

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-vs-

CHARLES KEITH WAMPLER,

Defendant.

CASE NO. 82-CR-764
CA-7965

HONORABLE JOHN W. KESSLER, JUDGE
PRESIDING

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

Dennis J. Langer
and
Robert D. Head
Assistant Prosecuting Attorneys

ON BEHALF OF THE DEFENDANT:

Robert A. Bostick
and
Wayne P. Stephan
Attorneys at Law

M. June Maynard, Court Reporter

<u>Plaintiff's Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Charles David Lett	295	302		
Donald Edward Schaffer	311	347	356	
Bobby Rowell	358	376		
Michael Patrick Rowell	389	413	433	435
David Miller	441	443		
Peggy Bond	446			
Martha Smith	448			
James Mathew Shipman	450	464		
Ellen Purvis	490			
Joe Shipman	499	507		
James Shipman	512			
Ted Ritchie	517	531	542	542
Andrea Jean Ritchie	543			
Judith Lynn Tabor	548	553		
Andrew Choate	561			
Sharon Gilbert	564			
Robert Wampler	569			
Adrian West	572	578	586 589	586
J. J. Arnold	590	592	595	
John G. Brun	597	599	604	
Dennis J. Adkins	606	658	699	701
Scott Lombardo	702	704		
Connie Stahl	706			

<u>Plaintiff's Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Hiram Gifford	708			
Peggy Gennette	713			
Freddie Wayne Shaneyfelt	716			
Robert J. Schmidt	719			
Bill Mullins	724	793		
Glenn M. Carmichael	815			
James Combs	820	827		
Larry Dehus	831	864		

REBUTTAL:

Joe Daniel Wynne	1011	1017	1019
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DEFENSE WITNESSES:

Robert Wampler	879		
John McGarvey	886	914	929
Gail Loftis	931	948	950
Charles Keith Wampler	952	989	1002

<u>State's Exhibits:</u>		<u>Marked</u>	<u>Accepted</u>
1-A	Autopsy Slide	285	285
1-B	" "	285	289
1-C	" "	285	285
1-D	" "	285	
1-E	" "	285	289
1-F	" "	285	
1-G	" "	285	289
1-H	" "	285	289
1-I	" "	285	289
2-A	Scene Slide	285	290
2-B	" "	285	290
2-C	" "	285	290
2-D	" "	285	290
2-E	" "	285	290
2-F	" "	285	293
2-G	" "	285	
2-H	" "	285	291
2-I	" "	285	291
3	Vial of Blood from Victim	285	876
4	Multiple Vials from Coroner's Office	285	876
5	Victim's Clothes	285	876
6	Victim's Boots	285	876
7	Defendant's Boots	285	876
8	Diagram	347	876

<u>State's Exhibits:</u>	<u>Marked</u>	<u>Accepted</u>
9 Knife	449	876
10 Aerial Photograph	605	876
11-A Photograph of Footprints	605	876
11-B " "	605	876
12 Photograph of Pathway	605	876
13-A Photograph of Footprint	605	876
13-B Photograph of Footprint	605	876
14 Stump's Bag	605	876
15 Yellow Towel	605	876
16 Plastic Bag Containing Pink Towel and White Towel	605	876
17-A Photograph of Pink Towel	605	876
17-B " " "	605	876
17-C " " "	605	876
18 Two Cans Recovered from Pathway	605	876
19-A Empty Old Milwaukee Light Beer Carton	605	876
19-B Old Milwaukee Carton with Six Full Cans	605	876
19-C Beer Cans from Inside Trash Can	605	876
19-D Beer Cans from Outside Trash Bag	605	876
19-E Photograph of Carton Inside Trailer	605	876
19-F Photograph of Cans Inside Trash Can	605	876
20 Super Rite Bag with Contained Genitals	605	876

<u>State's Exhibits:</u>	<u>Marked</u>	<u>Accepted</u>
21 Two Imperial Bags and One Super Rite Bag Recovered from Inside Trailer	605	876
22 Super Rite Bag from IGA	605	876
23 Imperial Bag which Contained Victim's Clothing	605	876
24 Photograph of Exh. 23 at Scene	605	876
25 Empty Imperial Bag from Kitchen Counter	605	876
26 Photograph of Inside of Refrigerator	605	876
27 David Rowell's ID Card	605	876
28-A Golden Dawn Match Book	605	876
28-B Broken Can Found Inside Trash Can in Trailer	605	876
29 Jeans from Bathroom Hamper	605	876
30 Photograph of Back Bedroom	605	876
31 Items from Father's Bed	605	876
32 Items from Defendant's Bed	605	876
33 Curtain from Defendant's Bedroom	605	876
34 Photograph of Ashtray in Defendant's Bedroom	605	876
35 Contents of Ashtray in Defendant's Bedroom	605	876
36 Photograph of Leather Strap	605	876
37 Leather Strap	605	876
38-A Photograph of Blood Spots on Living Room Table	605	876

<u>State's Exhibits:</u>	<u>Marked</u>	<u>Accepted</u>
38-B Photograph of Blood Apots on Living Room Table	605	876
38-C Blood from Table	605	876
39 Blood from Inside of Storm Door	605	876
40-A Defendant's Hair Sample	605	876
40-B Defendant's Hair Sample	605	876
40-C Cecil Wampler's Hair Sample	605	876
40-D James Shipman's Hair Sample	605	876
40-E Glenn White's Hair Sample	605	876
40-F Jack Joyce's Hair Sample	605	876
40-G Dave Lett's Hair Sample	605	876
40-H Sgt. Alexander's Hair Sample	605	876
40-I Dennis Adkins' Hair Sample	605	876
40-J Tim Chambers' Hair Sample	605	876
40-K Keith Vaughn's Hair Sample	605	876
40-L Joey Shipman's Hair Sample	605	876
40-M Fairl Byrd's Hair Sample	605	876
40-N Michael Rowell's Hair Sample	605	876
40-O Bobby Rowell's Hair Sample	605	876
40-P Ted Ritchie's Hair Sample	605	876
40-Q Michael Johnson's Hair Sample	605	876
41-A Defendant's Blood Sample	605	876
41-B Jim Shipman's Blood Sample	605	876
41-C Cecil Wampler's Blood Sample	605	876

<u>State's Exhibits:</u>	<u>Marked</u>	<u>Accepted</u>
41-D Bobby Rowell's Blood Sample	605	876
41-E Ted Ritchie's Blood Sample	605	876
41-F Mike Rowell's Blood Sample	605	876
41-G Michael Johnson's Blood Sample	605	876
42-A Defendant's Saliva Sample	605	876
42-B Joey Shipman's Saliva Sample	605	876
42-C Jim Shipman's Saliva Sample	605	876
42-D Cecil Wampler's Saliva Sample	605	876
42-E Ted Ritchie's Saliva Sample	605	876
42-F Mike Rowell's Saliva Sample	605	876
42-G Bobby Rowell's Saliva Sample	605	876
42-H Michael Johnson's Saliva Sample	605	876
43 Toilet Seat Cover	605	876
44-A Photograph of Brush in which Seat Cover Was Found	605	876
44-B Photograph of Seat Cover	605	876
45 Remainder of Toilet Cover Set	605	876
46-A Photograph of Toilet Seat Cover in Defendant's Bathroom 2/13	605	876
46-B " " "	605	876
47 Photograph of Toilet Seat Cover in Defendant's Bathroom 2/7.	605	876
48 Grass from Defendant's Boots	605	876
49 Diagram of Inside of Trailer	605	876
50 Diagram of Field	605	876

<u>State's Exhibits:</u>	<u>Marked</u>	<u>Accepted</u>
51 Diagram of Field	605	876
52 Grass Sample	705	876
53 Blue & White and Pink & White Towels	705	876
54 Hair Samples	705	876
55 Statement of Defendant	724	876
56 Pre-Interview Form 2-6-82	724	876
57 Taped Statement of Defendant	724	876
58 Photograph of Defendant's Hands	724	876
59 Photograph of Defendant's Hands	724	876
60 White Towel of Larry Dehus	831	876
61 Hair Standard of Victim	831	876
62 Hair from Pink Towel	831	876
63 Hair from Victim's Genitals	831	876
64 Fiber from Boot and Shirt	831	876
65 Chart - Hair on Calf. Does It Match?	1117	1116
66 Chart - Blood Types	1117	1116
67 Chart - Keith Wampler	1117	1116
67-A Squares of Cardboard Covering Blocks on Exh. 67	1117	1116

Defense Exhibits:MarkedAccepted

A - Knife

883

1011

B - Vodka Bottle

910

1011

Jury Communications:

1

1119

2

1119

3

1119

4

(NOTE: Jury Communications attached to Transcript of Proceedings.)

(NOTE: Please see attached list for filing of Exhibits.)

State of Ohio

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Charles Keith Wampler

BOX #1 of 4

- 1A - 1I - Slides - Coroner's Autopsy
- 2A - 2I - Slides - Scene
- 3 - Vial of Blood - Victim
- 4 - Multiple Vials from Coroner's
- 9 - Knife.
- 10 - Aerial Photo (in first envelope)
- 11A - 11B - Photo of footprints (in first envelope)
- 12 - Photo of pathway (in first envelope)
- 13A - 13B - Photo of footprint (in first envelope)
- 17A, B, C, - Photos of Pink Towel (in first envelope)
- 19E - Photo of carton inside trailer (in first envelope)
- 19F - Photo of cans inside trash can (in first envelope)
- 24 - Photo of #23 at scene (in first envelope)
- 26 - Photo of inside refrigerator (in first envelope)
- 27 - David Rowell ID Card
- 28A - Golden Dawn Match Book
- 30 - Photo of back bedroom (in first envelope)
- 34 - Photo of ash tray in Keith's bedroom (in first envelope)
- 35 - Contents of ash tray in Keith's bedroom
- 36 - Photo of leather strap (in first envelope)
- 37 - Leather strap
- 38A - Photo of blood spots on living room table (in first envelope)
- 38B - Photo of blood spots on living room table (in first envelope)
- 38C - The blood from table
- 39 - Blood from inside the storm door
- 40A - Defendant's hair sample
 - B - Defendant's hair sample
 - C - Cecil Wampler's hair sample
 - D - James Shipman's hair sample
 - E - Glen White's hair sample
 - F - Jack Joyce's hair sample
 - G - Dave Lett's hair sample
 - H - Sgt. Alexander's hair sample
 - I - Adkins' hair sample
 - J - Tim Chambers' hair sample
 - K - Keith Vaughn's hair sample
 - L - Joey Shipman's hair sample
 - M - Fairl Bird's hair sample
 - N - Michael Rowell's hair sample
 - O - Bobby Rowell's hair sample
 - P - Ted Richie's hair sample
 - Q - Michael Johnson's hair sample

- 41A - Keith's Blood Sample
 - B - Jim Shipman's Blood Sample
 - C - Cecil Wampler's Blood Sample
 - D - Bobby Rowell's Blood Sample
 - E - Ted Ritchie's Blood Sample
 - F - Mike Rowell's Blood Sample
 - G - Mike Johnson's Blood Sample
- 42A - Keith Wampler's Saliva
 - B - Joe Shipman's Saliva
 - C - Jim Shipman's Saliva
 - D - Cecil Wampler's Saliva
 - E - Ted Ritchie's Saliva
 - F - Mike Rowell's Saliva
 - G - Bobby Rowell's Saliva
 - H - Michael Johnson's Saliva
- 44A - Photo of Brush in which seat cover was found (in first envelope)
- 44B - Photo of seat cover (in first envelope)
- 46A - Photo of toilet seat cover in Defendant's bathroom on 2-13. (In first envelope)
- 46B - " "
- 47 - Photo of toilet seat cover in Defendant's bathroom on 2-7 (In first envelope)
- 48 - Grass from Defendant's Boots
- 49 - Diagram of inside of trailer
- 50 - Diagram of Field
- 51 - Diagram of Field
- 52 - Grass Sample
- 54 - Hair Samples
- 55 - Statement of Keith C. Wampler (in first envelope)
- 56 - Preinterview Form 2-6-82 (in first envelope)
- 57 - Taped Statement Charles Keith Wampler
- 58 - Photo of Defendant's Hands (in first envelope)
- 59 - Photo of Defendant's Hands (in first envelope)
- 61 - Hair Standard of Victim
- 62 - Hair from Pink Towel
- 63 - Hair from Victim's Genitals
- 64 - Fiber from Boot and Shirt
- 67A - Pieces of cardboard and Placards used on #67

Defendant's Exhibit A - Knife

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BOX #2 of 4

- 5 - Victim's clothes
- 29 - Jeans from bathroom hamper
- 32 - Items from Keith's bed
- 33 - Curtain from bedroom
- 45 - Remainder of toilet cover set
- 53 - Blue & white and Pink & white towels
- 60 - White towel of Larry Dehus

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-vs-

Charles Keith Wampler

BOX #3 of 4

- 6 - Victim's boots
- 7 - Defendant's boots
- 14 - Stump's bag
- 15 - Yellow towel
- 16 - Plastic bag containing pink towel and white towel
- 18 - Two cans recovered from pathway
- 19A - Empty Old Milwaukee Lite Beer
- 19B - Old Milwaukee Carton with six full cans
- 20 - Super Rite Bag which contained genitals
- 21 - Two Imperial Bags and one Super Rite Bag recovered from inside trailer
- 22 - Super Rite Bag from IGA
- 23 - Imperial Bag which contained victim's clothing
- 25 - Empty Imperial Bag from kitchen counter

Defendant's B - Partial Bottle of Nikolai Vodka

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State of Ohio

-vs-

Charles Keith Wampler

BOX #4 of 4

- 19C - Beer cans from inside trash can
- 19D - Beer cans from outside trash bag
- 28B - Broken can found inside trash can in trailer
- 31 - Items from father's bed (in yellow plastic bag)
- 43 - Toilet seat cover

Case No. 82-CR-764

State of Ohio

-vs-

Charles Keith Wampler

State's Exhibits filed separately:

- 8 - Large Diagram
- 65 - Chart Re. Hair on Calf. Does It Match?
- 66 - Chart Re. Blood Types
- 67 - Chart - Keith Wampler in Center

July 19, 1982

(Whereupon the following was had in chambers:)

MR. HEAD: Your Honor, our first motion is to move the Court for a nolle prosequi to count three of the indictment.

THE COURT: The rape count?

MR. HEAD: The second of the two rape counts. The pertinent part reads: Charles Keith Wampler, on or about the 6th day of February, 1982, in the County of Montgomery, aforesaid, and State of Ohio, did engage in sexual conduct with another, to wit: Robert D. Rowell, not his spouse, by purposely compelling him to submit by force or threat of force.

THE COURT: Any objection?

MR. BOSTICK: None.

THE COURT: So ordered.

MR. HEAD: The second, it is not a motion but is an inquiry as to whether the Court has come to a decision on the State's motion in limine filed a couple weeks ago pertaining to the two juvenile witnesses, Scott Lombardo, and Andy Choate?

THE COURT: No, I haven't, but I don't know that it will be material when we get to the point of examining jurors, generally, in voir dire, particularly about the witnesses. I will have a decision on that probably this evening. I have just seen for the first time the Defendant's memorandum in opposition, so it will require some reading. I will have a decision on that this evening.

MR. LANGER: One other motion, Judge. We would move the

Court to order counsel in this case at no time during this trial, jury selection, opening statements, examination of witnesses, or closing arguments to disclose to the jury or to make any reference to the fact that a second individual has been charged in this case or that the police or the State considers a second individual a suspect in this case. We make this motion for two reasons. One, we would submit to the Court that the mere fact that the second individual in this case, Michael Johnson, has been charged is not evidence. It is not evidence of Mr. Johnson's guilt or involvement in this particular facet, nor is it evidence of this Defendant's innocence, and I would submit to the Court four cases which are right on point. There isn't a case in Ohio. The Court is well aware of the standard instruction to a jury in any criminal case that the indictment is not evidence, but I would submit to the Court the following cases which I've Xeroxed. Davis v. State, an Alabama decision, 305 So. 2d 309; Killian v. State, an Arkansas decision, 42 S.W. Reporter 2d, P. 12; Reynolds v. State. This would be a Mississippi decision. 136 Miss. Reporter 329; Collins v. People, a Colorado decision. 69 Colo. Reporter 343.

THE COURT: All right.

MR. LANGER: Secondly, I would submit to the Court that if Defense counsel were permitted to disclose to the jury the fact that a second individual has been charged, then I think that opens the door or perhaps opens the can of worms because then I think in all fairness the State should then be permitted to establish the reasons why Mr. Johnson is charged or is also considered a suspect in

this case. The only reason that he is, is by virtue of his own statement. There is no other evidence of his involvement in this other than his own statement in which he basically states that he aided and abetted Keith Wampler and Keith Wampler actually committed the murder, rape, and abuse of the corpse. Of course, that would not otherwise be admitted under Bruton. But, if Defense opens the door, then I think it ought to come in. I think the door should not be opened to begin with.

One last thing. I didn't mean to suggest Defense can't present evidence of a second person's involvement, but it has to be evidence and not the conclusion that another person might have been involved in this.

THE COURT: Has counsel seen these cases?

MR. BOSTICK: We have not.

THE COURT: I assume you want a chance to look at those and respond. To save time, the Court will take it under advisement at this point. For purposes of voir dire, I don't think it would be necessary. As I understand your motion, it would be directed toward the testimony of any witness or perhaps, I guess you included some mention during voir dire during the specific phases of counsel's voir dire. We are not going to get to that point for another day or two.

MR. STEPHAN: I am trying to find out why we are being limited or there is an attempt to limit us. A few things appear to be unclear. Michael Johnson is a juvenile and he is charged with similar offenses in the Juvenile Court. He submitted a statement

that implicates himself and our client, and at this point in time I think the Prosecution does not anticipate his testifying. He is, throughout the facts of the case, a key figure in the scenario. I think if we are handcuffed on commenting about his whereabouts during the trial or the fact that he may have made a statement that incriminates himself, I think the restriction may be prejudicial to our client. He is a key role in the fact situation, and he is not going to testify, and I don't think we can leave that open for the jurors to speculate as to why he is not there.

MR. BOSTICK: Further, Your Honor, to piggyback on what has been said, none of us know as a matter of fact who will not testify in this case, and if the Defense is shortstopped and then along about the fourth or fifth inning a certain witness shows up, I merely ask the question, are we prepared to go back and run the reel back and start again?

MR. LANGER: You are submitting what if Michael Johnson does surprise everybody and decides to testify?

MR. BOSTICK: Or someone else.

MR. LANGER: At that point, I suppose it could then be disclosed to the jury that he has been charged, because he is now testifying, but we have been informed by Mr. O'Brien on behalf of Mr. Johnson that Mr. Johnson has retracted his confession and that he adamantly denies any involvement and he would not testify as a State's witness in this case. It has been an absolute statement.

THE COURT: Well, we will take it under advisement. At

this point, again, I don't think there is any necessity to rule on it. I would ask if the opportunity does present itself, that counsel refrain from mentioning it until the Court rules on the motion. Of course, you are free to submit anything you wish to submit on this point. I would just say off the top of my head, considering the grounds, I would be real concerned about the Bruton situation. That seems to present all kinds of problems, depending on where this inquiry might go. So, when we reargue this at some future time, you might want to address that issue for me because I would be very concerned about that.

MR. HEAD: Your Honor, one final point on this. As we ask the prospective jurors if they have knowledge of the case and once they indicate yes and we bring them in for individual voir dire, it may come out during the individual voir dire by the potential juror, I know two people have been charged. How do we deal with that without a Court ruling?

THE COURT: If they know it, they know it. It is something they know.

MR. LANGER: Yes.

THE COURT: The motion is only directed to the use by counsel of those facts by way of cross and so on, so we will have to wait and see.

MR. STEPHAN: The whole matter could be solved if the Prosecution is prepared at this time to guarantee that Michael Johnson is not going to appear.

MR. HEAD: I will guarantee he is not going to appear in the case in chief.

THE COURT: Well, he has got a Fifth Amendment Right, of course, not to testify, and it is kind of problematical if that means he has got a Right not to appear at all in the courtroom. It is not an issue I want to get into if we can avoid it.

MR. LANGER: Why is that a problem? If he does appear and the Court rules initially we can't refer to the fact a second person is charged, say, he does appear, the Court simply reverses the ruling now that he has appeared; that credibility is at stake and it should be brought out he has been charged and a deal has been struck and that can be argued to the jury.

MR. BOSTICK: I can think of at least one or two things that presents a problem from the standpoint of Defense. It is very, very difficult, if not impossible, in providing the best defense possible, to back up and start again. You don't start telling jurors and start directing cross examination in the middle of your swing. That is going to be virtually impossible to do.

THE COURT: Of course, the witness is at this point unavailable?

MR. LANGER: Yes.

THE COURT: Because he has, through counsel, indicated that he is going to exercise his Fifth Amendment. He is not a witness at this point. You are suggesting that he is not going to be a witness, to your best knowledge?

MR. HEAD: Right.

THE COURT: I guess we have to deal with the motion on that basis, that this person is not in fact a witness and will not be in this case. If he would later become a witness, those are problems we will have to deal with when and if that would occur. But, to answer your question, Wayne, he is not a witness, so maybe that does resolve it. I don't know. Does it resolve it in your mind?

MR. STEPHAN: No, because, as Bob or Dennis said, there is also rebuttal, and we all, I think, are aware that the decision may not be made until after the Defense rests, the decision as to whether or not he will. The decision as to whether or not he will have the opportunity to be a witness may not occur until after the Defense rests.

THE COURT: But, again, that is a decision not in the hands of the State at this point.

MR. STEPHAN: I think they have an overwhelming amount of control on whether or not he testifies.

MR. LANGER: We tried. He won't testify.

THE COURT: Anything else?

MR. BOSTICK: Judge, we do have a motion at this time. The Defense moves the Court to grant Defense additional peremptory challenges. We do that on the basis of pre-trial publicity, the matters that we anticipate having to cover, and the many persons in the community who are affected and have impacted their mind. Secondly, we do it on the basis of fairness. In support thereof, let

me say quickly as I recall there are some 20 states now, of which we are all aware, that provide more peremptories for Defense than they do the Prosecution. We can find nothing in the Ohio law which prohibits the Court from doing that. If I may suggest, it has been done at least in one case I was involved in before.

THE COURT: I am going to take that one under advisement because I want to wait and see what we run into as far as potential jurors are concerned. It is conceivable that we may run into a situation. I won't know that, though, until we put 12 in the box and see what is happening. I would rule on that before we get to that point.

MR. HEAD: Wayne, you indicated you had a circumstantial evidence instruction.

MR. STEPHAN: We are not prepared to provide it to the Court this morning.

MR. HEAD: I brought that up on circumstantial evidence because, obviously, I think counsel for the Defense as well as the State are going to voir dire on the issue of circumstantial evidence. I am going to ask the Court to read the instruction prior to my getting into that particular area so the jurors have a better understanding of what to deal with. Wayne indicated Defense was going to supply the Court with a proposed jury instruction which may be somewhat different than the standard Ohio Jur. instruction on that issue. I assume if they don't, we are free to explore the circumstantial evidence area vis-a-vis O.J.I.?

THE COURT: Generally, I think we ought to meet maybe before we get into the specific voir dire conducted by counsel to go over the ground rules on that, too. We probably won't get to that today.

MR. HEAD: That is all we have.

MR. STEPHAN: Mr. Zimmer is out here.

(Whereupon the following was had out of the presence of the prospective jurors:)

THE COURT: The record should reflect that we are in court on Case No. 82-CR-764, State of Ohio, Plaintiff v. Charles Keith Wampler, Defendant. We are present pursuant to some requests by various television media and a request by the Kettering-Oakwood Times for still photographs, the request being in effect to cover the trial of this cause by electronic means, and there have been objections to those requests filed by both the State of Ohio and counsel for the Defendant. We are present at this time for a hearing on those objections and on the request. Do you have a preference in the order of proceeding?

MR. STEPHAN: No preference, Your Honor. On behalf of the Defendant, we would waive his presence at this hearing.

THE COURT: Very well. Do you wish to proceed on your objection, Mr. Langer?

MR. LANGER: Yes, Your Honor. The State has particular concern for several of its witnesses who are juveniles. We anticipate as many as 10 State witnesses will be juveniles, and in a

written motion presented to the Court we cite Canon 3 A (7) (c), Sub. (ii) which states that the Court ought not to permit the televising or photographing of any witness who might be distracted by the presence of such cameras. We anticipate, given the immaturity of the witnesses, they would be so distracted. Also, those witnesses or their parents would object to the presence of the cameras and, therefore, under Subsection (iii) for that reason alone as far as those witnesses are concerned the televising or photographing should not be permitted during this testimony.

THE COURT: Very well. Mr. Stephan?

MR. STEPHAN: Your Honor, we join in the Prosecution's objection as to the witnesses generally. On behalf of the Defendant, as we have stated previously, we would ask the Court to deny the request for broadcasting and televising and reporting by electronic or photographic means at any time under any circumstances of the Defendant in this case. The basis for our objection is the fact that this particular Defendant is 16 years old and but for the fact that he has been certified by the Juvenile Court to this court as an adult and has been indicted we respectfully submit that he remains a child and is shielded by juvenile statutes and the law generally. On that basis, we would ask the Court to deny coverage as requested.

THE COURT: Very well. The requesting media may proceed through counsel. Does counsel wish to make a response or statement for the record prior to the Court's ruling? If you would identify yourself and your client, it would be appreciated.

MR. ZIMMER: Paul Zimmer, Your Honor, on behalf of WDTN, Channel 2. We would like to comment in the following respects. First of all, although under Ohio law this Defendant is a child because of his age at 16, this case has been certified from the Juvenile Court, and the Defendant is being tried as an adult. As such, in court today are representatives of all media, both newspaper, radio, and television, and they are free, because of the fact that this case has been certified to this court, to report on this case and disseminate whatever information is learned here in court. This would not be possible if this case was being tried in a Juvenile Court setting. Therefore, we feel the objection that is being made by the Defense attorneys is limited strictly to cameras, and they make no distinguishing argument to distinguish the televising of this trial by cameras versus the dissemination of word of this trial by any other media. We feel that the standards set down in the case of State ex. rel. Love have not been met, namely, that none of the disqualifying factors as set forth in Canon 3 A have been shown. There is no showing there would be any distraction of participants or the dignity of the court proceeding would be impaired or that the Defendant's Rights to a fair trial would be otherwise materially interfered with. The Prosecuting Attorney has stated the distractions anticipated, and he also cites the fact that the new rule, in effect January 1, 1982, states any witness, upon objecting, the Court will bar the broadcasting of that witness' testimony or the photographing of that witness. We feel that, in combination with the other changes of the

rule as of January 1, 1982, of barring the photographing of any juror, is sufficient protection in this trial and that based on the fact there have been no disqualifying factors shown, the camera coverage should be permitted within the limit of the new rule.

THE COURT: All right.

MR. KRISHER: Howard Krisher on behalf of Miami Valley Broadcasting Corporation, WHIO-TV, and AM-FM radio. We support Mr. Zimmer's comments and will not bore the Court with repetition. There are three additional points we would like to make. First, it is our understanding that the Defendant has indeed already been photographed such that he is already a part of the film footage, as the media people refer to it, with respect to a number of local stations. His image and visage with respect to the proceedings is already available, and that follows up on Mr. Zimmer's point that his certification as an adult has already occurred. Secondly, we would direct the Court's attention to Rule 11 of the Rules of Superintendence that deal with broadcasting and ask the Court to consider Subsection (c) of that rule which does give the Court the power to limit the circumstances under which footage can be taken. We submit to the Court that it is not necessary that the Court take the absolute position of total prohibition of any photographs of the Defendant. We would ask the Court to use the tools that are available to it for coming up with such limitation and protection with respect to photographing the Defendant in the courtroom as it feels is appropriate. As mentioned to the Court and other counsel informally prior to the hearing, the

media does believe that the Canon and the Rule of Superintendence does give to the media the right to be here, and we respectfully submit to the Court that you are being asked to carve out a special exception for the broadcast media, which we feel is unwarranted and unfair. The fact the courtroom artist, for example, will be permitted in the courtroom, we submit, is another reason why you ought to consider the request which we have made to photograph the Defendant at counsel table. As has been pointed out to you, there is an absolute prohibition against photographing anyone who objects, such as witnesses. There is a great deal of protection available. We simply ask, since the Defendant has been certified as an adult, that he be considered as and treated as an adult for purposes of broadcast rules as well as the rest of the rules that will be applied in the trial.

Thank you, Your Honor.

THE COURT: Very well. Anybody else? The Court has considered the arguments of counsel and takes into account the comments made by the representatives of the media who are here and who participated in a brief pre-trial conference before this hearing, and the Court appreciates the attempt of all parties to compromise on the issue. The record probably should reflect there was a visit to the courtroom that is proposed to be used in this so all counsel and all parties would have an understanding of the physical layout of that courtroom, and an attempt to compromise this issue was made, which did not bear fruit.

The Court is going to order that the witnesses who, in

accordance with the Rule of Superintendence, Rule 11 (C) (2) who specifically object to being filmed, video taped, recorded, or photographed, that they be prohibited from being so filmed, video taped, recorded, or photographed. Further, the prohibition against filming, video taping, photographing, or recording any of the jurors shall be ordered placed into effect. We will commence the voir dire in this matter shortly and that is anticipated to take approximately two days. So, if the equipment is needed elsewhere, it will be available for you.

I think the only issue that the Court perceives as any controversy is the filming or photographing of the Defendant as the Defendant sits at counsel table or appears in the courtroom in other roles other than as a witness in the case which, of course, if he would object as a witness, would be prohibited from being photographed, filmed, recorded, et cetera.

The Court feels that a special problem in this case is presented because of the age of the Defendant, that being 16, and the fact that he has been bound over for trial in this matter as an adult pursuant to the Juvenile Rules of Procedure. This Court does not feel that the Defendant loses any of the protection provided to him by the Ohio Revised Code in Title 21 of that Section merely by virtue of the fact he has been bound for trial as an adult. The bindover does not change the age of the Defendant. It merely substitutes procedure which, if the State is successful in its prosecution, would cause the imposition of a penalty that is provided to adults in the State of

Ohio. It is for this reason that the Court feels that an additional prohibition as provided for under Canon 3 A (7) Subsection (b), (c) (ii) would require that for the achievement of a fair trial an additional prohibition be made which may not be made in any other kind of a case and that is that the Defendant not be photographed, recorded, or otherwise video taped while he is in the courtroom at counsel table, et cetera. This prohibition, of course, does not mean that the media is in any way limited in their other coverage of the trial. Any of the other participants in the trial or witnesses who do not object are subject to full coverage.

Again, this matter, because of the nature of this particular case, is being decided in this manner. The Court does not extend the rule to any existing material which may or may not be in the possession of any respective media for purposes of broadcasting in this matter. The Court feels that it has, however, control over the proceedings that would occur in the courtroom, and this order is to be placed into effect immediately. Mr. Zimmer?

MR. ZIMMER: Could I have one thing -- I'd like to clarify one thing. The last time we were here before Judge Wolff, if there was testimony being taken when an objecting witness was on the stand, Judge Wolff held we could keep the cameras on in the courtroom while the witness was on the stand so long as we did not photograph the witness nor have audio pickup. I assume this is the same?

THE COURT: That would be permitted.

MR. HEAD: One point of clarification. When a witness objects to being televised or audioloy recorded, how is that going to be done? Is the Court going to inquire of each witness or how do you propose to do that?

THE COURT: The rule suggests that the Judge -- this is Superintendence Rule 11 (C) (2), that the Judge inform the witnesses of their right to object, and we would assume the objection would have to be of record in some fashion. If you wish to file a written objection on behalf of the witnesses, that should suffice for purposes of the rule. The written objection ought to contain the signature of the witness who wishes to object, and the fact he has been informed of his right to object by the Court through counsel.

MR. LANGER: If I may clarify one point. If the witness specifically objects even to the filming, not the audio recording but also the filming, will the filming be prohibited? If I understand Mr. Zimmer's point, in Judge Wolff's court, the media was permitted to continue filming.

THE COURT: Not of the witness.

MR. ZIMMER: As long as we didn't film the witness or pick up the witness' response.

MR. LANGER: All right.

MR. ZIMMER: One other point. We will have to have some kind of indication from the bench so our cameraman knows this witness has objected. I would suggest it would be better -- well, I will leave that up to the Court, but some way the cameraman will

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have to know this is a witness who has objected in writing. That will have to be brought out or he will never pick it up and he will keep the camera running.

THE COURT: The order of the Court in this regard is we will try to accommodate that the best we can with the facilities we have available so whoever is running the equipment will know sufficiently in advance. The Bailiff will tell him, but if there is a problem that develops in that regard, the News Directors are here. They understand the meets and bounds of the Court's order. We would rely on you to supervise the Court's order back in the studio if we miss it in the courtroom.

Anything further on this issue?

MR. HEAD: Not on the part of the State, Your Honor.

MR. STEPHAN: Nothing further.

THE COURT: We will commence the voir dire.

(Whereupon court reconvened.)

THE COURT: Good morning, ladies and gentlemen. I want to apologize initially for the bit of delay we have had in starting these proceedings. I can see that we are fairly crowded and some of you are standing, and so we are going to try to get as far along in these matters as we can as early as possible so that you don't experience any more inconvenience than you have already had.

I think all of you are probably here for the first time for potential jury service, is that correct? Are all of you here for the first time? Okay. I'd like to officially welcome you to the

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Montgomery County Common Pleas Court Building where a trial has been set for you to hear. I want to thank each of you in advance for taking time out of your busy lives to perform this most important civic duty. I realize and counsel realize that you are all making a personal sacrifice to come here and to serve, but I think if you are selected to serve as a juror and you do serve, that you will find this experience is one of the most interesting ones that you will have in your lives. Also, at the end of your jury service you will have the satisfaction of knowing that you have helped to render justice among your fellow citizens. The work of our jurors is just as important and as essential to the administration of justice as the work of the Judge or the lawyers of this community.

Each trial starts with a questioning under oath of you, the prospective jurors. The purpose of this questioning is to secure a panel of jurors as free of bias or prejudice or opinion as possible that will affect the rights of the parties to a fair trial. These questions are not meant to pry into your private lives or to embarrass you in any way, but some of these questions will be necessarily personal so that we can determine the basic qualifications that you have to serve as a juror. These questions will attempt to discover if any of you have any legal excuse or condition which would disqualify you from service. These excuses or conditions include physical disabilities, economic hardships, personal relationship with any of the parties or the witnesses in this case, conviction of a felony crime, a change of potential residence or

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change of residence to outside of Montgomery County, and there are others that will be explained to you later. These questions may further be designed to ascertain your opinions or your attitudes toward certain social, religious, or moral matters.

If you do not hear a question or understand a question that is stated by the Court or by counsel, you should indicate that, and the question will be repeated for you. If you feel your answer to any question asked by the Court or by counsel would be embarrassing to any of you personally, you may request permission to come to the bench at the side and give your answer in private at the side of the bench.

Before we get specific about any inquiries and place you all under oath, I want to first advise you that the statute in the State of Ohio, 2313.16, provides for certain excuses for jurors from jury service. I will read those to you at this time. First, that the prospective juror will be necessarily out of the County during the potential term of service and won't come back in time to serve; that the interest of the public or the interest of that prospective juror will be materially injured by potential jury service; that the juror is physically unable to serve; or that the juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill. With that explanation, then, Mr. Findlay, if you would, give the oath, please.

(Whereupon the prospective jurors were sworn.)

THE BAILIFF: I believe there is one affirmation.

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(Whereupon one gentleman affirmed.)

THE COURT: So that those individuals who are standing won't be any more uncomfortable than they have been in the past few minutes, perhaps we can put 12 jurors in the box and everybody can be seated.

THE BAILIFF: I had informed the potential jurors that the first 12 names would be different than in fact they are going to be. We will start with the jury list for jurors summoned during the week of July 12 and, in fact, the first name would be Audrey Brown, Seat No. 1. William Lee Young, Seat No. 2. Miles A. McSherry. Rise Charlene Davis. Joyce E. Harris. Eva M. Holtzman. Carolyn J. Purnhagen. James C. Starks. Brent William Davis. Debra L. Ball. Kimberly Kaye Barker. Little L. Barbee. Those are the first 12 names on the panel beginning the week of July 12, Judge.

THE COURT: Call a couple for the additional chairs.

THE BAILIFF: Sandra L. Hobbs, the last seat in the front row. Catherine M. Leen, the last seat in the second row.

THE COURT: Does that leave enough seats for everybody to sit down? Maybe we can squeeze in a little bit. You have all been placed under oath. I think we will proceed now to take any excuses which any of you wish to offer on any of the grounds that I had previously described to you. I would tell you, so that you can kind of decide particularly about the length of service, that it is anticipated in this case, that is, State of Ohio v. Charles Keith Wampler, 82-CR-764, that the length of the trial will be approximately

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two weeks, that is, beginning today and continuing through the balance of this week and quite probably we will have a Saturday session in this case; this week and then continuing on through the balance of next week and concluding on Friday. Would any of you have any difficulty or any problem serving in this case for that length of time? When I call on you, please state your name first for the record and then tell me what the problem is. Anybody up here? Your name?

MR. MCSHERRY: Miles McSherry. I am under a doctor's care for a heart condition.

THE COURT: Do you have medicine?

MR. MCSHERRY: I didn't consult the doctor. I didn't know when I would appear.

THE COURT: The sessions in this case, just for your information, the court session usually begins at approximately 9:00 o'clock or thereabouts, sometimes earlier, in the morning and runs up to the noon hour, when we break for an hour to an hour and a half or in that neighborhood for the luncheon recess, and then run until 5:00 or so in the evening. There are usually two recess periods in the morning and two in the afternoon for 20 minutes or so to give the jurors a chance to stretch their legs. I guess we kind of leave it, as far as medical conditions, up to the prospective juror, whether they feel they are up to it or not. We, obviously, realize jury service is an inconvenience. We certainly don't want to make it a physical hardship on anyone. I will leave it up to you. What do

you think?

MR. MCSHERRY: Well, I don't know. I have been getting along pretty good. It is hard to say. At times, I have hypertension when the blood pressure is up. I take the medication. I am not really certain. I could ask my doctor. Maybe at this stage there wouldn't be time for that.

THE COURT: Not really. We will have to have you pin yourself down in your own mind a little bit to see what you think, with that length of time, for the trial, if you would be able to serve

MR. MCSHERRY: I did serve on a Municipal jury a year ago, but I didn't have the condition or I didn't know I had the condition, but there was one stressful situation in that the Defendant was convicted. About two or three weeks after this was all over, the man was convicted, there had been a pre-trial and the other Defendant was also convicted, but apparently the parents of the Defendant -- I was made foreman, selected foreman, and they called my name several times. The parents looked at me. What I am trying to say is they came by my house and inquired two or three weeks later about a television or something, and then he asked if I had a phone book and this or that.

THE COURT: I think what you are getting at is if there are stressful situations involved in the trial, you wouldn't be physically able; that might have some effect.

MR. MCSHERRY: Yes. That is what I am thinking.

THE COURT: I think we will probably excuse you. Any objection?

MR. BOSTICK: None.

MR. HEAD: No objection.

THE COURT: Sir, we will excuse you from potential jury service in this case because of the risk that there may be some effect on your health.

MR. MCSHERRY: You can't say there would be, but --

THE COURT: I want to express to you personally my thanks for coming down and delivering that excuse in person. If you need a letter or anything --

MR. MCSHERRY: No, I am not employed.

THE COURT: You are excused, sir. Thank you very much for attending. Anybody else in the jury box?

MS. LEEN: Catherine Leen. I have two pre-school children. I don't have anyone to watch them for that length of time.

THE COURT: You couldn't arrange for two weeks?

MS. LEEN: No.

THE COURT: Any objection?

MR. BOSTICK: We have none, Your Honor.

MR. HEAD: No, Your Honor.

THE COURT: You may be excused, ma'am. Thank you very much for coming in and giving that excuse in person.

MS. HOBBS: Sandra Hobbs. I am scheduled to be out of town two weeks from today. If the trial should run --

THE COURT: So am I. I can tell you the case is going to be over. Does that take care of the jury box? First row, anybody

in the first row?

MS. BLACK: Patricia Black. I am planning on being out of town next week.

THE COURT: Is this something you have scheduled for some period of time, vacation?

MS. BLACK: Yes.

THE COURT: We don't want to interfere with anybody's vacation. Any objection?

MR. BOSTICK: None.

MR. HEAD: No.

THE BAILIFF: Could we attempt to determine which panel Ms. Black is on?

MR. HEAD: Panel B, No. 20.

THE COURT: You are excused, ma'am. Thank you for coming and talking to us in person. Anyone else in the front row?

MR. JOYCE: Charles Joyce. I've got arthritis of the spine. I can't sit too long.

THE COURT: You are in one of the allegedly comfortable chairs. You are not in the hard chairs with everybody else.

MR. JOYCE: I sit so long, Your Honor, then I got to get up and move.

THE COURT: Well, I think that sometimes the sessions do run a little long. We don't like to break in the middle of somebody's testimony. I think that might be a physical hardship for you. Any objection, counsel?

MR. BOSTICK: None, Your Honor.

MR. HEAD: No.

THE COURT: We are going to excuse you from service in this case. Thank you very much for coming down. We appreciate it.

MR. BOSTICK: Which panel?

THE BAILIFF: Panel A, No. 20.

THE COURT: Along the front row on this side?

MS. JOHNSON: Pamela Johnson. I am under a physician's care. I am under medication and it makes me drowsy.

THE COURT: The medication that you are taking, does that -- do you feel that might cause you a problem with paying close attention to all the testimony that might come from the witness stand or all the evidence that might be presented?

MS. JOHNSON: To some degree, but I have stitches in my mouth that may have to be removed this coming Thursday.

THE COURT: Does counsel have any objection?

MR. BOSTICK: No.

MR. HEAD: No.

THE COURT: You may be excused, ma'am. Thank you very much for coming down and giving the excuse in person.

MS. JOHNSON: Thank you.

THE BAILIFF: Panel A, No. 10.

THE COURT: Yes, ma'am?

MS. CARPENTER: Zeffie Carpenter. I have high blood pressure and am under a doctor's care. I am taking two pills, one

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to extract water. I can't sit long. I also have arthritic problems.

THE COURT: I can appreciate that. Any objection?

MR. BOSTICK: None, Your Honor.

MR. HEAD: No.

THE COURT: Thank you, ma'am. You are excused. We appreciate your delivering the excuse in person.

THE BAILIFF: Panel A, No. 43.

THE COURT: Anyone else? Moving on to this side. Your name, please?

MS. HEISTAND: Mary Heistand. I don't object to serving because I have already served once before, but I just find it impossible now to serve. My mother is 87. She was in the hospital for six weeks. Now we have brought her home. She has phlebitis. I am trying to take care of her and have responsibility of her home and my home.

THE COURT: Any objection?

MR. BOSTICK: No, Your Honor.

MR. HEAD: No.

THE COURT: You are excused, ma'am, with the thanks of the Court for coming personally today and delivering this in person. Thank you.

THE BAILIFF: Panel A, No. 33.

THE COURT: Second row on this side, anybody? All right. Second row on this side.

MS. BEHR: Rose Behr. I work third shift. I can't be

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excused. I can't afford to miss work.

THE COURT: Who is your employer?

MS. BEHR: Hollander.

THE COURT: Do they have any kind of program where they pay you in lieu of jury service?

MS. BEHR: I asked Larry about it. He said I should tell them I work third shift and I would be excused. If I work from 11:00 to 7:00, I don't think I could be awake all day long.

THE COURT: We don't want you to work during jury service. The purpose of my question was a lot of employers, they are not required by statute yet in the State of Ohio to pay people for the time off like vacation time or sick time or something like that for the time they would spend on jury service. They are not required to do that. That is why we provide the astronomical sum of \$10.00 a day for jurors to serve. We realize those employers who do not have a program for paying employees to serve during jury service it does work economic hardships against those individuals. My question is as far as you know your employer has no such program?

MS. BEHR: No.

THE COURT: You are saying it would work an economic hardship on you?

MS. BEHR: Yes, it would.

THE COURT: Any objection?

MR. BOSTICK: No, Your Honor.

MR. HEAD: No.

THE COURT: You are excused, ma'am, with the thanks of the Court for coming down. Good luck on your job. Anyone else?

MS. JUMP: Elizabeth Jump. I am scheduled for vacation next week. I have plans to go out of town.

THE COURT: That is certainly a valid excuse. Does counsel have any objection?

MR. BOSTICK: No.

MR. HEAD: No, Your Honor.

THE COURT: You are excused, ma'am. Have a good time on your vacation.

MS. JUMP: Thank you.

THE COURT: Yes, sir?

MR. WELLMEIER: Elton Wellmeier. I have prostate problems. I have no idea when I will have to undergo surgery. It could be a week or three months from now.

THE COURT: Are you under a doctor's care at this time?

MR. WELLMEIER: Yes.

THE COURT: Has he indicated that you are on a kind of stand-by basis for this?

MR. WELLMEIER: Yes. I go to a chiropractor. He has been kind of holding off. I don't know what is going to happen.

THE COURT: Would there be, in your opinion, a problem if, say, your time was totally occupied for the next two weeks? Would that be a problem to you from a medical standpoint?

MR. WELLMEIER: Yes. If I had to go into surgery, yes.

I don't know. I have been holding off. I don't know how long it will be before I go in.

THE COURT: Does counsel have any objection?

MR. BOSTICK: We have none, Your Honor.

MR. HEAD: No. I'd like the name again.

MR. WELLMEIER: Elton Wellmeier.

THE COURT: You are excused with the thanks of the Court for coming personally today. Anyone else in that row? All right. The third row back on the right side, anybody? I don't see any hands. The third row on the left side?

MS. SPILLER: Lois Spiller. I am scheduled to go out of town Friday. I won't be here for Saturday.

THE COURT: Friday and Saturday?

MS. SPILLER: Yes.

THE COURT: Is this business?

MS. SPILLER: Yes.

THE COURT: We are anticipating a Saturday session. That pretty much takes care of that. Any objection?

MR. BOSTICK: No, Your Honor.

MR. HEAD: No.

THE COURT: You are excused, ma'am. Thank you for coming down and talking to us personally. The fourth row back on the right-hand side?

MS. BOLINGER: Susan Bolinger. My mother is on her death-bed.

THE COURT: Sorry to hear that. That is an excuse under the statute. Any objection?

MR. HEAD: No, Your Honor.

MR. BOSTICK: No, Your Honor.

THE COURT: You are excused. Thank you for coming down. You have the sympathy of the Court. Anyone else on that side? The fourth row back on the left side, anybody? All right. How far back are we? We will take them as we see them. Your name, please?

MR. QUINN: Robert Quinn. I am slated to go on vacation beginning Saturday for two weeks. It is pre-scheduled.

THE COURT: Counsel?

MR. HEAD: No objection.

MR. BOSTICK: No objection.

THE COURT: Have a good time on your vacation. You are excused.

MR. QUINN: Can I sit in for a while and listen?

THE COURT: You are welcome to stay.

MR. QUINN: I was called to the city on jury duty. I actually don't have an open mind on the case, really. I have got a wife and three daughters.

MR. STEPHAN: Excuse me, Your Honor.

THE COURT: You are welcome to stay, but you are excused from service in this case. Thank you.

MR. SEWELL: Jackie Sewell. Clergy. I don't believe I could render a verdict in this case, truly.

THE BAILIFF: Reverend Sewell took an affirmation and spoke to me earlier this morning. I asked him to stay.

THE COURT: Let's get to the hardship problem first. Do you feel your duties with the church would prohibit you from service for two weeks?

MR. SEWELL: It would, study and so on and so forth, but the main thing would be rendering a verdict.

THE COURT: Because of your religious conviction?

MR. SEWELL: Yes, sir.

THE COURT: Any objection?

MR. BOSTICK: None.

MR. HEAD: No, Your Honor.

THE COURT: You are excused. Thank you for participating in these proceedings.

MR. SEWELL: Thank you.

THE COURT: Yes, sir?

MR. THACKER: Bruce Thacker. I am a student. I have two finals this week to prepare for.

THE COURT: Any objection?

MR. BOSTICK: None.

MR. HEAD: None.

THE COURT: You are excused, sir. Good luck in your final examinations.

MR. THACKER: Thank you.

THE COURT: Anyone else in the back?

MS. ACKERMAN: Susan Ackerman. I have got two more months left to pregnancy, and my husband is laid off. We depend on my part-time work at the Dayton Area Forensic Psychiatry Services.

THE COURT: You are part-time at that facility?

MS. ACKERMAN: Right.

THE COURT: Any objection?

MR. HEAD: No.

MR. BOSTICK: No.

THE COURT: You are excused, ma'am. Thank you very much for coming down in person. Yes, ma'am?

MS. CAMPBELL: Nora Campbell. I work for a small office. We only have two employees besides myself. To be off two weeks would be taking away from my office.

THE COURT: You don't feel there is any way the office could get along without you?

MS. CAMPBELL: It is not whether or not they can get along without me. It is just everybody else would have no time off or anything. It is not fair.

THE COURT: I am not so worried about the other people in your office. I am concerned about the hardship that would visit upon you personally.

MS. CAMPBELL: Nobody would be very friendly toward me for two weeks.

THE COURT: That can be a hardship, I assume. Does counsel have any objection?

MR. BOSTICK: No.

MR. HEAD: No.

THE COURT: You are excused, ma'am. Thank you very much. There was somebody else.

MR. MADEWELL: Rodney Madewell. I am scheduled to take two Civil Service tests; one this Friday and one the following Saturday for the City of Dayton. There is no makeup date on those.

THE COURT: Does counsel have any objection?

MR. BOSTICK: No.

MR. HEAD: No.

THE COURT: You are excused. Thank you very much. Good luck on your test.

MS. LAWNICZAK: Julie Lawniczak. I am a student at Sinclair and am on a program at St. Elizabeth's. We don't have makeup time. I would miss a lot of learning. It could affect my grades.

THE COURT: Does counsel have any objection?

MR. BOSTICK: No.

MR. HEAD: No.

THE COURT: You are excused with the thanks of the Court.

MS. BICKERSTAFF: Susie Bickerstaff. I work for GM. They will pay me part of my salary, but it will be for two weeks?

THE COURT: Two weeks.

MS. BICKERSTAFF: I am the sole support of my family.

THE COURT: They are going to pay you. They have that

policy. Your employer will pay you. They may ask that you turn in the \$10.00 that you get against your paycheck.

MS. BICKERSTAFF: All right.

THE COURT: Yes, ma'am?

MS. SPENCER: Nancy Spencer. I am waiting for a call to be put in the hospital for a hysterectomy. It could be within the two weeks or later.

THE COURT: You are not sure?

MS. SPENCER: I don't know when they will call me.

THE COURT: That is on an availability basis? Whenever something is available for you?

MS. SPENCER: Yes.

THE COURT: Otherwise you have to wait a lot longer?

MS. SPENCER: Yes.

THE COURT: Any objection?

MR. HEAD: No.

MR. BOSTICK: No, Your Honor.

THE COURT: You are excused, ma'am. Thank you very much. Anybody else? Okay. Did you report for the record on the absentees?

THE BAILIFF: No, sir, I did not.

THE COURT: By number on the panel, Mr. Findlay, if you will, report on the absentees for the benefit of counsel.

THE BAILIFF: Panel No. 1, the July 12th panel, the following persons are not present in the courtroom today. Nos. 3, 4, 6, 10, 12, 13, 15, 16, 17, 18, 20, 21, 23, 24, 25, 30, 32, 33, 35, 39,

40, 41, 42, 44, 46, 47, 48, 49, and 50.

THE COURT: Thank you.

THE BAILIFF: July 19, known as Panel A, the following persons are not present: Nos. 3, 12, 13, 14, 16, 22, 24, 25, 26, 27, 30, 36, 39, 40, 41, 42, 46, 47, 48, and 49. The panel of July 19, known as Panel B, beginning with Susan Ackerman. Nos. 4, 8, 10, 13, 16, 17, 18, 21, 28, 29, 31, 32, 35, 37, 38, 39, 40, 41, 42, 43, 44, 49, and 50.

THE COURT: Very well. Ladies and gentlemen, as I am sure you are aware, in the trial of this case, as in any case, each side of the case is entitled to a fair, unbiased, and unprejudiced jury. If there is any fact or any reason why any of you might be biased or prejudiced in any way in this case, you must disclose these reasons when you are asked to do so. It is your duty under oath to make these disclosures. Many of the questions, well, this morning's questions, will be addressed to you generally, that is, all of you collectively, but after the series of questions this morning, we are going to address other questions just to the panel of prospective jurors who are seated in the jury box. However, when those questions are directed to those potential jurors, all of you who are seated in the courtroom in general should pay close attention to those questions and make mental notes as to what your answers to those questions would have been. That way, if you are called upon to replace any of the members of the prospective jury that are seated in the jury box, rather than having to go back over the entire list of questions we