

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN N. XEREAS,	.	
	.	
Plaintiff,	.	CA No. 12-0456 (DAR)
	.	
v.	.	
	.	Washington, D.C.
MARJORIE A. HEISS, et al.,	.	Monday, November 5, 2018
	.	9:31 a.m.
Defendants.	.	
.	Pages 1 through 190

DAY 1
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

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Counter Defendant:

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1
2 THE DEPUTY CLERK: This is civil case 2012-456, John
3 N. Xereas versus Marjorie A. Heiss, et al. Erin Glavich, Tony
4 Richa, Amber McDonald, and W. Todd Miller for the plaintiff;
5 William O'Neil Miles Karson III for the defendants. This is a
6 jury selection and jury trial.

7 THE COURT: Good morning again to all of you. If
8 there are preliminary matters that you wish to briefly address,
9 you may do so now. I emphasize the word "briefly" because the
10 deputy clerk has ensured that our jury panel will be ready in
11 about 10 minutes.

12 Mr. Miller, Ms. McDonald, Mr. Richa -- let me remind
13 counsel that you must come to the podium. I can hear you, I
14 assure you, but if you're not at the podium, you will complicate
15 the operation of the backup equipment that the court reporter
16 uses.

17 MR. RICHA: Yes, Your Honor. There's a few --

18 THE COURT: Mr. Richa, good morning.

19 MR. RICHA: Good morning. There are a few exhibits
20 that are attached to exhibits that were marked into evidence.
21 If we are only using the exhibit that's attached to an exhibit,
22 do we need to admit the underlying exhibit before we can offer
23 the exhibit that's attached to it?

24 THE COURT: Let me suggest we address that on a
25 case-by-case basis. My immediate concern is if you have

1 questions concerning voir dire.

2 MR. RICHA: No.

3 THE COURT: Very well. Do you, Mr. Karson?

4 MR. KARSON: Your Honor, I don't believe we have any
5 preliminary matters to address. Mr. O'Neil should be here any
6 moment. (Mr. O'Neil enters.)

7 MR. O'NEIL: Sorry, Your Honor.

8 THE COURT: Good morning.

9 Did all of you receive the jury panel sheet?

10 MS. GLAVICH: Yes, Your Honor.

11 THE COURT: As I discussed with you during the final
12 pretrial conference, the deputy clerk will provide each member
13 of the panel with an index card so that each panel member can
14 note the number of the question to which he or she has a
15 response. We will hear the responses at the bench.

16 The likelihood is that each panel member will have a
17 response to at least one question, so I anticipate that we will
18 hear from everyone at the bench. I would appreciate it if you
19 could designate one lawyer per side to come to the bench with
20 the juror so that our space here at the bench will not be unduly
21 congested. Can you do that?

22 MS. GLAVICH: Yes, Your Honor.

23 MR. O'NEIL: Yes, Your Honor.

24 THE COURT: Very well. Thank you very much. If there
25 is a request to excuse any member of the panel for cause, I will

1 ask you to raise that request, to make that request as soon as
2 the panel member leaves the bench and returns to his seat. That
3 way we will all have fresh in our recollections the basis of any
4 such request.

5 Our hope is to seat a jury of eight. My hope is also that
6 you will -- that we will not have excused so many jurors for
7 cause that you will not each have three peremptory challenges
8 per side. So anything else before we begin?

9 May I ask, please, that everyone seated to my left move
10 over to my right, because the likelihood is -- you'll be coming
11 up, won't you, Mr. Miller?

12 MR. MILLER: Your Honor, I was going to sit on the
13 bench because --

14 THE COURT: Very well. The deputy clerk has already
15 made the appropriate arrangements. You may stay where you are.
16 That's fine. Is there anything else before we call the jury
17 lounge?

18 MR. O'NEIL: Your Honor, we did have one --

19 THE COURT: Mr. O'Neil, again, I can hear you, but you
20 must use the podium microphone.

21 MR. O'NEIL: My apologies, Your Honor. We did have
22 one preliminary matter that I wanted to raise with the Court.

23 THE COURT: Yes.

24 MR. O'NEIL: And I apologize for being late to court
25 this morning. Last week you ordered the plaintiffs to revise

1 their pretrial order because of some irrelevant material.

2 THE COURT: Their pretrial statement. The Court did
3 enter an order requiring that the statement be filed in redacted
4 form.

5 MR. O'NEIL: Yes, Your Honor. And they did that.
6 They filed a revised order that only eliminated one piece of
7 irrelevant information, and it's defendants' position that a
8 great deal of the testimony that they intend to elicit during
9 their case-in-chief is irrelevant to the causes of action that
10 remain in this case.

11 The breach of contract, the breach of the duty of good
12 faith and fair dealing, the unjust enrichment, and the trademark
13 claims are all that's left. They had prepared voluminous
14 evidence that we don't think is admissible but voluminous
15 evidence relating to the conversion, fraud, and other causes
16 of action which were -- summary judgment was granted.

17 So our concern is that their pretrial statement still
18 details pages and pages of irrelevant evidence. After summary
19 judgment, they didn't remove any of the proposed trial exhibits
20 or trial witnesses, and their trial witness list contains three
21 or four people, one who was just a patron at the club, who can't
22 possibly have relevant information regarding the trademark or
23 breach of contract claims.

24 THE COURT: The Court will proceed as follows: The
25 Court has made note of your concern. I believe the time to

1 address it is after we complete voir dire. I am very concerned
2 that the members of the panel should not have to wait in the
3 hall, and likely they are on their way now. I will, as part of
4 voir dire -- the only matter that I might take a moment to
5 address, because it does concern voir dire to some extent, is
6 the names of the witnesses.

7 I have here a list prepared on the basis of the parties'
8 pretrial statements. My practice generally is to simply name
9 the names and indicate, "You may hear testimony from or about
10 any of these people," and simply list them.

11 May I ask whether there is any witness on the plaintiff's
12 list that you believe should not be named at all? The first
13 name -- and I'm going to read my list just so you can say, and
14 then of course I'm going to hear from you, Mr. Miller or any of
15 your co-counsel, who wish to address this question.

16 The first is Al Goodwin.

17 MR. O'NEIL: Well, Your Honor, Al Goodwin was a
18 comedian who performed at the club, but I don't think he has
19 any information about trademark or breach of contract in the
20 operating agreement.

21 THE COURT: The second is the plaintiff, of course,
22 and we'll move on to Mick Aldasani because the next three people
23 are parties, of course. Mick Aldasani.

24 MR. O'NEIL: I think Mr. Aldasani was an employee of
25 Riot Act, but, again, I don't see how he could possibly have any

1 information about --

2 THE COURT: Very well. Terrence Hawkins.

3 MR. O'NEIL: The same would apply to him, Your Honor.

4 THE COURT: I'm skipping James Morrissey. I believe I
5 must include his name. As everyone knows, I reserve the
6 decision concerning whether he will testify or about what he
7 will testify until after we have proceeded with a voir dire out
8 of the presence of the jury.

9 Cindy Vaughn.

10 MR. O'NEIL: We don't have an objection to Ms. Vaughn.

11 THE COURT: Sharon Thomson.

12 MR. O'NEIL: Similarly, no objection.

13 THE COURT: Paul Farfel?

14 MR. O'NEIL: He was an employee of Riot Act, and
15 I don't see how he could have relevant information on the
16 trademark or breach of contract.

17 THE COURT: Sedrick Muhammed.

18 MR. O'NEIL: That's also similar, Your Honor.

19 THE COURT: So does that mean, then, that defendants
20 object to all of the witnesses other than the parties and the
21 two individuals, Cindy Vaughn and Sharon Thomson, who are
22 designated as adverse?

23 MR. O'NEIL: Correct, Your Honor.

24 THE COURT: Did you indicate whether you have an
25 objection to Terrence Hawkins? I'm sorry.

1 MR. O'NEIL: Yes, I do.

2 THE COURT: Very well. Thank you very much.

3 MR. O'NEIL: Thank you, Your Honor.

4 THE COURT: May I ask you, Mr. Miller or any of your
5 co-counsel who wish to be heard, to address the relevance of any
6 testimony at all, and if so, to what issue, beginning with Al
7 Goodwin.

8 MR. MILLER: Yes. Good morning, Your Honor.

9 THE COURT: Good morning, Mr. Miller.

10 MR. MILLER: Plaintiffs like to pigeonhole our case
11 in a very narrow frame.

12 THE COURT: Let me just ask you --

13 MR. MILLER: I understand, Your Honor, and I'll be
14 very brief. There's also a claim for the breach of good faith
15 and fair dealing, and as Your Honor knows, that's actually quite
16 broad, and all of those witnesses will be addressing conduct of
17 the defendants during the operation of the club that address
18 either our claims or in fact their counterclaims. It should be
19 very telling to Your Honor that they objected to every single
20 witness that we plan to call except for ones that are their own
21 agents. So I --

22 THE COURT: Well, may I interrupt you to ask, please,
23 just by way of example, what testimony you expect to elicit from
24 Mr. Goodwin? I start with him because he is first on his list.
25 If my assumption is correct, that is the first person you plan

1 to call.

2 MR. MILLER: Yes, Your Honor. Mr. Goodwin will
3 discuss the behavior of the defendants in relation to the
4 operation of the club, which deals with the duty of good faith
5 and fair dealing and breach of contract. Breach of contract
6 claim, Your Honor, also includes failure to keep proper books
7 and records of the club and other things that they did to
8 undermine the plaintiff in his duties to manage a comedy club.

9 THE COURT: Am I correct in my assumption that you
10 understand that behavior of the defendants cannot include
11 behavior with respect to allegations that the Court has
12 stricken?

13 MR. MILLER: Yes, Your Honor. You have stricken, we
14 understand, about the personal sexual relationship between the
15 defendants, and we will not be eliciting testimony on that.

16 THE COURT: Very well. I will also ask that you
17 caution the witnesses not to volunteer such information because
18 it may indeed occasion a mistrial with expenses borne by the
19 plaintiff.

20 MR. MILLER: Yes, Your Honor. Thank you.

21 THE COURT: I have made it very clear that we will
22 not have any testimony concerning any personal relationships.

23 MR. MILLER: Yes, Your Honor. We will.

24 THE COURT: Very well.

25 MR. MILLER: Thank you.

1 THE COURT: The Court will read the names as names
2 of individuals from whom the members of the panel may hear
3 testimony from or about. I will include them. We simply do not
4 have time now to address the five people in turn. We will do
5 that before we begin. That is a matter that we can address
6 while the jury, for example, is at lunch.

7 Very well. Thank you very much, Mr. O'Neil.

8 MR. O'NEIL: Yes, Your Honor.

9 THE COURT: Now, Mr. Miller, I should ask you whether
10 you have similar concerns regarding any of the witnesses on the
11 defendant' list.

12 MR. MILLER: No, we don't, Your Honor.

13 THE COURT: Very well. Thank you very much.

14 Counsel, when I introduce you and introduce the parties,
15 I will ask you to stand. The other witnesses are not in the
16 courtroom as far as I know.

17 MR. MILLER: Your Honor, if I can explain briefly, in
18 terms of active participation as we move forward with the jury,
19 it'll be Ms. McDonald, Ms. Glavich, and Mr. Richa doing the
20 lion's share.

21 THE COURT: Very well.

22 MR. MILLER: I don't intend to really appear before
23 the jury, but if there are legal matters that I could address
24 with the Court, I'm here.

25 THE COURT: Very well. I appreciate your sharing

1 that. I will still ask each of you to stand in turn.

2 Am I correct that you are Mr. Xereas?

3 THE PLAINTIFF: That's correct.

4 THE COURT: Good morning.

5 And you are Ms. McDonald?

6 MS. MCDONALD: Ms. McDonald.

7 THE COURT: Ms. Heiss.

8 (Ms. Heiss stands.)

9 And Mr. Dawson.

10 (Mr. Dawson stands).

11 Thank you. Good morning.

12 MR. O'NEIL: Your Honor, may I ask another question
13 just very briefly?

14 THE COURT: Yes.

15 MR. O'NEIL: Are witnesses allowed to be in court for
16 other --

17 THE COURT: No.

18 MR. O'NEIL: Okay. I just wanted to confirm that.
19 Thank you.

20 THE COURT: I believe the deputy clerk is taking
21 attendance in the hall. I note one matter on the jury panel.
22 There is a juror with the last name "Dawson." Would you quickly
23 determine, Mr. O'Neil or Mr. Karson, whether Mr. Dawson happens
24 to be a relative of Mr. Dawson?

25 (Counsel conferring.)

1 DEFENDANT DAWSON: No. No relation.

2 THE COURT: Okay.

3 (Jury panel enters the courtroom.)

4 THE COURT: Members of the panel, good morning. Give
5 us just one moment, please, to make sure that everyone is seated
6 comfortably, and then we will begin.

7 THE DEPUTY CLERK: Will the prospective jurors please
8 rise and raise your right hand.

9 (The jury panel is sworn.)

10 JURY SELECTION

11 THE COURT: Again, good morning to each of you. You
12 have been sent to this courtroom for jury selection in a civil
13 case. We will now begin the process known as voir dire, which
14 will be familiar to those of you who have prior jury service.

15 Please understand that the purpose of asking the questions
16 that I will ask and that you will answer under oath is not to
17 pry unduly into your personal lives or cause you embarrassment
18 or discomfort. Rather, it is to ensure that the jurors who are
19 seated in the case will be available to give their full
20 attention to the trial of this matter and base the decision that
21 you render on the evidence that you hear and the instructions
22 that I will give you at the close of the case.

23 I will give each question that I ask a number. The deputy
24 clerk of court has provided you with an index card and a pen so
25 that you may note the number of the question for which you have

1 a response. I will hear from you in turn, one at a time, in the
2 privacy of the bench so that you will be able to give your
3 complete answer privately.

4 Does everyone have an index card and a pen?

5 (Jurors indicate.)

6 Very well. Thank you very much. I will begin by giving
7 you some background regarding the case that will be tried.

8 This case arises from a business dispute among three original
9 managing partners of a District of Columbia limited liability
10 company, or LLC. When the LLC was formed, it was named "Riot
11 Act DC, LLC." Later, the LLC was renamed "Penn Social, LLC."
12 The LLC operated a comedy club called Riot Act Comedy Theater
13 in Penn Quarter, which opened in August 2011.

14 The plaintiff in the case is John Xereas. Mr. Xereas,
15 would you stand, please, and face the members of the jury panel?
16 (Plaintiff complies.) Thank you. In a civil case, the
17 plaintiff is the party who brings the lawsuit.

18 The defendants in the case are Geoffrey Dawson. (Defendant
19 Dawson stands), Marjorie Heiss (Defendant Heiss stands), and the
20 entity Penn Social, LLC. The defendants are the parties who
21 Mr. Xereas is suing.

22 In response to Mr. Xereas' claims, the defendants have
23 brought their own claims against Mr. Xereas. The claims brought
24 by the defendants against the plaintiff are known as
25 counterclaims.

1 Based on what I have said so far, may I ask whether any of
2 you recognize any of the names that I mentioned or the faces of
3 the individuals who just stood to face you? In other words, do
4 you recognize the name Penn Social, LLC; Riot Act; Riot Act
5 Comedy Theater? That is question 1. And if you have a
6 response, let me ask you to jot that down, please, on your index
7 card.

8 Question 2 flows from question 1, and that is, does any
9 aspect of what I've described to you about the lawsuit sound at
10 all familiar? That is question 2. If so, let me ask you to
11 make a note on your index card that you wish to respond to
12 question 2.

13 The plaintiff, Mr. Xereas, is represented by four lawyers
14 who are in the courtroom. I will ask each of them to stand in
15 turn and face you: Mr. W. Todd Miller, Ms. Amber McDonald,
16 Mr. Tony Richa, Ms. Erin Glavich. The defendants are
17 represented by Mr. William O'Neil and Mr. Miles Karson III.

18 Question 3. Do you recognize any of the lawyers who just
19 stood, either their names or their faces?

20 During the course of the trial, there will be testimony
21 from or about a number of witnesses. I am going to read their
22 names for you now. Question 4 will be whether you recognize any
23 of these names. If any name sounds at all familiar, I will ask
24 you to write down on your index card "4" and then the name of
25 the witness. I will pause after I read each name so that you

1 will have a chance to do that.

2 Al Goodwin. G-O-O-D-W-I-N. I introduced the parties
3 to you already, but I will give you their names again.

4 John Xereas, Marjorie Heiss, Geoffrey Dawson. If you
5 recognize any of those names, please jot them down in response
6 to question 4.

7 Mick Aldasani, A-L-D-A-S-A-N-I.

8 Terrence Hawkins.

9 James Morrissey, M-O-R-R-I-S-E-Y.

10 Cindy Vaughn.

11 Sharon Thomson.

12 Paul Michael Farfel. The last name is spelled F-A-R-F-E-L.

13 Sedrick, S-E-D-R-I-C-K, Muhammed.

14 Peter Bayne, B-A-Y-N-E.

15 Shaun, S-H-A-U-N, Robinson.

16 Geoff, G-E-O-F-F, McNabola.

17 Matthew Morinello, M-O-R-I-N-E-L-L-O.

18 Dawn, D-A-W-N, Henderson.

19 Evan Rosenthal, R-O-S-E-N-T-H-A-L.

20 Lauren Zoltnick Z-O-L-T-N-I-C-K.

21 John Sullivan.

22 Peter Genis, G-E-N-I-S.

23 Ted Xereas, X-E-R-E-A-S.

24 Finally, Tom DiTonto. That is D-i-T-A-N-T-O.

25 Do any of you recognize any of those names? If so, I would

1 ask you to write down your response on question 4. Would anyone
2 like me to repeat any names or add any spellings before we move
3 on? Very well. Thank you very much.

4 Question 5. Do you or any member of your immediate family
5 do business in any way with any of the parties to this lawsuit,
6 or compete in any business with any of the parties or the
7 businesses that I just named?

8 Do you do business or compete in any business with the
9 individuals -- in other words, Mr. Xereas, Ms. Heiss, or
10 Mr. Dawson, or with Penn Social, Riot Act DC, Riot Act Comedy
11 Club -- I believe I already said Penn Social. If so, please
12 write on your index card that you have a response to question 5.

13 Question 6. Have any of you been a party to a lawsuit
14 arising out of a business dispute? If so, let me ask you to
15 write on your card that you have a response to question 6.

16 Question 7. Are you a lawyer or a paralegal or an
17 individual who has received training in either of those fields,
18 classroom instruction or any other specialized instruction? If
19 so, please write on your index card that you have a response to
20 question 7.

21 Question 8. Do you or any member of your immediate family
22 work in a restaurant, a nightclub, a comedy club, or any
23 entertainment establishment? If so, please write on your index
24 card that you have a response to question 8.

25 Question 9. Do you have concerns regarding establishments

1 -- nightclubs, comedy clubs -- which serve alcohol that you
2 believe you should share with me? If so, please write on your
3 index card that you have a response to question 9.

4 Question 10. Have you ever registered or sought to
5 register a trademark? If so, please indicate that you have a
6 response to question 10.

7 Now, members of the panel, I will inform you that the trial
8 of this case is expected to last this week and continue into
9 next week. Next Monday is a holiday, of course, so we will not
10 sit on the holiday, Veterans Day, which is observed on November
11 12. Because tomorrow is election day, we will either start late
12 or recess early. With those qualifications, we will continue
13 through the week and likely into next week.

14 Is there any concern regarding that schedule that you
15 believe you should bring to my attention? If so, that is
16 question 11: Do you have a concern about the schedule that I
17 just shared with you that you want me to know?

18 Question 12. Is there anything I have not asked about
19 specifically that you believe I should know that would have a
20 bearing on your ability to decide this case based solely on the
21 evidence offered in the courtroom, the evidence introduced in
22 the courtroom, and the instructions I give at the end of the
23 case? If so, I will ask you to indicate that you have a
24 response to question 12.

25 Would anyone like for me to repeat or clarify any question?

1 I see a show of two hands on the first row. I'll begin with
2 you, please.

3 PROSPECTIVE JUROR: Could you please repeat the first
4 question?

5 THE COURT: Yes. It's a broad question. I want to
6 know whether you recognize the names of any parties: John Xereas
7 -- and would I ask you to stand again, please, Mr. Xereas, and
8 face the members of the panel.

9 Marjorie Heiss. Ms. Heiss, would you please stand and face
10 the members of the panel members again.

11 Geoffrey Dawson. Mr. Dawson is also standing again to face
12 you. Or the names Riot Act DC, LLC; Penn Social, LLC; Riot Act
13 Comedy Theater.

14 So that is question 1. Do you recognize the names or faces
15 of the people who stood to face you or names of any of those
16 businesses. If so, please write that you have a response to
17 question 1.

18 I saw another person raising your hand. Yes, please.

19 PROSPECTIVE JUROR: Could you please repeat question 12?

20 THE COURT: Yes. Question 12. Question 12 is the
21 opportunity for you to tell me something I should know that I
22 haven't asked about anything specifically.

23 In other words, is there any concern that you have that I
24 haven't asked about that you believe that I should know? And
25 the only reason I would want to know is that we must ensure that

1 the jurors who are seated will be able to give their full time
2 and attention to the trial of the case and make a decision based
3 only on the evidence that's offered and introduced in the
4 courtroom and the instructions that I will give at the end.
5 Anything I need to know that I haven't asked about. Thank you.

6 Does anyone else have a request for me to repeat a question
7 or clarify? Yes, sir.

8 PROSPECTIVE JUROR: Number 8, does that include
9 cousins, or do you only include spouses, brothers and sisters?

10 THE COURT: I believe it should be as broad as you
11 just described. In other words, as to question 8, I asked
12 whether you or any member of your family works in essentially
13 any form of entertainment establishment: a restaurant, a bar, a
14 nightclub, a comedy club. But we will define "family" broadly:
15 a blood relative, a relative by marriage.

16 In fact, I should even include close personal friends if
17 they are like relatives and you believe I should know about it.
18 That is question 8. So in view of that clarification, that
19 expansion of the question, if you have a response to question 8,
20 please note that on your index card.

21 Are there any other requests for clarification? I don't
22 see any other hands. Did I overlook anyone? Very well. Thank
23 you very much.

24 The deputy clerk will escort you to the bench. While I'm
25 speaking to the person at the bench, the panel member at bench,

1 the rest of you are free to stand and stretch if you like or
2 talk quietly but not about what you have heard thus far.

3 (Bench conference.)

4 (Juror 0689 steps up.)

5 THE COURT: I understand that you have answers yes to
6 question 7 regarding the business law classes. Is that right?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Can you tell us about the class, please?

9 PROSPECTIVE JUROR: It just covered the types of
10 businesses, what a limited liability company is, that type of
11 thing. It's been a lot of years too, but I thought I should
12 disclose that I did have a class.

13 THE COURT: No, I appreciate your sharing that with
14 us. In the class -- and you mentioned that part of what you
15 studied concerned forms of businesses such as LLCs. Did you
16 learn anything about liability in that process or the
17 obligations of the partners to the LLC?

18 PROSPECTIVE JUROR: I'm sure that was discussed.
19 I can't recall in detail, but I'm sure that that was covered.

20 THE COURT: Do you recall anything about it now?

21 PROSPECTIVE JUROR: I really don't.

22 THE COURT: You also indicated you have flight
23 reservations for November 17.

24 PROSPECTIVE JUROR: Yeah. It's a ways, but if it were
25 to go that long, that would be a problem.

1 THE COURT: So that is the Saturday at the end of next
2 week. Correct?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Does that mean, then, that you would be
5 available all of this week and into next week?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Very well. Thank you very much.

8 PROSPECTIVE JUROR: Can I make one other comment?

9 THE COURT: Yes.

10 PROSPECTIVE JUROR: There was a question regarding if
11 you had filed for a patent?

12 THE COURT: Yes. A trademark.

13 PROSPECTIVE JUROR: Okay. I have never done that, but
14 in full disclosure, my son is a patent attorney in Atlanta, so I
15 thought I should just mention that.

16 THE COURT: Have you ever discussed with your son any
17 matters involving trademark?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Have you discussed the process by which
20 someone might apply for a trademark or what that means?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Very well. Thank you very much.

23 Do you have questions, Mr. Richa?

24 MR. RICHA: No, Your Honor.

25 MR. O'NEIL: No questions, Your Honor.

1 THE COURT: Very well. Thank you very much. You may
2 return to your seat.

3 (Juror 0689 steps down. Juror 1596 steps up.)

4 THE COURT: Good morning.

5 PROSPECTIVE JUROR: Good morning.

6 THE COURT: Let me ask you to step you a little closer
7 to this microphone right here. Are you Mr. Zellmer?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: I understand you have an answer to
10 question 6, whether you have been a party to a lawsuit arising
11 in a business dispute. Can you tell us about that, please?

12 PROSPECTIVE JUROR: Sure. Mechanical engineer. My
13 partner and I sued an architecture firm for lack of payment of
14 a completed job.

15 THE COURT: How was the matter finally resolved?

16 PROSPECTIVE JUROR: Partial payment. We lost money.

17 THE COURT: Did it go to trial or...

18 PROSPECTIVE JUROR: It did go to trial. It was in
19 Chicago.

20 THE COURT: Do you believe that any aspect of your
21 experience of being a plaintiff to a lawsuit arising in a
22 business dispute would interfere with your ability to decide
23 this case based solely on the evidence that you hear and the
24 instructions I give?

25 PROSPECTIVE JUROR: I don't think so.

1 THE COURT: Okay. You also indicated that you or
2 perhaps a member of your family or close friend have worked in
3 any entertainment establishment?

4 PROSPECTIVE JUROR: Right. Myself, I'm a hobby
5 musician, and I occasionally play nightclubs. I have many
6 friends who are musicians. Some are professional musicians,
7 close friends. My uncle on my wife's side, I guess it's her
8 uncle, he's a professional comedian who plays in nightclubs and
9 elsewhere in the comedy circuit.

10 THE COURT: Do you know if your uncle or other family
11 members to whom you've referred ever performed at Riot Act or
12 Penn Social?

13 PROSPECTIVE JUROR: No. I know for certain nobody I
14 know ever has.

15 THE COURT: I imagine your greater concern is your
16 availability.

17 PROSPECTIVE JUROR: Not necessarily. Tomorrow is my
18 only concern. My daughter has tomorrow off for parent-teacher
19 conferences. I have not yet secured childcare for that. I was
20 going to wait to see what happened tonight. If I was not
21 selected for jury, I was going to call and check tonight.

22 THE COURT: Do you know what time the conferences are?
23 I remember those days well. I remember there were times that
24 took most of the day.

25 PROSPECTIVE JUROR: This is a new school. My wife,

1 actually, today is trying to determine what time our conference
2 is. They don't really have a good system yet, so I don't know
3 yet. But I think my wife can probably do it. It was just --
4 it's a small concern. Small concern.

5 THE COURT: Very well. I thank you for bringing that
6 to our attention.

7 PROSPECTIVE JUROR: Sure.

8 THE COURT: Thank you very much. Do either of you
9 have any questions?

10 MR. RICHA: May I ask your uncle's name?

11 PROSPECTIVE JUROR: His name is Tim Longo.

12 THE COURT: Do you have a question?

13 MR. O'NEIL: Are you related in any way to Greg
14 Zellmer?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Very well. Thank you very much,
17 Mr. Zellmer, you may return to your seat.

18 (Juror 1596 steps down. Juror 1737 steps up.)

19 THE DEPUTY CLERK: 1737.

20 THE COURT: Good morning. I see that you have a
21 response to the first question. Perhaps you've --

22 PROSPECTIVE JUROR: -- I -- yeah.

23 THE COURT: -- heard of --

24 PROSPECTIVE JUROR: I've heard of it.

25 THE COURT: -- individuals or one of the establishments?

1 PROSPECTIVE JUROR: The establishment. I've heard of
2 Penn Social. But I have no recollection of having been there.
3 I've just heard of it.

4 THE COURT: Would anything you've heard about it or
5 discussed with anyone or read on social media interfere your
6 ability to decide this case based solely on the evidence and the
7 Court's instructions?

8 PROSPECTIVE JUROR: I don't think it would influence me.

9 THE COURT: May I ask what you heard about Penn Social?

10 PROSPECTIVE JUROR: I just know that's a place where
11 people gather to have drinks. I just know that there are happy
12 hours there, but that's about it.

13 THE COURT: You also indicated that either you or
14 perhaps a member of your family or a close friend have worked in
15 any type of entertainment establishment a restaurant, a bar, a
16 nightclub, a comedy club. Is it you?

17 PROSPECTIVE JUROR: Not anymore. I used to.

18 THE COURT: You did at one time?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: What type of establishment?

21 PROSPECTIVE JUROR: I have worked in a coffee shop, a
22 restaurant -- well, mostly restaurants -- for about 10 years.

23 THE COURT: Are you still working in that capacity?

24 PROSPECTIVE JUROR: No.

25 THE COURT: During the time that you did, did you

1 become aware of any dispute among the principals or partners of
2 the businesses?

3 PROSPECTIVE JUROR: Sorry. There's a lot of places
4 that I worked. Um -- I don't think so. Nothing that comes to
5 memory right away.

6 THE COURT: Now, you also indicated that you have a
7 response to question 11. That is the question concerning the
8 time that we expect the trial will require.

9 PROSPECTIVE JUROR: Yeah. I do work Monday through
10 Friday 9 to 5, so I am just concerned about the length of that.
11 But I'm sure everybody --

12 THE COURT: Are you a government employee now?

13 PROSPECTIVE JUROR: No. I work for a nonprofit.

14 THE COURT: Do you have, I would say, meetings or
15 other events planned for this week and the following week,
16 events related to the work of the nonprofit in which you are --

17 THE COURT: I have standing meetings. I work on
18 projects more than like everyday tasks, and so I just -- I have
19 projects that need to get done. I have standing meetings like
20 morning meetings that we catch up on. So it would just
21 ultimately push back project deadlines.

22 THE COURT: Very well. Thank you for sharing that
23 with us. Do you have questions, Mr. Richa?

24 MR. RICHA: Have any of your family members or friends
25 been to Penn Social that you know of?

1 PROSPECTIVE JUROR: No.

2 MR. RICHA: Have you ever read anything in the
3 newspaper or in the media about Penn Social?

4 PROSPECTIVE JUROR: No.

5 MR. O'NEIL: Can I ask the name of the nonprofit?

6 PROSPECTIVE JUROR: NPR.

7 MR. O'NEIL: NPR. Okay.

8 THE COURT: Any other questions?

9 MR. RICHA: No, Your Honor.

10 THE COURT: Very well.

11 PROSPECTIVE JUROR: Sorry. I didn't -- so I also --
12 No. 8, I used to work in the restaurant industry, but I do still
13 have family members in the restaurant industry. My sister's
14 husband is a restaurant owner up in Pennsylvania.

15 THE COURT: Do any of those relatives ever discuss
16 with you ongoing issues among the partners of the business?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Very well. Thank you very much, Ms. Frame.

19 (Juror 1737 steps down. Juror 1759 steps up.)

20 THE COURT: How are you, Ms. Newlands?

21 PROSPECTIVE JUROR: Good morning.

22 THE COURT: Ms. Newlands, I see you have a response
23 to possibly -- I'm using the word "possibly" because you used
24 said "unsure."

25 PROSPECTIVE JUROR: I'm not sure of the name of Penn

1 Social. If it's a bar in D.C., then I think I have heard of
2 Penn Social. If it's not, then I think it's something different
3 that I'm thinking of.

4 THE COURT: I can share with you that it's in the
5 District of Columbia in the area now known as Penn Quarter.

6 PROSPECTIVE JUROR: Right. Right. If that is the
7 name of a bar-type place, bar/restaurant, then I have heard of
8 it. Somebody -- I can share the context of that. I don't think
9 it would bear on my sitting or not sitting.

10 THE COURT: No, that's fine.

11 PROSPECTIVE JUROR: I currently do personal injury
12 law, and somebody a few years ago approached me about an injury
13 that he sustained in the bar on some kind of game, like he hurt
14 his arm on some kind of game. I did not take the case. And
15 that's the extent of my knowledge of Penn Social.

16 THE COURT: Did you have any discussions with --

17 PROSPECTIVE JUROR: I think that's the case, the best
18 of my memory. I think somebody approached me related to Penn
19 Social. I'm pretty sure it was that.

20 THE COURT: Did you have any discussions with that
21 person about what was going on in Penn Social at the time?

22 PROSPECTIVE JUROR: Like inside the bar?

23 THE COURT: Yes. In other words -- and I should say
24 in the context of how the injury came about. Was there any
25 concern about management, for example?

1 PROSPECTIVE JUROR: Not that I recall. It was purely
2 whether this particular game was possibly malfunctioning or not.
3 But I didn't end up pursuing it further, and that was basically
4 it.

5 THE COURT: I think you may have already answered
6 question 7 when you were speaking about the person who
7 approached you as to question 1. You are a lawyer.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: You said you practice personal injury law?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Was there a time that you were ever
12 involved in business disputes such as the one I shared with you
13 in a quite general way at the outset?

14 PROSPECTIVE JUROR: No. I've never done business
15 litigation. I've done personal injury and criminal.

16 THE COURT: Have you ever met any of the lawyers that
17 I introduced to you, heard their names?

18 PROSPECTIVE JUROR: I don't think so.

19 THE COURT: You also have a concern regarding the
20 schedule.

21 PROSPECTIVE JUROR: Yeah. It's not -- I mean, I have
22 some deadlines next week. I have an appointment on Thursday.
23 It's nothing that I would say is such a massive inconvenience
24 I'm asking to be excused type thing, but I thought it was enough
25 that if I'm honest, I have to say, yeah, I have some concerns.

1 I imagine I can ask for like an extension of the discovery
2 responses and they'd be fine with it. You know, it's nothing
3 life or death, but, you know. I am busy, and I'm sure everybody
4 is, but that's it.

5 THE COURT: I certainly appreciate you bringing that
6 to our attention. Do you have questions, Mr. Richa?

7 MR. RICHA: No. You covered it, Your Honor.

8 MR. O'NEIL: No, Your Honor.

9 THE COURT: Very well. Thank you. You may return to
10 your seat.

11 (Juror 1759 steps down. Juror 0835 steps up.)

12 THE COURT: Good morning.

13 PROSPECTIVE JUROR: Good morning.

14 THE COURT: Should I pronounce your name "Baly" or
15 "Bailey"?

16 PROSPECTIVE JUROR: "Bailey." It's just spelled funny.

17 THE COURT: You are a lawyer. That's the first of the
18 questions.

19 THE COURT: Yeah. I'm a retired lawyer. Still, I
20 guess, a member of the bar.

21 THE COURT: Once a lawyer, always a lawyer.

22 PROSPECTIVE JUROR: I once said I used to be a lawyer,
23 and someone asked me if I had been disbarred.

24 (Laughter)

25 I said no.

1 THE COURT: What type of practice did you have?

2 PROSPECTIVE JUROR: Washington practice: legislative,
3 securities, whatever.

4 THE COURT: Did you ever have any occasion to become
5 involved as counsel in any business dispute such as the one I
6 described very generally at the --

7 PROSPECTIVE JUROR: I am self-employed now, and I do
8 do legal work for the company I work for, not really legal work.
9 I draft documents and things. So I would not interface with
10 people directly. I might just draft some agreements or things.

11 THE COURT: Is the company for which you work an LLC?

12 PROSPECTIVE JUROR: No. It's a corporation.

13 THE COURT: Do you believe that any aspect of your
14 prior work in the legal field would interfere with your ability
15 to decide this case based solely on the evidence and the
16 instructions I give at the end?

17 PROSPECTIVE JUROR: I don't think so.

18 THE COURT: Trademark. Do you own a trademark?

19 PROSPECTIVE JUROR: No. No, I just have done work on
20 behalf of clients or companies.

21 THE COURT: And I will ask --

22 PROSPECTIVE JUROR: Very little.

23 THE COURT: And I will ask that same question in the
24 aspect of your knowledge about trademark law. Would any of
25 aspect of your knowledge about trademark law interfere with your

1 ability to decide this case based solely on the evidence and the
2 instructions I give at the end?

3 PROSPECTIVE JUROR: I don't think so.

4 THE COURT: And finally, your schedule.

5 PROSPECTIVE JUROR: I just have a Wednesday, early
6 evening, long-standing appointment that involves nonrefundable
7 theater tickets and a birthday I'm throwing for my girlfriend.
8 That's all.

9 THE COURT: I generally excuse the jury sometime prior
10 to -- no later than 4:30.

11 PROSPECTIVE JUROR: That would be okay, then. I could
12 manage that.

13 THE COURT: Very well. Thank you very much.

14 Do either of you have questions, Mr. Richa?

15 MR. RICHA: No, Your Honor.

16 MR. O'NEIL: No, Your Honor.

17 THE COURT: Okay. Thank you very much.

18 (Juror 0835 steps down. Juror 0590 steps up.)

19 THE COURT: Good morning, sir.

20 PROSPECTIVE JUROR: Good morning.

21 THE COURT: You are Mr. Bailey. Mr. Bailey, you said
22 you have a response to the last question; there's something we
23 need to know.

24 PROSPECTIVE JUROR: I got a couple of my kidneys are
25 bad because I got arthritis in both my knees, and I have one

1 operation on this knee here and I can't sit for very long. The
2 end of this trial is going to be so long, I don't know that I
3 can stay out that long. I don't want to be sitting in the panel
4 there, then I have to go to the bathroom and --

5 THE COURT: I appreciate you sharing that with me.

6 PROSPECTIVE JUROR: Because, during the day now, I'm
7 retired. I had to retire. I was with the D.C. government for
8 40 years. But I get so tired. The medicine I take, it makes me
9 sleepy. I got high blood pressure, high cholesterol.

10 THE COURT: All right. I thank you for sharing that
11 with us, sir. For now I will ask you to please return to your
12 seat.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: Thank you very much.

15 (Juror 0590 steps down.)

16 THE COURT: Counsel, do we agree that Juror No. 0590
17 should be excused for cause?

18 MR. O'NEIL: Yes, Your Honor.

19 MR. RICHA: Yes, Your Honor.

20 THE COURT: Then he will be excused.

21 (Juror 1312 steps up.)

22 THE COURT: Good morning. Are you Ms. Lazarus? Let
23 me ask you to move a little bit closer to this mic on the ledge.
24 Ms. Lazarus, you mentioned you recognize the name "Penn Social."

25 PROSPECTIVE JUROR: Yes. I've patronized Penn Social.

1 THE COURT: Very well. Is that through the present
2 time?

3 PROSPECTIVE JUROR: Um, probably a few months ago?

4 THE COURT: Do you know how long a period did you go
5 to Penn Social?

6 PROSPECTIVE JUROR: I've only been there a couple of
7 times, and maybe for a couple of hours.

8 THE COURT: At any time that you were there, did you
9 hear the names of any of the people that I named, either the
10 three parties who stood and faced you or any of other names?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Do you have any feeling about the
13 operation of Penn Social that you believe would interfere with
14 your ability to decide this case based solely on the evidence
15 and my instructions?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Do either of you have questions, Mr. Richa?

18 MR. RICHA: Did you ever have any unusual experiences
19 at Penn Social?

20 PROSPECTIVE JUROR: Nothing comes to mind, no.

21 MR. RICHA: Are you familiar with any of the staff or
22 employees at Penn Social?

23 PROSPECTIVE JUROR: No.

24 MR. RICHA: Did you have any interactions with staff
25 or employees at Penn Social while you were there?

1 PROSPECTIVE JUROR: Nothing comes to mind. I mean,
2 I'm sure I ordered or something like that.

3 MR. RICHA: Is there anything that happened there that
4 you think would be relevant that you think we might want to know?

5 PROSPECTIVE JUROR: No.

6 MR. O'NEIL: No questions.

7 THE COURT: Very well. Thank you very much,
8 Ms. Lazarus.

9 PROSPECTIVE JUROR: All right. Thank you.

10 (Juror 1312 steps down.)

11 MR. RICHA: Your Honor, there's no employment on here.
12 Is it okay to ask about that?

13 THE COURT: For 1478?

14 MR. RICHA: Yeah. No, in the future -- that's fine.
15 In the future, I was asking if we could ask about that.

16 THE COURT: Yes.

17 We're ready. Thank you.

18 (Juror 1478 steps up.)

19 THE COURT: Good morning, sir. Are you Mr. Sewell?

20 PROSPECTIVE JUROR: That's correct.

21 THE COURT: Mr. Sewell, first you indicated you are
22 familiar with Penn Social.

23 PROSPECTIVE JUROR: I am. I've been to the
24 establishment a couple of times for performances and hung out
25 there a couple times.

1 THE COURT: Based on the times that you've been there,
2 do you have any concern about your ability to decide this case
3 based solely on the evidence and the instructions that I give at
4 the end?

5 PROSPECTIVE JUROR: No.

6 THE COURT: How would you characterize your experience
7 there?

8 PROSPECTIVE JUROR: Just a normal hangout type of
9 place. It was a pretty nice experience, actually, good comedy
10 show.

11 THE COURT: Did you have occasion to see or hear
12 anything about the three people who stood to face you,
13 Mr. Xereas, Mr. Dawson, or Ms. Heiss?

14 PROSPECTIVE JUROR: I've never seen them before.

15 THE COURT: And I believe the only other question as
16 to which you had a response is question 10.

17 PROSPECTIVE JUROR: Yeah.

18 THE COURT: Have you registered a trademark?

19 PROSPECTIVE JUROR: I have. It was a clothing line.
20 It took place in 2005. It's an inactive trademark, though.

21 THE COURT: Did you manage the registration yourself --

22 PROSPECTIVE JUROR: I did.

23 THE COURT: -- or were you represented by counsel?

24 PROSPECTIVE JUROR: No. I did it myself through
25 Legal Zoom.

1 THE COURT: Was there any aspect -- because you may
2 hear testimony during the trial about trademark, do you believe
3 that the aspect of your own experience in registering your own
4 trademark would interfere with your ability to decide this case
5 based solely on the evidence and the instructions that I give?

6 PROSPECTIVE JUROR: No. I think there was another
7 question. I think it was No. 11? Had something to do with time
8 or something.

9 THE COURT: Yes.

10 PROSPECTIVE JUROR: My daughter, I drop her off at
11 eight o'clock in the morning. Getting here will take probably
12 about an hour. I don't know if that's an issue.

13 THE COURT: Well, I appreciate you bringing that to
14 our attention. Typically, I would not require the jurors to be
15 here prior to 9:15. Would that --

16 THE COURT: That's perfect.

17 THE COURT: -- give you enough time?

18 PROSPECTIVE JUROR: Awesome.

19 THE COURT: Very well. Any questions for Mr. Sewell?

20 MR. RICHA: Have you ever been to Penn Social?

21 PROSPECTIVE JUROR: I don't know if I've been there.
22 Is it still open? It's been about six years since I've been
23 there.

24 MR. RICHA: When you were there, did you have any
25 unusual interactions with the employees?

1 PROSPECTIVE JUROR: No.

2 MR. RICHA: Are you familiar with -- you said
3 registering a trademark. Are you familiar with registering
4 trademarks?

5 PROSPECTIVE JUROR: I'm not familiar too much about it.

6 MR. RICHA: Nothing further.

7 THE COURT: Thank you, Mr. Richa.

8 MR. O'NEIL: Do you remember the name of the comic you
9 saw there?

10 PROSPECTIVE JUROR: I do not. It was a while ago.
11 Must not have been a memorable performance.

12 (Laughter)

13 THE COURT: Very well. Thank you very much,
14 Mr. Sewell. You may return to your seat. Thank you.

15 (Juror 1478 steps down. Juror 1141 steps up.)

16 THE COURT: Good morning. Are you Ms. Edwards?

17 PROSPECTIVE JUROR: I am.

18 THE COURT: Good morning. We will be using this
19 microphone here on the ledge.

20 You indicated, Ms. Edwards, that you have a response to the
21 very first question; you recognize the name of Penn Social.

22 THE COURT: Yeah. I mean, is it the bar on Indiana
23 Avenue? Is there a bar named -- by the Archives Metro?

24 THE COURT: 7th and D.

25 MR. O'NEIL: There's a sports bar across the street

1 from Superior Court on Indiana Avenue.

2 PROSPECTIVE JUROR: Yeah. I've been there socially,
3 like after games and stuff.

4 THE COURT: At any of the times that you were there,
5 would you see or hear any references to the individuals who
6 stood to face you?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Did anything in your experience while you
9 were at Penn Social cause you a concern that you believed you
10 should share with us?

11 PROSPECTIVE JUROR: I don't think so. It's just a bar
12 in D.C.

13 THE COURT: You also indicated that you had studied
14 law.

15 PROSPECTIVE JUROR: I probably shared too much
16 information. Sorry.

17 THE COURT: No, we appreciate that. You took prelaw?

18 PROSPECTIVE JUROR: Constitutional and writing stuff.

19 THE COURT: Did you take any classes; I think it's
20 called business associations?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Did you study litigation at all? In other
23 words, such as burdens of the parties to bring a lawsuit?

24 PROSPECTIVE JUROR: Other than just the basics. I
25 mean, this has been 20 years ago. But, I mean, I couldn't put

1 any use to it now.

2 THE COURT: Are you working in the legal field now?

3 PROSPECTIVE JUROR: I'm a lobbyist, but I work at a
4 non-law firm.

5 THE COURT: So you've never met either of these two
6 lawyers at the bench, Mr. Richa or Mr. O'Neil, or any of the
7 others?

8 PROSPECTIVE JUROR: No. I don't think so.

9 THE COURT: You said in your 20s you bartended.

10 PROSPECTIVE JUROR: I did. Just for extra money when
11 I moved to D.C.

12 THE COURT: Did you have occasion to become privy to
13 any sort of dispute among managing partners or owners of any of
14 the places where you worked?

15 PROSPECTIVE JUROR: No. No.

16 THE COURT: Do you have any recollections or
17 impressions of your work as a bartender that you believe would
18 affect your ability to decide this case based solely on the
19 evidence and the instructions I give?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: Do you have any doubt that it would?

22 PROSPECTIVE JUROR: I mean, I don't think so. I mean,
23 I have some opinions on how D.C. does nightclub licensing, but
24 that has nothing to do with -- or it sounds like it has nothing
25 to do with this.

1 THE COURT: You also said that you have a response to
2 the question concerning whether you have a view of
3 establishments that serve alcohol we should know about.

4 PROSPECTIVE JUROR: What I said?

5 THE COURT: You have a concern about D.C. law and the
6 equity of enforcement. Can you tell us a little bit about what
7 you mean?

8 PROSPECTIVE JUROR: I feel like there are large
9 nightclub owners in D.C. that grease the system that -- that's
10 just my perception -- to get licenses, like to get through ANC
11 procedures. That's just my D.C. government legal opinion, or my
12 perspective opinion.

13 THE COURT: No, that's something we wanted you to share.

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: Do you believe that the view that you hold
16 would interfere with your ability to decide this case based
17 solely on the evidence and the instructions that I give?

18 PROSPECTIVE JUROR: I don't think so. I get picked
19 for every jury. I'm a good juror. I listen to the instructions.

20 THE COURT: What experience do you have --

21 PROSPECTIVE JUROR: I get called every two years.
22 I served on a district court jury a few years ago. It was a
23 criminal case, and it was way long one. It was like seven
24 codefendants.

25 THE COURT: Thank you for sharing all of this with us.

1 Do either of you have questions of Ms. Edwards?

2 MR. RICHA: Have you ever taken specific classes on
3 trademarks?

4 PROSPECTIVE JUROR: No.

5 THE COURT: As part of the prelaw courses, did you
6 ever take any courses in company structures like LLCs or
7 anything like that?

8 PROSPECTIVE JUROR: No. I did put on the back my
9 response to --

10 THE COURT: Well, my goodness.

11 PROSPECTIVE JUROR: I'm sorry. My husband and I do
12 own -- we got a BBL for a rental property that we co-own with a
13 partner.

14 MR. RICHA: I'm sorry. I didn't hear you. You have a
15 what?

16 PROSPECTIVE JUROR: We have a basic business license.
17 I thought it was important to flag that as part of No. 12 that
18 we co-own a rental property with somebody. But that's just a
19 business relationship, though.

20 THE COURT: Have there been any disputes among the
21 principals concerning the operations?

22 PROSPECTIVE JUROR: No. No. I mean, we have black
23 mold in our basement and we're trying to decide -- that's just
24 normal stuff.

25 THE COURT: Okay. And question 11 regarding the

1 scheduling, you have a concern regarding the election.

2 PROSPECTIVE JUROR: I mean, I and probably half the
3 people in this room work in politics.

4 THE COURT: Once -- I do not know yet whether what we
5 will do tomorrow is start late or finish early, but I will
6 certainly allow time for everyone to have an opportunity to
7 vote. Is that the concern?

8 PROSPECTIVE JUROR: No. So I've already voted. I
9 did early voting in D.C. I'm in charge of my firm's election
10 reaction. So I've gotten most of it prewritten.

11 THE COURT: What does that require of you?

12 PROSPECTIVE JUROR: It's getting memos off to clients.
13 So I pretty much write the memo. My firm leadership will give
14 me a break, but I also feel a responsibility to be here. So
15 I'll do whatever I have to do.

16 THE COURT: Very well. Thank you very much.
17 Mr. Richa, anything further?

18 MR. RICHA: No, Your Honor.

19 MR. O'NEIL: Can you name the establishment you worked
20 for when you were a bartender?

21 THE COURT: So I bartended at National Theatre, and
22 then I did some guest bartending 15 or 20 years ago. I also
23 filled in for a bartender a few weeks ago up on U Street. It's
24 mostly when you're poor and 22 and have a full-time job and need
25 to take should shifts to pay your rent.

1 MR. O'NEIL: Does your concern about the D.C.
2 licensing process, does that arise from your work as a
3 bartender?

4 PROSPECTIVE JUROR: I think I'm pretty tuned in to the
5 business landscape in D.C. It's not about the business side;
6 it's more about how business and government interact with each
7 other.

8 THE COURT: Very well. I thank you very much. You
9 may return to your seat. Thank you.

10 (Juror 1141 steps down. Juror 0252 steps up.)

11 THE COURT: Good morning, Mr. Dawson.

12 PROSPECTIVE JUROR: Right.

13 THE COURT: When I saw your name on the list, I asked
14 counsel if you were related to Mr. Dawson, one of the parties.

15 PROSPECTIVE JUROR: Not that I know of.

16 THE COURT: He did not believe so.

17 PROSPECTIVE JUROR: I don't think so. My relatives
18 are in Texas.

19 THE COURT: Very well. You had a response only to
20 question 8, and that is whether you or any member of your family
21 or close family friends work in or used to work in the
22 entertainment --

23 PROSPECTIVE JUROR: One of my young cousins is
24 currently working at Disney World in Florida.

25 THE COURT: Does any aspect of his employment there

1 cause you concern about whether you could decide this case based
2 solely on the evidence and the instructions that I give?

3 PROSPECTIVE JUROR: No. I know very little about what
4 she's doing, frankly, just that she works at Disney World.

5 THE COURT: Do either of you have questions, Mr. Richa
6 or Mr. O'Neil?

7 Thank you very much, Mr. Dawson. You may return to your
8 seat.

9 (Juror 0252 steps down. Juror 1297 steps up.)

10 THE COURT: Good morning. You are Mr. Grinnell? I'm
11 going to ask you to move a little bit closer to this microphone,
12 please. I see you have a question about the response to our
13 schedule.

14 PROSPECTIVE JUROR: Oh, I was just writing down what
15 the question was.

16 THE COURT: All right. Do you have a concern about
17 the schedule?

18 PROSPECTIVE JUROR: No. I was just writing down the
19 schedule.

20 THE COURT: All right. Is there anything you believe
21 we should take into account about your ability to decide this
22 case based on the evidence or the Court's instructions?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Well, I apologize for not carefully
25 reading your card. Do either of you have questions? Mr. Richa?

1 MR. RICHA: No, Your Honor.

2 THE COURT: Mr. O'Neil?

3 MR. O'NEIL: No, Your Honor.

4 THE COURT: Mr. Grinnell, thank you very much. You
5 may return to your seat.

6 (Juror 1297 steps down. Juror 1382 steps up.)

7 THE COURT: Good morning. You're Mr. Rucker?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Good morning. I'm going to ask you to
10 move a little closer to the microphone, please. I did not see
11 anything written on your card. I just want to make certain that
12 I have not overlooked anything, because I did overlook something
13 of another person on the back.

14 I wanted to follow up on one question. I did not recognize
15 the name of your place of employment. I just want to make sure
16 whether that is an entertainment establishment?

17 PROSPECTIVE JUROR: No. That's maintenance.

18 THE COURT: Because D.C. Chimes is the name of the
19 business.

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: Has the business ever had responsibilities
22 at the Penn Social club?

23 PROSPECTIVE JUROR: No. Not that I know of.

24 THE COURT: All right. Do either of you have
25 follow-up questions, Mr. Richa?

1 MR. RICHA: No, Your Honor.

2 THE COURT: Mr. O'Neil.

3 MR. O'NEIL: No, Your Honor.

4 THE COURT: Thank you for that clarification.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: Thank you. You may return to your seat.

7 (Juror 1382 steps down. Juror 0820 steps up.)

8 THE COURT: Good morning. Ms. Lilly?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: You recognize one of the names of the
11 witnesses I called, John Sullivan.

12 PROSPECTIVE JUROR: There are a lot of John Sullivans,
13 so the John Sullivan that I know is a physician in upstate
14 New York. He was an emergency room physician.

15 THE COURT: You were right to let us know. That is
16 not the person who will be a witness.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: But thank you for sharing that.
19 The description of what the witness -- the subject of their
20 testimony I know is a different John Sullivan.

21 You indicated also that you have been the party to a
22 business dispute.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Can you tell us about that, please?

25 PROSPECTIVE JUROR: Yes. I'm a physician and I worked

1 in upstate New York, and it was a contract dispute because it
2 was -- I guess it was a non-compete clause.

3 THE COURT: Did you bring an action, or was an action
4 brought concerning you or your operations?

5 PROSPECTIVE JUROR: I guess it didn't get to the point
6 of actually -- other than hiring an attorney and -- I hired --
7 I'd hired an attorney in order to make sure that my next job
8 position did not reach the non-compete clause that was in the
9 contract that I signed with my original employer.

10 THE COURT: Was the matter resolved to your
11 satisfaction?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you believe any aspect of your
14 involvement in that business dispute would interfere with your
15 ability to decide this case based solely on the evidence and the
16 instructions that I give at the end?

17 PROSPECTIVE JUROR: No. I don't think there would be
18 any problem.

19 THE COURT: Am I correct that at some point you, or
20 was it someone in your family, had paralegal training?

21 PROSPECTIVE JUROR: I worked for two years as a
22 paralegal for an intellectual property law firm in New York City
23 back in 1989 to 1991. I do not have training as a paralegal.
24 They hired me because of my engineering background.

25 THE COURT: Do you believe that any aspect of your

1 work as a paralegal would interfere with your ability to decide
2 this case based solely on the evidence and the instructions that
3 I give?

4 PROSPECTIVE JUROR: I don't think so.

5 THE COURT: Did you have any exposure to issues
6 regarding the formation of LLCs?

7 PROSPECTIVE JUROR: No. You did mention something
8 about trademark, and the intellectual property I mostly worked
9 with litigation; and it was patents and trademarks, but I don't
10 have any specific memory of...

11 THE COURT: Did you have any involvement in seeking
12 to register a trademark on behalf of a client of the firm?

13 PROSPECTIVE JUROR: No. Not that I recall.

14 THE COURT: I see you had a response to question 11
15 concerning the schedule that you wanted to bring to our
16 attention.

17 PROSPECTIVE JUROR: I have an interview scheduled next
18 Tuesday. It's a telephone interview, but it can be -- I guess I
19 could call and ask them if I could change the interview time and
20 day. But at this point, that's what's on my schedule. That
21 would interfere with me physically coming here.

22 THE COURT: So is it safe to say that you believe that
23 you can move the date if need be?

24 PROSPECTIVE JUROR: I'd say it's safe to say I could
25 move the date if need be.

1 THE COURT: Very well. Do either of you have
2 questions?

3 MR. RICHA: In your paralegal experience, can you tell
4 me a little bit about your duties? Did you do research,
5 writing, more clerical work?

6 PROSPECTIVE JUROR: This is a very long time ago, but
7 I worked with several different attorneys. One of the primary
8 things I did was digesting depositions and research regarding
9 the potential trial. I did take -- I did have some experience
10 traveling with attorneys for discovery where we would read
11 papers and try to choose what papers were associated with -- you
12 know what discovery is; you look through papers and see whether
13 or not there's something that's applicable to the case.

14 MR. RICHA: Just one more. The research you did, did
15 you ever do research in writing in any trademark issues or
16 business law issues? Do you remember?

17 PROSPECTIVE JUROR: Oh, gosh. I honestly don't
18 remember.

19 MR. RICHA: That's fine. Thank you. Appreciate it.

20 THE COURT: Mr. O'Neil?

21 MR. O'NEIL: Can you tell me the name of the law firm?

22 PROSPECTIVE JUROR: Yeah, sure. It no longer exists.
23 But it's (inaudible). We were on 42nd street in New York.

24 THE COURT: Very well. Thank you very much.

25 PROSPECTIVE JUROR: Thank you.

1 (Juror 0820 steps down. Juror 1315 steps up.)

2 THE COURT: Good morning. Are you Ms. Fagonde?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Very well. Thank you. Ms. Fagonde, you
5 said you have a concern about the schedule. Would you tell us
6 what that is, please?

7 PROSPECTIVE JUROR: Yes. I'm a primary-care
8 physician. And I'm the only full-time primary care physician
9 in my clinic, and I have a full schedule for the next two weeks.
10 I mean, I wouldn't mind maybe five days tops, but two weeks,
11 that's stretching it.

12 THE COURT: Is there anyone available to cover for you?

13 PROSPECTIVE JUROR: I couldn't answer that right now.
14 I wasn't aware that it would be like about two weeks, so...

15 THE COURT: Well, I do thank you for sharing that with
16 us. I will ask you for now to please return to your seat.

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Thank you.

19 (Juror 1315 steps down.)

20 THE COURT: Do you agree that we should excuse
21 Dr. Fagonde for cause?

22 MR. O'NEIL: That's fine.

23 MR. RICHA: Yes, Your Honor.

24 (Juror 1062 steps up.)

25 THE COURT: Good morning. Are you Mr. Gafford?

1 PROSPECTIVE JUROR: Yes, I am.

2 THE COURT: Good morning. I see you wrote no to all
3 of my questions, but I wanted to make sure there wasn't anything
4 else that you wanted to tell us.

5 PROSPECTIVE JUROR: No. That's why I wrote no.

6 THE COURT: All right. There was missing information
7 from the jury sheet. Are you retired now?

8 PROSPECTIVE JUROR: Yeah, I'm retired.

9 THE COURT: What was your business before --

10 PROSPECTIVE JUROR: Construction worker.

11 THE COURT: As a construction worker, did you ever
12 have any involvement or any type of dispute among, let's say,
13 the owners of the company?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Did anyone ever discuss with you any type
16 of lawsuit or --

17 PROSPECTIVE JUROR: No. I'm a very good worker.

18 THE COURT: No, not involving you. I mean involving
19 the people who own the business.

20 PROSPECTIVE JUROR: Oh, no. No.

21 THE COURT: Did you own a business?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Do either of you have questions for
24 Mr. Gafford?

25 MR. RICHA: Do you have any experience with build-outs

1 of commercial properties?

2 PROSPECTIVE JUROR: No.

3 MR. RICHA: Do you have experience with commercial
4 building space?

5 PROSPECTIVE JUROR: Just renovating.

6 MR. RICHA: Were you involved in the financial aspect
7 of how much it cost or --

8 PROSPECTIVE JUROR: No. No.

9 MR. RICHA: Thank you.

10 MR. O'NEIL: No questions.

11 THE COURT: Did you ever do any construction work in
12 the area that we now call Penn Quarter, like what would have
13 been Chinatown when I came to D.C.?

14 PROSPECTIVE JUROR: I worked all over, different
15 sites, jobs.

16 THE COURT: Ever worked in, let's say, 7th and D?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Very well. I'll ask you to return to your
19 seat for now. Thank you very much, sir.

20 (Juror 1062 steps down. Juror 1761 steps up.)

21 THE COURT: Good morning. You're Ms. Ray?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Good morning. Let me ask you to move a
24 little closer to that microphone on the ledge. Thank you.

25 Ms. Ray, I don't see anything written on your card. I just want

1 to be certain I haven't overlooked anything.

2 PROSPECTIVE JUROR: No.

3 THE COURT: Is there anything you want to share with
4 us that I did not ask about?

5 PROSPECTIVE JUROR: No, not really. I mean, I
6 understand the questions, but I have nothing to add.

7 THE COURT: All right. The list that came from the
8 jury office is incomplete because it doesn't have anything to
9 tell us whether you're now retired or what type of work you --

10 PROSPECTIVE JUROR: Well, I'm a stay-at-home mom. I'm
11 married to a D.C. police officer. Been married for 32 years,
12 just put my last child in college. Basically, that's it.

13 THE COURT: May I ask -- this is a question I did not
14 ask, and I would have had no reason to, but you mentioned your
15 husband is a D.C. police officer.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Do you know of any instance in which he
18 has responded to anything at Penn Social or Riot Act?

19 PROSPECTIVE JUROR: No. Not -- no. Not in all the
20 years he's been on the force.

21 THE COURT: Has your husband ever spoken to you about
22 calls for any of the establishments in this city where people
23 gather where alcohol is served?

24 PROSPECTIVE JUROR: No. I really -- we really don't
25 discuss anything that's outside of the house, and I like to keep

1 it that way, you know. I don't discuss his job that much
2 because it's, you know, his job. So I don't give too much
3 opinion on it. But -- no.

4 THE COURT: Very well. I appreciate that. Do either
5 of you have any questions to ask Ms. Ray, Mr. Richa?

6 MR. RICHA: No, Your Honor.

7 MR. O'NEIL: No, Your Honor.

8 THE COURT: Thank you very much.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: You may return to your seat.

11 (Juror 1761 steps down.)

12 THE DEPUTY CLERK: Judge, the next lady, basically,
13 she kept going in and out to the restroom; and she had to go to
14 the nurse's office, but she is back in her seat.

15 THE COURT: Is she okay now?

16 THE DEPUTY CLERK: I think she is. She's ready to be
17 called. I just know she was going back and forth to the nurse's
18 office, the next one.

19 THE COURT: Would you mind going to ask her if she's
20 ill? Because if she's ill, I would rather just excuse her and
21 not have her sit around or ask her questions.

22 THE DEPUTY CLERK: Okay.

23 (Deputy clerk conferring with juror.)

24 (Juror 1624 steps up.)

25 THE COURT: Good morning. May I ask you first whether

1 you feel well enough to stand here at the podium? I ask that
2 only because the deputy clerk said you were going to see the
3 nurse.

4 PROSPECTIVE JUROR: Oh, yeah. I just needed
5 Band-Aids. I have blisters on my --

6 THE COURT: Are you feeling well now, ma'am?

7 PROSPECTIVE JUROR: I am. Thank you.

8 THE COURT: Very well. The first question you
9 answered is you have been a patron at Penn Social.

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: Can you tell us what type of experience
12 you had there?

13 PROSPECTIVE JUROR: Sure. It's fine. Went there for
14 happy hour. Went there a couple of times last year. I stopped
15 going because parking is kind of a pain downtown. I mean, it
16 was fine. It was like any D.C. Bar, right? They have like
17 games, and they have drinks, that type of thing.

18 THE COURT: Did you have occasions to see or hear
19 anything about the people that I introduced in the court,
20 Mr. Xereas, Mr. Dawson, Ms. Heiss?

21 PROSPECTIVE JUROR: I wouldn't recall, no. I'd say no.

22 THE COURT: Is there any aspect of your experience
23 there as a patron that you believe would affect your ability to
24 decide this case based solely on the evidence and the
25 instructions that I give at the end?

1 PROSPECTIVE JUROR: I don't know. I mean, I like the
2 place. I don't know if that -- I don't know how the case is
3 going to turn -- I don't know if there's a conflict of interest.

4 THE COURT: No, I appreciate your sharing that.

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: Are you now a paralegal, or did you
7 previously work as a paralegal?

8 PROSPECTIVE JUROR: I previously worked for a firm not
9 too far away from here.

10 THE COURT: What type of practice did the firm have?

11 PROSPECTIVE JUROR: They did white-collar defense.

12 It was business investigations. It was more like SEC matters.

13 THE COURT: Did you ever have the type of occasion to
14 work on any type of business dispute of the type I described
15 generally?

16 PROSPECTIVE JUROR: Not for that, no, but previously
17 I'd been a paralegal since college. I'm sure as a paralegal in
18 the past I have, but I don't recall any specific instances.

19 THE COURT: Do you recall anything, for example, the
20 relationship among participants in an LLC?

21 PROSPECTIVE JUROR: Well, I know about shareholder
22 relationships and such.

23 THE COURT: Do you believe that any aspect of your
24 work as a paralegal would interfere with your ability to decide
25 this case based solely on the evidence and my instructions?

1 PROSPECTIVE JUROR: No. I mean, I'll try and be as
2 unbiased as possible.

3 THE COURT: You also mentioned that you served on a
4 juror in the last few years.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: That was here or in Superior Court?

7 PROSPECTIVE JUROR: That was the (inaudible) court, so
8 I'm not sure if --

9 THE COURT: Do you remember whether it was a criminal
10 case or civil case?

11 PROSPECTIVE JUROR: I believe it was criminal, if I
12 recall.

13 THE COURT: Would any aspect of your prior jury
14 service interfere with your ability to decide this case based
15 solely on the evidence and the instructions that I give?

16 PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: And finally, since your former spouse is
18 employed at a restaurant -- not Penn Social?

19 PROSPECTIVE JUROR: Not Penn Social.

20 THE COURT: Does any aspect of his employment cause
21 you concern about your service in a case like this?

22 PROSPECTIVE JUROR: It depends. I don't know any
23 details about this case, so it depends. Same thing with me
24 being a patron at this place. I mean, like it all depends.

25 THE COURT: Did you have occasion to discuss with your

1 former spouse any concerns regarding operation of the businesses?

2 PROSPECTIVE JUROR: Not really. Not specifically.

3 THE COURT: Do any of you have follow-up questions?

4 Mr. Richa?

5 MR. RICHA: Do you know any of the staff or employees
6 of Penn Social currently present?

7 PROSPECTIVE JUROR: No.

8 MR. RICHA: Have you ever seen any of the shows at the
9 establishment?

10 PROSPECTIVE JUROR: No. Just always there to grab
11 beers and stuff.

12 MR. RICHA: The paralegal work you did, did you ever
13 do work around trademark law?

14 PROSPECTIVE JUROR: No, more like international
15 politics. But that's fuzzy to me. That was a couple of years
16 ago. I don't recall any specific details of the case.

17 MR. RICHA: Okay. Nothing further, Your Honor.

18 MR. O'NEIL: No questions.

19 THE COURT: Very well. Thank you very much, Ms. Cai.
20 You may return to your seat.

21 (Juror 1624 steps down. Juror 1746 steps up.)

22 THE COURT: Now, you're Mr. Dempsey. How are you?
23 Mr. Dempsey, you shared with us you've been to Penn Social a
24 couple of times. Can you tell us approximately how recently and
25 what your experiences there have been like?

1 PROSPECTIVE JUROR: I would say probably -- it's
2 probably been about a year or so, like the last few years. It's
3 just been general happy hour. Just eating, mostly drinking.
4 More social.

5 THE COURT: Did you have occasion to see or hear about
6 any of the people that stood to face you in the courtroom?

7 PROSPECTIVE JUROR: Not that I recall.

8 THE COURT: Does any aspect of your experiences at
9 Penn Social, do you believe that any aspect of your experiences
10 at Penn Social would interfere with your ability to decide this
11 case based solely on the evidence?

12 PROSPECTIVE JUROR: I don't believe so.

13 THE COURT: Do either of you have questions?
14 Mr. Richa?

15 MR. RICHA: Do you know any of the staff or employees
16 at Penn Social?

17 PROSPECTIVE JUROR: No.

18 MR. RICHA: Did you ever have any interactions with
19 the staff while you were there?

20 PROSPECTIVE JUROR: Not outside of just general, you
21 know...

22 MR. RICHA: Did you ever see any of the shows at the
23 establishment?

24 PROSPECTIVE JUROR: No.

25 MR. RICHA: Nothing further.

1 THE COURT: Mr. O'Neil?

2 MR. O'NEIL: No questions, Your Honor.

3 THE COURT: Thank you very much, Mr. Dempsey.

4 (Juror 1746 steps down. Juror 0160 steps up.)

5 PROSPECTIVE JUROR: Good morning.

6 THE COURT: Good morning. You're Mr. Powell?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Good morning, sir. Come a little closer
9 to this microphone on the left is the one you're using. Thank
10 you very much. Mr. Powell, I didn't see anything on your card.
11 I just wanted to make sure I have not overlooked anything.

12 PROSPECTIVE JUROR: No.

13 THE COURT: And I also wanted to -- for some reason
14 the list from the jury office is incomplete and doesn't tell us
15 anything about where you're -- what type of -- what type of work
16 you're in.

17 PROSPECTIVE JUROR: I'm retired. Not happily retired,
18 but retired. I'm working on some of that.

19 THE COURT: What type of work did you do before you
20 retired?

21 PROSPECTIVE JUROR: I worked for -- you said since I
22 retired?

23 THE COURT: No, before you retired.

24 PROSPECTIVE JUROR: I was working for a nonprofit. It
25 was a nonprofit in Washington on Connecticut Avenue, Northwest.

1 THE COURT: All right. And while there, did you ever
2 learn anything about disputes about the management of the --

3 PROSPECTIVE JUROR: Of course. I was head of office
4 services, so I was all over the place. I had a lot of people
5 doing different things.

6 THE COURT: Did it fall to you to resolve any of those
7 disputes?

8 PROSPECTIVE JUROR: Of course. I did that. But it
9 was just the thing about, you know, what about downsizing?
10 That's what came into the picture. And what they had us to do
11 was to train the contractors that gave us the job. So that's
12 why we kind of worked on some of those. That's not quite done
13 yet.

14 THE COURT: Do either of you have questions of
15 Mr. Powell?

16 MR. RICHA: No.

17 MR. O'NEIL: So if I understand it, have you brought a
18 claim against your old employer?

19 PROSPECTIVE JUROR: No, no, no, no, no. I'm just
20 going to move on. That's just how we feel about it.

21 THE COURT: Well, let me you ask you a few questions.
22 You just said in response to Mr. O'Neil's question that you
23 decided to move on.

24 PROSPECTIVE JUROR: I moved on.

25 THE COURT: Do you have any concern about people who

1 instead bring lawsuits? Because that's what this is. One side
2 sued the other, and that side sued the first time.

3 PROSPECTIVE JUROR: Trust me, I do know that, because
4 I'm going through that process because of somebody who ran into
5 my car. So, yes, I have no problem with that. I think that
6 what should be done should be done. I have a lawsuit going on
7 now with that.

8 THE COURT: So you are the plaintiff in that case.

9 PROSPECTIVE JUROR: Oh, yeah. They ran into my car,
10 so I'm suing them. I'm really excited about that one. That's
11 for sure.

12 THE COURT: Has that case already been filed in court?

13 PROSPECTIVE JUROR: Not yet. Just did the physical
14 therapy. Now we're going to work on the other part. That's a
15 process.

16 THE COURT: Does any aspect of the fact that you are a
17 plaintiff in a case cause you concern about serving as a juror?

18 PROSPECTIVE JUROR: No. I still believe in the rule
19 of law, and I believe in people's rights.

20 THE COURT: Very well. I thank you very much,
21 Mr. Powell. You may return to your seat.

22 PROSPECTIVE JUROR: Thank you. Y'all have a good day.

23 THE COURT: Thank you very much.

24 (Juror 0160 steps down. Juror 1076 steps up.)

25 THE COURT: Good morning. You are Ms. Thornton?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Good morning. Ms. Thornton, you are a
3 paralegal?

4 PROSPECTIVE JUROR: At the Department of Housing and
5 Urban Development, which is my place of employment.

6 THE COURT: Have you worked as a paralegal anywhere
7 other than the Department of Housing and Urban Development?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Does any of your work at Housing and Urban
10 Development, does it involve contracts or business relationships
11 among parties?

12 PROSPECTIVE JUROR: It does with housing -- well,
13 contracts with housing and money being disbursed to public
14 housing authorities, different things like that.

15 THE COURT: As part of your paralegal training, did
16 you learn anything about business associations?

17 PROSPECTIVE JUROR: Somewhat, yes.

18 THE COURT: Do you believe any aspect of what you
19 learned or what you do now would interfere with your ability to
20 serve as a juror in this case?

21 PROSPECTIVE JUROR: No. I don't think so.

22 THE COURT: Do either of you have questions?
23 Mr. Richa?

24 MR. RICHA: No, Your Honor.

25 THE COURT: Mr. O'Neil?

1 MR. O'NEIL: No, Your Honor.

2 THE COURT: Very well. Thank you.

3 (Juror 1076 steps down. Juror 0085 steps up.)

4 THE COURT: Good morning. You're Ms. Porter?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: Good morning. Let me ask you to move a
7 little closer to the microphone. You recognize the name Penn
8 Social?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Have you been to Penn Social?

11 PROSPECTIVE JUROR: I have not been to Penn Social,
12 but I know of it.

13 THE COURT: Have you heard anything about Penn Social
14 which you think we should know about?

15 PROSPECTIVE JUROR: No. Just that I know that it's a
16 restaurant, bar.

17 THE COURT: Do either of you have questions?
18 Mr. Richa?

19 MR. RICHA: How did you hear about it?

20 PROSPECTIVE JUROR: Just with friends, if they were
21 interested in meeting places. They mentioned they'd been there
22 before, but only that I know that it's a restaurant or bar. I
23 don't know anything else about it.

24 MR. RICHA: Do you have friends that have been there
25 or told you anything about it specifically?

1 PROSPECTIVE JUROR: Just that they had been there and
2 maybe could meet there, but nothing beyond that.

3 MR. RICHA: Did any of them tell you about any
4 interactions they may have had with the owners or employees that
5 work there?

6 PROSPECTIVE JUROR: No.

7 MR. RICHA: And did any of your friends ever attend
8 any shows that were held there?

9 PROSPECTIVE JUROR: Not that I know of.

10 MR. RICHA: Nothing more, Your Honor.

11 MR. O'NEIL: No questions.

12 THE COURT: Ms. Porter, did you indicate that there is
13 something familiar with the lawsuit or not something familiar
14 with the lawsuit?

15 PROSPECTIVE JUROR: Not something familiar. I was
16 just trying to remember what I wrote.

17 THE COURT: Okay. So you have no knowledge of what's
18 being alleged here.

19 PROSPECTIVE JUROR: No.

20 THE COURT: Very well. You may return to your seat.
21 Thank you. (Juror 0035 steps down. Juror 0386 steps up.)

22 THE COURT: Are you Ms. Frank?

23 PROSPECTIVE JUROR: I am.

24 THE COURT: Good morning. Could you ask you to move,
25 please, a little closer to this microphone. Okay. Ms. Frank,

1 you indicated that you recognize the name Penn Social.

2 PROSPECTIVE JUROR: I actually recognize the name
3 Riot Act because I had been there before.

4 THE COURT: Can you recall approximately how long ago
5 that was?

6 PROSPECTIVE JUROR: I think it was about five years
7 ago. It was actually Dick Gregory's 80th birthday party. He's
8 a friend of our -- was a friend of our family.

9 THE COURT: Can you remember who, if anyone, performed
10 at that?

11 PROSPECTIVE JUROR: He performed.

12 THE COURT: So that was at a time when he was 80.

13 PROSPECTIVE JUROR: Right. And actually, he wasn't
14 even really 80, but he said he was. He was a little bit older.
15 But I can't remember what year it was.

16 THE COURT: Is that the only time that you went to --

17 PROSPECTIVE JUROR: I think I went to an improv class
18 there once as well. I'm not positive, but I think that it was
19 there.

20 THE COURT: 7th and D.

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: Based on the occasions that you've been
23 there, is there any concern that you have that you would not be
24 able to decide this case based solely on the evidence and the
25 instructions that I give?

1 PROSPECTIVE JUROR: I don't think so, but that's my
2 knowledge of it.

3 THE COURT: Am I correct, then, that you do not know
4 any of the people who stood up and faced you --

5 PROSPECTIVE JUROR: No.

6 THE COURT: Mr. Xereas, Ms. Heiss, Mr. Dawson?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Very well. Is it you who previously or
9 still works in an entertainment establishment, a restaurant --

10 PROSPECTIVE JUROR: I'm on the board of the D.C.
11 Cabaret Network, and I'm a singer; and I also work with a group
12 of singers and performers, and we perform at clubs, and not
13 really restaurants so often, but clubs around Washington, D.C.

14 THE COURT: Am I correct that is not at Penn Social?

15 PROSPECTIVE JUROR: No.

16 THE COURT: In that capacity, have you ever become
17 familiar with disputes among principals of places where you've
18 performed?

19 PROSPECTIVE JUROR: Yes. When you say "disputes," I
20 mean, I don't know anybody who's not in entertainment who does
21 not have disputes with each other about credit for this or that
22 or whatever. And the group or club that we normally perform in
23 right now is actually closed for renovations, and they changed
24 names and they want to use -- they couldn't use the name they
25 had been using because that club is now being used by another

1 club in the suburbs. So, yes, that's familiar to me. It's not
2 necessarily something that could keep me from making a good
3 decision on evidence, but it's something that I'm aware of.

4 THE COURT: Do you have any opinions about that type
5 of dispute?

6 PROSPECTIVE JUROR: No.

7 THE COURT: And finally, you answered that you have a
8 response to question 10 concerning trademark.

9 PROSPECTIVE JUROR: Yes. I have two trademarks, and
10 I worked with an IP lawyer to make the applications. And I
11 received the application -- I mean, I received the trademarks,
12 and I own them.

13 THE COURT: How long ago did you go through that
14 process?

15 PROSPECTIVE JUROR: It was a long process, but the
16 trademarks were issued two years ago.

17 THE COURT: Do either of you have questions,
18 Mr. Richa, follow-up questions?

19 MR. RICHA: No, Your Honor.

20 MR. O'NEIL: I apologize, because I couldn't always
21 hear. You said you knew Dick Gregory?

22 PROSPECTIVE JUROR: Yes.

23 MR. O'NEIL: Did you ever have any discussions about
24 Riot Act or Penn Social?

25 PROSPECTIVE JUROR: Only that he invited us to come to

1 his club to the birthday party.

2 MR. O'NEIL: So you never discussed anything else
3 about that?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Very well. Thank you very much,
6 Ms. Frank. You may return to your seat.

7 PROSPECTIVE JUROR: Thank you.

8 (Juror 0386 steps down. Juror 1619 steps up.)

9 THE COURT: Good morning. You're Ms. Hartman?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Good morning, Ms. Hartman. You seem to
12 want some clarification about whether Penn Social, LLC, is the
13 same as the bar as Penn Social at 7th and D.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: So am I correct that you've been to Penn
16 Social?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Very well. How recently do you think was
19 the last time?

20 PROSPECTIVE JUROR: Not in the last six months.
21 Probably in the last year.

22 THE COURT: Was there any particular experience that
23 you had while you were there which makes you think you could not
24 decide this case based solely on the evidence or the
25 instructions that I give?

1 PROSPECTIVE JUROR: I don't think so. It was not any
2 experience that was out of the ordinary.

3 THE COURT: Were you there for happy hour or a show?

4 PROSPECTIVE JUROR: One happy hour and one late night,
5 like in their downstairs area.

6 THE COURT: Did you hear about anybody that I
7 introduced to you when they stood and I told you their names
8 which had formed the LLC?

9 PROSPECTIVE JUROR: No.

10 THE COURT: You indicated in response to question 8
11 that you had a relationship with a bartender and friends who
12 worked at bars or restaurants but not Penn Social.

13 PROSPECTIVE JUROR: Yes.

14 MR. RICHA: I couldn't hear what you said.

15 PROSPECTIVE JUROR: It was more like a combo of 8, and
16 I think 12 is when you asked if we knew anyone?

17 THE COURT: Yes.

18 PROSPECTIVE JUROR: Yeah.

19 THE COURT: No one at Penn Social.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Have any of those individuals discussed
22 with you their work in the restaurants or bars?

23 PROSPECTIVE JUROR: I would say yes, just in terms of
24 management and sometimes ownership. Not a lot or not extensively.

25 THE COURT: Have any of them discussed with you their

1 understanding of disputes about -- disputes among owners?

2 PROSPECTIVE JUROR: Not among owners, no.

3 THE COURT: Do any of you have follow-up questions,
4 Mr. Richa?

5 MR. RICHA: Do you know any of the staff or employees
6 of Penn Social?

7 PROSPECTIVE JUROR: I do not.

8 MR. RICHA: Did you have any out-of-the-ordinary
9 experiences with staff or employees while there?

10 PROSPECTIVE JUROR: While there? No.

11 MR. RICHA: Were any of the family or friends that are
12 in the restaurant business, have they ever been in any disputes
13 with their partners?

14 PROSPECTIVE JUROR: Not that I know of.

15 MR. RICHA: No more questions.

16 MR. O'NEIL: No questions.

17 THE COURT: Thank you very much. You may return to
18 your seat.

19 (Juror 1619 steps down. Juror 1069 steps up.)

20 THE COURT: Good morning.

21 PROSPECTIVE JUROR: Good morning.

22 THE COURT: You are Ms. Roman?

23 PROSPECTIVE JUROR: That's right.

24 THE COURT: Ms. Roman, you have a response to
25 question 8?

1 PROSPECTIVE JUROR: That's right. My domestic partner
2 for 14 years has worked in food and beverage the entire time.

3 THE COURT: Ever at Penn Social?

4 PROSPECTIVE JUROR: No. And I myself was a bartender
5 in grad school, but many, many years ago, in D.C.

6 THE COURT: Did your partner ever comment, or has your
7 partner ever commented on any issue involving disputes among
8 owners and managers?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Did your partner ever own or manage a
11 business?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Entertainment business, I mean.

14 THE COURT: A restaurant.

15 THE COURT: In D.C.?

16 PROSPECTIVE JUROR: In D.C.

17 THE COURT: When I say which one, I'm only asking
18 because there's a follow-up question about whether it was a
19 competitor or did business with Penn Social.

20 PROSPECTIVE JUROR: I doubt it. It was a small
21 fast-food restaurant, pizza restaurant.

22 THE COURT: Was it anywhere near the neighborhood we
23 call Penn Quarter.

24 THE COURT: It was in Dupont. He has since sold it.
25 It's been a few years.

1 THE COURT: And question 11 concerns our schedule.
2 You have a concern about the schedule.

3 PROSPECTIVE JUROR: He also had back surgery on
4 Friday, and so sort of has limited mobility this week. In an
5 ideal world, I would be around in case anything came up. But so
6 far, everything has been fine, so it looks clear.

7 THE COURT: Is there anyone else available to assist
8 if you are not?

9 PROSPECTIVE JUROR: If there were an emergency, I
10 imagine that we could find someone else, yes. But, again, in an
11 ideal world, I would be there.

12 THE COURT: Do either of you have questions, follow-up
13 questions, Mr. Richa, follow-up questions for Ms. Roman?

14 MR. RICHA: I don't.

15 MR. O'NEIL: No, Your Honor.

16 THE COURT: Thank you very much, Ms. Roman. You may
17 return to your seat.

18 PROSPECTIVE JUROR: Thank you.

19 (Juror 1069 steps down.)

20 THE COURT: I am concerned about the medical issue of
21 Ms. Roman's partner, because if she's needed and she's here,
22 we'd have to excuse her. I think it would be appropriate to
23 excuse her for cause now. Do either of you have strong feelings
24 about that?

25 MR. RICHA: No, Your Honor.

1 MR. O'NEIL: No, Your Honor.

2 THE COURT: Very well. We will excuse 1069 for cause.

3 (Juror 1228 steps up.)

4 THE COURT: Good morning. You're Mr. Apter?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: You said you have heard of Penn Social.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Have you heard anything about what type of
9 establishment it is or how well it's run, anything like that?

10 PROSPECTIVE JUROR: Is it a bar? That's what I
11 assumed it was.

12 THE COURT: I will characterize it for this purpose as
13 a bar, an entertainment establishment at the corner of 7th and D.

14 PROSPECTIVE JUROR: Okay. Yeah.

15 THE COURT: Do you believe you have ever been there?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Does anything that you've heard about it
18 give you concern that you cannot decide this case based solely
19 on the evidence and the Court's instructions?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you. Any questions?

22 MR. RICHA: Have you heard about it, sir?

23 PROSPECTIVE JUROR: I think I read about it on online
24 that just tells about new establishments in D.C., and I believe
25 I've heard people mention Penn Social or Penn Quarter.

1 MR. RICHA: Did you ever read any newspaper articles
2 about any disputes involving Penn Social?

3 PROSPECTIVE JUROR: No.

4 MR. O'NEIL: No questions.

5 THE COURT: Mr. Apter, thank you very much. Please
6 return to your seat.

7 (Juror 1228 steps down. Juror 0516 steps up.)

8 THE COURT: You are Ms. Bell?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Good morning. Ms. Bell, you said that you
11 recognized the name Penn Social. Have you been to Penn Social?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: When do you believe you went most recently?

14 PROSPECTIVE JUROR: Once in the last year.

15 THE COURT: While there, did you hear anything about
16 the disputes that I summarized at the beginning of the case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Did you recognize any of the people who
19 stood to introduce themselves?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: Do you believe that any aspects of your
22 visits to Penn Social would interfere with your ability to
23 decide this case based solely on the evidence and the
24 instructions that I give?

25 PROSPECTIVE JUROR: No, ma'am.

1 THE COURT: Thank you, Ms. Bell.

2 Do either of you have questions for Ms. Bell?

3 MR. RICHA: Do you know any staff or employees of Penn
4 Social?

5 PROSPECTIVE JUROR: No.

6 MR. RICHA: And when you were there, did you have any
7 unusual experiences with staff or employees at Penn Social?

8 PROSPECTIVE JUROR: No. It was a nice place to go to,
9 so no.

10 MR. RICHA: Nothing further.

11 MR. O'NEIL: No questions.

12 THE COURT: Thank you very much, Ms. Bell. You may
13 return to your seat.

14 (Juror 0516 steps down. Juror 0216 steps up.)

15 THE COURT: Good morning. Are you Mr. Avagyan?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: Mr. Avagyan, you said you have been to
18 Penn Social approximately 10 times in the last seven years, last
19 in the summer of 2017. Am I reading your notes correctly?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Very well. While there, did you have any
22 experience that you believe would interfere with your ability to
23 decide this case based solely on the evidence and the Court's
24 instructions?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Do either of you have follow-up questions?
2 Mr. Richa?

3 MR. RICHA: Did you ever see any shows at Penn Social?

4 PROSPECTIVE JUROR: No.

5 MR. RICHA: Do you know any staff or employees of Penn
6 Social?

7 PROSPECTIVE JUROR: No.

8 MR. RICHA: Did anybody ever talk to you about any
9 disputes at Penn Social?

10 MR. RICHA: No.

11 THE COURT: Did you have any experiences there that
12 were out of the ordinary?

13 PROSPECTIVE JUROR: No.

14 MR. RICHA: Thank you.

15 MR. O'NEIL: No questions.

16 THE COURT: Thank you very much. You may return to
17 your seat.

18 (Juror 0216 steps down. Juror 1332 steps up.)

19 THE COURT: Good morning, sir. You are Mr. Gonzalez?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Mr. Gonzalez, you said you have a response
22 to question 1. You've been to Penn Social?

23 PROSPECTIVE JUROR: No. I've just like have heard
24 about it like either on the Internet or like -- and I do some
25 running around here, so I think I might have -- the name sounds

1 familiar. I think I've heard friends just mention the name.

2 THE COURT: Did you hear anything about any type of
3 dispute among the people that stood to introduce themselves to
4 you? Mr. Xereas, Mr. Dawson, Ms. Heiss?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Is there any aspect of what you heard that
7 would cause you to have any concern about deciding this case
8 based solely on the evidence and the instructions that I give?

9 PROSPECTIVE JUROR: Not that I'm aware of.

10 THE COURT: You also indicated that you are a lawyer.

11 PROSPECTIVE JUROR: I'm actually a paralegal.

12 THE COURT: Do you work for a law firm?

13 PROSPECTIVE JUROR: It's a government agency. It's
14 the Pension Benefit Guarantee Corporation, so basically we
15 protect the pension plans.

16 THE COURT: Did you ever have any involvement working
17 as a paralegal in any type of disputes that I described,
18 disputes among individuals who form an LLC?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Did you ever study anything about the
21 formation of an LLC?

22 PROSPECTIVE JUROR: I have some basic legal knowledge
23 about it through school courses, but not in depth.

24 THE COURT: All right. Do you believe any aspect of
25 what you learned in the school courses would interfere with your

1 ability to decide this case based solely on the evidence?

2 PROSPECTIVE JUROR: Not that I know of.

3 THE COURT: All right. And you wanted to tell us
4 about your work or maybe the work of a family member or close
5 friend --

6 PROSPECTIVE JUROR: Other than just that I have some
7 family members coming to visit during this time, and they'll be
8 here like in the next two weeks.

9 THE COURT: That's your concern about the schedule. I
10 see a response next to question 8. Question 8 concerned whether
11 you or any family member works at a restaurant or --

12 PROSPECTIVE JUROR: Yes, I do. I have my partner that
13 works for a restaurant and some other friends that work for
14 restaurants.

15 THE COURT: Do any of them ever work at Penn Social?

16 PROSPECTIVE JUROR: Not that I'm aware of.

17 THE COURT: Have any of them discussed the type of
18 dispute that I told you a little bit about at the beginning?

19 PROSPECTIVE JUROR: You mean in general?

20 THE COURT: Yes. Disputes among individuals who have
21 formed an LLC.

22 PROSPECTIVE JUROR: No. I mean, I've just -- no.
23 I've heard their stories, things that go around at work and
24 stuff like that, but not specifically.

25 THE COURT: Very well. Thank you very much,

1 Mr. Gonzalez.

2 Do either of you have follow-up questions? Mr. Richa?

3 MR. RICHA: Of any of the people that you know that
4 were employees, are any of them friends or acquaintances of
5 anybody that work at Penn Social?

6 PROSPECTIVE JUROR: Of any of these entities?

7 MR. RICHA: Are any of your friends acquaintances or
8 friends with anybody that works at Penn Social?

9 PROSPECTIVE JUROR: Not that I'm aware of.

10 MR. RICHA: No further questions.

11 MR. O'NEIL: No questions.

12 THE COURT: Thank you very much, Mr. Gonzalez. You
13 may return to your seat.

14 (Juror 1332 steps down. Juror 1387 steps up.)

15 THE COURT: Good morning. You are Mr. Haynes? Good
16 morning, sir. May I ask you to move a little closer to the mic
17 on the podium on the ledge. Thank you. First you indicated
18 that you are familiar with Penn Social and Riot Act.

19 PROSPECTIVE JUROR: Yes. Just the name "Penn Social."
20 I've never been there. I've just heard of it.

21 THE COURT: Is there anything that you've heard about
22 it that would interfere with your ability to decide this case
23 based solely on the evidence and my instructions?

24 PROSPECTIVE JUROR: No.

25 THE COURT: You said that you recognized the name

1 Terrence Hawkins.

2 PROSPECTIVE JUROR: Mm-hmm.

3 THE COURT: Can you tell us about the Terrence Hawkins
4 that you know? I ask that question only because another juror
5 knew one of the witnesses, potential witnesses, who had the same
6 name, but it wasn't the same person.

7 PROSPECTIVE JUROR: Right. And that's probably
8 similar to mine. I know this person by the name of Terry
9 Hawkins. I don't know if Terrence is his given name. And I go
10 to church with him. That's about it.

11 THE COURT: Do you know anything about the type of
12 work he does?

13 PROSPECTIVE JUROR: Last time we talked, I think he
14 worked for the federal government or the military.

15 THE COURT: Has he shared with you whether he ever
16 worked in any entertainment field?

17 PROSPECTIVE JUROR: I doubt that. He's like a career
18 military.

19 THE COURT: Very well. Thank you very much. I'm
20 inclined to believe that is not the same person. Thank you.
21 You also indicated that you have studied business law in a
22 master's program?

23 PROSPECTIVE JUROR: And part of the master's program
24 was a business law class. That's the extent of that.

25 THE COURT: Did any of that include discussions about

1 the formation of LLCs?

2 PROSPECTIVE JUROR: Mm-hmm, right. The differences
3 between LLCs, partners, corporations, that type of thing.

4 THE COURT: Do you believe that anything that you
5 studied in business law class in the master's program would
6 interfere with your ability to decide this case based solely on
7 the evidence and my instructions at the end?

8 PROSPECTIVE JUROR: No.

9 THE COURT: You also said that you have worked, in
10 terms of entertainment establishments, at a radio station and
11 a restaurant. Can you tell us about that?

12 PROSPECTIVE JUROR: So I currently work with Radio
13 One, and I'm a salesperson. I have a cousin that worked for
14 like Red Lobster a couple of years ago. That's the extent of
15 it. So we may come in contact with some clubs, restaurants,
16 that type of thing, but in terms of entertainment, that's kind
17 of the field I work in, just in terms of selling advertising,
18 that type of thing.

19 THE COURT: In your work in that capacity at the radio
20 station, have you ever solicited Penn Social?

21 PROSPECTIVE JUROR: Not Penn Social, no.

22 THE COURT: Or Riot Act?

23 PROSPECTIVE JUROR: No. Neither one of those two.

24 THE COURT: And question 11 concerned our schedule.
25 If I'm reading your writing correctly, you are on commission.

1 PROSPECTIVE JUROR: I'm a straight-commission
2 salesperson.

3 THE COURT: Does that work require that you be
4 available in the hours that the jury would be expected to serve,
5 roughly from 9:15 or so in the morning until 4:15 or so in the
6 afternoon?

7 PROSPECTIVE JUROR: Yes, because I have to go out and
8 get my business and have meetings and that type of thing during
9 those time frames. So if I don't go out then, I don't get paid.
10 I mean, I can't get new business at all. So that's how our
11 sales structure is.

12 THE COURT: Thank you very much.

13 Do either of you have follow-up questions?

14 MR. RICHA: When Judge Robinson asked you about your
15 knowledge about Penn Social or Riot Act, you said you had heard
16 of Penn Social. I just want to make sure, have you been to Riot
17 Act before?

18 PROSPECTIVE JUROR: No. I've never been to Riot Act.
19 I think I only heard about Penn Social because it's a restaurant
20 and I live near downtown.

21 THE COURT: Mr. O'Neil, do you have follow-up
22 questions for Mr. Haynes?

23 MR. O'NEIL: No, Your Honor.

24 THE COURT: Very well. Thank you very much,
25 Mr. Haynes. You may return to your seat.

1 PROSPECTIVE JUROR: Thank you.

2 (Juror steps down.)

3 THE COURT: Do either of you wish to address
4 Mr. Haynes in view of the issue weighing on him during the two
5 weeks that we will likely be here?

6 MR. RICHA: I'll defer to Your Honor.

7 MR. O'NEIL: I believe it probably would be --

8 THE COURT: A distraction.

9 MR. O'NEIL: It would have a negative impact on him
10 I'm just concerned about it.

11 THE COURT: I believe we should excuse Mr. Haynes
12 under these circumstances.

13 (Juror 0530 steps up.)

14 THE COURT: Good morning, Ms. Caudill.

15 PROSPECTIVE JUROR: Good morning.

16 THE COURT: Ms. Caudill, you said you recognize the
17 name "Al Goodwin."

18 THE COURT: It's my uncle's name. I don't think he
19 has any relation to this, but it's a familiar name.

20 THE COURT: Just so that we know that for sure, can
21 you tell us anything about any involvement he may have ever had
22 with any of the people who stood and faced you?

23 PROSPECTIVE JUROR: I don't think he has any
24 involvement. He lives in Connecticut.

25 THE COURT: Very well. Thank you very much. And the

1 next question to which you had a response concerned a lawsuit or
2 other dispute having to do with a business.

3 PROSPECTIVE JUROR: Yes. So my company that I work
4 for now, about a year and a half ago, had a group of employees
5 that left and started a complete business. So my company sued
6 their new company so that they couldn't steal our employees and
7 our clients.

8 THE COURT: What company was that?

9 PROSPECTIVE JUROR: I work forward Leidos Cyber,
10 cybersecurity, and the other company was Revolutionary Security.

11 THE COURT: Is that dispute still ongoing?

12 PROSPECTIVE JUROR: It's not.

13 THE COURT: Was it resolved out of court, or were
14 there court proceedings to resolve it?

15 PROSPECTIVE JUROR: There was a proceeding. I don't
16 think it was a trial. I didn't participate in that.

17 THE COURT: Does any aspect of your knowledge of the
18 dispute -- or do you believe any knowledge you have about that
19 dispute would affect your ability to decide this case based
20 solely on the evidence and the instructions that I give at the
21 end?

22 PROSPECTIVE JUROR: I don't think so.

23 THE COURT: Do either of you have questions for
24 Ms. Caudill? Mr. Richa?

25 MR. RICHA: You're in cybersecurity work?

1 PROSPECTIVE JUROR: Mm-hmm.

2 MR. RICHA: Did you ever do any work involving
3 cybersquatting?

4 PROSPECTIVE JUROR: No.

5 MR. RICHA: Have you done any work involving ownership
6 of domain names?

7 PROSPECTIVE JUROR: No.

8 MR. RICHA: Do you do any work with regard to
9 interception of e-mails?

10 PROSPECTIVE JUROR: Part of our managed service, that
11 would be part of that. But I'm a program manager, so I'm not
12 directly involved in that.

13 MR. RICHA: Can I get a briefing of what your duties
14 are?

15 PROSPECTIVE JUROR: I manage kind of a broad range of
16 cybersecurity programs for Fortune 500 companies. So we have
17 professional services that do consulting for companies and how
18 to secure their enterprise, and we have a couple of products as
19 well.

20 MR. RICHA: Gotcha. Nothing further.

21 MR. O'NEIL: I have no questions.

22 THE COURT: Thank you. Ms. Caudill, thank you very
23 much. I'll ask you to please return to your seat. Thank you.

24 (Juror 0530 steps down. Juror 0281 steps up.)

25 THE COURT: Good afternoon. You are Mr. Thomson?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Very well. Good afternoon. Mr. Thomson,
3 you said that you work, perhaps a family member or friend, have
4 worked in the entertainment --

5 PROSPECTIVE JUROR: Yes. I'm a chef.

6 THE COURT: And where do you --

7 PROSPECTIVE JUROR: JW Marriott.

8 THE COURT: Did you ever work at Penn Social or any --

9 PROSPECTIVE JUROR: No.

10 THE COURT: -- restaurants in the Penn Quarter --

11 PROSPECTIVE JUROR: No.

12 THE COURT: -- area? During your work, have you heard
13 anything about management or partnership disputes that spilled
14 over into your area?

15 PROSPECTIVE JUROR: Not really. I worked out in San
16 Francisco for a second, and it was kind of a dispute between the
17 ownership and the management group that trickled down a little
18 bit, but not too much.

19 THE COURT: Did you learn anything about how this
20 dispute was resolved?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: Do you believe that any aspect that you
23 learned would affect your ability to decide this case based
24 solely on the evidence and the instructions that you hear at the
25 end?

1 PROSPECTIVE JUROR: I don't believe so.

2 THE COURT: And you mentioned your schedule, sir.
3 Can you tell us about that?

4 PROSPECTIVE JUROR: Yes. So, currently, like we're
5 down a chef and also purchaser. So we're down two positions
6 right now, so I'm doing both of the jobs. I mean, I know
7 everyone is busy. And then like tomorrow I have something I
8 have to be present for -- I should be present for.

9 THE COURT: Do you know whether arrangements could be
10 made for someone to cover your shift if you are required to
11 serve?

12 PROSPECTIVE JUROR: We don't really have the excessive
13 staff to cover it at this moment, but if selected, I obviously
14 will be here.

15 THE COURT: Very well. Thank you very much,
16 Mr. Thomson. Do either of you have questions about Mr. Thomson?
17 Mr. Richa?

18 MR. RICHA: No, Your Honor.

19 THE COURT: Mr. O'Neil?

20 MR. O'NEIL: No, Your Honor.

21 THE COURT: Mr. Thomson, thank you very much. You may
22 return to your seat for now. Thank you.

23 PROSPECTIVE JUROR: Thank you.

24 (Juror 0281 steps down. Juror 0231 steps up.)

25 THE COURT: Good afternoon. Now, Mr. Hulbert, the

1 first question you had a response to was question 1, Penn Social.

2 PROSPECTIVE JUROR: Yes. I recognize that name.

3 THE COURT: Do you go to Penn Social?

4 PROSPECTIVE JUROR: I have in the past, yes. Not
5 frequently, but I have.

6 THE COURT: When you were there, was it there, for
7 example, for happy hour or a show?

8 PROSPECTIVE JUROR: Yeah. Happy hour, watching
9 football games, that type of thing.

10 THE COURT: Did you hear anything about a dispute --

11 PROSPECTIVE JUROR: I did not.

12 THE COURT: Did you have any experience that you think
13 would color your views of the evidence in this case?

14 PROSPECTIVE JUROR: I don't.

15 THE COURT: Your uncle is a judge in Maryland.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Is he on the federal court or one of the --

18 PROSPECTIVE JUROR: He does family court.

19 THE COURT: Has he ever discussed resolution of a
20 dispute like this?

21 PROSPECTIVE JUROR: He has not, no.

22 THE COURT: And question 8, you or someone in your
23 family --

24 PROSPECTIVE JUROR: Yeah -- restaurant industry owner.

25 THE COURT: In this area?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: While working there, do you know of any
3 disputes that arose among principals?

4 PROSPECTIVE JUROR: I don't, no.

5 THE COURT: Do either of you have questions for
6 Mr. Hulbert?

7 MR. RICHA: Do you know any staff or employees of Penn
8 Social?

9 PROSPECTIVE JUROR: I don't, no.

10 MR. RICHA: Did you ever see any shows --

11 PROSPECTIVE JUROR: No.

12 MR. RICHA: Did you ever have any exposure to any
13 cybersquatting claims?

14 PROSPECTIVE JUROR: No.

15 MR. RICHA: Do you do a lot of work with domain names?

16 PROSPECTIVE JUROR: No.

17 MR. RICHA: Nothing further.

18 THE COURT: Mr. O'Neil.

19 MR. O'NEIL: No questions.

20 THE COURT: Mr. Hulbert, thank you very much. You may
21 return to your seat. Thank you.

22 PROSPECTIVE JUROR: Thank you.

23 (Juror 0231 steps down. Juror 0076 steps up.)

24 THE COURT: Good afternoon. You are Mr. Allen? You
25 are a lawyer.

1 PROSPECTIVE JUROR: I'm a member of the D.C. Bar, not
2 a practicing member.

3 THE COURT: Are you alone or with a firm?

4 PROSPECTIVE JUROR: So I work with the federal
5 government as an attorney.

6 THE COURT: Did you ever work in any firm or other
7 enterprise in which resolution of business disputes of the type
8 that we've just discussed in a very general sense are part of
9 your work?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Do you recall learning about it in law
12 school -- most of us don't -- about the formation of an LLC?

13 PROSPECTIVE JUROR: No, not really.

14 THE COURT: And you also indicated, sir, that you or
15 perhaps or family member or friend have worked in the
16 entertainment industry.

17 PROSPECTIVE JUROR: So a fairly close friend manages a
18 bar.

19 THE COURT: Is it in Penn Quarter?

20 PROSPECTIVE JUROR: No. It's in Adams Morgan.

21 THE COURT: Do you know whether it has, for example,
22 comedy shows or trivia night or could be regarded in any way as
23 a similar establishment?

24 PROSPECTIVE JUROR: I don't think that's their main
25 thing. I don't visit the bar very often. I'm not especially

1 familiar with events they might have. I've been from time to
2 time, but I don't think a comedy event is the typical event they
3 would have.

4 THE COURT: Thank you very much, Mr. Allen.

5 Do either of you have questions for Mr. Allen? Mr. Richa?

6 MR. RICHA: No, Your Honor.

7 THE COURT: Mr. O'Neil.

8 MR. O'NEIL: No, Your Honor.

9 THE COURT: Very well. Thank you very much. You may
10 return to your seat.

11 (Juror 0076 steps down. Juror 0659 steps up.)

12 THE COURT: Good afternoon, sir. Are you Mr. Riddick?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Very well. Thank you very much.

15 Mr. Riddick, you said you have a response to question No. 8,
16 meaning, I assume, you or someone in your family --

17 PROSPECTIVE JUROR: My cousin. Nightclub. Karaoke or
18 something. I think it's Karaoke.

19 THE COURT: Do you know which nightclub?

20 PROSPECTIVE JUROR: It's in Northwest somewhere. He
21 young. I don't keep up with him.

22 THE COURT: Do you know whether it's Penn Social, for
23 example? Does that name sound familiar?

24 PROSPECTIVE JUROR: No. No. I don't know nothing
25 about that.

1 THE COURT: Is there any aspect of what he does which
2 would cause you to have concern about serving as a juror in this
3 case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: And I see a question mark, sir, for
6 question 12. That was the --

7 PROSPECTIVE JUROR: Jury system.

8 THE COURT: Tell us about your concern.

9 PROSPECTIVE JUROR: Something happened to my
10 grandparents years ago.

11 THE COURT: Involving the jury system?

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: And as a result of that, you cannot serve?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Very well. Thank you for sharing that
16 with us, sir. For now I'm just going to ask you to please have
17 a seat in the place where you were. Thank you.

18 PROSPECTIVE JUROR: Okay.

19 (Juror 0659 steps down.)

20 THE COURT: I did not ask the details of what happened
21 because I could see that I was causing Mr. Riddick some distress
22 by the expression on his face. I believe we have no option but
23 to excuse Mr. Riddick for cause. Do you agree?

24 MR. RICHA: I agree.

25 MR. O'NEIL: I agree.

1 THE COURT: Very well. 0659 is excused for cause.

2 (Juror 0428 steps up.)

3 THE COURT: Good afternoon. You are Ms. Fain?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Good afternoon. Ms. Fain, you said you
6 had heard of Penn Social. I'm just going to ask what you're
7 referring to.

8 PROSPECTIVE JUROR: Just that they're on F Street, or
9 they were on F Street, and they weren't doing well. But I never
10 attended any events.

11 THE COURT: When did you hear about that?

12 PROSPECTIVE JUROR: Maybe a few years ago. It was my
13 boyfriend who was in the news business who worked for Voice of
14 America who mentioned they weren't doing well.

15 THE COURT: And do you believe any aspect of what you
16 heard about the operations would affect your ability to decide
17 the case based on the evidence? In other words, would you put
18 aside what your boyfriend told you and decide based on the
19 evidence?

20 PROSPECTIVE JUROR: I don't think I know enough about
21 Penn Social to really form an opinion.

22 THE COURT: Would you rely on his opinion?

23 PROSPECTIVE JUROR: No.

24 THE COURT: When I say "his," your boyfriend, what he
25 told you at the time.

1 PROSPECTIVE JUROR: All I know is that it wasn't doing
2 well. But I don't know why it wasn't doing well, and I don't
3 think he had any particular opinion one way or the other about it.

4 THE COURT: I believe you also said that even though
5 you heard about Penn Social, you did not recognize any of the
6 names --

7 PROSPECTIVE JUROR: That's true.

8 THE COURT: -- of the people who stood. Am I correct,
9 then, that whatever your boyfriend learned in his work as a
10 journalist did not include any names?

11 PROSPECTIVE JUROR: No names.

12 THE COURT: With regard to the schedule, you have a
13 concern about a doctor's appointment on the 19th.

14 PROSPECTIVE JUROR: I thought if the case ran over
15 that I should tell you.

16 THE COURT: No, I appreciate that. I see that that is
17 the third Monday.

18 PROSPECTIVE JUROR: Right.

19 THE COURT: Very well. I thank you for sharing that
20 information with us. Do you have follow-up questions,
21 Mr. Richa?

22 MR. RICHA: Did you hear any details whatsoever about
23 why Penn Social was not doing well?

24 PROSPECTIVE JUROR: I have no details. I didn't hear
25 any details about why it didn't do well.

1 MR. RICHA: Do you have any knowledge of any newspaper
2 articles or magazine articles about the -- about Penn Social?

3 PROSPECTIVE JUROR: Not really, no. I don't recall
4 having read anything about what problems they were having.

5 MR. RICHA: Have you heard anybody talk about it? Not
6 just you reading it, but have you ever heard anybody talking
7 about it, media, in regard to Penn Social?

8 PROSPECTIVE JUROR: I might have read something in the
9 *City Paper*, but I can't remember what I read. If I did read
10 anything, it wasn't detailed and didn't make much of an
11 impression.

12 MR. RICHA: Nothing further, Your Honor.

13 THE COURT: Thank you very much. Do you have
14 questions, Mr. O'Neil?

15 MR. O'NEIL: No, Your Honor.

16 THE COURT: Thank you very much. You may return to
17 your seat.

18 (Juror 0428 steps down.)

19 THE COURT: Now, Counsel, we have excused five jurors
20 for cause: 0590, 1315, 1069, 1387, 0659. Let's take a moment
21 and make certain that that corresponds with the deputy clerk's
22 notes.

23 MR. RICHA: Can you repeat that from the beginning, if
24 you don't mind?

25 THE COURT: 0590.

1 MR. RICHA: I'm sorry. What's the last name of that
2 person?

3 THE COURT: Bailey. 1315, 1069.

4 MR. RICHA: What was the name of that person?

5 THE COURT: Ms. Roman.

6 MR. RICHA: What was the last name?

7 THE COURT: Roman. 1387. Finally, 0659.

8 We withheld judgment with respect to Juror 1596 who
9 indicates that he has a parent-teacher conference scheduled for
10 tomorrow. I believe -- my recollection is that he indicated
11 that he believed his wife would be able to attend, but I'm
12 inclined to excuse him also so that will not weigh on his
13 attention tomorrow. Is that without objection, Mr. Richa?

14 MR. RICHA: No objection.

15 MR. O'NEIL: No objection.

16 THE COURT: So we will also excuse 1596.

17 Now, having done that, I can give each side three
18 challenges. What you will do is take the sheet that Ms. Lesley
19 is giving you now, write on the sheet in the appropriate column
20 the numbers of your four peremptory challenges, and when you are
21 ready, Ms. Lesley will take the sheet. We will then seat the
22 first eight people who have not been excused for cause.

23 MR. RICHA: Can we have a few minutes --

24 THE COURT: Excuse me. Who have not been subject to
25 your peremptory challenges. We do not strike by rounds anymore.

1 MR. RICHA: I didn't hear the last thing you said.

2 THE COURT: We do not strike by rounds. In other
3 words, I wouldn't hear your strikes and then the defendants'
4 strikes. So make your four strikes and note them on the list
5 and give the list to Ms. Lesley as soon as you've done that.

6 MR. RICHA: Okay. Thank you.

7 THE COURT: Very well. Any other questions while
8 we're here?

9 MR. O'NEIL: No, Your Honor.

10 THE COURT: Very well. Thank you.

11 (End of bench conference.)

12 THE COURT: Members of the panel, bear with us a few
13 more moments, please. If you would like to stretch or need to
14 step into the hall for a moment, this would be an appropriate
15 time. We're very close to the time we will recess for lunch, I
16 assure you.

17 (Parties exercising peremptory strikes.)

18 THE COURT: Now, members of the panel, the deputy
19 clerk will call by number the members of you who will take a
20 seat in the jury box. So just hold on one moment, please.

21 THE DEPUTY CLERK: Ladies and gentlemen, as I call
22 your four-digit juror number. Please answer present and take a
23 seat in the jury box with the label of your seat number, and I'm
24 going to say which seat number you are.

25 Juror No. 0689, please sit in seat No. 1 up here in the

1 jury box.

2 Juror No. 1737, please sit in seat No. 2.

3 Juror No. 1312 please sit in seat No. 3.

4 Juror No. 1478, seat No. 4.

5 Juror No. 1141, seat No. 5.

6 Juror No. 0252, seat No. 6.

7 Juror No. 1297, seat No. 7.

8 Juror No. 1382, seat No. 8.

9 THE COURT: Counsel, may I ask you to approach,
10 please, Mr. O'Neil and Mr. Richa.

11 (Bench conference.)

12 THE COURT: Now, thank you. Do either of you have any
13 concerns in the manner in which the other side exercised
14 peremptory challenges? Do you, Mr. Richa?

15 MR. RICHA: No, Your Honor.

16 THE COURT: Do you, Mr. O'Neil?

17 MR. O'NEIL: No, Your Honor.

18 THE COURT: Did you have occasion to see each other's
19 strike sheet?

20 MR. RICHA: No.

21 THE COURT: Very well. Thank you very much.

22 (End of bench conference.)

23 THE COURT: I extend my thanks to you whose numbers
24 were not called for bearing with us during this process. Even
25 though your number was not called, you should be confident that

1 you discharged your civic duty by appearing and by participating
2 in the process of voir dire. I will ask you at this time and
3 direct you to the jury lounge on the fourth floor. Thank you so
4 much. (Dismissed jurors exit the courtroom.)

5 PRELIMINARY JURY INSTRUCTIONS

6 THE COURT: Now, those of you who have been seated, I
7 will ask you to please stand and face the deputy clerk of court,
8 who will administer your oath.

9 (The jury is sworn.)

10 Thank you so very much. At this time, I will excuse you
11 for lunch and ask that you return by 2 p.m. The deputy clerk
12 will escort you to the jury deliberation room behind this
13 courtroom. That is where you will gather just prior to 2 p.m.
14 so that we can begin at 2:00.

15 I will have some specific instructions to guide you during
16 this process when you come back from lunch. What I will
17 instruct you now before you take your lunch is that you may not
18 discuss the case with anyone, what little you have heard thus
19 far, but you have heard something.

20 You have heard what the dispute is about, you've met the
21 parties, you've met the lawyers, and you've heard the names of
22 some of the witnesses. So you are not free to discuss any of
23 that even among yourselves. You may not Google these names or
24 undertake any type of research, and that is because your
25 decision must be based exclusively on what you hear in the

1 courtroom.

2 I will have more details, but right now the most important
3 thing is to make sure you know where the jury room is, and
4 you're welcome to go to the cafeteria on the first floor, or, if
5 you think you have time to step out, that's also perfectly fine.
6 I will ask everyone to be back by five minutes before 2:00, and
7 we will begin promptly at 2:00. Thank you so very much.

8 JUROR: Do we have an end time every day?

9 THE COURT: That is a very good question. I strive to
10 recess by no later than 4:15 or so. Rarely will I have occasion
11 to keep you beyond 4:30. And I will have that instruction on
12 that when you come back. There will be light refreshments for
13 you available in the morning, I believe pastry and coffee, some
14 juices or fruits as early as 9:00. So you are free to come as
15 early as 9:00. You must be here by 9:20 so that we may start by
16 9:30.

17 Before you come back into court this afternoon, the deputy
18 clerk is going to speak with you to find out your preference for
19 tomorrow. As I said, we will either start late or recess early.
20 So she will conduct a quick survey. I don't need to be part of
21 it; I just need to know the answer. So she will speak with you
22 while you're in the jury room to determine which of those two
23 ways we will proceed so that we will not interfere in any way
24 with your election-day plans. Thank you very much. Please
25 accompany Ms. Lesley.

1 (Jury out at 12:46 p.m.)

2 THE COURT: Counsel, before we do anything further, we
3 all must eat. So we will recess. I will ask you to endeavor to
4 be back by -- can you make it by 1:40?

5 MR. O'NEIL: I believe so, Your Honor.

6 THE COURT: I'll say 1:45. I will resume at 2:00 by
7 reading the preliminary instructions. I assume each side will
8 proceed with an opening statement. Am I correct?

9 MS. GLAVICH: Yes, Your Honor.

10 THE COURT: Will the defendants do the same? Very
11 well. We will hear your opening statements, and perhaps at that
12 point, I will hear any issues regarding the first witness that
13 the plaintiff intends to call. That was a matter that I
14 deferred when we had preliminary matters this morning. Thank
15 you very much.

16 (Recess from 12:47 p.m. to 1:53 p.m.)

17 THE COURT: Now, good afternoon. We are still waiting
18 for two jurors, so we have a moment. I will begin as soon as
19 everyone returns by reading the fairly standard preliminary
20 instructions, and then you will be ready for your opening
21 statements. Have you given any thought to how much time you
22 need for your opening statements? Ms. Glavich?

23 MS. GLAVICH: I need about 20 minutes.

24 THE COURT: Did you say 20 minutes?

25 MS. GLAVICH: Mm-hmm.

1 THE COURT: Very well. And Mr. O'Neil, Mr. Karson?

2 MR. O'NEIL: I believe it's about the same, Your Honor.

3 THE COURT: All right. I ask that you please refrain
4 from objecting during the opposing side's opening statement. If
5 there is an objection you wish to make, I will hear it, of
6 course, but I will do so out of the presence of the jury. Can
7 we all agree to proceed in that fashion?

8 MS. GLAVICH: Yes.

9 THE COURT: Very well. Thank you. And, of course,
10 your opening statements should not include references to claims
11 to which the Court has issued summary judgment or, alternatively,
12 claims that have been dismissed.

13 MR. MILLER: Your Honor, if I may?

14 THE COURT: Mr. Miller, yes. I was waiting to make
15 certain no juror was coming in.

16 MR. MILLER: May we address the witness issue?
17 Because it does affect the opening, Your Honor.

18 THE COURT: You have a moment.

19 MR. MILLER: I was hoping we could address,
20 Your Honor, the witness question because it does affect the
21 opening. If the Court is inclined to tell us that we can't call
22 witnesses who've been on our list the whole time, they were in
23 our pretrial statement; they were in our amended pretrial
24 statement --

25 THE COURT: The broad question, of course, is to what

1 remaining claim is their testimony relevant.

2 MR. MILLER: Yes, Your Honor. We've been focused on
3 that, and I think you'll find when they testify that it is
4 relevant to all of our claims. We have a trademark claim. So
5 one way to think about it, there's sort of two broad issues in
6 this case.

7 One is the defendants' breach of the operating agreement
8 and their related duties of good faith and fair dealing towards
9 the plaintiff, and the second thing is the trademark, the Riot
10 Act trademark. Mr. Goodwin would testify to, among other
11 things, the goodwill that was associated with the Riot Act
12 trademark.

13 THE COURT: What is his basis of knowledge?

14 MR. MILLER: He has performed at the club. He's known
15 the plaintiff for a number of years. He assisted in the
16 development of a website before Riot Act -- before the plaintiff
17 even met Mr. Dawson. So he has personal knowledge about the
18 name "Riot Act" within the comedy industry. And then he also
19 has evidence of misbehavior by at least one of the defendants.

20 THE COURT: I assume you are not referring to any
21 supposed relationship between --

22 MR. MILLER: No, we're not.

23 THE COURT: -- between any defendants.

24 MR. MILLER: No, but there's other inappropriate
25 conduct that's been engaged in by the defendants that is a

1 critical part of the case.

2 THE COURT: Are you speaking to something relevant to
3 a remaining claim?

4 MR. MILLER: Yes, Your Honor. It's misconduct that
5 Ms. Heiss engaged in vis-a-vis Mr. Goodwin as a comic at the
6 club where she engaged in classic inappropriate sexual behavior.
7 And that goes to the value. It was well known in the industry
8 how she was acting, and it goes to the duty of good faith and
9 operating the club --

10 THE COURT: I have already indicated if there are
11 references to alleged -- and I use the term "alleged" because I
12 still do not know to this moment what the evidence is of any
13 such relationships -- we simply cannot have such references.
14 There is a point at which such references could well be regarded
15 as a cause for a mistrial.

16 I generally do not have occasion to begin a trial with that
17 concern, but I have made it clear since I first met all of you
18 after Judge Lamberth referred the case to me that the matters
19 that were described when all of you first appeared are not
20 relevant. So any alleged or perceived relationship between
21 anyone other than a business relationship we simply cannot
22 entertain.

23 MR. MILLER: Your Honor, I do not believe your ruling
24 makes that clear. Your Honor's ruling discusses and the
25 defendants moved only with regard to the conduct, the

1 relationship between the two defendants. There's numerous other
2 --

3 THE COURT: I'm speaking of matters that the Court
4 addressed when you first -- when I say "you," I mean all of you
5 -- first appeared.

6 MR. MILLER: Yes, Your Honor. Those are in the
7 complaint.

8 THE COURT: I'm aware that they're in the complaint,
9 but the mere fact that they're in the complaint does not mean,
10 without more, that they are appropriate areas for inquiry during
11 this proceeding.

12 If all of the jurors are back, we must begin with the
13 preliminary instructions. You may refer to the witnesses by
14 name because we simply do not have a mechanism to preview the
15 testimony of each of them. I am aware that the defendants may
16 object to a line of questioning. I will caution you that you
17 simply may not elicit any testimony about any relationship,
18 liaison --

19 MR. MILLER: Your Honor, I think that's a little hard
20 to understand.

21 THE COURT: To the extent that you believe that there
22 is such a question, you must ask Mr. Goodwin. Before you ask
23 it, we will excuse the jury for a brief recess. So, in other
24 words, do not refer to it in your opening statement because I do
25 not know whether it will be admissible.

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: In other words, you may not -- and as I
3 said, I do not generally have occasion to be this explicit
4 before we barely get under way, but I am concerned that a
5 reference to what someone said that one of the parties did that
6 could be characterized as an overture of a sexual or sensual
7 nature could occasion a mistrial. So I am telling you now don't
8 refer to that in your opening statement.

9 MR. MILLER: Yes, Your Honor. I understand. But I
10 think we're sanitizing a case that involves behavior --

11 THE COURT: This is opening statement.

12 MR. MILLER: No, I understand that, Your Honor --

13 THE COURT: Typically, lawyers do not --

14 MR. MILLER: -- but Mr. Goodwin has first-hand --

15 THE COURT: -- go into this degree of --

16 MR. MILLER: -- knowledge --

17 THE COURT: First, I'm speaking, Mr. Miller.

18 Typically, lawyers do not go into this degree of detail in
19 an opening statement in any event. You have 20 minutes. You
20 may refer generally to the fact that Mr. Goodwin will testify
21 about his observations during a time that he had a business
22 relationship with any of the defendants. Certainly, you may do
23 that. You indicated that you wished to elicit testimony
24 regarding his perception of what I believe you've characterized
25 as goodwill. You may refer generally to that.

1 But before you ask any question concerning this so-called
2 overture, I have to hear it out of the presence of the jury. I
3 know of no other way to ensure that matters of an inflammatory,
4 unduly prejudicial or otherwise irrelevant matter is not
5 introduced to the jury.

6 This is not a reality TV show. This is a trial.

7 MR. MILLER: Yes, Your Honor.

8 THE COURT: Very well.

9 MR. MILLER: And unfortunately, the truth involves
10 inappropriate conduct by the defendants.

11 THE COURT: Very well. Let me ask you to have a seat,
12 please. I believe everyone is back.

13 (Court conferring.)

14 All right. Ms. Lesley just advised that the jurors'
15 preference concerning election day is to leave an hour early.

16 (Jury in at 2:05 p.m.)

17 THE COURT: Now, members of the jury, good afternoon.
18 We will proceed for an hour and 15 minutes or so, take a brief
19 recess, and then continue until we've recessed for the day.
20 Ms. Lesley advised me of your preference concerning how we will
21 proceed tomorrow. So we will recess tomorrow an hour earlier in
22 deference to election day. Thank you for speaking with her
23 about your preferences.

24 If at any point during these proceedings you cannot hear or
25 you cannot see because there is someone standing in your way or

1 there is background noise, please let us know immediately. Just
2 say something so that we will know, and we can make the
3 adjustment immediately.

4 I will now proceed with some preliminary instructions.
5 You will receive very detailed instructions at the end of the
6 evidence concerning the precise claims which will be for your
7 consideration. These are general instructions to guide you
8 during the course of the trial.

9 The first series of instructions concerns the duty of the
10 jury. It will be your duty to find from the evidence what the
11 facts are. You and you alone will be the judges of the facts.
12 You will then have to apply to those facts the law as I will
13 give it to you at the end of the case. You must, of course,
14 follow the law whether you agree with it or understand the
15 wisdom of it or not.

16 Nothing I may say or do during the course of the trial is
17 intended to indicate or should be taken by you as indicating
18 what your verdict should be. That is because the rendering of a
19 verdict is your sole and exclusive responsibility.

20 Next I have some general instructions concerning the
21 evidence. The evidence from which you will find the facts will
22 consist of the testimony of witnesses, documents and other
23 things received into the record as exhibits, and any facts the
24 lawyers agree to or stipulate to or that I may instruct you to
25 find.

1 Certain things are not evidence and must not be considered
2 by you. I will list those things for you now.

3 First, statements, arguments, and questions by lawyers are
4 not evidence.

5 Second, objections to questions are not evidence. Lawyers
6 have an obligation to their clients to make objections when they
7 believe evidence being offered is improper under the rules of
8 evidence. You should not be influenced by the objection or by
9 my ruling on it.

10 If the objection is sustained, then you must ignore the
11 question. If the objection is overruled, then you must treat
12 the answer as you would any other answer. If you are instructed
13 that some item of evidence is received for a limited purpose
14 only, then of course you must follow that instruction.

15 Third, testimony that I have excluded or asked you to
16 please disregard is not evidence and must not be considered.

17 Fourth, anything you may have seen or heard outside the
18 courtroom is not evidence and must be disregarded. You are to
19 decide the case solely on the evidence presented here in the
20 courtroom.

21 There are two kinds of evidence: direct and circumstantial.
22 Direct evidence is direct proof of a fact such as testimony of
23 an eyewitness. Circumstantial evidence is proof of facts from
24 which you may infer or conclude that other facts exist. I will
25 give you further instructions on these as well as other matters

1 at the end of the case, but please keep in mind that you may
2 consider both kinds of evidence, direct and circumstantial.

3 It will be up to you to decide which witnesses to believe,
4 which witnesses not to believe, and how much of any witness's
5 testimony to accept or reject. I will give you some guidelines
6 for determining the credibility of witnesses at the end of the
7 case.

8 The next series of instructions concern burden of proof.
9 As I informed you when you came for voir dire, this is a civil
10 case. The plaintiff in a civil case has the burden of proving
11 his case by what is called the preponderance of the evidence.
12 That means the plaintiff has to produce evidence which,
13 considered in light of all the facts, leads you to believe that
14 what the plaintiff claims is more likely true than not true.

15 To put it differently, if you were to put the plaintiff's
16 and the defendants' evidence on opposite sides of the scales,
17 the plaintiff would have to tip the scales somewhat on his side.
18 If the plaintiff fails to meet this burden, then your verdict
19 must be for the defendant.

20 In this case, as I informed you at the outset, the
21 defendants have also brought claims against the plaintiff.
22 We call the claims made by the defendants counterclaims. The
23 burden of proof as to the counterclaims remains the same. That
24 is, the defendants must put sufficient evidence on their side of
25 the scales to tip the scales somewhat in their favor as to the

1 claims that they have brought against the plaintiff.

2 Some of you may have served on criminal cases and will be
3 familiar with the term "proof beyond a reasonable doubt." That
4 requirement does not apply to a civil case, and therefore that
5 requirement should not be a part of your discussions in this case.

6 I now have a few words about your conduct as jurors. You
7 as jurors must decide this case based solely on the evidence
8 presented here within the four walls of this courtroom. This
9 means that during the trial you must not conduct any independent
10 research about this case, the matters in the case, the
11 individuals and entities involved in the case.

12 In other words, you should not consult dictionaries or
13 reference materials, search the Internet, look at websites or
14 blogs, or use any other electronic tools to obtain information
15 or to help you decide the case. Put another way, do not try to
16 find out information from any source outside the confines of
17 this courtroom.

18 Until you retire to begin your deliberations, you may not
19 discuss this case with anyone, even each other. After you
20 retire to deliberate, you will begin your discussions with your
21 fellow jurors, but you cannot discuss the case with anyone else
22 until you have returned a verdict and the case is at an end.

23 I know that many of you, all of you, use cell phones,
24 BlackBerrys, the Internet, and other tools of technology. You
25 also must not talk to anyone at any time about this case. This

1 includes your family and friends. You may not communicate with
2 anyone about the case on your cell phone, through e-mail, text
3 messaging, Twitter, or any form of social media.

4 If I have omitted any form of social media, any specific
5 reference, I will include that as something you simply cannot
6 utilize to communicate with anyone about what is going on here
7 or to seek information.

8 I expect that each of you would be prepared to inform me
9 should you learn of any breach by someone else; for example, if
10 someone has attempted to speak with you about what you were
11 doing here. We have these rules, as I'm sure you can imagine,
12 to ensure the fairness of the proceedings.

13 Finally, I ask that you not form any opinion at all until
14 you have heard all of the evidence. That means you should keep
15 an open mind until you begin your deliberations at the end of
16 the case. If you wish to take notes during the course of the
17 trial, you are free to do so, and I believe you have been
18 provided with a notepad and pen or pencil for that purpose.
19 Does everyone have one? Very well.

20 The notes are for your use. They're not to be shared with
21 anyone at any point, unless it is with your fellow jurors at the
22 time you begin your deliberations. The deputy clerk,
23 Ms. Lesley, will collect your notepads in the evening and return
24 them to you in the morning.

25 What will occur next is that counsel will make an opening

1 statement, beginning with counsel for plaintiff. An opening
2 statement is neither evidence nor argument. Instead, it is an
3 outline of what that party or those parties intend to prove,
4 offered to help you follow the evidence.

5 Next the plaintiff will begin the process of calling his
6 witnesses and of course counsel for the defendants will have an
7 opportunity to cross-examine those witnesses. The defendants
8 will then present their witnesses, and the plaintiff's counsel
9 will be free to cross-examine them.

10 After all of the evidence is in, the parties will present
11 their closing arguments to summarize the evidence and interpret
12 it for you from their perspective, and then you will receive my
13 instructions regarding the law that is to guide you during your
14 deliberations. You will then retire to deliberate on your
15 verdict.

16 Thank you very much for your attention. Now we will
17 proceed with plaintiff's opening statement.

18 Ms. Glavich. Good afternoon.

19 MS. GLAVICH: Good afternoon. Thank you, Your Honor.

20 OPENING STATEMENT BY COUNSEL FOR PLAINTIFF

21 MS. GLAVICH: May it please the Court.

22 Who doesn't love to laugh? To entertain? Who doesn't love
23 to make someone smile? Mr. John Xereas didn't just love doing
24 these things; he made it his life's work.

25 And as we will show you, defendants, who are supposed to be

1 partners in that life's work, took it away from him. They took
2 it away by mismanaging company funds and by robbing him of full
3 use and full enjoyment of his trademark that he grew from ground
4 up before he met them, by their continual use of it after they
5 said, "We'll stop." We will show this to you over the next
6 couple of days.

7 Riot Act is a trademark. A business. It was started by
8 Mr. John Xereas a long time ago. He got into the entertainment
9 industry while he was still in college. He spent 10 years with
10 DC Improv, an organization we've all heard of, and he started
11 there as a food runner and worked his way up because he loved
12 the entertainment industry.

13 We will show you that he became a manager, that he had an
14 opportunity to go manage another club, but he turned it down.
15 And he turned it down because he wanted to open his own
16 business. And so that's what he did. In 2005 he started Riot
17 Act. And he did that by just doing an LLC, starting a website,
18 registering a domain name; he got an e-mail address for himself,
19 and he got one for family members and friends along the way who
20 would help him grow that business. That's what he wanted to do,
21 and we will show that to you through testimony and evidence.

22 You will also hear that he tried different ventures under
23 the Riot Act name because, like most people who start a
24 business, they want to see it grow. They want to try new stuff
25 out. And you'll hear it doesn't always work out.

1 He opened one comedy club, didn't work out. But he didn't
2 stop because that's not what John does. He wanted a bigger
3 space, a better space, a comedy theater. You will hear
4 testimony that when he was in that search for a bigger, better
5 spot, serendipity, he met Geoff Dawson, who's in the trial.
6 Geoff Dawson is a well-known bar owner in this town.

7 And defendants had heard of a space, a big space, but they
8 didn't really know what to do with it. John had a plan and a
9 business and a trademark, but he didn't have a space. They were
10 introduced. They got to talking. You'll hear testimony and
11 evidence that they came up with *We're going to open a comedy*
12 *club and restaurant.*

13 And Mr. Dawson introduced Ms. Heiss. Ms. Heiss is a
14 lawyer, as you will find out. She would be able to take care of
15 some of the legal parts of the business venture, so they agreed
16 they would be equal partners. And they didn't just talk about
17 this. They made it happen.

18 Defendant Heiss drafted a contract, a contract that the
19 three of them signed. They each put money, their own money,
20 behind that contract. They also, as the evidence will show and
21 you'll hear testimony about it, they drafted a business plan and
22 an offering memorandum and went out and got outside investors.
23 Riot Act the comedy theater was born.

24 Now, since they had the space, Defendant Dawson, who had
25 opened bars before, he knew contractors. He had other things in

1 the works. He handled the build-out, getting the space ready.
2 Ms. Heiss was in charge of legal affairs. She was also in
3 charge of getting all the internal policies, things like that
4 together. And as you will hear, John Xereas, he was in charge
5 of the comedy side. That's what he had experience in, and
6 that's what he did. You'll hear testimony that he hired people
7 he trusted, that he knew, that would help him get the club
8 ready.

9 And in August of 2011, doors opened, and they did great.
10 Within a couple of months, the comedy theater was on its way up,
11 making money. And, members of the jury, if that's where it was
12 headed and it stayed that way, we wouldn't be here. But we're
13 here. So something went wrong.

14 It became clearer and clearer, even before the club opened,
15 that the goal that Mr. Xereas had of a successful comedy
16 theater, something he wanted to do, was not the same goal as the
17 defendants had. You will hear testimony that Mr. Dawson was
18 hiring personnel, but those personnel were difficult to work
19 with and caused problems for John on the comedy side and the
20 daily operation side.

21 You will hear testimony that Defendant Heiss, who I
22 mentioned is a lawyer, had a conflict of interest that she did
23 not tell John. You will see evidence of Riot Act's funds paying
24 credit cards, paying for reimbursements, paying bills, and
25 there's no documentation for what those payments are or why

1 they're going to that person.

2 You will hear evidence or see evidence and hear testimony
3 that the company, Riot Act Comedy Theater, their money was
4 getting used to pay Defendant Dawson's other businesses. And
5 you'll hear testimony that there is no invoice to support those
6 payments, and you'll also hear testimony that Defendant Dawson
7 is the one who negotiated on behalf of Riot Act and his other
8 companies that was getting the money.

9 It wasn't just these problems that caused things to go
10 south. In January of 2012, it really went south. On January
11 17, defendants had Mr. Xereas's brother and a man named Mike
12 Farfel fired. These are people who John had hired because they
13 knew comedy. They knew how to get that company going.

14 You will also hear that at the same time the defendants had
15 people fired, they also shut off their Riot Act e-mail
16 addresses. They could no longer access them, despite the fact
17 that they'd had these e-mail addresses before. Do you remember
18 when I said in 2005 he had set up e-mail addresses? That's when
19 those started. So defendants had them shut off.

20 You will also see evidence and hear testimony that John
21 reminds them, *The trademark is mine. I own this.* And, yes,
22 John was upset when this happened. You will hear testimony that
23 he was upset and he went to cool off for one day.

24 On January 19, he was back at work, back doing what he
25 loved with Riot Act Comedy Theater. You will hear testimony of

1 how he showed up, he had a rally-the-troops moment, pointing to
2 the name on the wall and saying, "That's it. Be proud of Riot
3 Act. That's why we're here."

4 You'll also hear testimony that on the same day, January
5 19, defendants Dawson and Heiss held a surprise managing member
6 meeting. By the terms of the contract that they signed, they
7 were supposed to provide several days' notice and a purpose for
8 what these meetings are about. At these meetings, each of the
9 members are supposed to have an equal vote.

10 So at this January 19th meeting, you will hear testimony
11 and see evidence that at this meeting they stripped John of his
12 ability to use LLC funds and to make contracts. He's the
13 manager of the comedy side of this business, and they stripped
14 him of his ability to use funds and make contracts.

15 You will hear testimony that John still showed up for work
16 after all of this. He still put in his time. He still put in
17 his effort, because this is his life. He poured himself into
18 that comedy theater.

19 In late January, still with John showing up for work, you
20 will hear testimony and see evidence that the defendants again
21 had another surprise managing member meeting. I think they gave
22 a couple days' notice this time, but as you'll hear, Mr. Xereas
23 was unable to make it. They went ahead without him.

24 At this managing member meeting on January 26, you will
25 hear testimony and see evidence that they voted 2 to 1, without

1 him there, to strip him of his managerial duties, to change the
2 locks on the club, to remove him from his e-mail, the one that
3 he had started in 2005, and they gave all of his responsibilities
4 of the comedy club to Defendant Heiss.

5 You will hear how he was technically still a managing
6 member. All of his powers were gone. At this point, it became
7 clear to John -- you'll hear testimony that supports this --
8 that he needed to focus on protecting his trademark, his
9 business that he had started a long time ago.

10 So in February he got his own attorney, and he sent them a
11 cease and desist letter, and defendants, in March, hold another
12 managing member meeting. At this meeting, they bring counsel,
13 John brings his counsel, and John brings a court reporter. But
14 you will hear the defendants refused to let the court reporter
15 in. So they proceed without a court reporter. And at this
16 meeting, defendants vote 2 to 1 against John to terminate his
17 managing member interest.

18 They give two reasons for this. The first reason is they
19 say that John didn't show up back at the club, didn't put in
20 enough time and effort at the club after January 17th. The
21 second reason that they give, they say that the club's social
22 media was sabotaged. And they blamed John for it.

23 And this will be a central theme to their counterclaims:
24 John was responsible for this. But you will also hear testimony
25 from the woman who did it, who admitted to doing it, who told

1 defendants that she did it, and she explains why she did it.

2 Because they weren't paying her. And she was afraid. You will
3 hear testimony from that person, a Ms. Dawn Henderson.

4 And members of the jury, with John out, the club suffered.
5 Defendants made the decision they were going to rebrand, rebrand
6 without comedy and start over. You will hear testimony that in
7 doing that, they decided that they needed a loan, a very large
8 loan that Defendant Dawson arranged with the club from his
9 personal funds, again, negotiating for himself and for the club.

10 And we will show, members of the jury, that with all this,
11 John still cares about Riot Act. He wants his trademark. He
12 wants his business. And so in 2012, defendants say, okay, fine.
13 We'll give you back your trademark; we won't touch it anymore.
14 But you will hear evidence, see evidence, and hear testimony,
15 they're still using it. It's still on their licensing. It's
16 still hanging in the bar.

17 Members of the jury, we thank you for stepping out of your
18 lives for a few days to help us resolve this issue. As we will
19 show, Mr. John Xereas has been frustrated in trying to do his
20 life's work. He's been denied the full value of all of the
21 effort that he made Riot Act before the club opened, while the
22 club was opening and working, and then after.

23 Despite being promised compensation for all the work that
24 he put into the club before he was terminated, he received a
25 fraction of that. We will show that he has never been

1 compensated for his trademark. And we will show they had a
2 contract. They had a contract to be equal business partners.
3 And they didn't do that.

4 Members of the jury, we are asking you to look at the
5 evidence and listen to the testimony over the next few days.
6 We ask you to help make Mr. John Xereas whole to put him back
7 on his feet so he can move on with his life.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Ms. Glavich. Thank you, you
10 may have a seat. Mr. O'Neil.

11 MR. O'NEIL: Thank you, Your Honor.

12 THE COURT: Mr. O'Neil, you may proceed.

13 OPENING STATEMENT BY COUNSEL FOR THE DEFENSE

14 MR. O'NEIL: When I think about this case, the one
15 image that comes back to my mind over and over again is the old
16 story of the kid playing a game, gets frustrated, and at a
17 certain point just can't take it anymore, grabs his ball and
18 goes home. And that is exactly what John Xereas did in this
19 situation.

20 Defendants and Mr. Xereas started a business together,
21 invested over \$2 million in outside investors' money to get that
22 business started, and in the middle of the game, Mr. Xereas took
23 his ball and went home, leaving the business in chaos and
24 disarray.

25 The defendants, after Mr. Xereas walked out, walked out

1 with his book of all the acts which were supposed to perform
2 at the club, they tried for three months to keep the business
3 going. But they decided shortly after that the comedy part was
4 never going to work, and so what they did is they invested their
5 own money and built a new establishment that's been profitable
6 and has paid back at present about half of the investors' money.
7 So the investors put in \$2 million, and they've gotten about a
8 million dollars of it back, despite Mr. Xereas's best efforts to
9 prevent that business from thriving.

10 So that's what I want to talk to you about today, just a
11 little bit of the history of the process here. As Ms. Glavich
12 noted, in many ways, Riot Act was John's dream come true. He
13 had worked at Improv for 10 years until he left. He started his
14 own comedy club on 14th Street, in the basement of a jazz club.
15 It lasted seven months and then closed.

16 He called that club Riot Act. He called his business,
17 producing shows in various venues around town over the years, he
18 called that Riot Act. So there's no doubt that he had used the
19 name Riot Act. But when he came to Mr. Dawson and Ms. Heiss and
20 they decided to go into business together, he was the one who
21 said he wanted it to be called Riot Act.

22 Mr. Dawson has started many businesses in Washington, D.C.,
23 probably 20 before Riot Act, and several more since. And
24 Ms. Heiss worked with Mr. Dawson for 15 years, sometimes owning
25 a piece of the equity in the projects, sometimes just being paid

1 as an employee of their management company.

2 So they had started many places before, and the name wasn't
3 really a crucial element to them. In their view, Riot Act had
4 already been used and closed down after seven months. So in
5 their view, it wasn't all that valuable. But John insisted that
6 the company be called Riot Act.

7 And the one thing that they wanted to make sure of before
8 they used the name was that the company was going to own the
9 name. Mr. Dawson and Ms. Heiss had multiple conversations with
10 Mr. Xereas confirming that the company was going to own the
11 name, to the point that when they created the LLC and went to
12 file the name of the company with the DCRA, they found that
13 there was another company called Riot Act, one that John had
14 incorporated years before for a project that he tried that
15 didn't get off the ground.

16 And so they had to -- Ms. Heiss had to call the lawyer, get
17 them to dissolve that corporation, and then the company filed
18 its articles of incorporation under the name Riot Act. They
19 never would have done that if the company didn't own the name.
20 The understanding of all the parties, with the assistance of
21 John, is that the company would own the name.

22 And as we go through the case, you'll see the communications
23 during that time period, the e-mails back and forth. They
24 weren't all working in the same office until the club was built
25 out in late summer of 2011. They were kind of all in different

1 locations, so there were communications by e-mail where they
2 confirmed that where John would refer to we've got to protect
3 our trademark, we've got to make sure that other people don't --
4 we've got to make sure other people don't get in the back door
5 on our intellectual property. So you'll see all those e-mails
6 confirming our understanding that the name was owned by the
7 company.

8 So when Mr. Xereas talks about a license, just know that
9 the facts aren't going to back that up. The facts are that the
10 company, from the very beginning, owned the name Riot Act and
11 acted as if it owned the name. It paid for the domain name for
12 the use of the e-mail accounts, and John was there with the
13 company that Riot Act hired, a company called Squid, who set up
14 all the domain names and e-mail accounts, and he was there
15 participating in the transfer of all that information to this
16 company.

17 And you'll hear Shaun Robinson will come in and tell you
18 that he sat town with John and that, in his view, John knew
19 exactly what he was doing, that he was transferring the
20 ownership of those domains and e-mail accounts to the company.

21 What company would take its name and then allow one of the
22 minority partners to own the name so that at some point in the
23 future he can spring a trap and tell them that, well, now you've
24 got to start paying for it, and I want whatever number he could
25 make up.

1 They were all equal partners. But when things went south,
2 when the game got tough, John started saying, no, no, no, that's
3 fine, you have to start paying me for it. He had his lawyer
4 send a cease and desist letter in February of 2012 telling the
5 company they couldn't use the name anymore. That would
6 essentially have shut down the business.

7 He did the same thing to Shaun Robinson, who was running
8 the company website. Had lawyers contact Shaun and tell him
9 that he didn't own -- that the company didn't own those domains
10 and they had to turn them off right away. Luckily, neither one
11 of them did that, or the company would have immediately closed
12 its doors, and the friends and families of Geoff Dawson and
13 Marjorie Heiss would have lost their \$2 million.

14 Another fact that wasn't mentioned in the plaintiff's
15 opening was that of that \$2 million invested, Mr. Xereas didn't
16 bring in any of it. His sole contribution to the company was
17 his original \$100,000 obligation that each of the members took
18 on. Marjorie and Geoff paid \$75,000 of that before the club
19 even opened, and in August of 2011, they made their final
20 \$25,000 payment. John began promising them that they would have
21 their \$100,000 in August of 2010, and you'll see the e-mails.

22 But by August of 2011, he hadn't put in any money. He was
23 playing with house money. I think he thought that this was his
24 dream come true, he was the true face of Riot Act, and he was
25 the only one that made any decisions that mattered. The reality

1 is he had partners. He had investors. He had fiduciary duties
2 to the people who had put their money into this business, and he
3 wasn't the one who had unilateral say into how the business was
4 run.

5 And you'll see that over time, even before August of 2011,
6 the relationship of the parties frayed, one of the factors being
7 John's inability to put his money into the business. But
8 another factor was the people he hired, the people he surrounded
9 himself with, and the way he conducted business.

10 Early in 2011, Geoff and Marjorie came to the conclusion
11 that this project was bigger than John could handle. Even
12 during the build-out stage, they began to have concerns. And
13 what they did was they talked to a person that they had done
14 business with for many years, Richard Mackey, who had run
15 several bars in D.C., sometimes affiliated with Mr. Dawson,
16 sometimes not, and they asked him to be a general manager.

17 They came to John, and they told him, John, we think this
18 would make things run smoother. We think this would be a better
19 way to do it. And John agreed. In fact, you'll hear Mr. Dawson
20 testify he thought John was relieved that some of the pressure
21 was off of him because the idea had always been John was going
22 to be the operating partner of this business.

23 Geoff and Marjorie had no desire to run a comedy theater.
24 They had no comedy experience. That was John's part of the
25 company. Geoff was going to raise the money, build out the

1 space. Marjorie was going to do the contracts, do the licenses.

2 And you'll see the contracts. They're not simple
3 documents. They're sophisticated, top-of-the-line agreements
4 among the partners, among the investors, and she registered with
5 the Securities and Exchange Commission. And they raised money,
6 the \$2 million from over 20 -- 15 to 20 outside investors. Some
7 of the investors put in \$500,000; some put in as little as
8 \$50,000. They sold the pieces in units.

9 And all of those investors weren't investing in John. They
10 were investing in Geoff and Marjorie. Had Geoff gone to those
11 investors and said, I'm trying to raise money for this business,
12 but John is going to be in charge, the investors wouldn't have
13 approved the money. Geoff has worked with these investors
14 before and always shared and paid back the investment of his
15 enterprises.

16 Had he ever been in the comedy business before? No.
17 That was something new and exciting, and they were all excited
18 about it in the beginning. But the ultimate reason to go into
19 the business was to make a profit for themselves and for their
20 investors. And as time went on, it seemed more and more that
21 Mr. Xereas had no interest in his investors.

22 In fact, one thing you didn't hear during their opening was
23 that there were any investors at all. Instead, John has focused
24 his claim on invoices that they couldn't find when they went to
25 search our offices. Not invoices that don't exist; invoices

1 they couldn't find. And those are two different things.

2 And we'll be the first to admit, when they took over
3 control of the business from John, the records were in disarray.
4 But it's a bar and a comedy club, and they're not all CPAs, and
5 people don't always put things in the right file. But you'll
6 see when you go through the company's QuickBooks accounts that
7 they had meticulous records of what the company was spending,
8 and they kept those meticulous records in their QuickBooks
9 accounts because the investors expected to have records of what
10 was going on with their investments.

11 When the business opened in 2011, it immediately lost
12 money. In the first two months, the business lost \$100,000.
13 This was after \$2 million of the investors' money had been used
14 to build out the space. Businesses that make money, everybody
15 can kind of look the other way at small personality disagreements.
16 Businesses that lose money magnify those problems.

17 So in the fall of 2011, John still hadn't put his money in.
18 The business was losing money. Geoff Dawson was loaning the
19 business a hundred thousand dollars here, \$200,000 there, to
20 keep the doors open to protect his investors, and he was using
21 his own house as the collateral for those loans.

22 Eventually, when Mr. Xereas admitted that he couldn't come
23 up with the money for the investment, Geoff got a friend of his,
24 Mr. Thomas DiTonto, to loan John \$50,000 for his first half of
25 his capital contribution. So even when John was purporting to

1 put his money into the game, it was really Geoff's money. It
2 was Geoff's friends investing in the business.

3 And again, John still didn't have any skin in the game.
4 Eventually, by December 2012, John put his final \$50,000 in.
5 But by that time, the tension in a business that's losing money
6 that's trying to make payroll, that's checking to make sure
7 their payroll checks don't bounce, got to be too much.

8 And you'll hear testimony throughout the case of the
9 concerns that Geoff and Marjorie had about the business. They
10 weren't there on a day-to-day basis. They were supposed to be
11 in the background. John was supposed to be signing contracts
12 with comics and having them reviewed by Marjorie.

13 John was supposed to be running the show on a daily basis,
14 the comedy part of the business. The general manager was
15 running the bar and restaurant business to try to take some of
16 the burden off of John. But in early in 2011, Richard Mackey,
17 who they had hired to be the manager, had to go back to Ireland.
18 His father was sick.

19 So on Richard's recommendation, they hired a new general
20 manager, a man named Matt Morinello. John had also -- as I
21 noted before, John hired a lot of his friends and relatives, his
22 brother and other people. You'll meet some of them even today,
23 today and tomorrow. And he surrounded himself with these people
24 that walled themselves off from the rest of the employees.

25 They were kind of John's people, and they were protecting

1 John. And one of those was Dawn Henderson. You'll see her
2 testimony that was taken during this case. John gave her the
3 job of being in charge of social media: a Facebook fan page, a
4 Twitter page, YouTube pages. But in September, Matt Morinello
5 fired Dawn because she was getting a fairly high salary, the
6 business was losing money, they were tightening ship all over
7 the place, so Dawn had to be let go and she was supposed to end
8 her responsibilities for the social media accounts. In
9 response, that same day, John fired Matt Morinello without
10 consulting his two other partners.

11 Now, certainly, the partners had, or John as the operating
12 partner, had power to write checks, to run the business on a
13 normal basis, but when big events are being considered, the
14 three partners need to be in consultation. The firing of Matt
15 Morinello caused significant problems.

16 Geoff was very disappointed, and you'll see the e-mails
17 he wrote that same day saying, okay, John, if you want to run
18 things, you've got to do it. You need a \$200,000 loan because
19 I'm not putting any more money into this business if that's the
20 way you're going to run it.

21 And, of course, John couldn't do that. That's when John
22 promised to find a way to put more money into the account, and
23 they kind of smoothed over the problems and ended up hiring a
24 new general manager, Peter Bayne. And you'll hear from
25 Mr. Bayne later in the case. But throughout the fall of 2011,

1 when the company was losing money, the tensions between the
2 partners grew until, in January, Geoff and Marjorie decided
3 something needed to be done.

4 They made a small amount of profit in October, a little bit
5 better in November because they presold a lot of tickets through
6 Groupon, so they made a little bit of money. The problem with
7 preselling tickets through Groupon is, the next month, ticket
8 sales plummeted again. They never came close to their projected
9 ticket sales numbers.

10 So by the end of the year, the company was still in the
11 red, no prospects for a way to profitability, John acting
12 unilaterally, and Geoff and Marjorie decided something needed to
13 be done. Costs needed to be reduced. They needed a
14 professional staff running the place.

15 And so they voted two to one to fire John's brother and
16 Mike Farfel, John's friend, both of whom you'll hear from Peter
17 Bayne had very mushy job descriptions and generally just hung
18 around the club doing this or that. But really, if they had
19 specific responsibilities, they generally didn't meet them very
20 well. For a while, Ted was trying to arrange events, and you'll
21 hear about some of the specific problems that that led to and
22 Marjorie had to step in and fix.

23 And it was well within their rights to take the action to
24 fire Ted and Mike. And, in fact, you'll hear from Mr. Xereas,
25 Ted worked for Mr. Xereas when he was working at the Improv.

1 Only lasted a short amount of time when John himself had to fire
2 his own brother for his actions at the Improv. So John knew
3 what he was dealing with. Geoff and Marjorie did not. And once
4 they realized it, they took the steps to fix it.

5 Well, the dismissal of Ted and Mike caused John to really
6 lose it. This is when he really -- the frustration boiled over.
7 He took his notebook showing all the acts that he had scheduled
8 to perform at the venue, and he went home.

9 And Ms. Glavich, as she noted, maybe for the first week
10 he'd answer e-mails, he'd answer phone calls occasionally. They
11 were scrambling to find -- they had comics coming into town they
12 didn't know about. They had comics coming in to perform that
13 didn't have contracts; they didn't know how much they were
14 supposed to get paid. It was chaos. John took his ball and
15 went home, and he never once thought of the investors, what they
16 had on the line.

17 He took steps to make sure that the company felt his
18 absence. The day after Ted and Mike Farfel were fired, all of
19 the social media accounts of the company -- the YouTube page,
20 the Facebook fan page, the Twitter account -- they were all
21 taken down. We all now know, and you'll see Dawn's testimony,
22 she admits to part of it. But the only conclusion you can
23 reach, based on the timing of that event and seeing Dawn's
24 testimony, is that she wasn't doing this on her own.

25 She was taking instruction from somebody. We think that

1 person was John, who was storming out of the club screaming at
2 his partners. So we don't think it was a coincidence that Dawn
3 Henderson, who had been fired in September but still had all
4 the administrator codes to get into all these accounts, took
5 everything down.

6 And the company, which was already wounded, couldn't afford
7 advertising on a bigger scale, so it relied on its social media
8 to get out the word. I mean, this was back in 2012. Maybe
9 Twitter wasn't what it is today, but this was the main avenue to
10 reach the people who were going to buy their tickets. They had
11 to hire a forensic expert to try to figure out what was going
12 on. And when they asked John to help, he shrugged his shoulders
13 and said, I don't know, I'll make some calls.

14 You'll hear Dawn testify John never called her, the obvious
15 person to call. So he was more than happy to make the company
16 suffer because of what he had seen as the perceived slights by
17 Geoff and Marjorie.

18 But it didn't stop there. Some of the witnesses who are
19 scheduled to testify before you today, all part of John's group
20 within the club, they filed EEOC complaints. They filed a bar
21 complaint against Marjorie. They filed a criminal complaint
22 against Geoff. Anything they could think of, they did to cause
23 more pain and more suffering for the company.

24 The company had to bring in folks from outside to try to
25 find new comedy acts to perform. They were doing triage in

1 Mr. Xereas's e-mail accounts, trying to figure out what he had
2 agreed to, because there were no executed contracts, there were
3 no plans laid out, and in his absence, as I said, it was chaos.

4 So they did have meetings, and we have the transcripts of
5 those meetings. They talk about the meeting in March where they
6 didn't allow a court reporter in. They recorded the meeting.
7 The recording of that meeting and a transcript of that meeting
8 were made and provided to John. Same with the January 26th
9 meeting. A transcript was made of that. I think Geoff recorded
10 it on his cell phone.

11 They put the minutes of that meeting in John's mailbox at
12 work, and it sat there because he never came in to get it. In
13 fact, you'll hear from Marjorie, she didn't see John after he
14 walked out of the club until he walked into her deposition in
15 this case six years later. So this idea that John answered a
16 few phone calls and answered a few e-mails, therefore he was
17 continuing to work, that's simply not true.

18 For many months, Geoff had bent over backwards to let John
19 run the club his own way, gave him plenty of rope to do what he
20 wanted to do. But as I said, at a club that's losing money, you
21 have to try something different. You have to cut the fat. You
22 have to make things lean, and hopefully make that leap to
23 profitability. It never happened.

24 By the middle of February, as Ms. Glavich noted, John had
25 his lawyer send the company a cease and desist letter claiming

1 that he owned the trademark that he had clearly given the
2 company. When we talk about this idea of a trademark license
3 that John likes to talk about, there was no license. There was
4 no agreement to pay any amount of money. There were no terms
5 under which the trademark would revert to Mr. Xereas. There
6 were no terms at all. There was no written agreement.

7 And if this trademark license was so important to John, he
8 could have asked to have it put in the operating agreement or in
9 the document that they sent to investors to let them know that
10 John had this claim against the name of the company.

11 What both Geoff and Marjorie will testify to is that they
12 never would have provided such an agreement to John over a name
13 they didn't care about, that really wasn't that important to
14 them, because it gave him, as a minority owner of the company,
15 complete leverage.

16 If he had a license that didn't require any payment and
17 then two years after you've invested this money building the
18 company up he wants some huge licensing fee, then you're faced
19 with the choice of either giving him the money or changing the
20 business' name, both of which are very impalatable choices.

21 So you have to ask yourself, would an experienced business
22 person put themselves in that place? And the only answer is no.
23 It's true, halfway through 2012, they made another difficult
24 decision. They realized they weren't going to make it in the
25 comedy business. Competing with the Improv, when the Improv is

1 a national chain and books acts out of a national office, just
2 wasn't going to work. So, again, Geoff put \$700,000 of his
3 money into repurposing and rebranding the club into Penn Social.

4 And Penn Social, over the last six years, has been a
5 profitable business. In fact, Mr. Xereas owns 26.6 percent of
6 it. So not only did Geoff put his house on the line for the
7 company, he made Mr. Xereas money. Now, they haven't been paid
8 anything because the way the business was structured. The
9 investors who put in the \$2 million, they get their money back
10 first.

11 That was supposed to happen within a year, in 2010.
12 They've been paid back half of their money so far. So from the
13 investors' perspective, this is not a very good deal. It's the
14 sincere hope, and you'll hear Geoff testify about that, that in
15 the next two years they'll be able to complete paying back the
16 investors.

17 But in large part, John's claims, what started out as
18 claims by his friends and eventually this lawsuit, have really
19 put the company behind the 8 ball. The company, under the
20 agreement, is obligated to indemnify Geoff and Marjorie if they
21 get sued.

22 So when John created this, he created this obligation to
23 pay the fees that Geoff and Marjorie were incurring in defending
24 this lawsuit. So once this lawsuit is over, maybe the investors
25 will get paid back. But the only people who have been looking

1 out for the investors over the last eight years are Geoff and
2 Marjorie.

3 We think the evidence will show not only that we did not
4 breach the contract, but we were well within our rights when we
5 removed John as a managing member. He wasn't devoting himself
6 to the business. He was trying to shut it down. They were
7 completely justified in removing him as a managing member.

8 And, really, the only thing they removed was his vote.
9 He still owns his shares, he still owns his equity in the
10 business, and hopefully someday that will pay off for him.
11 Geoff and Marjorie haven't gotten paid from the business, but
12 someday they still hope that it could happen.

13 The other claims that John is making here, in addition to
14 the breach of contract claims, is this trademark claim. But
15 clearly, as I stated, there's no license, and if there was a
16 license, everybody agrees it didn't require the business to pay
17 John anything. He planned in late fall of 2011 to hire a lawyer
18 to negotiate a license agreement. You'll see those e-mails.

19 But during the -- but that never happened. During the
20 whole time that the company used the words "Riot Act," it never
21 had an obligation to pay John for that use. So his trademark
22 claims, his cybersquatting claims about the domain names that he
23 voluntarily gave to the company, his breach of contract claims,
24 there's nothing there.

25 We have asserted breach of contract claims ourselves, and

1 we think those are well supported. All of the actions that John
2 took to try to hobble the business did in fact cost the business
3 money, and it was only through the defendants' hard work that
4 John's investment has been protected. So we think once you hear
5 from all of the witnesses, and we do ask you give us the
6 opportunity to hear from everybody before you decide, it'll be
7 very clear to you that John's claims ring hollow, and our claims
8 are fully supported and justified. Thank you.

9 THE COURT: Thank you, Mr. O'Neil. Counsel, may I ask
10 you to approach, please, regarding our schedule.

11 (Bench conference.)

12 THE COURT: You, Ms. Glavich, are going to examine the
13 first witness. Are you prepared to start now with the
14 understanding that before you seek to inquire about any matter
15 that indicated is likely objectionable then you can start and
16 then ask to approach the bench, or would you like to give the
17 jury a brief recess now and continue?

18 MS. GLAVICH: It would probably only be one or two
19 questions that will impact the issue. So if you'd like to just
20 deal with it now, and then I can just continue through
21 Mr. Goodwin without stopping for one question.

22 THE COURT: Is that reasonable?

23 MR. O'NEIL: Well, I don't know what he's going to
24 testify to.

25 THE COURT: Well, I'm not going to preview the

1 testimony. I only one to want to hear -- I assume that's not
2 the witness who's seated on the row behind you.

3 MS. GLAVICH: No. The witness is out in the hall.

4 THE COURT: Why don't we excuse the jurors for 15
5 minutes, and we can all take a stretch break. I can hear
6 counsel's arguments regarding this line of questioning that may
7 well be objectionable, I will rule on it, and then we'll come
8 back and proceed. About how long do you think your direct will
9 require?

10 MS. GLAVICH: Not long. Maybe half an hour or so?

11 THE COURT: All right. And then you'll be prepared to
12 cross-examine immediately thereafter?

13 MR. O'NEIL: Yes.

14 THE COURT: Very well. Thank you.

15 (End of bench conference.)

16 THE COURT: Members of the jury, thank you. At this
17 time, we will take our afternoon recess. It may seem odd since
18 we started rather late after lunch, but I will excuse you for 15
19 minutes. That gives you time to step out into the hallway if
20 you'd like, make a phone call, and then come back ready to
21 resume until we recess for the day. Thank you very much. I
22 will ask you to leave your notepads on your seats, please.
23 Thank you. Ms. Lesley is coming to assist you now.

24 (Jury out at 3:09 p.m.)

25 THE COURT: We are off the record.

1 (Short recess.)

2 THE COURT: Ms. Glavich, since you indicated that you
3 will undertake the direct examination of Mr. Goodwin, may I ask
4 you, please, what it is you wish to elicit concerning a
5 so-called -- what you have termed an "overture" by Ms. Heiss?

6 MS. GLAVICH: Yes, Your Honor. The testimony that we
7 would like Mr. Goodwin to discuss is he's a comedian. He has
8 performed at Riot Act, the comedy club, while John was one of
9 the managers there and Defendant Heiss was there as well.

10 He was involved in two particular incidents in one evening,
11 one in which -- if you would like me to be blunt, one in which
12 Defendant Heiss had him feel her breasts, and another one in
13 which she took a running leap on him while he in full view of
14 his wife. He has testimony as to those particular events.

15 THE COURT: To what claims would that testimony be
16 relevant?

17 MS. GLAVICH: It's relevant to the breach of duty of
18 good faith and fair dealing, Your Honor.

19 THE COURT: Mr. O'Neil -- thank you very much,
20 Ms. Glavich. Mr. O'Neil?

21 MR. O'NEIL: Your Honor, in your summary judgment
22 motion, when you addressed the covenant of good faith and fair
23 dealing, you stated that the plaintiff has shown that a genuine
24 issue of material fact exists. Plaintiffs put forth evidence
25 for which a reasonable juror might infer that the defendants

1 acted in bad faith when removing plaintiff as a managing member
2 of the LLC.

3 Now, I don't see how a hug from Ms. Heiss to a performer
4 after he came off the stage, and even a hug to his wife, has
5 anything to do with a breach of the duty of good faith and fair
6 dealing. This wasn't an even an interaction with the
7 contractual partner.

8 THE COURT: Very well. Thank you, Mr. O'Neil.
9 Ms. Glavich?

10 MS. GLAVICH: Yes, Your Honor. This goes to the point
11 of breach of duty and fair dealing. This also goes to our
12 defense of the counterclaims. They're alleging that the comedy
13 club failed because of John's actions. What we are trying to
14 say is that they were also behaving very badly. That affects
15 the club. It affects John's ability to manage the club.

16 THE COURT: Very well. Thank you very much,
17 Ms. Glavich.

18 Having heard the arguments of counsel, the Court sustains
19 prospectively the objection to questions concerning the alleged,
20 so-called overture, largely because the Court -- largely because
21 plaintiff has failed to demonstrate that there is any nexus at
22 all between what is believed will be the response of Mr. Goodwin
23 to questions about these interactions and any remaining claim or
24 defense of any claim brought by the defendants. Thus, the Court
25 precludes testimony about what I will again call the so-called

1 overtures.

2 Now, having said that, we are down now to approximately
3 eight minutes. So let's all take a brief recess so that we'll
4 be ready to resume and continue until about 4:30. Thank you.

5 (Recess from 3:16 p.m. to 3:28 p.m.)

6 THE COURT: Ms. Glavich, if you would like to ask
7 Mr. Goodwin to step inside, you may do so now.

8 MS. GLAVICH: Yes, Your Honor.

9 (Witness enters.)

10 THE COURT: Thank you very much.

11 Are you Mr. Goodwin? Good afternoon, sir. If you wouldn't
12 mind, please have a seat right here on the front row just for
13 one moment. Thank you.

14 (Jury in at 3:31 p.m.)

15 THE COURT: Members of the jury, thank you very much.
16 Ms. Glavich, you may call the plaintiff's first witness.

17 MS. GLAVICH: Thank you, Your Honor. We'd like to
18 call as our first witness Mr. Allan Goodwin.

19 THE COURT: Very good. Mr. Goodwin, let me ask you to
20 step to the witness stand and stand toward the deputy clerk to
21 be sworn.

22 ALLAN GOODWIN, WITNESS FOR THE PLAINTIFF, SWORN

23 DIRECT EXAMINATION

24 BY MS. GLAVICH:

25 Q. Please introduce yourself to the jury.

1 A. Hi. My name is Allan Goodwin. I'm a stand-up comedian,
2 and I'm here as the first witness for the plaintiff today.

3 Q. Thank you. And do you go by another name in your comedy?

4 A. No. That is my comedy name. My real name is Allan
5 Sitterson, but my stand-up comedy name is Allan Goodwin. I'm
6 on all the websites.

7 Q. And you preempted me a little bit, but what is your
8 profession?

9 A. Stand-up comedy. I also do some programming work too on
10 the side. Well, it's my day job, but comedy is what I do. I'm
11 lucky that my day job allows me to do comedy everywhere. As
12 long as I have Internet access, I can code from my day job and
13 then do comedy at night.

14 Q. How long have you been a comedian?

15 A. Twenty-seven years.

16 Q. And do you do stand-up performances?

17 A. I do. I just left Seattle. I was supposed to have a gig
18 tonight in Seattle, but I canceled tonight to come and do this
19 instead; and I still have another gig in Washington at SKWIM on
20 Wednesday.

21 Q. Do you do any other kind of comedic performances?

22 A. Just stand-up.

23 Q. What kind of venues do you perform at?

24 A. Comedy clubs across the country, all over. Other countries
25 too. I've done gigs on boats, Carnival Cruise Lines. I've done

1 shows in the Bahamas, the Cayman Islands, England. I do comedy
2 wherever people want me.

3 Q. Do you perform in the District?

4 A. I used to all the time. Matter of fact, I just got booked
5 to do a show at Bier Baron on April 26th and 27th, I think, of
6 next year.

7 Q. How do you know Mr. John Xereas?

8 A. I've known John since he worked at the DC Improv.

9 Q. Is that where you met him?

10 A. That is where I met him, yep. It's a great story, but
11 probably one we don't have time to go into. But it was a neat
12 story the way we met anyways. I'll leave it at that.

13 Q. You can give us the short version.

14 A. Well, I had been trying to get into the club for a couple
15 of years and had very little luck, and he was out changing the
16 signs on the marquee. And I was walking by because my day job
17 at the time involved me working in that area. And I was -- I
18 complained to him. And I said, "I've been trying to get in here
19 two years, and nobody listens to me. I'm featuring for Jake
20 Johanssen in two weeks right down the street at The Comedy Cafe,
21 so I don't even need this club."

22 And I didn't know who he was, so I didn't know he was a
23 manager. But then he came to see me two weeks later. And I had
24 forgotten who he was, and he hands me his business card upside
25 down, and he said, "Don't turn this card over until I leave."

1 And I was just the feature. Jake Johanssen was headlining.
2 So I thought, I'm going to sit here with an upside-down business
3 card for 45 minutes in my hand?

4 But he literally goes and pulls the chair out for his date,
5 and they both get up and walk out on Jake Johanssen. I'm like,
6 who is this guy? And I flipped it over. "John Xereas. DC
7 Manager, DC Improv." I'm like, "Finally, after two years."

8 Q. Around when would you say that you met him? What year?

9 A. Gosh. It was late '90s, maybe? Late '90s, early 2000s.
10 Yeah.

11 Q. Were you ever involved in Riot Act?

12 A. I was. I did their website.

13 Q. When did you work on their website?

14 A. After John left the DC Improv, he started Riot Act, and he
15 was working super hard to make Riot Act a viable name, you know,
16 a brand. Yeah.

17 Q. And what did you do for him?

18 A. I did -- he was doing -- after the DC Improv, he was
19 booking --

20 THE COURT: Well, let me suggest, Mr. Goodwin, that
21 you wait till Ms. Glavich has completed the question, listen
22 carefully to the question so that you answer only the question
23 that she asked.

24 THE WITNESS: What did I do for him?

25 MS. GLAVICH: Yes.

1 THE COURT: That was the question.

2 THE WITNESS: I did anything and everything that John
3 wanted me to do for him, which included building the website for
4 Riot Act, doing comedy shows when he would have me on the shows,
5 and -- yeah.

6 BY MS. GLAVICH:

7 Q. Did you perform at Riot Act?

8 A. I did.

9 Q. Did you perform at the Riot Act Comedy Theater?

10 A. I performed at every instantiation of Riot Act there was.
11 There was one -- I think the name of the club was HR-47. It was
12 in the basement, and I performed there several times. And then
13 it moved to the -- I guess the E Street location.

14 Q. When did you perform at the E Street location?

15 A. In the -- once it opened until the time they let John go.
16 I was there quite often.

17 Q. Performing?

18 A. Yeah, and doing videos and stuff for advertising upcoming
19 shows. I was there quite often.

20 Q. When you were doing video, were you paid?

21 A. No.

22 Q. When you were performing there, what was your impressions
23 of the club at the time?

24 A. Amazing. An amazing club. Very well thought out. One of
25 the best clubs I've ever performed at in the 27 years I've been

1 doing stand-up comedy. Far surpasses some of the biggest known
2 clubs in the industry now. It would have been one of the best
3 comedy clubs in the world had it been allowed to have flourished
4 and continued under John's leadership.

5 Q. Do you know Marjorie Heiss?

6 A. I do.

7 Q. What were your interactions with Ms. Heiss?

8 A. She was one of the owners of the club. She made me feel
9 very uncomfortable, so I tried to limit my interactions with
10 her. She's -- I don't know. Impetuous? Very little
11 inhibitions? Inappropriate?

12 THE COURT: Counsel, let me ask you to approach,
13 please.

14 (Bench conference.)

15 THE COURT: I am concerned that Mr. Goodwin has not
16 heeded my instruction to avoid volunteering information. A
17 concern actually arose -- and bear with me here while I look
18 at the realtime -- the response which he made, which is not
19 responsive to the question that you asked, the question was
20 certainly not objectionable, but Mr. Goodwin indicated that,
21 for example, that the club would have been one of the most
22 successful clubs had it been allowed to flourish under John's
23 leadership. That's close to a verbatim reading, I believe.

24 Mr. Goodwin cannot render an opinion about whether the club
25 would or would not have been successful had the instant dispute

1 not arisen. I am not certain what to do because, as I said,
2 your questions have not been objectionable. I am concerned that
3 too much information is being volunteered, and of course the
4 last such occurrence was the reference to Ms. Heiss as
5 impetuous. I fear that the next thing might have been what I
6 indicated was not relevant. So short of asking the jury to step
7 out while I speak to Mr. Goodwin, I'm not certain what to do.

8 MS. GLAVICH: I can move on to my next question.
9 I have two more, three more questions.

10 THE COURT: Are you prepared to do that?

11 MS. GLAVICH: Yes.

12 THE COURT: Very well. In that event, perhaps there
13 is nothing I need to do at this moment. Should the state of
14 affairs change, I believe I will have to ask the jury to step
15 out, and I will have to be more explicit in my instruction to
16 Mr. Goodwin to answer the questions, both your questions, which,
17 as I said, have not been objectionable at all, and the questions
18 that you will ask Mr. Goodwin. All right. Thank you.

19 (End of bench conference.)

20 THE COURT: Thank you.

21 Now, Ms. Glavich, please continue.

22 BY MS. GLAVICH:

23 Q. Mr. Goodwin, do you know Mr. Geoff Dawson?

24 A. I'm -- kind of, yeah. I mean, I've met him a couple of
25 times.

1 Q. What were your interactions with Mr. Dawson when you were
2 at Riot Act?

3 A. Nothing. I met him a handful of times, and there was very
4 little interaction. I don't know very much about him. He
5 wasn't there very often.

6 MS. GLAVICH: I believe that's all the questions I have.

7 THE COURT: Very well. Thank you very much,
8 Ms. Glavich. You may have a seat. Thank you.

9 Mr. O'Neil, you may cross-examine.

10 MR. O'NEIL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'NEIL:

13 Q. Mr. Goodwin, you stated that you worked with Mr. Xereas
14 at the first Riot Act club. Correct?

15 A. Yes.

16 Q. And do you know how long that club was open?

17 A. I would say maybe a year and a half.

18 Q. And in that year and a half, how many times did you perform
19 there?

20 A. Ten, fifteen times.

21 Q. So about once a month you were appearing there?

22 A. Maybe, yeah.

23 Q. Were you a headliner?

24 A. On some shows, yes. Others, no.

25 Q. When you weren't the headliner, what was your normal rate

1 of pay?

2 A. I don't remember. It was probably like 50 bucks or
3 something.

4 Q. How about when you were a headliner?

5 A. 150.

6 Q. Had you headlined anywhere else besides the first Riot Act
7 club on 14th Street at that point?

8 A. Yes.

9 Q. And what was kind of the proportion between the times
10 that you were an opener and the times you were a headliner?

11 A. With other clubs?

12 Q. Yes. Generally, in your career in 2007 when the first
13 Riot Act club was opened.

14 A. I'm comparing pay with Riot Act in that time to pay from
15 other clubs at that time?

16 Q. No. I'm asking, in your career in 2007, how often were you
17 the headliner versus an opener?

18 A. At Riot Act?

19 Q. Everywhere.

20 A. 50-50.

21 Q. And at Riot Act, was that the same?

22 A. Yeah.

23 Q. What was the most that you got paid at the first Riot Act
24 for headlining a show?

25 A. I think -- it's been a while, but it's anywhere between

1 \$150 to \$200.

2 Q. Okay. And then there was a period of time after the first
3 Riot Act closed in 2007 and the second Riot Act club opened in
4 August of 2011. Were you working with Mr. Xereas at that time?

5 A. Yes.

6 Q. What were you doing?

7 A. I was helping him in any capacity he needed help.

8 Q. On a daily basis?

9 A. No, but weekly, monthly. And that doesn't just mean
10 computer work. I was putting flyers on cars and doing
11 everything that he needed help with.

12 Q. And then the second Riot Act, you stated, which opened in
13 August 2011 until January of 2012, can you tell me how many
14 times you performed at that Riot Act?

15 A. I was there opening night. I got to headline it, I think,
16 twice before, but it wasn't like weekends headlining. It was
17 one-offs. I would say -- I was on some shows not as a
18 headliner, too, there. I would say, in that span, maybe eight
19 times I was on stage. Eight, nine times. Not necessarily all
20 headlining. Maybe three times headlining.

21 Q. Okay. In six months, you played the club eight times.

22 A. Yeah, but not always headlining.

23 Q. Okay.

24 A. Sometimes emceeing.

25 Q. What did you get paid to emcee?

1 A. I don't remember. Probably like 50 bucks a show, 75 bucks
2 a show.

3 Q. And how about when you were an opening act? How much did
4 you get paid?

5 A. Emceeing is opening act.

6 Q. Okay.

7 A. You mean feature?

8 Q. Feature is the one that comes before --

9 A. Before the headliner, yeah.

10 Q. -- the headliner. Okay. All right.

11 A. That was probably a hundred a show.

12 Q. And then when you were a headliner at Riot Act.

13 A. Same. Like 150, 200, something like that, per show.

14 Q. Did you headline a show at Riot Act on New Year's Eve?

15 A. I think I did. I think so. It's been a while. I may
16 have. That doesn't sound wrong.

17 Q. Did you sign a contract with Riot Act for that performance?

18 A. I may have.

19 Q. Do you recall?

20 A. It's been a while. I don't.

21 Q. Did you typically sign contracts with Mr. Xereas when you
22 performed at Riot Act?

23 A. Not to the best of my recollection, no.

24 Q. Does that differ between whether you were a headliner or a
25 feature?

1 A. No.

2 Q. So even when you were the headliner, you weren't signing
3 contracts with the club.

4 A. Not usually, no. But I don't do that with any club.

5 Q. Do you have an agent?

6 A. I don't. Not yet.

7 Q. Because I went to your website, Mr. Goodwin, and your
8 web page identifies a booking agent, Trish Sitterson?

9 A. My wife.

10 Q. Is she a booking agent for anyone else?

11 A. No.

12 Q. I guess that's comedy, right?

13 A. That's comedy. You gotta make it look, right, like you do
14 have an agent.

15 Q. And Michael Farfel, he's your talent agent?

16 A. No. He's a friend of mine, and he used to be an employee
17 at Riot Act.

18 Q. According to yesterday on your web page, Mike Farfel's
19 listed as your talent agent. So that's not true either?

20 A. No. That's -- any comic has people listed as their talent
21 agent, their TV agent, their this agent, their that agent, and
22 none of them are agents. Every comic does this.

23 Q. So you're booking your own show.

24 A. Yes.

25 Q. Okay. The shows you just did in Seattle, you booked them

1 yourself?

2 A. I booked them myself.

3 Q. You didn't sign a contract for that?

4 A. I did not.

5 Q. Do you recall what you got paid on New Year's Eve at Riot
6 Act when you performed there?

7 A. New Year's Eve -- any club I do New Year's Eve is usually
8 two to three times the amount of a normal show. So if I had to
9 guess, I probably got somewhere around 900 or more for New
10 Year's Eve. And that's any club. When you book New Year's Eve,
11 that's a good gig because you're going to get some money on New
12 Year's Eve.

13 Q. And you said you performed at the Riot Act club up until
14 January. January 19th? Is that the date that you used?

15 A. Maybe. I know that the day that John was let go I never
16 stepped foot in there again.

17 Q. The day that Ted was let go or John?

18 A. Probably Ted. You're right.

19 Q. What was the date you understood John was let go?

20 A. I don't remember. I just know that once they started
21 firing all these people that really made the company what it
22 was, I never went back.

23 Q. Did you have a conversation with John about that?

24 A. Probably.

25 Q. Did John ask you not to play at the Riot Act club?

1 A. No.

2 Q. Do you know if John asked any other comics not to play the
3 Riot Act club?

4 A. No. As a matter of fact, a lot of people feel very
5 beholden to John.

6 THE COURT: Well, let me ask you to ensure that you
7 answer the question that the lawyer asked.

8 THE WITNESS: No. I don't think he did.

9 BY MR. O'NEIL:

10 Q. Did you assist Mr. Xereas in publicizing his dispute with
11 his partners at the Riot Act club?

12 A. If there were any ample places for me to voice my disdain
13 for what they were doing to him, I took the opportunity, yes.

14 Q. And did you talk about that with John?

15 A. Probably not.

16 Q. So when you left comments on the *Washington City Paper's*
17 web page about a story about John's dispute with his partners,
18 you did that without John knowing that?

19 A. Probably.

20 Q. Did you bring it to John's attention?

21 A. I may have.

22 Q. Do you know what John has done with the Riot Act trademarks
23 since they were returned to him?

24 A. I don't.

25 Q. Have you performed in any of John's clubs since January of

1 2012?

2 A. I have not.

3 Q. Does John have a club?

4 A. I don't think he does.

5 Q. Does he still work in comedy?

6 A. No. This has devastated him.

7 Q. Did John ever say anything to you about the damage to the
8 Riot Act social-media sites?

9 A. The damage to the Riot Act social-media sites? No.

10 Q. Do you know Dawn Henderson?

11 A. I know her.

12 Q. How do you know her?

13 A. I do know that she was in charge of Riot Act social media
14 sites.

15 Q. I asked you how do you know her.

16 A. That's how I know her.

17 Q. So you met her while she was working at Riot Act?

18 A. Yes.

19 Q. Did you know her before that?

20 A. Maybe passively, but that's where I got to know her.

21 Q. Do you know anything about the finances of Riot Act Comedy
22 Theater?

23 A. No. I mean, I know that when John was asked to be -- or
24 was brought in to run it that he had to give up a large amount
25 of money to be a part of the group of owners, but I don't know

1 specifics, no.

2 Q. So he was required to invest in the company that he was
3 going to own 26 percent of?

4 A. Yes.

5 Q. Did you find that unusual?

6 A. No.

7 Q. Have you ever run a comedy club?

8 A. I have not.

9 MR. O'NEIL: I have nothing further. Thank you.

10 THE COURT: Thank you very much, Mr. O'Neil.

11 Ms. Glavich, do you wish brief redirect of Mr. Goodwin?

12 MS. GLAVICH: No, I do not, Your Honor.

13 THE COURT: Thank you very much, Ms. Glavich.

14 Mr. Goodwin, thank you very much. You may step down, and
15 you are excused.

16 THE WITNESS: Thank you.

17 (The witness steps down.)

18 THE COURT: Counsel, may I ask you to approach briefly
19 regarding our schedule, please?

20 (Bench conference.)

21 THE COURT: Thank you. Is it you, Ms. McDonald, who
22 will examine Mr. Xereas? Would you like to begin? We have
23 about 30 minutes. Very well, let's do that, then, and we'll
24 continue until a point you believe it's suitable to break for
25 the day, no later than 4:30 --

1 MS. MCDONALD: Yes, Your Honor.

2 THE COURT: -- since that is what I promised the
3 jurors. Thank you very much.

4 (End of bench conference.)

5 THE COURT: Now, Mr. Richa, I understand you are
6 prepared to call the plaintiff's next witness.

7 MR. RICHA: Yes, Your Honor. We call John Xereas.

8 THE COURT: Very well. Thank you.

9 Mr. Xereas, I'll ask you to please step forward to face
10 the deputy clerk of court to be sworn.

11 JOHN XEREAS, WITNESS FOR THE PLAINTIFF, SWORN

12 DIRECT EXAMINATION

13 BY MR. RICHA:

14 Q. Good morning.

15 A. Good morning.

16 Q. Or good afternoon; sorry. Please state your name for the
17 record.

18 A. John Xereas.

19 Q. Can you please tell us about your educational background?

20 A. I attended American University, and I majored in
21 communications.

22 Q. And can you please tell the jury about your work experience.

23 A. Well, while I was attending American University, the DC
24 Improv was just about to open, and I thought it would be a great
25 place to work and learn about my field a little bit, hoping to

1 help them with advertising, marketing, and things like that.

2 I thought it would be -- I was always into comedy. I
3 thought it would be a great place to work. So the first night
4 the Improv opened, I ran food. Eventually, I became a server,
5 and eventually I became a manager, and eventually I became an
6 owner of the Improv.

7 Q. Is it customary for managers of the Improv to become owners?

8 A. There's only a few of us that have done that over the years.

9 Q. Can you please tell the jury a little bit about your
10 performance at the Improv?

11 A. At the Improv? I booked acts; I did inventory for the
12 liquor; I booked outside acts at alternative locations; I did
13 contracts; I did staffing. Anything that really had to do with
14 the running of the operation, I was somehow involved in.

15 Q. How was the Improv doing when you became manager of it?

16 A. When I first became manager of the Improv, the general
17 manager at the time, his name was John Johnson, and he basically
18 told me not to put all my eggs in one basket; there's a good
19 chance the club was going to close in six months. So I really
20 took it upon myself to change that, got in good with a lot of
21 the media outlets -- Donnie Simpson, Jack Diamond, things of
22 that sort -- improved our acts, improved our staff, improved our
23 visibility overall.

24 Our owner at the time was a gentleman named Mark
25 Anderson, who was in a depression, and he didn't come out of

1 his -- literally out of his apartment for two years. When he
2 did come out of this depression, I had literally made him
3 millions of dollars. So, in turn, he gave me 5 percent ownership
4 of the club, and then every year I got another percentage.

5 Q. And how long in total were you at the Improv?

6 A. Between 15 and 16 years.

7 Q. Can you tell us when the Riot Act name was first conceived?

8 A. I was working at the Improv, and I had come up with an idea
9 for a television show, actually, and they always say write what
10 you know. So I wrote a TV show about a guy who ran a comedy
11 club. And I thought it would be neat to have that perspective,
12 and also every week, we would have a different comic on the show
13 so it would add to the star power. And while conceiving this
14 project, I was thinking to myself, what do I call the club or
15 what do I call the show, and I came up with the name "Riot Act."

16 Q. You testified you were at the Improv for 15 or 16 years.

17 Can you tell us the years that you were there?

18 A. 1991 to 2005.

19 Q. Okay. And then what happened in 2005?

20 A. Well, while I was at the Improv, I approached them -- this
21 is a few years before, and I approached them about possibly
22 selling comedy CDs and booking more outside events, and they
23 seemed like they wanted to stay more streamlined with just the
24 club. So, for lack of a better name, I started a company called
25 John X. Productions, and I was booking a lot of comics at

1 outside venues and selling comedy CDs.

2 A couple of years after that, the Improv approached me and
3 said it was something they thought they might want to do now.
4 So I basically dissolved John X. Productions. I brought all the
5 bookings into the club, and the Improv bought my CDs at cost,
6 and we moved that store that I had at John X. Productions to the
7 Improv.

8 Q. What did you do career-wise in 2005 when you were done with
9 the Improv?

10 A. When I actually started the Riot Act company, I did a
11 Thomson search. I had my trademark attorney do a search on the
12 name. He found it was available. I also incorporated the
13 company Riot Act Entertainment, LLC. I created five domains.
14 I eventually added another two that year including Riot Act
15 Entertainment, Riot Act Comedy, Hire a Comic. Those three were
16 really the core of my websites but all of them directing to my
17 personal e-mail as well, and I started to do business.

18 Q. So all of this happened in 2005?

19 A. Correct.

20 Q. How many domain names did you register in 2005?

21 A. At that point, seven. Five, and then two later on that year.

22 Q. Did all of these domain names contain the trademark "Riot
23 Act," the name "Riot Act" in the domain name?

24 A. Six of the seven did. The one that did not was Hire a Comic.

25 Q. And when you set up these domain names, did you set up

1 e-mail accounts that were associated with the respective domain
2 names?

3 A. Yes, I did. For each one of these domains, I also set them
4 up for my mom and my brother and a couple of other friends that
5 were helping me with other things, probably Allan and some other
6 friends.

7 Q. Can you explain why you set up e-mail accounts for your
8 mother and your brother?

9 A. Because Riot Act was always a family business. From the
10 time I started it, my mom and my brother were very involved in
11 helping me set up the company and to move it forward, promoting.
12 Anything it had to do, it was pretty much the three of us.

13 Q. And did you have your own e-mail accounts associated with
14 each these domain names?

15 A. Yes, I did.

16 Q. And when did you start using your Riot Act e-mail account?

17 A. As soon as I got it in 2005.

18 Q. And was your Riot Act e-mail address used for business
19 or personal?

20 A. For both. It became my address.

21 Q. When did you first start using the Riot Act name in commerce?

22 A. In 2005, when I set up a store online to sell the comedy CDs.

23 Q. What was the website online that you sold the CDs through?

24 A. Riotactentertainment.com or riotactcomedy.com.

25 Q. And did you eventually incorporate?

1 A. I did in 2005.

2 Q. And what was the name of your company?

3 A. Riot Act Entertainment, LLC.

4 Q. And can you tell the jury a little bit about the business
5 you conducted under that Riot Act company?

6 A. Basically, I was working hard to promote shows outside
7 third-party places for comics to perform. I was selling comedy
8 CDs and things like that. But I was really trying to find
9 another club, because with a club, it allows you to be in touch
10 with the community daily, to build on shows all the time, and
11 really provide a service that people can come to all the time.

12 I was also doing theater shows. So I did Lisner Auditorium
13 where I sold out Bob Saget. I did the Lincoln Theatre where I
14 sold out Paul Mooney and Dick Gregory several times. I did all
15 types of shows like that.

16 And so the theater shows is a different type of aspect
17 because you're really just trying to -- you're promoting one
18 show one night. But I needed something. I needed more
19 consistency, and that consistency would come with a club. So
20 while I was doing the theater shows, I was also trying very hard
21 to find space to put the new Riot Act, or a Riot Act.

22 Q. Did you continue to conduct business from 2005 up until the
23 time you met the defendants?

24 A. Yes, I did.

25 Q. And were there other people involved in Riot Act besides

1 yourself?

2 A. My family.

3 Q. And was your family involved in the Riot Act business from
4 2005 until the time you met the defendants?

5 A. Yes, they were.

6 Q. When did you first start booking comedy under the Riot Act
7 name?

8 A. 2005.

9 Q. Did you continue booking shows under the Riot Act name
10 from 2005 until the time you met the defendants?

11 A. Absolutely.

12 Q. How many shows would you say you booked from 2005 until
13 the time you met the defendants?

14 A. Probably a couple hundred considering that I was also
15 booking comics at clubs, at corporate events, at universities,
16 all types of things including my theater shows. So all in all,
17 in that three- to four-year span, probably a couple hundred shows.

18 Q. And where were these shows located geographically?

19 A. Most of them in the United States, many of them locally,
20 but also all over the United States, some international shows
21 as well, and cruises and things like that.

22 Q. And you mentioned theater shows. You testified about
23 theater shows. Can you tell me -- you mentioned GW Lisner
24 Auditorium. Can you mention names of other venues you did shows
25 at?

1 A. I did Constitution Hall, I did the Apollo in New York City,
2 major large venues with major acts.

3 Q. And did you eventually open your own comedy club?

4 A. I did. In about 2006 I was one of the head people at the
5 DC Comedy Fest, and one of the locations we used during that
6 festival was a spot called HR-57. It was on 14th Street. It
7 was a jazz club, and we had great shows upstairs.

8 The gentleman who owned the space was a guy named Tony
9 Puesan who contacted me after the festival and wondered if I
10 was interested in possibly doing something with him. He had a
11 downstairs that was available, and he said to me would I think
12 about putting something in there comedy-related, possibly.

13 MR. RICHA: Your Honor, may we approach briefly about
14 a matter I mentioned preliminarily?

15 THE COURT: Of course.

16 Members of the jury, while we confer at the bench, please
17 use the time to stand and stretch if you like, have a sip of
18 your beverage, talk quietly among yourselves. Thank you.

19 (Bench conference.)

20 MR. RICHA: We had exhibits that are attached to our
21 initial complaint defendants attached to it which we've
22 identified as trial exhibits. So rather than introduce the
23 entire complaint, just introduce the exhibit? We'd like to just
24 introduce just the exhibit.

25 THE COURT: Did you say rather than introduce the

1 entire complaint?

2 MR. RICHA: Well, it's an exhibit attached to the
3 complaint.

4 THE COURT: The complaint is not an exhibit.

5 MR. RICHA: Right. But it's attached. The exhibit
6 that I want to introduce is attached.

7 THE COURT: Did you already mark it?

8 MR. RICHA: Yes. We listed only the exhibits that
9 were attached.

10 THE COURT: What is the number?

11 MR. RICHA: It's Exhibit 5. It's just ads showing the
12 Riot Act name.

13 MR. O'NEIL: So now you're going to introduce Exhibit 5
14 seven different times?

15 MR. RICHA: No, no. It's one exhibit, but it's an
16 exhibit that we marked it as --

17 THE COURT: May I see it, please?

18 MR. O'NEIL: Do mind if I go grab my copy, or should I
19 just wait?

20 THE COURT: Let me ask you to wait, if you don't mind.
21 We can all share the same copy.

22 (Court reviewing document.)

23 The list of exhibits, are you speaking of Exhibit 5?

24 MR. RICHA: No, no, no. So we listed it as our trial
25 exhibits all exhibits attached to the complaint. This is just

1 an exhibit that was attached to the complaint. We just want to
2 introduce this. It was already marked as 294, so we marked that
3 as 294.5 because it was Exhibit 5 to our complaint. I didn't
4 want -- with a complaint this thick, I didn't want to move the
5 entire complaint into evidence. I just wanted to move that.

6 MR. O'NEIL: This is something Mr. Xereas compiled?

7 MR. RICHA: No. That was the attached to our
8 complaint. It just shows his use of the trade name, just
9 various advertisements.

10 THE COURT: The Court would not expect that the jury
11 would receive the ECF header at the top, the reference to the
12 date on which it was filed, and a different exhibit number.
13 What you handed me has Plaintiff's Trial Exhibit 294.5.

14 MR. RICHA: Right. So the exhibit that was marked is
15 294, the original complaint exhibits. This would just be
16 Exhibit 5 to the complaint.

17 THE COURT: It cannot be received in this format.
18 I'm not certain what use you intend to make of it.

19 MR. RICHA: I'm just trying to build the fact that he
20 was using the Riot Act name to show samples of what he just
21 talked about, about the media exposure, and that the Riot Act
22 name prior to him meeting --

23 THE COURT: Is it your intention to display it on the
24 ELMO?

25 MR. RICHA: Yes. I was just going to display two ads.

1 THE COURT: Can you show it, please, without the
2 header at the top?

3 MR. RICHA: Yes.

4 THE COURT: This is totally extraneous information at
5 the top. The other problem is there is nothing on the exhibit
6 list marked 294.5.

7 MR. RICHA: So the whole complaint that that's
8 attached to is 294. It's that thick.

9 THE COURT: I remind everyone that the mere fact that
10 something is on the list does not mean it is admissible. What
11 is it that you want to show Mr. Xereas now?

12 MR. RICHA: I was going to show him the ads, make him
13 authenticate that they were Riot Act ads, showing that he was
14 using the name prior to meeting and advertising in major
15 publications with major headliners.

16 THE COURT: Mr. O'Neil? One possibility here, of
17 course, is that I see the deputy clerk has correction tape. If
18 there are two pages you wish to show, I will ask you to white-
19 out this top part, but then that means that what you've marked
20 -- I do not know whether you intend to move into evidence 194.5
21 or only the two pages.

22 MR. RICHA: I was going to move this entire thing.

23 THE COURT: When you say "this entire thing," are you
24 speaking of 194.5?

25 MR. RICHA: 294.5.

1 THE COURT: Excuse me.

2 MR. RICHA: This was always marked as an exhibit.
3 They've never objected to it.

4 THE COURT: Well, my concern is a little different.
5 As I said, I don't expect to see the ECF banner at the top.

6 MR. RICHA: Can I just cover it with the...

7 THE COURT: With the corrections tape. We're not
8 going to publish it at this time. So you will be responsible
9 for ensuring that there is a copy with the banner or header at
10 the top deleted.

11 Any objection to the admission of 294.5, Mr. O'Neil?

12 MR. O'NEIL: No, Your Honor.

13 THE COURT: Very well. Can you please take the
14 deputy clerk's correction tape, delete the header at the top --
15 actually, you can delete the header at the top and then proceed.

16 MR. RICHA: Okay.

17 THE COURT: But I will not publish the exhibit until
18 you have done that to every page.

19 MR. RICHA: Okay.

20 THE COURT: In fact, to expedite matters, take care
21 of the redactions with the correction tape after we recess, and
22 simply ask your questions.

23 MR. RICHA: Okay. Just to make sure, when I hand it
24 to him and I get him to identify it --

25 THE COURT: I have no idea how he would know -- he

1 would almost have to begin here. Is that what you intend to do?

2 MR. RICHA: Well, initially, I was going to ask him to
3 identify it and indicate the exhibit that was attached it.

4 THE COURT: Very well.

5 MR. RICHA: Thank you.

6 (End of bench conference.)

7 THE COURT: Members of the jury, thank you.

8 BY MR. RICHA:

9 Q. All right. So we were talking about you booking comedy,
10 and can you tell the jury about some of the comedians that you
11 booked at your various shows, both at your club and also at
12 these venues that you were talking about?

13 A. Yes. I was very close and am very close with Paul Mooney,
14 and was very close with Mr. Dick Gregory. I did shows with them
15 in numerous places. I was the first person to put the two of
16 them together. We did the Apollo. We sold out Lincoln Theatre.
17 We did Constitution Hall. As I mentioned, I did Bob Saget.

18 I also did Jeff Ross, Wendy Liebman, Judy Gold. When I
19 opened up the club, Kid from Kid 'n Play opened up the club, and
20 Ralphie May came through, and a lot of local headliners, Tony
21 Woods, T-Rexx, people of that sort. The whole spectrum.

22 MR. RICHA: May I approach, Your Honor?

23 THE COURT: Yes, of course.

24 BY MR. RICHA:

25 Q. I'm handing you what's been premarked Plaintiff's Exhibit

1 294.5, give you a chance to look at it.

2 A. Yes.

3 Q. Do you recognize that document?

4 A. I do recognize this document.

5 Q. Okay. What is it?

6 A. This is Exhibit 5 from the complaint that I filed March
7 23rd of 2012, and this exhibit shows some of the shows that I
8 did, including some of the theater shows. In fact, here's a
9 show I forgot to mention, the 9:30 Club. I was the first person
10 to sell out the 9:30 Club using comedy. I did that twice in one
11 night. But this is pretty much a list of all the different
12 types of shows I was doing at the time.

13 Q. When you say "it shows" --

14 A. They are actual advertisements in publications.

15 MR. RICHA: Your Honor, I would move Exhibit 294.5
16 into evidence.

17 THE COURT: And I understand that is without
18 objection, Mr. O'Neil?

19 MR. O'NEIL: That's correct, Your Honor.

20 THE COURT: Plaintiff's Exhibit 294.5 will be admitted
21 without objection.

22 (Plaintiff Exhibit No. 294.5
23 received into evidence.)

24 BY MR. RICHA:

25 Q. I'm going to turn your attention to page 3 of that exhibit.

1 A. Yes.

2 Q. Mr. Xereas, can you describe what the jury's looking at?

3 A. This is an ad I took out in the *City Paper* in October 2006
4 promoting three of the my theater shows, and in the last box it
5 promotes my Riot Act Comedy Club.

6 Q. And I'm going to turn your attention to page No. 7 of the
7 exhibit in front of you.

8 A. Sure.

9 Q. And can you describe what the jury's looking at there?

10 A. This is an ad from February 5, 2007, showing an opening of
11 the Riot Act Comedy Club and "Kid" Christopher Reid opening it up.

12 Q. Can you tell me, Mr. Xereas, what kind of media attention
13 and reviews that Riot Act received?

14 A. We got great reviews and a great response. The *Washington*
15 *Post* covered us. We were the Best Bet several times. The
16 *City Paper*, we were the Pick of the Week at least three times.
17 We were on the cover of *Metro Weekly* and various other
18 publications. We had a very good response.

19 Q. And were there other publications you were covered in?

20 A. Yes, there were. I can't think of any more off the top
21 of my head, but all the local *Washington Times*, *City Paper*,
22 *Washington Post*, all of those types of publications, periodicals.

23 MR. RICHA: May I approach, Your Honor?

24 THE COURT: Yes.

25

1 BY MR. RICHA:

2 Q. I'm handing you what's been premarked Plaintiff's Exhibit
3 294.6. Do you recognize that document?

4 A. I do, yeah. There's actually two documents here. The
5 first one is a review from the *Washington Post*, an article
6 promoting one of the shows I was having at Riot Act Comedy Club,
7 and the second one is also the same -- similar thing, but this
8 one is the *Washington City Paper*.

9 Q. Okay. And both of those articles were from prior to the
10 time you met the defendants. Correct?

11 A. Oh, yes. One is from -- they're both from '07.

12 MR. RICHA: Your Honor, we move Plaintiff's Exhibit
13 294.6 into evidence.

14 THE COURT: Is that without objection?

15 MR. O'NEIL: May I approach, Your Honor?

16 THE COURT: Yes.

17 (Bench conference.)

18 MR. O'NEIL: It appears that the purpose of these
19 exhibits is to establish some sort of value in the Riot Act
20 trademark so that they can argue the diminution of value in the
21 trademark? But that's not a theory that's acceptable in this
22 circuit. It's not a theory supported by their expert witness
23 who is purportedly showing --

24 MR. RICHA: Registration.

25 MR. O'NEIL: If it's simply being used to establish

1 that, that's fine.

2 THE COURT: If that is the only purpose for which it
3 is being used, maybe you could ask a clarifying question,
4 Mr. Richa, that demonstrates -- or another instance which shows
5 that you used the trademark. You can ask about this just so
6 it's clear. By then, we probably will have reached the point
7 where we will need to recess.

8 MR. RICHA: I have a very natural break coming up.

9 THE COURT: All right. Thank you.

10 (End of bench conference.)

11 BY MR. RICHA:

12 Q. Back to the exhibit that I just focused you to, 294.6, so
13 these articles from 2007 demonstrate that you were using the
14 trademark "Riot Act" in 2007. Correct?

15 A. Yes. That is correct.

16 Q. Thank you.

17 MR. RICHA: Your Honor, we move Exhibit 294.6.

18 THE COURT: And I understand that is without
19 objection, Mr. O'Neil?

20 MR. O'NEIL: That's correct, Your Honor.

21 THE COURT: Plaintiff's 294.6 will be admitted without
22 objection. You may continue.

23 (Plaintiff Exhibit No. 294.6
24 received into evidence.)

25

1 BY MR. RICHA:

2 Q. Mr. Xereas, what did you do after -- well, actually, first
3 of all, why don't you tell us why the club you opened closed?

4 A. Why I opened the club?

5 Q. No. Why it closed.

6 A. Oh, why it closed.

7 Q. Yes.

8 A. When I got into that space, there were a few things that
9 I brought up to Tony that really needed to get remedied. The
10 major thing was he needed to build a wall between the comedy and
11 the jazz. Upstairs was the jazz; downstairs was the comedy.
12 Oftentimes, the jazz ended up being very loud and kind of
13 overshadowing the shows downstairs. I approached Tony numerous
14 times to possibly get this remedied. It was never remedied.

15 At the same time, another factor was that we started doing
16 very well. The space wasn't very big. We only held about 90 to
17 100 people, and within the first five, six months I felt I
18 needed a bigger space. We had pretty much outgrown that space
19 in addition to the problems we were having audio-wise.

20 Q. And when you refer to "Tony," who is Tony?

21 A. Tony Puesan. I had mentioned his name earlier. He's the
22 gentleman who owns HR-57 jazz club.

23 Q. And what did you do after the club closed?

24 A. After the club closed, I continued booking comics at
25 various locations, but I really turned up my effort to try

1 and find a bigger, better space.

2 Q. And were you working with any individuals in trying to
3 find this new space?

4 A. I had some people that were behind me, including we almost
5 got a space on 14th Street that I ended up losing to Room &
6 Board, the furniture company. But Dave Chappelle was very
7 interested in being part of that process at the time, and I had
8 various people that were interested and wanted to know what was
9 happening.

10 Q. And when you refer to Dave Chappelle, you're talking about
11 the comedian?

12 A. I'm talking about the comedian Dave Chappelle.

13 Q. Did you eventually register additional domain names other
14 than the others that you've testified to?

15 A. I did. I registered another 60 domains, all of them with
16 the Riot Act name in it.

17 Q. And I know we have to wrap up shortly. Please tell the
18 jury about Riot Act and charity involvement.

19 A. One of the things that really matters a lot to me is -- was
20 building the brand and making it part of not just the comedy
21 world but the community.

22 So we often did a lot of shows that weren't necessarily
23 beneficial monetarily, but they were beneficial to the brand and
24 to what we were trying to accomplish, in spreading happiness and
25 laughter. So, at least once a month, I'd do a show at Walter

1 Reed for the military troops. That's a military hospital.

2 I have my own setup with speakers and a soundboard where
3 I can take myself and set up shows. I can do it autonomously
4 myself. That was one of the places. We also did -- I did
5 things for Children's Hospital, the Boys & Girls Club, YMCA,
6 many of those types of things.

7 MR. RICHA: Your Honor, I think this is a good
8 stopping point, because this establishes what he did prior to
9 meeting the defendants.

10 THE COURT: Very well. Thank you very much,
11 Mr. Richa. Mr. Xereas, you may step down and return to your
12 seat at the table.

13 THE WITNESS: Thank you.

14 (The witness steps down.)

15 THE COURT: Thank you.

16 Members of the jury, we will now recess for the evening.
17 I will ask you to please return your notepads to the deputy
18 clerk. She will have them ready for you in the morning. I
19 believe I indicated that coffee, pastries, and juices will also
20 be available in the morning as early as nine o'clock. So you
21 are free to come as early as 9:00 to have a light breakfast in
22 the jury room. I will ask that if you choose not to do so that
23 you be here by 9:20 so we can resume promptly at 9:30.

24 We will resume with the continuation of Mr. Richa's
25 examination of Mr. Xereas, the point at which we left off this

1 evening. I will again remind you that during the recess you are
2 not to discuss the case with anyone, undertake any research, or
3 permit anyone to discuss it with you.

4 I wish all of you a pleasant evening and look forward to
5 seeing you in the morning. Thank you very much. Thank you.

6 (Jury out at 4:28 p.m.)

7 THE COURT: Now, counsel, is there anything you wish
8 to address before we recess?

9 MS. MCDONALD: Yes, Your Honor.

10 THE COURT: Ms. McDonald.

11 MS. MCDONALD: Your Honor, there are two items we
12 would like noted for the record. The first is our strong
13 objection to the Court's earlier ruling with regard to the
14 conduct of Ms. Heiss. Among other issues in their opening
15 statement, defendants raised the issue of EEOC claims and bar
16 complaints.

17 It's very difficult to address those without the
18 information and the context of the actions that Ms. Heiss
19 took that led to those bar and EEOC complaints. It gives a
20 misimpression to the jury of what was actually happening at the
21 club and the actions that people undertook following their
22 employment at the club.

23 THE COURT: Very well. Thank you very much,
24 Ms. McDonald. Mr. O'Neil, do you wish to respond? Before you
25 do, Mr. O'Neil, Ms. McDonald, may I ask you to come back,

1 please? I should have asked you what action you wish the Court
2 to take, not with respect to Ms. Heiss but with respect to the
3 opening statement.

4 MS. MCDONALD: Well, with respect to the opening
5 statement, we would also like it on the record that Mr. O'Neil
6 was highly argumentative as opposed to presenting facts. I
7 don't know that there's anything that can be done at this point
8 beyond perhaps an instruction to the jury to disregard his
9 argumentative comments, but we would like it on the record.

10 THE COURT: Very well. Thank you very much,
11 Ms. McDonald.

12 MS. MCDONALD: Thank you, Your Honor.

13 THE COURT: Ms. McDonald, the reason the Court asks
14 what you wish the Court to do regarding matters other than your
15 objection to my ruling regarding testimony by Mr. Goodwin about
16 Ms. Heiss is we have had extensive argument about that issue,
17 and I have no reason to reconsider my earlier ruling that the
18 testimony is not relevant to any claim, defense, counterclaim,
19 or defense to any counterclaim. And I should add, to the extent
20 there could be some nominal or minimal relevance perceived, the
21 prejudicial effect would outweigh any probative value.

22 Now, Mr. O'Neil, do you wish to respond to Ms. McDonald's
23 concern regarding your opening statement?

24 MR. O'NEIL: Regarding my opening statement,
25 Your Honor? I certainly didn't intend to be argumentative.

1 I was trying to lay out the facts as best I could, and to the
2 extent I wandered into argument, Your Honor, I apologize.

3 I would like -- I know you've addressed the other point,
4 but I don't think that our discussion of the EEOC complaints or
5 the bar complaints opens the door to everything. They marked
6 those complaints in their exhibits. If they want to develop
7 testimony about those complaints, they're already in a package.
8 The complaint is what the complaint is. It's a public record.

9 But what they're trying to do, Your Honor, is something
10 certainly different. If you look at -- in even their revised
11 pretrial statement, Your Honor, the statements about Ms. Heiss
12 on page 5 go far beyond the pale of anything that was stated in
13 an EEOC complaint or in a bar complaint. And if the examination
14 is limited to the topics in the bar complaint, we can respond
15 accordingly that the EEOC complaint was tossed, the bar
16 complaint was tossed. But we think that evidence is relevant to
17 a concerted effort by Mr. Xereas and his friends to attack the
18 club, after he walked out, in as many ways as they could think of.

19 MS. MCDONALD: Your Honor, if I may?

20 THE COURT: Thank you, Mr. O'Neil. Ms. McDonald.

21 MS. MCDONALD: Again, Your Honor --

22 THE COURT: You acknowledge that the complaints were
23 marked as exhibits by the plaintiff?

24 MS. MCDONALD: That's correct, Your Honor.

25 THE COURT: What then is the basis upon which you

1 could argue now that there should be no testimony or other
2 evidence about the exhibits which you have marked?

3 MS. MCDONALD: Well, Your Honor, it becomes
4 problematic, because Ms. Heiss admitted to certain conduct in,
5 for example, in her response to the bar complaint. We can't
6 discuss the EEOC complaint -- or defendants can't discuss the
7 EEOC complaints and the bar complaints in a vacuum without
8 discussing the actual behavior that led to them.

9 They raised it in their opening, and now we'll be given
10 no opportunity to respond. It will look like these people were
11 purely biased and acting without any reason, when in fact
12 Ms. Heiss admitted to some of this conduct.

13 THE COURT: May I ask you for an example, please?

14 MS. MCDONALD: Ms. Heiss admitted to flashing her
15 breasts at a comedian while in the club.

16 THE COURT: And to what issue is that relevant?

17 MS. MCDONALD: Well, Your Honor, it goes first to --

18 THE COURT: I should say to what claim that remains
19 in the case could that be of any conceivable relevance?

20 MS. MCDONALD: Well, the defendants are claiming that
21 plaintiff was damaging the club when they were making it
22 impossible for him to manage the club. At the same time, they
23 were acting in violation of their duty of good faith and fair
24 dealing. And they were supposed to be acting in the best
25 interest of the club, and they clearly were not.

1 They were behaving outrageously, Your Honor. And I
2 understand the Court not wanting to put that sort of outrageous
3 conduct in the open, but that's, frankly, what was happening,
4 and it was undermining the contract and plaintiff's ability to
5 fulfill his role at the club.

6 THE COURT: Thank you very much, Ms. McDonald.

7 MS. MCDONALD: Thank you.

8 MR. O'NEIL: Your Honor, if I could --

9 THE COURT: First, the Court has already instructed
10 the jurors that the opening statements of counsel are not
11 evidence, and I believe that instruction is sufficient to
12 address the concern that you just raised, Ms. McDonald, on
13 behalf of your client. Indeed, that instruction will be
14 included in the final instructions that I give the jury after
15 all of the evidence is in.

16 With regard to the content of the EEO complaint or bar
17 complaint, the Court again finds that the substance of the
18 allegation -- and I'm speaking of the one that you provided as
19 an example -- is simply not relevant to any claim, defense,
20 counterclaim, or defense to a counterclaim.

21 As the Court ruled with regard to a similar concern, my
22 finding is also that any conceivable relevance that there could
23 possibly be is outweighed by the prejudicial effect and the risk
24 that the jury might be confused or could well be confused or
25 misled regarding what is actually at issue in this case.

1 In other words, there is no issue before the jury
2 concerning any claims which ultimately made their way to the
3 EEOC or to bar counsel. Those claims cannot be adjudicated or
4 re-adjudicated in this context, and for that reason as well, the
5 Court finds that there is simply no relevance.

6 Now, is there anything else to be addressed before we
7 recess? Anything further on behalf of the plaintiff?

8 MS. MCDONALD: Nothing, Your Honor.

9 MR. O'NEIL: Your Honor, if I --

10 THE COURT: Or Ms. Glavich? Mr. Richa, anything
11 further on behalf of the plaintiff?

12 MS. GLAVICH: No, Your Honor.

13 MR. RICHA: No, Your Honor.

14 THE COURT: Very well. Thank you.

15 Mr. O'Neil.

16 MR. O'NEIL: My apologies, Your Honor. I jumped the
17 gun. I'd just like to bring up the voir dire of Mr. Morrissey.
18 Has the Court identified when this is going to occur or how
19 we're going to handle that?

20 THE COURT: I imagine we are at least a day or so
21 away since at this point the plaintiff is still in the midst
22 of direct examination of the plaintiff. You will, of course,
23 cross-examine the plaintiff. And if I'm reading correctly or
24 making the correct inference from your witness list, the
25 plaintiff's intention is to call, after Mr. Xereas, Ms. Heiss

1 and Mr. Dawson. Am I correct?

2 MS. MCDONALD: Your Honor, we plan to call Ms. Heiss
3 and then...

4 MR. O'NEIL: Mr. Farfel.

5 MS. MCDONALD: Terrence Hawkins.

6 THE COURT: And after Mr. Hawkins, Mr. Dawson?

7 MS. MCDONALD: That's correct.

8 THE COURT: Very well. Can you let us know tomorrow,
9 then, when we should plan to take time to hear from Mr. Morrissey?

10 MS. MCDONALD: We're expecting to offer Mr. Morrissey
11 on Wednesday, Your Honor, but we will let you know ahead of time.

12 THE COURT: Very well. Perhaps we can stay tomorrow
13 after the jury is excused, meaning that all of you will vote in
14 the morning, or else very, very late tomorrow evening. I will
15 excuse the jury, but perhaps we can all remain. Is that
16 reasonable? In other words, we'll excuse the jury at
17 approximately 3:15, but you will be prepared to stay for another
18 hour. Can we do that?

19 MS. MCDONALD: Would you be conducting voir dire of
20 Mr. Morrissey at that time?

21 THE COURT: Yes.

22 MS. MCDONALD: We would have to check to see if
23 Mr. Morrissey is available at that time.

24 THE COURT: Very well. If not, please propose
25 something else. Very well. Thank you very much.

1 MR. O'NEIL: Thank you, Your Honor.

2 THE COURT: Anything's further before we recess?

3 Very well. Thank you. Please return -- I will ask all of you
4 to return by 9:00 so you will have the necessary time to set up,
5 check the microphones, determine that the monitors are working,
6 and everything else that you must do so that we can bring the
7 jury in at 9:30. Thank you so much. Everyone please have a
8 good evening.

9 (Proceedings adjourned at 4:41 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Bryan A. Wayne
BRYAN A. WAYNE