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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION, CRIMINAL PART
INDICTMENT NO.: 09-08-1485
A.D. # _____

STATE OF NEW JERSEY,)
)
 vs.) TRANSCRIPT
) OF
 STEPHEN F. SCHARF,) TRIAL
)
 Defendant.)

Place: Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601

Date: April 13, 2011

BEFORE:

HONORABLE PATRICK J. ROMA, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ. (Assistant Deputy Public
Defender)
Office of the Public Defender, Appellate Section

APPEARANCES:

WAYNE L. MELLO, ESQ. (Assistant Prosecutor)
Attorney for the State

EDWARD J. BILINKAS, ESQ. (Law Offices of Edward J.
Bilinkas)
SARA SENCER McARDLE, ESQ. (Law Office of Sara
Sencer McArdle, LLC)
JASON ALTERBAUM, ESQ.
Attorneys for the Defendant

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1 (The prospective jurors entered the
2 courtroom.)

3 THE COURT: I think we can get started. Good
4 morning ladies and gentlemen.

5 (A chorus of good morning.)

6 THE COURT: All right. My name is Patrick J.
7 Roma. And I'm a Judge in the Superior Court of the
8 State of New Jersey.

9 Ladies and gentlemen, you have been brought
10 here today so that we may select a jury for this case,
11 which is entitled the State of New Jersey versus
12 Stephen Scharf.

13 Now let me go through a couple of things
14 preliminarily. All right? Number one, you're in a
15 criminal courtroom. You -- you're going to hear things
16 in this courtroom that may be disturbing to you, that
17 bother you.

18 But the fact is this is reality. This is not
19 some TV show. And quite frankly, I need to impress
20 this upon you because you will hear about details
21 concerning this case or -- or at least a description of
22 the case.

23 And what we're going to be looking for are
24 jurors who can hear this case fairly and impartially.
25 That's the bottom line. We could ask you a hundred

1 different ways, but that is the goal to get fair and
2 impartial jurors to hear this case.

3 There may be some experience in your life,
4 something has happened to you, it may or may not affect
5 your ability to be fair and impartial but please
6 understand that that's the whole purpose of the voir
7 dire to get to know you a little better and at the same
8 time to make sure, or as -- as humanly possible, that
9 you are fair and impartial. And I'll ask you
10 questions. We'll go through this questionnaire that
11 I've handed out.

12 There's a group of people waiting for us in
13 the back that we started with yesterday. They will
14 join us as soon as I finish this presentation.

15 Now something I should impress upon you this
16 is your responsibility collectively. We are all in
17 this together. This is not for some other person to
18 do, some other person's responsibility. This is part
19 of your obligation, your responsibilities as a member
20 of a free society.

21 We have a system here where people
22 participate in a jury system and they act as judges,
23 judges of the facts. It's an awesome responsibility.
24 And it carries with it certain obligations.

25 And I understand the difficulty. Believe me,

1 with the economy and everything else that we have, I --
2 I realize how difficult it is. But everyone serves on
3 a jury panel at one point or another even the Chief
4 Justice of this great State. He was called for jury
5 duty and he was excused because of other
6 responsibilities.

7 Just about every judge in the Criminal
8 Division has been called at one time or another,
9 including myself. And if not for the fact that I had a
10 -- a jury that I had to take care of, I would have
11 enjoyed sitting on a jury.

12 And the reason why I'm telling you this is
13 that you've been preselected out of a group of maybe
14 150 people. We now have you as a group that can sit
15 here with respect to the length of the time.

16 Of course there may be some other reasons
17 that could affect your participation. And I'll get
18 into that in a moment. But I just want to make sure
19 that you -- you fully understand just how important you
20 are. You are the cornerstone of our democracy. Okay?

21 We are about to begin a process called a voir
22 dire. And the purpose of the voir dire is very simple.
23 It is to obtain a jury which is able to hear this case
24 without any bias, prejudice, or preconceived ideas. In
25 short, the idea is to select a fair jury. You may be

1 interested in knowing that voir dire is an Anglo-French
2 term meaning to speak the truth

3 Members of the panel, we are here to try the
4 matter in dispute between the State of New Jersey and
5 Stephen Scharf. This is a criminal case and the charge
6 is as follows.

7 That on or about September 20, 1992 in the
8 Borough of Englewood Cliffs, in the County of Bergen,
9 and within the jurisdiction of this Court, did
10 purposely and/or knowingly cause the death or serious
11 bodily injury and resulting in the death of Jody Ann
12 Scharf contrary to the provisions of N.J.S.A.
13 2C:11-3(a) (1) and N.J.S.A. 2C:11-3(a) (2) and against
14 the peace of this State, the government, and dignity of
15 the same.

16 I realize that jury service may be new to
17 some of you so a few preliminary remarks may prove to
18 be helpful.

19 The first step in a jury trial is the
20 selection of the jury. This process is important
21 because both the State and defendant are entitled to
22 jurors who are impartial and agree to keep their minds
23 open until a verdict is reached.

24 Jurors must be as free as humanly possible
25 from bias, prejudice, or sympathy and must not be

1 influenced by preconceived ideas.

2 Those of you selected as jurors in this case
3 shall serve as judges of the facts. In other words,
4 you will listen to the testimony of witnesses, examine
5 any physical evidence introduced, and thereafter
6 determine the facts.

7 I am the judge of the law. At the conclusion
8 of this matter, after the evidence has been presented
9 and counsel have made their closing arguments, I will
10 tell you what the law is. And you must apply that law
11 to the facts in order to reach a fair and impartial
12 verdict.

13 Although you may be qualified to serve as a
14 juror in most cases, there may be something that could
15 disqualify you in this case or make it embarrassing for
16 you to serve.

17 In order to learn this, I will ask you
18 questions. Please understand that I will -- the
19 questions I will ask are for a legitimate purpose and
20 not to simply pry into your personal affairs.

21 Do not hesitate to speak your mind honestly
22 and plainly. It is very important that you answer each
23 question fully and truthfully. Keep in mind there are
24 no right or wrong answers. Truthful and honest answers
25 are necessary so that a fair and impartial jury can be

1 selected.

2 As we mature, we all, to some extent, develop
3 certain biases, prejudices, fixed opinions, and views.
4 We develop these from our families, others around us,
5 the media, and from our everyday experiences.

6 You are entitled to be who you are and to
7 feel and think about things as you do. It is important
8 to recognize any biases, prejudices, fixed opinions,
9 and views that you may have and to disclose them to me
10 during the jury selection process.

11 If for any reason my questions do not cover
12 why you would not be able to listen with an open mind
13 to the evidence in this case or be unable to reach a
14 fair and impartial verdict, it is necessary that you
15 volunteer this information to me when you are
16 questioned.

17 If at any time during the jury selection
18 process you wish to discuss anything with me, excuse
19 me, concerning your ability to serve as a juror, I will
20 speak with you outside the presence of the other jurors
21 but in the presence of the attorneys.

22 After I have questioned each of you, you may
23 be excused as a juror by me if in my opinion there is a
24 valid reason why you should not serve. Each attorney
25 may also excuse a limited number of jurors without

1 giving any reason for doing so.

2 In the event you are excused, please do not
3 consider this an insult or take it personally. It is
4 merely part of the process employed in selecting a jury
5 as permitted by our court rules.

6 Our best estimate is that this case will take
7 about 18 days to complete. And this will be done over
8 a period of some six weeks, basically three days a
9 week, Tuesday, Wednesday, and Thursday.

10 That schedule has certain advantages. We
11 will not be sitting Monday and Friday. It will be
12 Tuesday, Wednesday, and Thursday.

13 We will have much more control over the
14 proceedings once a jury has been empaneled 'cause then
15 we can start at 9:00 o'clock. We start at
16 9:00 o'clock. We have a break midmorning. Then we
17 have lunch from 12:30 to 1:30 and then another break in
18 the afternoon. And then we finish at 4:00 o'clock.

19 Right now, by the time you finish up in jury
20 management, you go through the orientation, and then
21 you're screened as to the length of the trial, we lose
22 a -- a considerable amount of time.

23 But once we get started, we'll have the
24 witnesses ready. We can move ahead. And also, I'll be
25 able to advise you from time to time as to where we are

1 and to give you a better understanding as to whether
2 we're ahead, slightly behind, or whatever the
3 circumstances might be.

4 But I can assure you that with the
5 experienced attorneys that we have they will move this
6 case along as expeditiously and as fairly as possible.

7 This is a criminal case. And there are
8 certain principles of law that must be accepted and
9 followed by jurors.

10 The indictment is not evidence of the
11 defendant's guilt on the charge. An indictment is a
12 step in the procedure to bring the matter before the
13 court and jury for the jury's ultimate determination as
14 to whether the defendant is guilty or not guilty on the
15 charges stated in it.

16 The defendant has pleaded not guilty to the
17 charge and is presumed to be innocent. Unless each and
18 every essential element of the offense charged is
19 proved beyond a reasonable doubt, the defendant must be
20 found not guilty of that charge.

21 The burden of proving each element of the
22 charge beyond a reasonable doubt rests upon the State.
23 And that burden never shifts to the defendant. It is
24 not the obligation or the duty of the defendant in a
25 criminal case to prove his innocence or offer any proof

1 relating to his innocence.

2 The prosecution must prove its case by more
3 than a mere preponderance of the evidence yet not
4 necessarily to an absolute certainty. The State has
5 the burden of proving a defendant guilty beyond a
6 reasonable doubt.

7 Some of you may have served as jurors in
8 civil cases where you were told it is necessary to
9 prove only that a fact is more likely true than not
10 true. In criminal cases, the State's proof must be
11 more powerful than that. It must be beyond a
12 reasonable doubt.

13 A reasonable doubt is an honest and
14 reasonable uncertainty in your minds about the guilt of
15 the defendant after you've given full and impartial
16 consideration to all of the evidence.

17 A reasonable doubt may arise from the
18 evidence itself or from a lack of evidence. It is a
19 doubt that a reasonable person hearing the same
20 evidence would have.

21 Proof beyond a reasonable doubt is proof, for
22 example, that leaves you firmly convinced of the
23 defendant's guilt.

24 In this world we know very few things with
25 absolute certainty. In criminal cases, the law does

1 not require proof that overcomes every possible doubt.

2 If based on your consideration of the
3 evidence you are firmly convinced that the defendant is
4 guilty of the crime charged, you must find him guilty.
5 On the other hand, you are not firmly convinced of the
6 defendant's guilt, you must give the defendant the
7 benefit of the doubt and find him not guilty.

8 You will have to apply the law as I give it
9 to you regardless of your own personal feelings about
10 it.

11 As this is a criminal case, your verdict must
12 be unanimous. That is all 12 deliberating jurors must
13 agree upon the verdict.

14 I would first like to introduce to you the
15 attorneys. The State of New Jersey will be represented
16 throughout these proceedings by Assistant Prosecutor
17 Wayne Mello. I would like him to rise and introduce
18 himself.

19 MR. MELLO: Thanks, Judge. Good morning,
20 folks.

21 (A chorus of good morning.)

22 THE COURT: Thank you.

23 MR. MELLO: Thanks, Judge.

24 THE COURT: The defendant will be represented
25 by Mr. Edward Bilinsky (sic). I would like him to

1 rise, introduce himself, and also to introduce the
2 members of his team, and also his client.

3 MR. BILINKAS: Good morning.

4 (A chorus of good morning.)

5 MR. BILINKAS: My name is Edward Bilinkas.

6 At counsel table we have a Sara Sencer McArdle.

7 MS. McARDLE: Good morning ladies and
8 gentlemen.

9 (A chorus of good morning.)

10 MR. BILINKAS: Jason Alterbaum.

11 MR. ALTERBAUM: Good morning.

12 (A chorus of good morning.)

13 MR. BILINKAS: And my client, who it's an
14 honor to represent, Stephen Scharf.

15 THE DEFENDANT: Good morning.

16 (A chorus of good morning.)

17 THE COURT: Thank you, counsel. All right.

18 You have a questionnaire. Does everyone have a
19 questionnaire? Yes?

20 (A chorus of yes.)

21 THE COURT: If anyone does not have a
22 questionnaire, please raise your hand. That
23 questionnaire should have not only the questions,
24 35 questions, biographical information, also I prepared
25 a -- a calendar so that you can go through this and

1 know the days that we will be in session, and also a
2 witness list.

3 Now let me go through something very quickly.
4 You were prescreened as to the length of the trial.
5 But there is a qualification section. It's question
6 number one. Okay? We'll do this first to see if
7 anyone falls into this category.

8 In order to be qualified under New Jersey law
9 to serve on a jury, a person must have certain
10 qualifying characteristics. The juror must be age
11 18 or older, a citizen of the United States, able to
12 read and understand the English language, a resident of
13 Bergen County.

14 Also, a juror must not have been convicted of
15 any indictable offense in any state or Federal court
16 and must not have any physical or mental disability
17 which would prevent the person from properly serving as
18 a juror.

19 Is there any one of you who does not meet
20 those requirements? If so, please raise your hand?
21 All right. Why don't you step out of the panel?
22 Anyone else? Just number one. All right?

23 And the process that we're going to utilize
24 is the same process we'll use later on. We'll go to
25 sidebar. Please do not discuss any of these issues

1 with anyone else. All right? They're private issues
2 to be addressed at sidebar.

3 Also, please understand that if for some
4 reason you are excused here, you'll be sent to another
5 panel. There's a pharmaceutical case that will be
6 started probably in the next couple of days that will
7 last about six or seven months. You may be required
8 for that case. Okay?

9 Anyway, is there anyone else to join this
10 group? Let's go to sidebar. Okay. Sir, if you would.
11 And when you come to sidebar, I would ask that you
12 stand right here (indicating). Okay? There's a
13 microphone here so everything can get recorded. But
14 you have to face the back of the courtroom.

15 And please, oh please, hold on to the
16 questionnaire. Every time we do this someone leaves
17 the questionnaire back there. Because you're going to
18 need it when you're -- come forward to go through the
19 biographical information. All right?

20 (Jury voir dire started.)

21 (Jury voir dire stopped.)

22 THE COURT: One other -- if you're excused
23 from here, you're not excused to leave the courthouse.
24 You have to go back to jury management for assignment
25 to another judge. Next.

1 (Jury voir dire resumed.)

2 (Jury voir dire stopped.)

3 THE COURT: All right. No one else? Okay.
4 All right. The rest of these questions do not require
5 anyone raising their hands, just make note of the
6 question. And when we go to sidebar when you're
7 called, then we'll go through those individual
8 questions.

9 What I will ask you is whether you have any
10 questions, yes answers, or concerns. All right? And
11 that's when we go to sidebar. So make sure you hold
12 onto the questionnaire. And we'll pick up with
13 question 2(a).

14 I've mentioned the projected duration of the
15 trial. Is there anything about the length or
16 scheduling of the trial that would interfere with your
17 ability to serve?

18 Two(b), do you have any medical, personal, or
19 financial problem that would prevent you from serving
20 on this jury? In responding, please consider that the
21 Court will provide reasonable accommodations to your
22 special needs. But I will only be aware of any such
23 need if you let me know about them.

24 The Court's purpose in asking you the
25 circumstances relates to your ability to serve as a

1 juror. If you have any such requests, please let us
2 know and we will address this at -- at sidebar. Please
3 consider that the judiciary will provide reasonable
4 accommodations consistent with the Americans with
5 Disabilities Act.

6 You have been introduced to the lawyers in
7 this case. Do any of you know the lawyers? Has any of
8 them or anyone in their office ever represented you or
9 brought any action against you? Do you know any of the
10 parties?

11 I'm going to now read from a -- a list of
12 potential witnesses. Let me explain something about
13 the list. We don't know how many witnesses will be
14 called. It could be far less than what has been
15 presented. But we have an absolute obligation to bring
16 to you the names of all potential witnesses.

17 So the list that you see is a -- a list of
18 all possible witnesses not necessarily the witnesses
19 who will be called in this proceeding.

20 I'm going to -- going to read through this.
21 Does everyone have a copy? If anyone does not, please
22 raise your hand. Seeing no hands, I will now proceed.
23 There's a three page list.

24 Number one, Captain -- from the Bergen County
25 Prosecutor's Office, Captain Joseph Hornyak, Lieutenant

1 Terrance Alver, Lieutenant Eric Baum, Lieutenant
2 Anthony D'Augustine, Lieutenant Frank Kelaher, Sergeant
3 Russell Christiana, Sergeant Sharon Malone, Sergeant
4 Lynn Morrissey, Sergeant Zaida Molina, Sergeant William
5 Stallone, Detective Gary Boesch, Detective James
6 Bordino, Detective James Krassowski (phonetic),
7 Detective Gerard Dargan, Detective Jamie Eckert,
8 Detective John Frassa (phonetic), Detective Robert
9 Hernest, Detective Gregory Kohles, Detective Cecilia
10 Love, Detective John Straniero.

11 From the Palisades Interstate Park Police,
12 Lieutenant Nelson Pagan, Lieutenant Walter Siri,
13 Sergeant Paul Abbott, Detective Ronald Karnick,
14 Detective James Lyman, also Patrolman Lowell Tamayo.

15 From the Englewood Cliffs Police Department,
16 Chief Michael Cioffi, Sergeant Todd Coletta. From the
17 Bergen County Police Department, Patrolman John
18 Desimone (phonetic). From the Bergen County Sheriff's
19 Department, Sergeant William Dinella (phonetic),
20 Sergeant Stephen Stanak, Detective Edward Hauser, and
21 Detective John Kennedy.

22 From the Washington Township Police
23 Department, Chief Ted Ehrenburg, Captain William
24 Gundersdorf. From the Washington State Patrol,
25 Detective John Wright. From the Bergen County Medical

1 Examiner's Office, Mary Ann Clayton, M.D. From the New
2 Jersey State Police Laboratory, Little Falls, New
3 Jersey, Cynthia McSweeney and Karen Menser.

4 From New York, New York, Dr. Michael M.
5 Baden, M.D. From Pittsburgh, Pennsylvania, Cyril
6 Wecht, M.D., J.D. From San Antonio, Texas, a
7 representative of the USAA Life Insurance Company.

8 From Trenton, New Jersey, a representative of
9 the New Jersey Unclaimed Property Trust Fund. From
10 Hackensack, New Jersey, a representative of the
11 Mid-Atlantic Bank. From Trexlertown, Pennsylvania, a
12 representative of Matchmaker International. From the
13 Bergen County Engineering Department, Michael Rohart
14 (phonetic) and Michael Aderinsi (phonetic).

15 From Frenchtown, New Jersey, Eileen Austr.
16 From Little Falls, New York, Lori Beam. From Bristol,
17 Virginia, Linda Graingel (phonetic). From Califon, New
18 Jersey, William Cannon. From Randolph, New Jersey,
19 Paul Connet (phonetic). From Cape Coral, Florida,
20 Colleen Davies. From Malden, Massachusetts, Jared
21 Durante.

22 From Boonton, New Jersey, Maureen Durante.
23 From Fair Lawn, New Jersey, Douglas Dystra (phonetic).
24 From Far Hills, New Jersey, Jake Field and John Field.
25 From Hackettstown, New Jersey, Maureen Glenna. From

1 Mahwah, New Jersey, Martelle Green.

2 From Jupiter, Florida, Cheryl Gwalnick
3 (phonetic). From Bellefonte, Pennsylvania, Janet
4 Houser and Ronald Houser. From Clinton, New Jersey,
5 Marion Hilferty. From Powder Springs, Georgia, Carrie
6 Harper.

7 From Newton, New Jersey, Nancy Huizenga.
8 From Sparta, New Jersey, Henry Charles Jackson, Jr. and
9 from Washington, D.C., Henry Charles Jackson, III.
10 From Pleasant Hill, California, Peggy Johnson.

11 From Vineland, New Jersey, Kathy Long. From
12 Long Valley, New Jersey, Natalie Mahoney. From
13 Millington, New Jersey, Robert Martin. From Fairfield,
14 California, John McCullough. From Morristown, New
15 Jersey, Benjamin Michel. From Bernardsville, New
16 Jersey, Anna Rawson Mola.

17 From Dover, New Jersey, Lisa Waterhouse
18 Moses. From Hackettstown, New Jersey, Brian Newell and
19 Patricia Newell. From Woodbridge, New Jersey, Ignacio
20 Ortega, Jr. From Wayne, New Jersey, Caroline Joyce
21 Peppi. From Aberdeen, New Jersey, Kathleen Scanlon.

22 From Hoboken, New Jersey, Jonathan Scharf.
23 From Hackettstown, New Jersey, Tina Scharf. From
24 Brick, New Jersey, Carmella Schiessl. From New York,
25 New York, Theresa Schofield. From Abington,

1 Pennsylvania, Steven Schorr.

2 From Summit, New Jersey, Rosemarie Silver.

3 From Cranford, New Jersey, Alla Sorkin. From

4 Cuddebackville, New York, Barbara Stanley. From

5 Bernardsville, New Jersey, Patricia Teague. From

6 Hackettstown, New Jersey, Susan Roycon (phonetic).

7 As I said, they are potential witnesses. And

8 the question that would follow that would be do you

9 know any of the potential witnesses?

10 Now number five, I have already briefly

11 described the case. Do you know anything about this

12 case from any source other than what I've just told

13 you? Six, are any of you familiar with the area or

14 address of the incident?

15 Seven, have you ever served on a jury before

16 today here in New Jersey or in any state court or

17 Federal court? Eight, have you ever sat as a Grand

18 Juror? Nine, do you know anyone else in the jury box

19 other than as a result of reporting here today?

20 Ten, would your verdict in this case be

21 influenced in any way by any factors other than the

22 evidence in the courtroom such as friendships, or

23 family relationships, or the type of work that you do?

24 Is there any -- number 11, is there anything

25 about the nature of the charge itself that would

1 interfere with your impartiality?

2 Twelve, have you ever been a witness in a
3 criminal case regardless of whether it went to trial?

4 Thirteen, have you ever testified in any court
5 proceeding?

6 Fourteen, have you ever applied for a job as
7 a state or local police officer, or with the sheriff's
8 department, or county jail or state prison?

9 Fifteen, have you, or any family member, or
10 close friend ever worked for any agency such as a
11 police department, prosecutor's office, the FBI, the
12 DEA, or a sheriff's department, jail or prison either
13 in New Jersey or elsewhere?

14 Sixteen, as a general proposition, do you
15 think that a law enforcement officer is (a) more likely
16 to tell the truth than a witness who is not a law
17 enforcement officer or (b) less likely to tell the
18 truth than a witness who is not a law enforcement
19 officer?

20 Seventeen, would any of you give greater or
21 lesser weight to the testimony of a law enforcement
22 officer merely because of his or her status as a law
23 enforcement officer?

24 Eighteen, have you, or any family member, or
25 close friend ever been accused of committing an offense

1 other than a minor motor vehicle offense?

2 Nineteen, have you, or any family member, or
3 close friend ever been the victim of a crime whether it
4 was reported to law enforcement or not?

5 Twenty, would you have any difficulty
6 following the principle that the defendant on trial is
7 presumed to be innocent and must be found not guilty of
8 that charge unless each and every essential element of
9 the offense charged is proved beyond a reasonable
10 doubt?

11 Twenty-one, the indictment is not evidence of
12 guilt. It is simply a charging document. Would the
13 fact that the defendant has been arrested and indicted
14 and is here in court facing these charges cause you to
15 have preconceived opinions on the defendant's guilt or
16 innocence?

17 Twenty-two, I have already given you the
18 definition of reasonable doubt and will explain it
19 again at the end of the trial. Would any of you have
20 any difficulty in voting not guilty if the State fails
21 to prove the charge beyond a reasonable doubt?

22 Twenty-three, if the State proves each
23 element of the alleged offense beyond a reasonable
24 doubt, would you have any difficulty in returning a
25 verdict of guilty?

1 Twenty-four, the burden of proving each
2 element of a crime beyond a reasonable doubt rests upon
3 the prosecution. And that burden never shifts to the
4 defendant. The defendant in a criminal case has no
5 obligation or duty to prove his or her innocence or
6 offer any proof relating to his or her innocence.
7 Would any of you have any difficulty in following these
8 principles?

9 Twenty-five, would you have any difficulty or
10 reluctance in accepting the law as explained by the
11 Court and applying it to the facts regardless of your
12 own personal beliefs about what the law should be or
13 is?

14 Twenty-six, is there anything about this
15 case, based on what I've told you, that would interfere
16 with your ability to be fair and impartial?

17 Twenty-seven, the purpose of questioning you
18 as prospective members of the jury is to select a jury
19 which will be fair and impartial. Is there anything
20 not covered by the previous questions which would
21 affect your ability to be a fair and impartial juror or
22 in any way be a problem for you serving on the jury?

23 Twenty-eight, is there anything else that you
24 feel is important for the parties in this case to know
25 about you?

1 Twenty-nine, a defendant in a criminal case
2 has the absolute right to remain silent and has the
3 absolute right not to testify. If a defendant chooses
4 not to testify, the jury is prohibited from drawing any
5 negative conclusions from that choice. The defendant
6 is presumed innocent whether he testifies or not.
7 Would any of you have any difficulty in following these
8 principles?

9 Thirty, have any of you been divorced? Would
10 that affect your ability to be fair and impartial?

11 Thirty-one, you will hear evidence that Jody Ann Scharf
12 had filed a divorce complaint against Stephen Scharf.
13 Would that affect your ability to be fair and
14 impartial?

15 Thirty-two, you will hear evidence in this
16 case that Jody Scharf made certain statements to
17 friends and colleagues claiming that she was frightened
18 of Stephen Scharf. Would that affect your ability to
19 be fair and impartial?

20 Thirty-three, you will hear evidence of
21 extramarital affairs. Would this affect your ability
22 to be fair and impartial?

23 Thirty-four, there will be evidence
24 concerning domestic violence. Would this affect your
25 ability to be fair and impartial?

1 Thirty-five, there will be evidence in this
2 case that Stephen Scharf took out a life insurance
3 policy on the life of Jody Ann Scharf 16 months prior
4 to her death. Would this affect your ability to be
5 fair and impartial?

6 As I've indicated, this is day two of jury
7 selection. And we're now going to bring out the panel
8 that is in the jury room. And we'll pick up where we
9 left off yesterday.

10 I would ask when you come forward to please
11 indicate your name, pronounce your name, and also spell
12 your name. The reason is simple. I have the list in
13 the order in which you're being called. The attorneys
14 have an alphabetical list. And it will help them to
15 locate your name.

16 Also, please, the biographical sheet, have
17 that with you because I'll ask you to rise and to give
18 us the biographical information. Use that as a
19 checklist and just go right through it. Okay?

20 PROSPECTIVE JUROR: Excuse me.

21 THE COURT: Don't --.

22 PROSPECTIVE JUROR: If we -- if we have
23 any --.

24 THE COURT: Please, I'm a little reluctant to
25 taking questions from a large group not knowing what

1 you might say.

2 PROSPECTIVE JUROR: Should we turn cell
3 phones off or --?

4 THE COURT: One of the things that you should
5 not do don't discuss any of these matters or any of
6 these concerns with any of the other people. We'll do
7 that at sidebar as we did before with the --

8 OFFICER: Jury entering.

9 THE CLERK: Jury entering.

10 THE COURT: -- the people that we had.

11 (The original prospective jurors from the
12 previous day entered the courtroom.)

13 THE COURT: Welcome back ladies and
14 gentlemen. Please be seated. Madame Clerk.

15 THE CLERK: Juror number four, Elizabeth
16 Thompson -- Thomas. I'm sorry.

17 THE COURT: Please step forward over here
18 (indicating). And what I'm going to do I'm going to
19 ask you when you come up, because we have people seated
20 in the jury box, come up here with -- you'll form a
21 line. And we'll take you in the order that you're
22 called. Okay? Remember the seat that you occupy. All
23 right?

24 (Jury voir dire resumed.)

25 (Jury voir dire stopped.)

1 THE COURT: If you would, anyone being called
2 forward, locate that sheet. It'll save some time. All
3 right? Have it in front of you.

4 (Jury voir dire resumed.)

5 (Jury voir dire stopped.)

6 THE COURT: Please remember to stand over
7 here (indicating). Okay?

8 (Jury voir dire resumed.)

9 (Jury voir dire stopped.)

10 THE COURT: Madame Clerk.

11 THE CLERK: Juror number four, Dee Huey
12 (phonetic).

13 (Jury voir dire resumed.)

14 (Jury voir dire stopped.)

15 THE COURT: Mr. Bilinkas.

16 MR. BILINKAS: Please excuse juror number 11.

17 THE COURT: Juror number 11, you are excused
18 with the thanks of the Court.

19 (Ms. Beregovsky exited the courtroom.)

20 THE COURT: Madame Clerk.

21 THE CLERK: Juror number 11, Daniella Dixon.

22 (Jury voir dire resumed.)

23 (Jury voir dire stopped.)

24 THE COURT: Mr. Mello.

25 MR. MELLO: Satisfactory at present.

1 THE COURT: Mr. Bilinkas.

2 MR. BILINKAS: Juror number four.

3 THE COURT: Juror number four, you are

4 excused with the thanks of the Court.

5 (Ms. Huey exited the courtroom.)

6 THE CLERK: Juror number four, Barbara

7 Torres.

8 (Jury voir dire resumed.)

9 (Jury voir dire stopped.)

10 THE COURT: Madame Clerk.

11 THE CLERK: Juror number four, Debra Hanby.

12 (Jury voir dire resumed.)

13 (Jury voir dire stopped.)

14 THE COURT: Mr. Mello.

15 MR. MELLO: Satisfactory at present.

16 THE COURT: Mr. Bilinkas.

17 MR. BILINKAS: Juror number 15.

18 THE COURT: Juror number 15, you are excused

19 with the thanks of the Court.

20 MS. BROHM: Thank you.

21 (Ms. Brohm exited the courtroom.)

22 THE COURT: Madame Clerk.

23 THE CLERK: Juror number 15, Sophie Sog

24 (phonetic).

25 (Jury voir dire resumed.)

1 (Jury voir dire stopped.)

2 THE CLERK: Juror 15, Mary Connor.

3 MR. BILINKAS: What was that name again?

4 THE CLERK: Mary Connor.

5 (Jury voir dire resumed.)

6 (Jury voir dire stopped.)

7 THE COURT: Mr. Mello.

8 MR. MELLO: Satisfactory at present.

9 THE COURT: Mr. Bilinkas.

10 MR. BILINKAS: Juror number 13.

11 THE COURT: Juror number 13, you are excused

12 with the thanks of the Court.

13 (Ms. Singletary exited the courtroom.)

14 THE CLERK: Juror 13, Cinnamon Clark-Chavis.

15 MR. MELLO: Diane, how's that -- how's that

16 spelled?

17 THE CLERK: -- C-h-a-v-i-s.

18 MR. MELLO: Oh, got it.

19 (Jury voir dire resumed.)

20 (Jury voir dire stopped.)

21 THE COURT: Mr. Mello.

22 MR. MELLO: Satisfactory at present.

23 THE COURT: Mr. Bilinkas.

24 MR. BILINKAS: Juror number 13.

25 THE COURT: Juror number 13, don't get too

1 settled over there. All right. Thank you.

2 (Ms. Clark-Chavis exited the courtroom.)

3 THE CLERK: Juror number 13, Eleanor Casner

4 (phonetic).

5 (Jury voir dire resumed.)

6 (Jury voir dire stopped.)

7 THE COURT: Mr. Mello.

8 MR. MELLO: Satisfactory, Judge.

9 THE COURT: Mr. Bilinkas.

10 MR. BILINKAS: Juror number 13.

11 THE COURT: Juror number 13, you're excused.

12 MS. CASNER: Is that me?

13 THE COURT: No one wants to sit there.

14 (Ms. Casner exited the courtroom.)

15 THE COURT: Next.

16 THE CLERK: Juror 13, -- Hernandez.

17 (Jury voir dire resumed.)

18 (Jury voir dire stopped.)

19 THE COURT: Madame Clerk.

20 THE CLERK: Juror number 13, Gerard Charles.

21 (Jury voir dire resumed.)

22 (Jury voir dire stopped.)

23 THE COURT: All right. Remain standing. All

24 right? Mr. Mello.

25 MR. MELLO: Number 13.

1 THE COURT: You're excused.

2 (Mr. Charles exited the courtroom.)

3 THE COURT: Madame Clerk.

4 THE CLERK: Juror number 13, Maria Hernandez.

5 (Jury voir dire resumed.)

6 (Jury voir dire stopped.)

7 MR. BILINKAS: Judge, can we be heard?

8 (Sidebar)

9 MR. BILINKAS: Judge, in -- in response to
10 some of your questions, I -- I don't think that -- I
11 think she may have a problem reading the information on
12 the sheet. And you were asking her specific questions
13 concerning her background information.

14 THE COURT Uh-huh.

15 MR. BILINKAS: She at least appeared to me
16 that she didn't understand what as on that sheet.

17 THE COURT: Okay.

18 (Sidebar concluded)

19 THE COURT: Number 13, can I see you for a
20 moment?

21 (Jury voir dire resumed.)

22 (Jury voir dire stopped.)

23 THE COURT: Madame Clerk.

24 THE CLERK: Juror number 13, Myron Radowych.

25 (Sidebar)

1 MR. BILINKAS: Judge, also, I guess one of
2 the jurors is -- in front of the sheriff's officers.

3 MS. McARDLE: --.

4 MR. MELLO: Maybe we'll ask her.

5 MS. McARDLE: I -- it could be. I mean I
6 don't know.

7 THE COURT: I think at some point we'll
8 address it.

9 MS. McARDLE: Okay.

10 THE COURT: I don't want a stampede.

11 MS. McARDLE: Sure.

12 (Sidebar concluded.)

13 MR. BILINKAS: What is that number?

14 MR. MELLO: Diane, what was that -- what was
15 the name?

16 THE CLERK: Myron Radowych --.

17 MR. MELLO: Got it.

18 (Jury voir dire resumed.)

19 (Jury voir dire stopped.)

20 THE COURT: We're going to take a ten minute
21 break. All right?

22 (Brief Recess)

23 (The prospective jurors entered the
24 courtroom.)

25 MR. MELLO: Judge, can we approach?

1 THE COURT: Sure.

2 (Sidebar)

3 MR. BILINKAS: Judge, in light of the fact
4 that the last witness said he -- I think there was an
5 article --.

6 THE COURT: I believe he read over the
7 article.

8 MR. BILINKAS: Right.

9 THE COURT: My intention is after we finish
10 up, I'm -- I'm going to go through the jurors and see
11 if anyone has read an article, whether it affects their
12 judgment or not.

13 MR. BILINKAS: Okay.

14 THE COURT: We can go over it individually.

15 MR. BILINKAS: Okay. Especially with this.

16 (Sidebar concluded)

17 THE COURT: All right. Madame Clerk.

18 THE CLERK: Juror number 13, Patricia
19 Schwecke (phonetic).

20 MS. SCHWECKE: Schwecke.

21 THE CLERK: Schwecke.

22 (Jury voir dire resumed.)

23 (Jury voir dire stopped.)

24 THE CLERK: Juror number 13, Richard Schultz.

25 (Jury voir dire resumed.)

1 (Jury voir dire stopped.)

2 THE COURT: Mr. Mello.

3 MR. MELLO: It's Mr. Bilinkas's turn, Judge.

4 THE COURT: Oh. Mr. Bilinkas.

5 MR. BILINKAS: Juror number eight.

6 THE COURT: Juror number eight.

7 (Ms. Kidd exited the courtroom.)

8 THE COURT: Madame Clerk.

9 THE CLERK: Juror number eight, Diana Simms.

10 (Jury voir dire resumed.)

11 (Jury voir dire stopped.)

12 THE COURT: Could I see the attorneys just to
13 give you an idea?

14 (Sidebar)

15 THE COURT: We have about ten people that are
16 left on the panels. Do we have a general idea -- I
17 know that you have been satisfied with the jury at this
18 point, but -- and that may change depending on the
19 composition. Are we -- where are we?

20 MR. BILINKAS: I think we're -- we're real
21 close, Judge.

22 THE COURT: Real close like four or five
23 people?

24 MR. BILINKAS: Yes.

25 THE COURT: Three people or something like

1 that? All right.

2 (Sidebar concluded)

3 THE CLERK: Juror number eight, Marilette

4 Delacruz.

5 (Jury voir dire resumed.)

6 (Jury voir dire stopped.)

7 THE COURT: Mr. Mello.

8 MR. MELLO: Satisfactory at present.

9 THE COURT: Mr. Bilinkas.

10 MR. BILINKAS: Juror number five.

11 THE COURT: Juror number five, you are

12 excused with the thanks of the Court.

13 (Ms. Roberts exited the courtroom.)

14 THE COURT: Madame Clerk.

15 THE CLERK: Juror number five, Sue Foo.

16 MR. BILINKAS: What is the last name?

17 THE CLERK: F-o-o.

18 (Jury voir dire resumed.)

19 (Jury voir dire stopped.)

20 THE CLERK: Juror number five, Giovanna

21 Smargiassi.

22 MR. BILINKAS: The last name again?

23 THE CLERK: S-m-a-r --.

24 (Jury voir dire resumed.)

25 (Jury voir dire stopped.)

1 THE COURT: Madame Clerk.

2 THE CLERK: Juror number five, Daniel

3 Shanahan.

4 (Jury voir dire resumed.)

5 (Jury voir dire stopped.)

6 THE COURT: Mr. Mello.

7 MR. MELLO: Number five. Number five.

8 THE COURT: I'm sorry. Number?

9 MR. MELLO: Shanahan, number five.

10 THE COURT: Number five. Thank you.

11 (Mr. Shanahan exited the courtroom.)

12 THE COURT: Madame Clerk.

13 THE CLERK: Juror number five, Bart Klim.

14 (Jury voir dire resumed.)

15 (Jury voir dire stopped.)

16 THE CLERK: Juror number five, Ramon Ortiz.

17 (Jury voir dire resumed.)

18 (Jury voir dire stopped.)

19 THE COURT: Mr. Bilinkas. Yes?

20 MR. BILINKAS: This jury is satisfactory to

21 the defense.

22 THE COURT: Thank you.

23 MR. MELLO: Absolutely. You have a jury,

24 Judge.

25 THE COURT: Thank you.

1 MR. MELLO: Satisfactory.

2 THE COURT: All right. There are a couple of
3 things that we need to take care of. I think -- I
4 think number 11. Sheriff's officer, number 11?

5 OFFICER: Yes, she had a question.

6 (Jury voir dire resumed.)

7 (Jury voir dire stopped.)

8 (Sidebar)

9 THE COURT: Would that affect your challenges
10 in any way?

11 MR. BILINKAS: No.

12 THE COURT: Okay.

13 MR. MELLO: No.

14 MR. BILINKAS: Judge -- Judge, before you let
15 the sitting --.

16 THE COURT: I'm not letting them go. We have
17 to go through each and every one of them.

18 MR. BILINKAS: Okay. With regards to the
19 article.

20 (Sidebar concluded)

21 THE COURT: Ma'am, could you step back,
22 please? All right. As long as she's here.

23 (Jury voir dire resumed.)

24 (Jury voir dire stopped.)

25 THE COURT: Starting with juror number one,

1 and we'll continue until the end, I just have a couple
2 of questions to ask. Juror number one. And you might
3 as well form a line, juror number two, three, 'cause
4 I'm going to go through the same thing with each of
5 you.

6 (Jury voir dire resumed.)

7 (Jury voir dire stopped.)

8 (Sidebar)

9 THE COURT: Any -- let's go through a couple
10 of things. Number one, we're skipping tomorrow and
11 going till Tuesday.

12 MR. BILINKAS: Yes, sir. Appreciate --.

13 THE COURT: -- Thursday and Friday.

14 MR. BILINKAS: Appreciate that, Judge.

15 THE COURT: Okay. What else? I'll go
16 through the instructions with them.

17 MR. BILINKAS: Judge, I would only ask that
18 you accentuate the --.

19 THE COURT: I'm going to go through the --
20 reading and doing the --.

21 MR. BILINKAS: Right. Right.

22 THE COURT: Yeah. But let me ask you
23 something. You just reminded me. Are you satisfied as
24 to juror number two as to my inquiry with that juror?

25 MR. BILINKAS: Absolutely.

1 THE COURT: Okay. I would even go as far as
2 saying you have 16 people. If you wanted to, he could
3 be excused and we would go with the 15 people just to
4 be absolutely clear that I'm giving you these options.

5 MR. BILINKAS: Judge, I understand the
6 options. And I would appreciate the Court's --.

7 THE COURT: Could you do me a favor and speak
8 with your client just so we're completely clear on this
9 matter?

10 MR. BILINKAS: Certainly. Judge, I've --
11 I've discussed that with my client, Mr. Scharf. He
12 understands the specifics and -- and he -- he's
13 satisfied with regards to this jury. He does not want
14 him kicked.

15 THE COURT: Okay. Mr. Scharf, you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. All right. Anything else
19 that we need to cover at sidebar?

20 MR. BILINKAS: No, Judge.

21 THE COURT: Okay.

22 (Sidebar concluded)

23 THE COURT: To give you an idea of where we
24 are with things, we -- we had to go through a question
25 and answer period regarding an issue. The attorneys

1 are satisfied with you. We now have a jury.

2 The two -- is there two left, the two of you?

3 You will report back to jury management. Okay? I'm

4 sorry about that. I should have mentioned that

5 earlier. Actually, three people.

6 (The remaining prospective jurors exited the

7 courtroom.)

8 THE COURT: We now have selected a jury. You

9 have the schedule. And we're going to meet Tuesday,

10 Wednesday, and Thursday. We're not going to meet

11 tomorrow Thursday. We're going to go to next Tuesday.

12 All right? Everyone has the schedule? All right.

13 There are a couple of things that I need to

14 go over with you. Number one, I want to explain that

15 as we proceed with this case the likelihood of news

16 articles will -- will increase.

17 And there's all types of media that might be

18 involved. It could be, I don't know, on the internet.

19 It could be cable. It could be TV. It could be print

20 news.

21 And I'm going to tell you that you have to

22 completely avoid reading or listening to any news

23 account. You have to be crystal clear on this point.

24 And I'm going to go through this in a little more

25 detail because I think it is time well spent.

1 You may have a family member at home that
2 says well, you know, you're on a case. I -- I want to
3 talk to you about -- no. The Judge told you that you
4 can't talk with anyone. Okay? You cannot do it.

5 If they have some sort of news article or --
6 or some sort of program, they can record it. They can
7 -- you can read the articles at the end of the trial.
8 We don't want anything to invade your ability to fairly
9 and impartially hear this case.

10 Another thing, there are all kinds of law
11 related programs on TV. Okay? And there are judge
12 programs. There's everything that you can possibly
13 imagine. I don't want you watching any of the law
14 related programs.

15 There may be something in that law program
16 that parallels the subject matter in this case. That's
17 TV. That's TV. And this is reality. So the things
18 that happen within 90 minutes will not happen here.

19 I -- I just want you to be aware that there
20 are things that happen there that do not comport with
21 what happens through this witness stand and avoiding it
22 completely is the best way to handle it.

23 News articles you can read at the end of the
24 case. Don't do any research. Don't use your Google or
25 whatever it might be to try to gather some information.

1 You can't do that.

2 We want you to have a clean slate. We want
3 you to enter this case to be able to hear everything
4 and then at the very end to be able to deliberate and
5 return a just and fair verdict. Is that understood?

6 I'm going to tell you how important this is.
7 I'll be asking you about it at the beginning of each
8 day and giving you the instruction at the end just to
9 make sure. It's -- it's that important.

10 And I'm telling there will be articles.
11 There will be news coverage. But you have to
12 completely avoid listening. Again, I'm spending a
13 little more time, but I -- I think it's worth it to
14 make sure that we don't have any problems or concerns
15 at a later date. Okay?

16 Now with respect to Tuesday, as I told you,
17 we're in a much better position. I want to thank the
18 attorneys because we're on schedule. Basically we had
19 figured on approximately three days for jury selection.
20 This is day two and we have a panel.

21 I guess what you can do is you can relax,
22 enjoy the weekend. It won't be completely raining or
23 it'll be partly raining depending on which
24 meteorologist you listen to.

25 But the point being that I want you to relax

1 and -- and just get ready. We have the case coming up.
2 What you'll have first on Tuesday, you'll be sworn in.
3 And also, you'll listen to the attorneys. Basically
4 they'll do their opening statements. And then you'll
5 sit and listen to the testimony in this case from this
6 witness stand. Okay?

7 I want to thank you. You've been a wonderful
8 group, very cooperative, very helpful, and
9 understanding. All right. Enjoy your weekend and I'll
10 see you on Tuesday. All right?

11 Oh, if you would -- 9:00 -- 9:00 -- get here
12 before 9:00, report to the jury room. You'll go with
13 the sheriff's officer. But basically I -- I want to
14 get started as quickly as possible on Tuesday.

15 So be here prior to 9:00 o'clock. You'll be
16 brought out at 9:00 so that we can be seated and that
17 we can start the case. All right? Please follow the
18 sheriff's officer inside. Have a good day.

19 (The prospective jury panel exited the
20 courtroom.)

21 THE COURT: Be seated. Let's just go over a
22 couple of things that we covered at sidebar and if
23 there's anything else that we need to cover.

24 Again, I want to thank you for your
25 cooperation. It -- it allows me to -- to forecast the

1 trial a little better. With jury management I needed
2 to give them projections as to what -- what, if any,
3 additional people we needed. We now have a panel.

4 Anyone have any comment concerning my
5 instructions? I -- I normally tell the jurors not to
6 listen or read any media accounts, but -- read or
7 listen to.

8 But in this particular case because there was
9 an article in The Record, I -- I wanted to reemphasize
10 that and to make sure that there's no misunderstanding.
11 I'll -- I'll do that during the course of the trial to
12 make sure that the jurors are not reading some type of
13 news related material. Anything further from either of
14 you?

15 MR. MELLO: No, sir. Thank you very much for
16 your consideration.

17 MR. BILINKAS: No, sir.

18 THE COURT: Now starting on Tuesday, I'll
19 swear in the jury. I'll give them the preliminary
20 introduction. And then we'll hear from each of you as
21 to opening statements. Okay? Mr. Mello, you'll be
22 opening for the State. And Mr. Bilinkas, you'll be
23 opening for the defense.

24 MR. MELLO: Yes, sir.

25 THE COURT: Is there anything else that you

1 wish to cover?

2 MR. MELLO: Only that we have the completion
3 of the Miranda hearing at, I believe, --

4 MS. McARDLE: Monday.

5 MR. MELLO: -- 1:30 on Monday. We have one
6 appearance to make.

7 THE COURT: We do. You're right.

8 MR. MELLO: And that's it.

9 THE COURT: Okay. So at 1:30 I'll see you on
10 Monday.

11 MR. MELLO: Yes, sir.

12 THE COURT: Okay.

13 MR. BILINKAS: Judge, the -- the only other
14 thing I -- I'd just like to bring to the Court's
15 attention, and I'm -- I'm hoping this won't be a
16 problem, when we come in on -- on Monday, what I'd like
17 to do is bring the technical equipment in and set it up
18 and just be able to test it to make sure that things
19 move smoothly.

20 If Mr. Mello would like, I can even show him
21 basically how to -- how to use it. And like I said, I
22 have no problems with him --.

23 THE COURT: This is on Monday?

24 MR. BILINKAS: On -- on Monday.

25 THE COURT: Well, let me just tell you what

1 we have on Monday and then we'll work around it. I
2 have a calendar on Monday.

3 I think the best thing to do would be to
4 agree upon some time in the afternoon 'cause I can
5 finish the calendar by 12:30. There's always some
6 spillover. I don't know if I have any other matters
7 other than your matter at 1:30.

8 MR. BILINKAS: Well, we could do it after
9 1:30, Judge.

10 THE COURT: Okay.

11 MR. BILINKAS: After we're done with my --

12 THE COURT: Okay. Fine.

13 MR. BILINKAS: --. We do not need to disturb
14 any --.

15 MR. MELLO: I'm guessing it's just going to
16 take a few minutes to --.

17 THE COURT: Yeah. No, I understand. You
18 haven't -- you didn't encounter any problem with
19 clothing?

20 THE DEFENDANT: Oh. No -- no, Your Honor.

21 THE COURT: Okay. Good.

22 MR. BILINKAS: And, Judge, we do have extra
23 clothing with us in case there is a problem. Judge,
24 can we get Mr. Mello's order of witnesses?

25 MR. MELLO: I haven't decided that yet. I'll

1 discuss that with Mr. Bilinkas Monday.

2 THE COURT: Okay.

3 MR. MELLO: We're a long way from Monday --

4 Tuesday.

5 THE COURT: Thank you. All right?

6 MR. MELLO: Thank you, Judge.

7 THE COURT: I'll see you Monday at 1:30.

8 MR. BILINKAS: --.

9 (Trial adjourned for the day.)

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Certification

I, K. Annette Higgs, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on Video, from 9:59:57 a.m. to 12:37:23 p.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

K. Annette Higgs

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