

November, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	2:13-cr-00048
)	
v.)	Judge Mark R. Hornak
)	
RAFAEL CABRERA,)	
)	
Defendant.)	

VOIR DIRE

GOOD MORNING LADIES AND GENTLEMEN. I AM UNITED STATES DISTRICT JUDGE MARK HORNAK AND YOU HAVE BEEN SUMMONED TO THIS COURTROOM FOR THE SELECTION OF A JURY TO SERVE IN A CRIMINAL TRIAL. THIS CASE IS ENTITLED UNITED STATES OF AMERICA v. RAFAEL CABRERA.

LADIES AND GENTLEMEN, BUT FOR SERVICE IN OUR U.S. MILITARY, SERVING AS A JUROR IN OUR CRIMINAL JUSTICE SYSTEM IS THE HIGHEST FORM OF CIVIC DUTY AND RESPONSIBILITY WHICH ONE IS CALLED UPON TO PERFORM AS A CITIZEN IN OUR DEMOCRATIC FORM OF GOVERNMENT. CITIZENS SITTING IN JUDGMENT OF THE ACTIONS OF FELLOW CITIZENS IS A BASIC TENET OF OUR CIVIL AND CRIMINAL JUSTICE SYSTEM WHICH WE BELIEVE TO BE THE FAIREST SYSTEM IN THE WORLD, AND WHICH COULD NOT FUNCTION WITHOUT YOU. WE KNOW THAT IT IS A PERSONAL AND PROFESSIONAL SACRIFICE AND INCONVENIENCE FOR YOU TO BE HERE, BUT IT IS TRULY VERY IMPORTANT AND I WILL DO EVERYTHING IN MY POWER TO MAKE THIS A MEANINGFUL EXPERIENCE FOR YOU WITH AS LITTLE INCONVENIENCE AS POSSIBLE. BELIEVE

ME THIS TRIAL IS VERY IMPORTANT TO THE DEFENDANT, THE UNITED STATES GOVERNMENT AND THIS COURT, AND WE ARE ALL MOST APPRECIATIVE OF YOUR PARTICIPATION AS CITIZEN JURORS. THE TRIAL OF THIS CASE IS ESTIMATED TO LAST APPROXIMATELY 1 WEEK. WE WILL COMMENCE TRIAL TODAY AND PROCEED DAILY FOR THE REQUISITE NUMBER OF DAYS NEEDED TO COMPLETE THE TRIAL.

THE GOVERNMENT IS PURSUING THIS CASE BY A SUPERCEDING INDICTMENT, WHICH IS A FORMAL DOCUMENT USED SOLELY FOR THE PURPOSE OF CHARGING A DEFENDANT WITH HAVING COMMITTED A CRIME AND INFORMING DEFENDANT OF THE NATURE OF THE PENDING CHARGE. IT IS MERELY A STATEMENT OF THE CHARGES; IT IS NOT EVIDENCE OR PROOF OF CRIMINAL CONDUCT. UNDER THE LAW, A DEFENDANT IS PRESUMED TO BE INNOCENT. THE GOVERNMENT HAS THE BURDEN OF PROVING THE CHARGE SET FORTH IN THE SUPERCEDING INDICTMENT THROUGH WITNESS TESTIMONY AND EVIDENCE BEYOND A REASONABLE DOUBT.

THE MERE FACT THAT MR. CABRERA HAS BEEN CHARGED WITH CRIMINAL CONDUCT AND IS PRESENT IN THIS COURTROOM IS NOT EVIDENCE OR PROOF THAT HE IS GUILTY OF ANYTHING. YOU SHOULD HAVE NO OPINION AS TO HIS GUILT AT THIS MOMENT IN TIME. AS A MATTER OF FACT, IF YOU WERE CALLED UPON TO RENDER YOUR VERDICT AT THIS MOMENT, UNDER THE LAW YOU WOULD HAVE TO FIND MR. CABRERA NOT GUILTY. WHY? BECAUSE, BY LAW, HE IS PRESUMED TO BE INNOCENT UNLESS PROVEN GUILTY BEYOND A

REASONABLE DOUBT AND AT THIS TIME THERE HAS BEEN NO WITNESS TESTIMONY OR EVIDENCE WHATSOEVER PRESENTED TO ESTABLISH GUILT.

IT IS THE JURY'S FUNCTION TO DECIDE THE FACTS OF THE CASE WITHOUT BIAS OR PREJUDICE TO THE DEFENDANT OR THE GOVERNMENT. THE LAW DOES NOT PERMIT JURORS TO BE GOVERNED OR INFLUENCED BY SYMPATHY, BIAS, PREJUDICE, OR PUBLIC OPINION. YOU ARE AT ALL TIMES TO BE FAIR MINDED!

THEREFORE, I MUST EXCLUDE FROM THE JURY ANYONE WHO HAS SUCH STRONG FEELINGS ABOUT THE PERSON OR ISSUES INVOLVED IN THE CASE THAT HE OR SHE IS UNABLE TO EVALUATE THE EVIDENCE IMPARTIALLY. THE LAW ALSO AFFORDS THE GOVERNMENT AND THE DEFENDANT THE OPPORTUNITY TO PARTICIPATE IN THE JURY SELECTION PROCESS THROUGH THE EXERCISE OF PEREMPTORY CHALLENGES (EXCUSALS), WHICH MEANS THAT THEY WILL BE PERMITTED TO EXCLUDE A TOTAL OF 18 OF YOU PROSPECTIVE JURORS FROM THE CASE FOR ANY REASON WHATSOEVER. IN FACT THE LAWYERS MUST EXCLUDE A CERTAIN NUMBER OF YOU TO GET TO THE REQUISITE NUMBER OF JURORS FOR A TRIAL.

THE JURY IN THIS CASE WILL CONSIST OF TWELVE MEMBERS AND TWO ALTERNATES. AN ALTERNATE MAY TAKE THE PLACE OF ANY SEATED JUROR IF A JUROR MUST BE EXCUSED FOR A LEGITIMATE REASON DURING THE COURSE OF THE TRIAL. IF NONE OF THE ORIGINAL TWELVE JURORS IS EXCUSED DURING THE COURSE OF THE TRIAL OR DELIBERATIONS, THE ALTERNATES WILL BE EXCUSED FROM FURTHER SERVICE. ALTERNATES WILL PARTICIPATE IN ALL PHASES OF THE OF THE TRIAL, BUT WILL NOT PARTICIPATE IN DELIBERATIONS

UNLESS CALLED UPON TO FILL A SLOT AS NECESSITATED BY SOME DISABILITY ON THE PART OF A SEATED JUROR.

TO ASSIST BOTH THE COURT AND THE LAWYERS IN THE JURY SELECTION PROCESS, I WILL CONDUCT VOIR DIRE. THAT MEANS I WILL ASK YOU CERTAIN QUESTIONS ABOUT YOUR FEELINGS AND EXPERIENCES WHICH MIGHT INFLUENCE YOUR THINKING ABOUT THIS CASE. THESE QUESTIONS ARE DESIGNED TO SUPPLY INFORMATION TO BOTH THE GOVERNMENT AND THE DEFENSE WHICH WILL ENABLE THE LAWYERS TO EXERCISE THEIR PEREMPTORY CHALLENGES MORE INTELLIGENTLY AND EFFECTIVELY. CERTAIN QUESTIONS WILL BE ASKED OF YOU HERE IN OPEN COURT AND OTHER QUESTIONS MAY BE ASKED INDIVIDUALLY IN PRIVATE OUT OF THE HEARING OF ONE ANOTHER.

THE EXERCISE OF PEREMPTORY CHALLENGES DOES NOT CONSTITUTE ANY REFLECTION WHATSOEVER ON THE PROSPECTIVE JURORS WHO ARE EXCUSED FROM DELIBERATING ON THIS CASE. IT SHOULD NOT BE INTERPRETED AS A DECISION THAT THOSE PERSONS WHO ARE EXCUSED ARE BIASED OR PREJUDICED. IT SIMPLY MEANS THAT THE LAWYERS, BASED ON THEIR TRIAL EXPERIENCE, KNOWLEDGE OF THE CASE, AND THE INFORMATION LEARNED THROUGH VOIR DIRE, HAVE DECIDED THAT SOMEONE ELSE SHOULD SIT AS A JUROR TO HEAR AND DECIDE THIS PARTICULAR CASE.

NOW THAT I HAVE EXPLAINED THE PURPOSE OF VOIR DIRE TO YOU, I WILL TELL YOU A LITTLE ABOUT THE CRIMINAL CASE ON WHICH WE'RE ABOUT TO HAVE A TRIAL.

I WILL NOT AT THIS TIME EXPLAIN THE APPLICABLE LAWS TO YOU, BUT IN ORDER THAT YOU HAVE SOME FAMILIARITY WITH THE CASE WHICH YOU MAY BE SELECTED TO HEAR, I WILL READ A SUMMARY OF THE INDICTMENT TO YOU.

THE GRAND JURY HAS RETURNED A SUPERCEDING INDICTMENT WHICH CHARGES THE DEFENDANT AS FOLLOWS:

THE SUPERSEDING INDICTMENT CHARGES DEFENDANT AS FOLLOWS. FROM IN AND AROUND AUGUST 2012, AND CONTINUING THEREAFTER TO ON OR ABOUT JANUARY 10, 2013, IN THE WESTERN DISTRICT OF PENNSYLVANIA AND ELSEWHERE, THE DEFENDANT, RAFAEL CABRERA, DID KNOWINGLY, INTENTIONALLY AND UNLAWFULLY CONSPIRE WITH PERSONS BOTH KNOWN AND UNKNOWN TO THE GRAND JURY TO POSSESS WITH INTENT TO DISTRIBUTE AND DISTRIBUTE 100 GRAMS OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN, A SCHEDULE I CONTROLLED SUBSTANCE, CONTRARY TO THE PROVISIONS OF TITLE 21, UNITED STATES CODE, SECTIONS 841(A)(1) AND 841(B)(1)(B)(I).

WHAT THIS MEANS, EFFECTIVELY, IS THAT IT IS CHARGED BY THE GRAND JURY AND ALLEGED BY THE GOVERNMENT THAT FROM APPROXIMATELY AUGUST, 2012 THROUGH JANUARY 10, 2013, DEFENDANT HAD AN AGREEMENT WITH AT LEAST ONE OTHER PERSON, AND DEFENDANT AGREED WITH THAT PERSON OR PERSONS TO POSSESS WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTE HEROIN, IN AN AMOUNT GREATER THAN 100 GRAMS. THE GOVERNMENT ALLEGES THAT THIS CONSPIRACY OPERATED AS FOLLOWS:

DEFENDANT, WHO LIVED IN NEW JERSEY, BROUGHT LARGE QUANTITIES OF HEROIN TO CARLISLE, PENNSYLVANIA, WHERE HE WOULD MEET WITH A PERSON, AVERY JOHNSON, WHO WOULD THEN DRIVE THIS PROVIDED HEROIN BACK TO PITTSBURGH, WHERE IT WOULD THEN BE RESOLD. THE GOVERNMENT ALLEGES THAT THE MONEY FROM THESE HEROIN SALES WOULD, IN TURN, BE FUNNELED BACK TO DEFENDANT, WHO WOULD PROVIDE JOHNSON WITH ADDITIONAL HEROIN, AND THAT THESE EXCHANGES OCCURRED ON APPROXIMATELY FOUR OR FIVE OCCASIONS IN THE FALL/WINTER OF 2012/13.

TO ESTABLISH CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE 100 GRAMS OR MORE OF HEROIN, THE GOVERNMENT MUST PROVE ALL OF THE FOLLOWING ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT:

- 1) THAT TWO OR MORE PERSONS AGREED TO DISTRIBUTE AND POSSESS WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE.
2. THAT RAFAEL CABRERA WAS A PARTY TO OR MEMBER OF THAT AGREEMENT.
3. THAT RAFAEL CABRERA JOINED THE AGREEMENT OR CONSPIRACY KNOWING OF ITS OBJECTIVE TO DISTRIBUTE AND POSSESS WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE AND INTENDING TO JOIN TOGETHER WITH AT LEAST ONE OTHER ALLEGED CONSPIRATOR TO ACHIEVE THAT OBJECTIVE; THAT IS, THAT RAFAEL CABRERA AND AT LEAST

ONE OTHER ALLEGED CONSPIRATOR SHARED A UNITY OF PURPOSE AND THE INTENT TO ACHIEVE THAT OBJECTIVE.

4. THAT HEROIN IS A SCHEDULE I CONTROLLED SUBSTANCE.
5. THAT THE CONSPIRACY HAD THE SPECIFIC UNLAWFUL PURPOSE OF DISTRIBUTING AND/OR POSSESSING WITH INTENT TO DISTRIBUTE 100 GRAMS OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN.

AS PREVIOUSLY STATED, THE CHARGE AGAINST THE DEFENDANT IS SET FORTH IN AN INDICTMENT, WHICH IS SIMPLY THE DESCRIPTION OF THE CHARGES MADE BY THE GOVERNMENT AGAINST THE DEFENDANT, BUT THE INDICTMENT IS NOT EVIDENCE THAT THE DEFENDANT COMMITTED A CRIME OR CRIMES. THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGE. A DEFENDANT IS PRESUMED TO BE INNOCENT AND MAY NOT BE FOUND GUILTY BY YOU UNLESS ALL TWELVE OF YOU UNANIMOUSLY FIND THAT THE GOVERNMENT HAS PROVED THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

MR. CABRERA IS PRESENT IN COURT AND IS SEATED AT COUNSEL TABLE TO MY RIGHT, WITH HIS ATTORNEY, RANDALL H. MCKINNEY. THE ATTORNEYS FOR THE GOVERNMENT, ASSISTANT U.S. ATTORNEY ERIC ROSEN AND SPECIAL ASSISTANT U.S. ATTORNEY JACOB PUGH, ARE SEATED AT COUNSEL TABLE TO MY LEFT ALONG WITH LAW ENFORCEMENT AGENT(S) LEN PICCINI.

MY COURTROOM DEPUTY IS MR. BRIAN BABIK. MY JUDICIAL LAW CLERKS ARE MR. JOSEPH PARSONS AND MS. GINEVRA VENTRE. MY JUDICIAL ASSISTANT

IS MS. JUDY DRESSLER. THEY ARE OFFICERS OF THE COURT AND WILL HELP WITH SELECTION OF THE JURY. THE COURT REPORTER IS MS. SANDRA WENGER AND SHE WILL STENOGRAPHICALLY TRANSCRIBE EVERYTHING THAT IS SAID IN THIS PROCEEDING.

LADIES AND GENTLEMEN, PLEASE RISE AND RAISE YOUR RIGHT HAND TO BE ADMINISTERED AN OATH.

MR. BABIK, WILL YOU SWEAR THE PANEL OF JURORS PLEASE?

WE WILL START THE SELECTION PROCESS BY ASKING EACH OF YOU TO STAND AND ANSWER ALOUD THE QUESTIONS ON THE DATA SHEET FORM PROVIDED TO YOU THIS MORNING. PLEASE TAKE YOUR TIME AND SPEAK UP LOUDLY AND CLEARLY SO THAT ALL OF YOUR ANSWERS WILL BE HEARD AND UNDERSTOOD. IF YOU DO NOT UNDERSTAND ANY OF THE QUESTIONS, PLEASE FEEL FREE TO ASK ME FOR AN EXPLANATION. LET'S START WITH THE PERSON IN SEAT NUMBER ONE.

QUESTIONNAIRE

CRIMINAL JURY PERSONAL DATA INFORMATION

- A. I AM JUROR NUMBER _____.
- B. I AM (AGE) _____ YEARS OLD.
- C. I LIVE IN (CITY OF RESIDENCE & COUNTY) _____.
- D. I HAVE LIVED THERE APPROXIMATELY ____ YEARS.
- E. I OWN/RENT MY HOME.
- F. I AM/AM NOT LICENSED TO DRIVE AN AUTOMOBILE.
- G. MY EDUCATIONAL BACKGROUND IS _____.

(E.G. HIGH SCHOOL? COLLEGE? OTHER?) IF COLLEGE, MY MAJOR AREA OF STUDY WAS _____.

H. MY EMPLOYER IS _____.

MY JOB TITLE IS _____. (IF RETIRED, WHO WAS YOUR LAST EMPLOYER AND WHAT WAS YOUR OCCUPATION?)

I. I AM/AM NOT MARRIED. IF MARRIED,

(a) MY SPOUSE'S EMPLOYER IS _____.

(b) MY SPOUSE'S JOB TITLE IS _____.

(IF RETIRED, WHO WAS HIS/HER LAST EMPLOYER AND WHAT WAS HIS/HER JOB TITLE?)

J. DO YOU HAVE CHILDREN? IF YES, PLEASE TELL US THEIR AGES AND EMPLOYMENT, IF ANY.

K. I DO/DO NOT HAVE AN ATTORNEY. IF SO, MY ATTORNEY'S NAME IS _____ AND I HAVE RETAINED HIM/HER BECAUSE _____.

QUESTIONS DIRECTED TO THE ENTIRE PANEL

NOW I WILL POSE A NUMBER OF QUESTIONS TO YOU AS A GROUP. IF YOUR ANSWER TO THE QUESTION IS "NO," REMAIN SEATED AND SAY NOTHING. IF YOUR ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES", PLEASE STAND AND STATE YOUR JUROR NUMBER ONLY. AT THIS TIME, DO NOT PROVIDE ANY FURTHER INFORMATION ABOUT YOUR "YES" ANSWER.

1. RECALLING THE SUMMARY OF THE SUPERCEDING INDICTMENT WHICH I READ TO YOU, DO ANY OF YOU KNOW ANYTHING ABOUT THIS CASE OR HAVE YOU READ, SEEN OR HEARD ANYTHING ABOUT IT?

FOLLOW UP IN CHAMBERS

- WHO? WHAT? HOW?
- FROM WHAT SOURCE?

- HAVE YOU FORMED ANY OPINION?
- CAN YOU SET THAT KNOWLEDGE / OPINION ASIDE?
- HAS IT AFFECTED YOUR ABILITY TO BE FAIR / IMPARTIAL?

2. I WILL ASK THE DEFENDANT, RAFAEL CABRERA, TO STAND. DO ANY OF YOU KNOW, OR KNOW ANYTHING ABOUT, RAFAEL CABRERA?

FOLLOW UP IN CHAMBERS

- HOW DO YOU KNOW MR. CABRERA?
- IS HE A FRIEND / RELATIVE / BUSINESS ASSOCIATE?
- WHAT HAVE YOU HEARD OF MR. CABRERA?
- WOULD YOUR KNOWLEDGE OF MR. CABRERA AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

3. I WILL ALSO ASK MR. CABRERA’S ATTORNEY, RANDALL MCKINNEY, TO STAND.

DO ANY OF YOU KNOW MR. MCKINNEY?

HAS HE EVER REPRESENTED YOU OR ANY MEMBERS OF YOUR IMMEDIATE FAMILY, OR BEEN INVOLVED WITH YOU OR THEM IN ANY WAY?

FOR PURPOSES OF ALL OF MY QUESTIONS, “IMMEDIATE FAMILY” CONSISTS OF HUSBAND / WIFE, CHILDREN, BROTHERS, SISTERS, MOTHER AND FATHER AND GRANDPARENTS.

FOLLOW UP IN CHAMBERS

- HOW DO YOU KNOW MR. MCKINNEY?
- IS HE A FRIEND / RELATIVE / BUSINESS ASSOCIATE?

- WHAT HAVE YOU HEARD OF MR. MCKINNEY?
- WOULD YOUR KNOWLEDGE OF MR. MCKINNEY AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

4. WILL THE PROSECUTOR, ASSISTANT UNITED STATES ATTORNEY ERIC ROSEN, PLEASE STAND:

DO ANY OF YOU KNOW MR. ROSEN?

HAS HE EVER REPRESENTED YOU OR ANY MEMBERS OF YOUR IMMEDIATE FAMILY, OR BEEN INVOLVED WITH YOU OR THEM IN ANY WAY?

5. WILL THE PROSECUTOR, SPECIAL ASSISTANT UNITED STATES ATTORNEY JACOB PUGH, PLEASE STAND:

DO ANY OF YOU KNOW MR. PUGH?

HAS HE EVER REPRESENTED YOU OR ANY MEMBERS OF YOUR IMMEDIATE FAMILY, OR BEEN INVOLVED WITH YOU OR THEM IN ANY WAY?

ALSO SITTING AT COUNSEL TABLE WITH MR. ROSEN AND MR. PUGH ARE LAW ENFORCEMENT AGENT(S) LEN PICCINI. PLEASE STAND.

DO ANY OF YOU KNOW EITHER LAW ENFORCEMENT AGENT _____ OR LAW ENFORCEMENT AGENT _____?

FOLLOW UP IN CHAMBERS

- WHO DO YOU KNOW?
- HOW DO YOU KNOW MR. ROSEN / MR. PUGH / SPECIAL AGENTS _____ OR _____?

- WHAT HAVE YOU HEARD OF MR. ROSEN / MR. PUGH / SPECIAL AGENTS _____ OR _____?
- WOULD YOUR KNOWLEDGE OF MR. ROSEN / MR. PUGH / SPECIAL AGENTS _____ OR _____ AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

6. DOES ANYBODY ON THE JURY PANEL KNOW ANYBODY ELSE ON THE PANEL, THE JUDGE, OR THE COURT STAFF?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

7. THIS CASE WILL INVOLVE TESTIMONY REGARDING NOT ONLY THE COMMUNITY AND AREA OF PITTSBURGH, PENNSYLVANIA, BUT ALSO THE CARLISLE, PENNSYLVANIA AREA, SPECIFICALLY LOVE'S TRUCK STOP NEAR CARLISLE. DO ANY OF YOU (OR YOUR IMMEDIATE FAMILY OR CLOSE FRIENDS) HAVE A PARTICULAR FAMILIARITY WITH THE CARLISLE, PENNSYLVANIA AREA OR THAT STORE?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

8. THIS CASE IS BEING PROSECUTED BY THE GOVERNMENT FOLLOWING AN INVESTIGATION BY THE FEDERAL BUREAU OF INVESTIGATION, THE PITTSBURGH POLICE DEPARTMENT AND THE PENNSYLVANIA STATE POLICE. DO YOU HAVE SUCH STRONG PERSONAL FEELINGS ABOUT ANY OF THESE AGENCIES THAT WOULD AFFECT YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL VERDICT IN THIS CASE?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

9. SIMILARLY, POTENTIAL WITNESSES IN THIS CASE ARE EMPLOYED BY THE CITY OF PITTSBURGH BUREAU OF POLICE, THE PENNSYLVANIA STATE POLICE, THE FBI, AND THE DRUG ENFORCEMENT ADMINISTRATION, ALSO KNOWN AS THE “DEA.” HAVE YOU EVER HAD ANY DIFFICULT OR UNPLEASANT EXPERIENCES WITH THOSE LAW ENFORCEMENT AGENCIES, OR DO YOU HAVE VERY STRONG PERSONAL FEELINGS FOR OR AGAINST THOSE AGENCIES FOR WHATEVER REASON?

FOLLOW UP IN CHAMBERS

- WHAT WAS THE NATURE OF THE EXPERIENCE AND WHEN DID IT OCCUR?
- WHAT IS THE NATURE OF YOUR PERSONAL FEELINGS AGAINST THESE AGENCIES?

- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

10. DO YOU BELIEVE THAT POLICE TESTIMONY IS MORE OR LESS LIKELY TO BE BELIEVABLE OR RELIABLE THAN TESTIMONY BY ANOTHER WITNESS?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

11. THE FOLLOWING WITNESSES MAY TESTIFY IN THIS TRIAL. PLEASE STAND AND STATE YOUR JUROR NUMBER IF YOU KNOW ANY OF THE FOLLOWING WITNESSES.

[LIST WITNESSES]

-
-

FOLLOW UP IN CHAMBERS

- WHICH WITNESS DO YOU KNOW?
- HOW DO YOU KNOW HIM / HER?
- IS HE / SHE A FRIEND / RELATIVE / BUSINESS ASSOCIATE?
- WHAT HAVE YOU HEARD OF HIM / HER?
- WOULD YOUR KNOWLEDGE OF HIM / HER AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

12. THE GOVERNMENT MAY ALSO CALL COOPERATING WITNESSES. COOPERATING WITNESSES ARE DEFENDANTS IN A CRIMINAL CASE WHO ASSIST THE GOVERNMENT IN THE INVESTIGATION AND PROSECUTION OF OTHER DEFENDANTS, OFTEN AS A TERM OF A PLEA BARGAIN. DO YOU HAVE ANY STRONG PERSONAL BELIEFS, ONE WAY OR THE OTHER, REGARDING THE GOVERNMENT'S USE OF COOPERATING WITNESSES AND PLEA BARGAINING?

FOLLOW UP IN CHAMBERS

- WHAT IS THE NATURE OF YOUR PERSONAL BELIEFS REGARDING THE USE OF COOPERATING WITNESSES AND PLEA BARGAINING?
- WOULD THE FACT THAT A DEFENDANT COULD RECEIVE A REDUCED SENTENCE FOR COOPERATING AGAINST ANOTHER DEFENDANT CAUSE YOU TO NECESSARILY DISCOUNT OR REJECT THE TESTIMONY OF THE COOPERATING DEFENDANT?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

13. IF MR. CABRERA WERE TO TESTIFY, WOULD IT BE DIFFICULT FOR YOU TO FAIRLY CONSIDER HIS TESTIMONY

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

14. THIS TRIAL IS ESTIMATED TO TAKE ABOUT 1 WEEK TO PRESENT THE

WITNESSES TESTIMONY, EVIDENCE AND ARGUMENTS OF COUNSEL. HOWEVER, THIS IS REALISTICALLY JUST OUR BEST ESTIMATE OF TRIAL TIME AND THE TRIAL MAY TURN OUT TO BE SHORTER OR LONGER. IF THE TRIAL IS NOT YET CONCLUDED, WE WILL NOT BE IN SESSION NEXT MONDAY, MEMORIAL DAY. WE WILL BE IN SESSION TOMORROW EVEN THOUGH IT IS A LOCAL ELECTION DAY.

ALSO, OUR JURY DELIBERATION ROOM IS UP ONE FLIGHT OF STAIRS FROM THIS COURTROOM WHICH MUST BE TRAVERSED SEVERAL TIMES DURING EACH DAY.

IS THERE ANY LEGITIMATE JUSTIFIABLE HARDSHIP REASON, PERSONAL, PROFESSIONAL, BUSINESS, MEDICAL CONDITION OR IMPAIRMENT, OR OTHERWISE, WHY YOU COULD NOT SERVE AS A JUROR FOR THE DURATION OF THIS TRIAL? I MUST ADVISE YOU THAT A CLAIMED HARDSHIP MUST BE REAL - NOT IMAGINED, PERCEIVED OR HOPED FOR – AND SUCH CLAIMS OF HARDSHIP WILL BE SCRUTINIZED CLOSELY.

FOLLOW UP IN CHAMBERS

- WHAT REASON?
- HOW DOES THAT PREVENT YOU FROM FULFILLING YOUR JURY SERVICE OBLIGATION?

15. IS THERE ANY MATTER PENDING IN YOUR LIFE, ABOUT WHICH YOU ARE CONCERNED, THAT WOULD PREVENT YOU FROM DEVOTING YOUR FULL, UNDIVIDED ATTENTION TO THIS TRIAL?

FOLLOW UP IN CHAMBERS

- EXPLAIN.

- HOW DOES THAT PREVENT YOU FROM FULFILLING YOUR JURY SERVICE OBLIGATION?

16. HAVE YOU EVER SERVED AS A JUROR IN A CRIMINAL OR CIVIL CASE OR AS A MEMBER OF A GRAND JURY IN EITHER THE FEDERAL OR STATE COURTS?

FOLLOW UP IN CHAMBERS

- DETAILS? WITHOUT DISCLOSING THE OUTCOME / VERDICT, DESCRIBE:
- WHO? WHEN? WHERE?
- WOULD THAT EXPERIENCE AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

17. IS THERE ANYTHING ABOUT THAT EXPERIENCE – WHETHER IT INVOLVED THE LAWYERS, THE JUDGE, THE ACCUSED, THE EVIDENCE OR YOUR JURY DELIBERATIONS- THAT MAKE YOU FEEL THAT YOU WOULD HAVE TROUBLE BEING FAIR AND IMPARTIAL, OR THAT YOU BELIEVE WOULD MAKE IT DIFFICULT FOR YOU TO SERVE FAIRLY AS A JUROR IN THIS CASE?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- HOW DOES THAT PREVENT YOU FROM FULFILLING YOUR JURY SERVICE OBLIGATION?

18. HAVE ANY OF YOU FORMED ANY OPINIONS ABOUT EITHER PROSECUTORS OR DEFENSE LAWYERS (THOSE IN THIS CASE OR OTHERWISE) WHICH WOULD AFFECT YOU IN DECIDING THIS CASE?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- HOW DOES THAT PREVENT YOU FROM FULFILLING YOUR JURY SERVICE OBLIGATION?

19. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN EMPLOYED, OR SOUGHT TO BE EMPLOYED, BY THE FEDERAL GOVERNMENT (OTHER THAN MILITARY SERVICE) OR BY ANY STATE, LOCAL, COUNTY OR FEDERAL LAW ENFORCEMENT AGENCY IN A PAID OR VOLUNTEER CAPACITY?

FOLLOW UP IN CHAMBERS

- WHO? WHAT? HOW?
- WHAT WAS THE OUTCOME?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

20. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN A WITNESS OR DEFENDANT IN A CRIMINAL CASE (OTHER THAN MINOR TRAFFIC VIOLATIONS)?

FOLLOW UP IN CHAMBERS

- WHO? WHEN? WHERE? YOUR TESTIMONY?

- WHAT WAS THE OUTCOME?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

21. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN ARRESTED, CHARGED WITH OR CONVICTED OF A CRIMINAL OFFENSE?

FOLLOW UP IN CHAMBERS

- WHO WAS CONVICTED OF THE CRIMINAL OFFENSE?
- WHAT WAS THE NATURE OF THE CRIMINAL OFFENSE?
- WHAT WAS THE OUTCOME OF THE CHARGES?
- IS THERE ANYTHING ABOUT THAT EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM WHICH MAKES YOU FEEL THAT YOU COULD NOT BE A FAIR AND IMPARTIAL JUROR IN THIS CASE AND/OR WOULD CAUSE YOU DIFFICULTIES IF YOU WERE TO SERVE AS A JUROR IN THIS CASE?
- DETAILS? WHAT? HOW?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

22. HAVE YOU EVER BEEN A VICTIM OF A CRIME?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

23. DO ANY OF YOU NOW, OR HAVE YOU WITHIN THE PAST FIVE YEARS, BELONGED TO OR PARTICIPATED IN ANY CRIME PREVENTION GROUPS, SUCH AS NEIGHBORHOOD WATCH ORGANIZATIONS, OR ANY OTHER CRIME PREVENTION GROUPS?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

24. DO YOU HAVE SUCH STRONG PERSONAL FEELINGS ABOUT THE PROSECUTION OF CRIMINAL CASES INVOLVING POSSESSION OR DISTRIBUTION OF ILLEGAL DRUGS THAT WOULD AFFECT YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL VERDICT BASED UPON THE EVIDENCE IN THIS CASE?

FOLLOW UP IN CHAMBERS

- WHAT FEELINGS? EXPLAIN.

25. DO YOU HAVE ANY PRECONCEIVED OPINIONS ABOUT THE NARCOTICS LAWS THAT WOULD MAKE YOU UNABLE TO DECIDE THE CASE ON THE EVIDENCE PRESENTED AND THE LAW AS STATED BY THE COURT?

FOLLOW UP IN CHAMBERS

- DETAILS? WHAT? HOW?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

26. HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN ADDICTED TO AN ILLEGAL NARCOTIC DRUG, SUCH AS HEROIN?

FOLLOW UP IN CHAMBERS

- WHO? WHAT? HOW?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

27. HAVE YOU OR ANYONE IN YOUR FAMILY EVER BEEN TREATED FOR A DRUG OR SUBSTANCE ABUSE PROBLEM?

FOLLOW UP IN CHAMBERS

- DETAILS? WHAT? HOW?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

28. ARE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY A MEMBER OF ANY ORGANIZATION WHOSE MISSION INVOLVES THE TREATMENT OF PERSONS ADDICTED TO ILLEGAL DRUGS?

FOLLOW UP IN CHAMBERS

- WHO? WHAT? HOW?
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

29. DO YOU BELIEVE THAT THE USE, POSSESSION OR DISTRIBUTION OF HEROIN, OR ANY OTHER DRUG THAT IS CURRENTLY ILLEGAL, SHOULD BE LEGALIZED?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

30. THE JURY IN THIS CASE WILL BE INSTRUCTED THAT A DEFENDANT IN A CRIMINAL CASE IS PRESUMED TO BE INNOCENT AND THAT PRESUMPTION OF INNOCENCE REMAINS WITH HIM THROUGHOUT THE ENTIRE TRIAL.

DO YOU HAVE ANY DOUBT OR RESERVATION ABOUT YOUR ABILITY TO FOLLOW THIS INSTRUCTION?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

31. DO YOU THINK THAT BECAUSE MR. CABRERA WAS ARRESTED, OR BECAUSE HE HAS BEEN CHARGED WITH A CRIME, THAT HE IS PROBABLY GUILTY OF THAT CRIME OR SOME OTHER CRIME?

FOLLOW UP IN CHAMBERS

- EXPLAIN.

- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

32. I SHALL ALSO INSTRUCT THE JURY THAT THE DEFENDANT IN A CRIMINAL CASE DOES NOT HAVE TO TESTIFY OR PRESENT ANY EVIDENCE ON HIS OWN BEHALF AND THAT HIS DECISION TO NOT DO SO IS NOT TO BE CONSIDERED EVIDENCE AGAINST HIM OF HIS GUILT.

DO YOU HAVE ANY DOUBT OR RESERVATION ABOUT BEING ABLE TO FOLLOW THIS INSTRUCTION?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

33. I SHALL INSTRUCT THE JURY THAT THE GOVERNMENT HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

DO YOU HAVE ANY DOUBT OR RESERVATION ABOUT YOUR ABILITY TO FOLLOW THIS INSTRUCTION?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

34. IF YOU WERE REPRESENTING THE GOVERNMENT OR THE DEFENDANT IN THIS CASE, IS THERE ANY REASON WHY YOU WOULD NOT BE CONTENT TO HAVE THE CASE DECIDED BY SOMEONE IN YOUR FRAME OF MIND?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

35. TO ADMIT TO HAVING SOME SYMPATHY FOR OR PERSONAL FEELINGS AGAINST EITHER THE DEFENDANT OR THE GOVERNMENT IN THIS CASE IS NOTHING TO BE ASHAMED OF AND DOES NOT REFLECT BADLY UPON YOU AS A PERSON. HOWEVER, BOTH THE GOVERNMENT AND THE DEFENDANT ARE ENTITLED TO HAVE THIS CASE HEARD BY A FAIR AND IMPARTIAL JURY THAT WILL DECIDE THE CASE SOLELY ACCORDING TO THE EVIDENCE ADMITTED IN THIS COURT AND ACCORDING TO THE COURT'S INSTRUCTIONS ON THE LAW. THE LAW PROVIDES THAT THE JURY MAY NOT BE GOVERNED BY SYMPATHY, PREJUDICE OR PUBLIC OPINION. WITH THIS IN MIND, DO YOU HAVE ANY REASON WHY YOU WOULD NOT BE ABLE TO GIVE EITHER THE GOVERNMENT OR THE DEFENDANT A FAIR TRIAL BASED SOLELY UPON THE EVIDENCE ADMITTED AT TRIAL AND THE INSTRUCTIONS GIVEN BY THE COURT?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

36. IS THERE ANYTHING ABOUT THE NATURE OF THIS CASE WHICH YOU THINK WOULD MAKE IT DIFFICULT FOR YOU TO TRY THE ISSUES FAIRLY AND IMPARTIALLY WITHOUT ANY PREJUDICE OR BIAS?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

37. DO YOU NOW HAVE ANY OPINION AS TO MR. CABRERA'S GUILT OR INNOCENCE?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

38. DURING DELIBERATION, IF YOU HAVE FORMED AN OPINION, WOULD IT BE DIFFICULT FOR YOU TO KEEP AN OPEN MIND AND TO CONSIDER THE OPINION OF OTHERS?

FOLLOW UP IN CHAMBERS

- EXPLAIN.
- WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

39. HAVING HEARD THE QUESTIONS OF THE COURT DO YOU KNOW OF ANY REASON WHY YOU COULD NOT SIT ON THIS JURY AND RENDER A FAIR AND IMPARTIAL VERDICT BASED SOLELY UPON THE EVIDENCE PRESENTED IN THIS CASE AND THE LAW AS I WILL INSTRUCT YOU?

FOLLOW UP IN CHAMBERS

- WHAT? HOW?
- EXPLAIN WHY IT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

RETIRE TO CHAMBERS FOR INDIVIDUAL VOIR DIRE

RETURN TO COURT ATTORNEYS - STRIKE PROCESS