ms. Hatten, I'm going to come back to you
10 for a second.

11 You also circled a character trait as
12 being opinionated, and it is unusual sometimes that
13 someone would be willing to say that. Can you tell me a
14 little bit more about that, please.

15 JUROR HATTEN: I just say what I believe.

16 MR. GILLAM: Okay. And pretty open about
17 doing that if you believe it?

18 JUROR HATTEN: Yes.

19 MR. GILLAM: All right.

20 Let me ask you this if I could briefly.
21 Are there any of you -- I'm sure that most of you are
22 active in some sort of group whether it be your church
23 or your community group or a club or this type of thing,
24 perhaps a committee associated with a church.

25 Are any of you involved in a community

1 group or a club -- it could be a group or something
2 connected with your work where you are an officer or
3 have been an officer or had a leadership position in a
4 club or a group? Or it could be a church committee.

5 I'm trying to make this, since I'm
6 running out of time, sort of broad. Do you see where
7 I'm going with that? Any of you that served in a
8 leadership position in a club, civic group, community
9 group, church committee, anything like that?

10 First row?

11 Mr. Grammer, Mr. Perkins. Yes, sir, what
12 type of --

13 JUROR PERKINS: I have been a manager of
14 a VFW 1183 in Longview. I'm also president of Viet Nam
15 Veterans Association, Chapter 987, at the present time.

16 MR. GILLAM: All right. Thank you, sir.

17 Who else on the front row that I may have
18 missed.

19 Mr. Grammer? I tell you, Mr. Grammer, go
20 ahead, I would like to hear from you, sir.

21 JUROR GRAMMER: Cypress Valley
22 Republicans here in Marshall. In the past year, I'm not
23 active in it as a leadership position or a person of
24 responsibility, precinct chairman, 25. Chairman of the
25 deacons at my local church in Longview, Macedonia

1 Baptist Church and several committees, and Trustee of
2 the East Texas Baptist University. Trustee, also, at
3 the church and various other committees.

4 MR. GILLAM: Thank you, sir.

5 What about the second row? Did I miss
6 any hands on the second row back there?

7 Yes, sir, Mr. Smith back there.

8 JUROR SMITH: Yes, I pastored the St.
9 Paul Baptist Church in Longview, Texas. There is 250
10 souls under my care.

11 MR. GILLAM: It is a pretty big
12 leadership position, isn't it, sir?

13 JUROR SMITH: A lot of responsibility.

14 MR. GILLAM: I understand.

15 Anybody else on -- yes, sir, Mr. Moon?

16 JUROR MOON: Leadership positions and
17 about every committee in our church, First United
18 Methodist Church. And a chair in the Society of
19 American Foresters Chapter, Northeast Texas.

20 MR. GILLAM: Okay. Thank you.

21 Yes, ma'am. Ms. Webb, again.

22 JUROR WEBB: Leadership over the women's
23 department in our church.

24 MR. GILLAM: Women's department in your
25 church. All right.

1 Very quickly, just the first two rows
2 back here. Anybody that may have raised their hand a
3 few moments ago that I missed.

4 23, Ms. Brown.

5 JUROR BROWN: Do you want board
6 membership? I'm on the board for Camp Duran.

7 GILLAM: Okay. All right. Thank you.

8 The final question I have got for you
9 because I think I am out of time here is this:
10 Oftentimes we stand up here and we ask these questions
11 and we go through these things, and you get to the end
12 and somebody sitting out there in your seat says, well,
13 you know what, if one of those lawyers would have asked
14 me this, then I would have had an answer which might
15 have raised a red flag in their mind as to why I might
16 not be the right juror to sit on this particular case.

17 So the question I have got for you here
18 at the end is this: Just based upon what you have
19 heard, and you have heard very little, really no
20 evidence in the case at all, but just based upon what
21 you have heard, is there any of you that are seated out
22 here that says, you know what, this is just not the type
23 of case that I think I probably ought to be sitting on?

24 Any hands at all?

25 Yes, sir. Is it Mr. Smith back there?

1 JUROR SMITH: Yes. I'm just
2 uncomfortable with the amount of money we're talking
3 about here, damages. It just kind of blew me away when
4 I heard that figure.

5 MR. GILLAM: All right, sir. Thank you,
6 Mr. Smith, I appreciate that.

7 Folks, that wraps up my time. The folks
8 at Google, the lawyers I'm working with here, we
9 appreciate your time so far today, and we look forward
10 to working with those of you that are selected as jurors
11 in this case.

12 Thank you for your time this afternoon.

13 THE COURT: Thank you, Mr. Gillam.

14 Now then, I promised you earlier I was
15 going to come back to this question. We're getting
16 ready to take a break, but with respect to the dates of
17 the 19th through the 27th, if you could raise your
18 numbers at this time if jury service during those dates
19 presents an undue hardship along the lines that I have
20 previously outlined for you.

21 I have Nos. 13 and 14 and No. 2. I'm not
22 inviting excuses, but I need to know about them now if
23 you have got a problem.

24 JUROR STEVENS: Do we know that it is
25 going to stop that day?

1 THE COURT: Well, let me tell you
2 something, lawyers have a certain amount of time during
3 which they are allowed to present their evidence, so I
4 have a pretty good idea of when it is going to be over.
5 Okay. That is when I put the time limits on the
6 lawyers, so when I tell you you are going to be through
7 with your jury service on the 27th, that's what I mean.

8 JUROR STEVENS: Well, I have a medical
9 appointment at the VA hospital in Shreveport on the
10 29th.

11 THE COURT: You will make it.

12 I have No. 30 and No. 33 as well.

13 I have 2, 7, 13, 14, 30 and 33. Any
14 others?

15 Okay. Will the lawyers approach?

16 (Bench conference.)

17 THE COURT: Who does the Plaintiff have
18 for individual voir dire?

19 MR. TRIBBLE: No, none.

20 THE COURT: Anybody for the Defendant?

21 MR. GILLAM: No.

22 THE COURT: Okay. Well, in that case I'm
23 going to tell those who have got a scheduling conference
24 to stick around and then I'll have the other ones be
25 back at 4:30, I think we can move through these excuses

1 in about 10 minutes. That will give you a full 30
2 minutes to make your strikes.

3 Step back.

4 (Bench conference concluded.)

5 THE COURT: All right. I need Nos. 2, 7,
6 13, 14, 30 and 33 to remain in the courtroom at this
7 time, and the rest of y'all are excused until 4:30.

8 Be back ready to come in the courtroom at
9 4:30.

10 (Jury panel out.)

11 THE COURT: Just leave your numbers in
12 your chair.

13 Would counsel approach?

14 Mr. Perkins, if you will come on around.

15 (Bench conference.)

16 THE COURT: Hi there. How are you doing?

17 JUROR PERKINS: I'm doing great, sir.

18 THE COURT: Nice to see you.

19 JUROR PERKINS: I have got appointments
20 that are going to conflict with these dates.

21 THE COURT: Tell me what your
22 appointments are.

23 JUROR PERKINS: I have got -- and I don't
24 really know exactly what dates they are. I have got an
25 eye appointment sometime this month, I don't know

1 exactly when. But once they give you a date if you
2 don't attend it, you're out in the cold. I have got
3 glaucoma in this eye, I'm 90 percent disabled, and I
4 take about 19 pills.

5 THE COURT: Okay. You don't know the
6 exact date, but you are fairly confident that it's this
7 --

8 JUROR PERKINS: No, I'm pretty sure I
9 have got one between the 19th and 27th.

10 THE COURT: Does the Plaintiff have any
11 questions?

12 MR. TRIBBLE: I'm sorry, I didn't hear
13 you.

14 THE COURT: Do you have any questions for
15 the juror? Did you hear what he said?

16 MR. TRIBBLE: I couldn't hear from that
17 angle, I apologize.

18 THE COURT: No, that's okay. What he's
19 told me is that he has appointments for his eyes
20 previously scheduled through the VA Hospital, correct?

21 JUROR PERKINS: Right, Shreveport.

22 THE COURT: That he is not certain of the
23 exact dates, but that he is reasonably confident that he
24 has appointments scheduled for the time that the Court
25 set aside to try the lawsuit. And if he doesn't make an

1 appointment because of schedule through the VA, as I
2 understand it it is extremely difficult to --

3 JUROR PERKINS: Yeah, they put you down
4 there as a no show.

5 THE COURT: And in addition to that he's
6 told me he is taking multiple types of medication. He
7 has got glaucoma and is effectively 90 percent disabled.

8 JUROR PERKINS: Yeah, I have got
9 diabetes, I have got hypertension, on and on and on,
10 Agent Orange, you know.

11 MR. TRIBBLE: We don't have any
12 questions, Your Honor.

13 THE COURT: No questions, okay. I tell
14 you what, be back ready to come in the courtroom at
15 4:30, I'm going to visit with he lawyers real quick
16 about your excuse, and I will let you know something.

17 JUROR PERKINS: Okay.

18 (Juror Perkins leaves the courtroom.)

19 THE COURT: I am excusing No. 2, Mr.
20 Perkins.

21 Now, before I call Mr. Stevens up, he's
22 the next person on the list.

23 For purposes of the record, Juror No. 1,
24 Mr. Grammer, had a difficult time reading the questions
25 that were on the screen this morning for voir dire.

1 Now, I'm not going to excuse him because
2 he can't read the screen, but what I am going to do is
3 I'm going to require y'all to make accommodation for a
4 screen that is going to be closer to his seat
5 downstairs. If it becomes an issue in the smaller
6 courtroom downstairs, can you come up with -- if he's
7 selected for the jury, y'all need to come up with some
8 sort of accommodation for him and y'all can share the
9 cost of doing that, okay?

10 But I'm not going to excuse him because
11 he had a difficult time seeing the screen. All right.

12 MR. VERHOEVEN: Could I ask a question?
13 I wasn't entirely clear, and maybe I didn't hear it
14 well. Whether he said he couldn't see because he didn't
15 have his glasses or --

16 THE COURT: Well, he said he took his
17 glasses off.

18 MR. VERHOEVEN: He took them off.

19 MR. TRIBBLE: He said he took them off in
20 order to try to read the screen.

21 MR. VERHOEVEN: I was just wondering if
22 it might make some -- before we go through this whole
23 procedure, unless you are saying --

24 THE COURT: No, I'm just saying I don't
25 know if it's going to be a problem or not. If it

1 becomes a problem --

2 MR. PARKER: We'll accommodate him.

3 THE COURT: There will be accommodations.

4 MR. VERHOEVEN: Sure.

5 THE COURT: I know how the evidence in
6 these cases are perceived, and it may just take a
7 monitor being placed closer to him.

8 MR. PARKER: Would it be all right,
9 Judge, when you seat the jury if we could make an
10 inquiry of him if it would be helpful -- and I don't
11 know if it is close or far off that's the problem, but
12 we can do it with a screen or --

13 THE COURT: I'm going to do that, but I'm
14 going to wait to see if he gets on the jury first.

15 MR. PARKER: Sure.

16 THE COURT: Mr. Stevens.

17 I might have unnecessarily asked you to
18 remain because your only conflict was the 29th, wasn't
19 it?

20 JUROR STEVENS: I think it's the 29th. I
21 know I have got one the last of the month and one the
22 first of next month.

23 THE COURT: Well, you'll make the 29th,
24 okay?

25 JUROR STEVENS: Okay.

1 THE COURT: Any other conflicts?

2 JUROR STEVENS: Not that I know of.

3 MR. VERHOEVEN: He's thinking.

4 JUROR STEVENS: Besides all of that I
5 have to go to my brother-in-law's to use the phone
6 because we have got a rotary phone in our house.

7 THE COURT: Well, there is no particular
8 phone that is required for jury service. Okay?

9 JUROR STEVENS: Well, I might be ignorant
10 on the phone, but I will do the best I can.

11 THE COURT: Well, thank you, sir.

12 (Juror Stevens leaves the courtroom.)

13 THE COURT: Ms. Crow. Come on around,
14 please.

15 How are you?

16 JUROR CROW: Fine.

17 THE COURT: Well, tell me what your
18 scheduling difficulty is.

19 JUROR CROW: Well, I lost my Medicaid on
20 my two sons, and my son has got a dentist appointment,
21 and I don't have -- I don't have my own car, so that is
22 a conflict in itself. I was lucky today because my
23 brother-in-law was off today and he let me use his car
24 to come up here today. That is my predicament.

25 Being on Medicaid, I have to reapply with

1 the welfare office there.

2 THE COURT: You live in Atlanta?

3 JUROR CROW: Yes, sir, it is almost 48
4 miles from here, almost an hour's drive.

5 THE COURT: Do you have any other way to
6 get here?

7 JUROR CROW: No, I don't, just his car
8 and that is it.

9 And I am divorced, and my ex-husband, the
10 last time I heard, lives in Arkansas and he doesn't
11 associate with any of my two sons at all.

12 THE COURT: All right. Do you have any
13 questions, Mr. Tribble?

14 MR. TRIBBLE: My only question is this:
15 If there were another juror from Atlanta, would you like
16 to car pool or something?

17 JUROR CROW: I don't know anybody on
18 this.

19 MR. TRIBBLE: Okay.

20 MR. GILLAM: And your brother's car, he
21 uses it every other day. He just let you use it today.

22 JUROR CROW: Yes, he works in Texarkana.

23 MR. GILLAM: Okay. Okay.

24 JUROR CROW: I believe it is on the
25 Arkansas side, I'm not for sure. He just recently

1 started that because he was a police officer in Lone
2 Star. Yeah, Lone Star.

3 MR. TRIBBLE: I guess just to clarify.
4 My only question would be there are other potential
5 jurors from Atlanta, and would you mind riding with them
6 if they were happy to give you a ride?

7 JUROR CROW: Sure.

8 THE COURT: Well, just --

9 MR. TRIBBLE: I don't know if that's --

10 THE COURT: No, I understand, Mr.
11 Tribble.

12 But tell me, when is your son's dental
13 appointment?

14 JUROR CROW: It is on the -- I believe on
15 the 21st.

16 THE COURT: The 21st, okay.

17 JUROR CROW: I would have to call to make
18 sure.

19 THE COURT: And what's the nature of his
20 dental appointment?

21 JUROR CROW: It was for the Texas Health
22 Steps and --

23 THE COURT: Is it a check-up or is he
24 having some sort of treatment?

25 JUROR CROW: He was having some -- four

1 cavities filled from a previous check-up appointment.

2 THE COURT: Okay. And how old is your
3 son?

4 JUROR CROW: Fourteen.

5 THE COURT: Okay. How difficult is it to
6 schedule his dental appointments?

7 JUROR CROW: Not hard.

8 What happened is they got I-30 all messed
9 up, and they got detours and I was late once before at
10 the last dental appointment that he had.

11 THE COURT: All right. Thank you. Let
12 me -- be back ready to come in the courtroom at 4:30,
13 I'm going to visit with the lawyers for a minute. Okay?

14 JUROR CROW: Yes. Thank you.

15 (Juror Crow leaves the courtroom)

16 THE COURT: Any solutions as to how to
17 get her here other than riding with someone that we
18 don't yet know is going to be on the jury, Mr. Tribble?

19 MR. TRIBBLE: The only reason I mentioned
20 that is that we have got at least four or five people
21 from Atlanta on the panel. You know, I think in other
22 cases we have provided taxis or at least split the cost
23 of --

24 MR. GILLAM: Well, it seems to me -- as I
25 understood what she said, and maybe I misunderstood it,

1 but when your child is on Medicaid/Medicare, that there
2 is some issue with respect to rescheduling that is
3 involved in that. And it seems like asking this lady,
4 you know, to have to car pool with somebody and
5 reschedule -- her son actually has four cavities and
6 that's a little bit of an inconvenience that she
7 shouldn't have to put up with.

8 MR. TRIBBLE: So it's just too bad that
9 poor people can't serve on the jury.

10 THE COURT: Well, that is my concern. I
11 don't think she should be denied the right to serve
12 because of the lack of transportation.

13 MR. PARKER: Judge, could you -- I mean,
14 the odds are that there are going to be more than one
15 person from Atlanta on this jury, and you are going to
16 have alternates.

17 THE COURT: Well, I am not going to have
18 alternates, I am going to seat eight. I'm going to give
19 each of y'all four strikes. If I have to lose one, then
20 I can go down to six.

21 MR. PARKER: But the odds are that there
22 will be more than one person from Atlanta and perhaps --
23 and we shouldn't have a conversation with them, but the
24 Court could maybe suggest that they car pool, and if
25 simply becomes a problem during the trial, you can

1 excuse her.

2 THE COURT: That is my inclination. I
3 know she has got her son's dental appointment, but it
4 sounded -- it is necessary, but it didn't sound to me
5 like she knew how difficult it would be to reschedule
6 the dental appointment. There may be an issue with
7 Medicaid, but I'm not going to excuse her.

8 All right. Ms. Webb.

9 Hi there. Tell me what is your --

10 COURT REPORTER: I can't hear her.

11 THE COURT: Can you speak into this
12 microphone for me, it will help us keep an accurate
13 record.

14 Go ahead.

15 JUROR WEBB: I think on the 22nd I'm
16 scheduled to have an occupational therapy rehab
17 appointment, and I have an orthopedic appointment some
18 time after that, maybe the 26th or the 27th. I'm not
19 sure, I would have to look at my appointment card. I
20 suppose I can reschedule that if necessary.

21 THE COURT: Have you had to reschedule
22 them in the past?

23 JUROR WEBB: No, this is the first one I
24 have had. I have been having problems with the pain in
25 my wrist and that's why I'm having to go to it.

1 THE COURT: Do you suppose though you
2 could reschedule it if you had to?

3 JUROR WEBB: I think I probably could.

4 THE COURT: Okay. Well -- do the parties
5 have any questions?

6 MR. TRIBBLE: No, Your Honor.

7 MR. GILLAM: None.

8 THE COURT: Well, you know, if it was a
9 surgery or something that was -- that you had scheduled
10 for a long time, I would probably let you go for that,
11 but if it's something that you can reschedule, I'm going
12 to ask you to do that, okay? If you get selected. You
13 might not be selected. But if you do get selected, I
14 would appreciate your rescheduling it for me, okay?

15 JUROR WEBB: Okay.

16 THE COURT: All right. Thank you, ma'am.

17 (Jury Webb leaves the courtroom.)

18 THE COURT: If y'all would both come up.

19 MR. PARKER: Are we going to reach them?

20 THE COURT: No, I am going to tell them
21 that I don't need to hear their excuse, they can save it
22 for another Judge.

23 (Jurors Classen and Byers approach the
24 bench.)

25 THE COURT: Unless they impose even a

1 newer math on us, it's not mathematically possible we
2 are going to reach either of y'all, so you can keep your
3 excuses to yourself and save them for the next Judge.
4 Okay?

5 Be back ready to come in the courtroom at
6 4:30, okay? But it's not mathematically possible that
7 we will reach you, so you will not be selected this term
8 of Court.

9 (Jurors Classen and Byers leave the
10 courtroom.)

11 THE COURT: Okay. I have excused No. 2,
12 and I have not excused anyone else. I'm going to seat
13 eight. Four strikes per side, take your strikes down
14 through No. 17, if you go below 17, you are burning a
15 strike.

16 Be back in the courtroom and exchange
17 your strikes at 4:30 -- well, take until 4:35 to turn in
18 your strikes. After you have turned them in to the
19 Clerk, exchange numbers with the other side so that the
20 other side can see who you struck, and then advise my
21 Clerk once you have done that if there is any additional
22 challenges, Batson challenges or that type of challenge,
23 so I can take them up before we the jury seated. Okay?

24 MR. TRIBBLE: Thank you, Your Honor.

25 MR. GILLAM: Thank you, Your Honor.

1 (Bench conference concluded.)

2 THE COURT: The Court is in recess.

3 COURT SECURITY OFFICER: All rise.

4 (Recess.)

5 (Jury panel in.)

6 THE COURT: Please be seated.

7 Thank you again, Ladies and Gentlemen,
8 for your patience.

9 When the Court Clerk calls your name,
10 please come forward and take your seat in the jury box.

11 Ms. Lockhart.

12 COURTROOM DEPUTY: Wendy Busch, Allen
13 Stallings, Betty Graves, Vandell Smith, Katherine Crow,
14 Betty Webb, Donnie Newman, and Guindolyn Prestidge.

15 THE COURT: All right. Thank you, Ladies
16 and Gentlemen.

17 My next comments are directed to those of
18 you who are still seated out there. Y'all did not get
19 selected to serve on this jury and your jury service is
20 now at an end. Rest assured that you have the thanks of
21 the Court as well as the parties to this case for your
22 time and attention today. Our system of justice simply
23 will not work unless we actually summon more jurors than
24 we actually need in any given case. So, don't despair.
25 The fact that you were not selected this time, doesn't

1 mean that you won't be selected next time, but for
2 present purposes you have the thanks of the Court and of
3 the parties for your patience and the time that you've
4 given us today.

5 Happy New Year to all of you, and please
6 travel safely this evening when you go home.

7 And return your buttons to Ms. Anderson,
8 otherwise she is going to get on to me. Okay?

9 Thank y'all.

10 (Remaining jury panel leaves the
11 courtroom.)

12 THE COURT: All right. At this time
13 those of you who have been selected, I need you to stand
14 at this time and take the oath of a juror.

15 Ms. Lockhart.

16 (Jury sworn.)

17 THE COURT: Thank you. All right.

18 Have a seat and I will give you a couple
19 of quick parting instructions.

20 First of all we are going to start the
21 case as I indicated the morning of January the 19th at
22 8:30. If you will be here about 8:25 it will help us to
23 start on time, 8:20, 8:25. We are going to try the case
24 in the smaller courtroom downstairs. You will need to
25 come in that morning and report to the jury room

1 downstairs, and I will do my level best to start at 8:30
2 in the morning so that I don't waste your time. Okay?

3 You are going to go home tonight and your
4 spouse or friend or significant other is going to ask
5 you, well, how was jury duty and you're going to say, it
6 was great, I got selected. And then they are going to
7 say, well, tell me what kind of case it is. Don't
8 answer that question. Okay. Tell them that the Judge
9 told me that I can't talk about the case.

10 And the reason for that is this, as soon
11 as you answer that question, the person that you're
12 talking to is going to say, well, I know something about
13 that or I know something about one of the parties to the
14 case or something about the technology. You have heard
15 no evidence at this point, and I want to make sure that
16 the case is decided on the evidence that the Court has
17 found to be admissible as well as the sworn testimony
18 from the witnesses who will be in front of you
19 testifying. So, don't talk about the case.

20 The second thing is don't do any outside
21 research, either on the internet or at the library. I
22 don't know that you will see any media reports about it
23 either in the newspaper or on the internet, but should
24 you run across something that appears to be a media
25 report, do not read it, and change the channel that

1 happens to be on the television. Okay?

2 Once again, I want you to decide the case
3 based on the evidence that I find is admissible as well
4 as the sworn testimony of the witnesses.

5 And finally, I don't think it will happen
6 in this case, I don't have any reason to believe that it
7 will happen, but should somebody contact you other than
8 someone who is with the Court, you know, one of the
9 parties or somebody who says they are working on behalf
10 of a party were to contact you, it would be highly
11 improper, and you should report that fact to the Court
12 immediately through the Clerk's Office or to a security
13 officer the morning that the trial starts.

14 Those are the only instructions that I
15 have today to leave you with. I know you have been here
16 a long time today, please travel safely on the way home.

17 MR. PARKER: Your Honor, before you
18 release the jury, may Mr. Gillam and I approach the
19 bench?

20 THE COURT: Yes.

21 (Bench conference.)

22 MR. PARKER: You have two that are
23 Atlanta people, and I didn't know whether you wanted to
24 get into that now or --

25 THE COURT: I don't. I'm going to ask

1 for their cell phone and contact information and have
2 Ms. Anderson do that through the Clerk's Office.

3 MR. PARKER: Okay. Good.

4 THE COURT: Appreciate it.

5 (Bench conference concluded.)

6 THE COURT: If you will please leave your
7 -- either your cell phone numbers or some contact number
8 that the Clerk's Office can reach you, that would be of
9 great assistance to me. The reason that I'm having you
10 do that is that there may be a situation where I have to
11 start like in the afternoon on the 19th as opposed to in
12 the morning and I want to give you as much advance
13 notice of any scheduling changes I can. Okay?

14 With that you are excused at this time.
15 Please travel safely again, and I will see you the
16 morning of the 19th.

17 (Jury out.)

18 THE COURT: Y'all have a seat.

19 I am going to have Ms. Anderson contact I
20 believe it is Ms. Crow as well as the other jurors who
21 are from Atlanta to see about arranging transportation
22 to and from the courthouse. It may be that I have to
23 decide that the parties may provide transportation for
24 her, but I'm going to see if we can't arrange it so that
25 she can car pool with one of the other jurors who was

1 from Atlanta to make sure that she can be here and
2 participate in the trial.

3 If it becomes a hardship and as I
4 indicated here at the bench previously, I have got eight
5 jurors, and if I have to excuse one, I don't want to,
6 but if I have to, then I will proceed with seven.

7 Is there anything further from the
8 Plaintiff at this time regarding jury selection?

9 MR. TRIBBLE: No, Your Honor.

10 THE COURT: Defendant?

11 MR. GILLAM: Not regarding the selection,
12 Your Honor. We do have our five copies of the
13 questionnaires to turn back in.

14 THE COURT: If you will turn in all of
15 your copies of the questionnaires, we will maintain
16 those in the custody of the Court for the duration of
17 the trial, and we will maintain the originals through
18 the disposition of any appeal. Okay?

19 THE COURT: We're scheduled for 9:00 in
20 the morning on the evidence.

21 How long is my hearing going to last?

22 MR. TRIBBLE: Well, Your Honor, are you
23 taking up everything?

24 THE COURT: Well, it depends on how much
25 everything is.

1 MR. TRIBBLE: Well, we have narrowed our
2 objections to their exhibits down to just a small number
3 of categories, but there still is a lot of objections
4 from the other side.

5 The main thing are these deposition
6 objections, there seems to be a lot of those
7 outstanding.

8 There is the motion to reconsider the
9 MIL. Are you going to hear --

10 THE COURT: Is the briefing complete on
11 the Daubert issues as its going to be here?

12 MS. CANDIDO: Your Honor, with respect to
13 Google's Daubert motion for Mr. Bratic, Google is
14 willing to waive its reply brief if Your Honor is
15 willing to hear that tomorrow.

16 THE COURT: Well, are you willing to
17 waive your reply brief?

18 MS. CANDIDO: Yes.

19 MR. NELSON: And Your Honor, we have a
20 concurring motion on Mr. Wagner, they are related. We
21 would be willing to waive our reply brief, if they could
22 file a response before tomorrow. We filed it a couple
23 of weeks ago.

24 MS. CANDIDO: Your Honor, they filed that
25 brief on December 23rd, we can't file an opposition on

1 the fly.

2 THE COURT: I will take a look at the
3 papers that have come in on it tonight. You need to be
4 prepared to argue what has been filed, and I'm not
5 shortening your response time, but I'm going to hear
6 what I can hear tomorrow. Okay? And if I have to bring
7 you back or take it on the papers for your motion with
8 respect to Wagner, I'll do that.

9 But the issue that I recollect from the
10 filings was Google had wanted to have a hearing on the
11 5th and the position that y'all took -- Plaintiffs took
12 in response to that was that y'all wanted your full
13 response time and if they would just waive their reply
14 then it would be scheduled on the 5th. That is my
15 recollection.

16 MR. NELSON: Yes, Your Honor, that is
17 exactly correct. We have a pending motion to
18 consolidate the briefing of Mr. Wagner and Mr. Bratic on
19 the Daubert motion because they are related, and so,
20 yes, Your Honor, you are absolutely correct.

21 THE COURT: All right.

22 MS. CANDIDO: Your Honor, and Google
23 doesn't agree that the motions are related and our
24 opposition is not due until Thursday.

25 THE COURT: I understand. I didn't

1 shorten your -- the Plaintiffs' response time to your
2 Daubert motion and I'm not shortening yours. So, y'all
3 need to be prepared to argue the motion with respect to
4 Mr. Bratic. Okay?

5 Beyond that, there are deposition
6 designations that I am sure you all are going to
7 continue to try to resolve. I am not going to sit up
8 there and read deposition designations tomorrow from the
9 bench while you make your arguments. What I will do is
10 I will give you some time between now and the time that
11 the evidence begins to meet and confer and then submit
12 to me your tenders of the transcripts along with a chart
13 that identifies those portions to which you are
14 objecting and I will just rule on those in chambers.
15 Okay?

16 And I will see y'all at -- why don't we
17 make it 9:30. Okay? I will see y'all at 9:30.

18 MR. TRIBBLE: Thank you.

19 COURT SECURITY OFFICER: All rise.

20 (Court adjourned.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing is a correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date