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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 501 "I" STREET, SACRAMENTO, CALIFORNIA 95814
ROBERT T. MATSUI FEDERAL COURTHOUSE

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 RYAN McGOWAN, ROBERT
15 SNELLING, ULYSSES SIMPSON
16 GRANT EARLY IV, and THOMAS
LU,
17 Defendants.

CASE NO.: 2:12-CR-00207 TLN
DEFENDANT EARLY'S
JURY VOIR DIRE

Before: Honorable Troy L. Nunley

18
19 Defendant EARLY hereby respectfully submits the following brief relating to
20 Jury Voir Dire in this matter and a proposed guideline for questioning potential
21 jurors to insure a fair and impartial trial.

22
23 Firearm Issues

24 Courts should allow voir dire of juror's attitudes about and experiences with
25 firearms. *United States v. Ford*, 19 F.3d 1271, 1273 (8th Cir. 1994); *Stephan v.*
26 *Marlin Firearms Co.*, 353 F.2d 819 (2d Cir. 1965).

27 Questions about juror membership in organizations are commonplace and
28 appropriately include questions about membership in groups with positions on

1 firearms. *United States v. Price*, 888 F.2d 1206, 1212 (7th Cir. 1989). The court may
2 choose which proffered questions, if any, it wants to ask.

3
4 Pretrial Publicity

5 Substantial pretrial publicity carries with it an inherent potential for
6 prejudgment of the case. As stated in *Irwin v. Dowd*, 366 U.S. 717, 727 (1961),
7 “[T]he influence that lurks in an opinion once formed is so persistent that is
8 unconsciously fights detachment from the mental processes of the average man.”
9 See also *Lincoln v. Sunn*, 807 F.2d 805, 815 (9th Cir. 1987).

10 Accordingly, a judge must inquire to the area of possible prejudice from
11 pretrial publicity. Appellate Court have been inclined to not only require
12 questioning in this area, but also to require attorney-conducted voir dire as well.
13 *United States v. Thomas*, 463 F.2d 1061 (7th Cir. 1972); *Silverthorne v. United*
14 *States*, 400 F.2d 627 (9th Cir. 1968).

15 “Mere exposure to pretrial publicity will not automatically render a juror
16 partial. The defendant/government is still required to demonstrate the juror’s
17 actual prejudice from the publicity. *United States v. Beniach*, 825 F.2d 1207 (7th
18 Cir. 1987).

19
20 Proposed Questionnaire

21 I. Background Questions:

- 22 A. Name.
23 B. Area of town where you live.
24 C. Marital Status
25 D. Occupation
26 E. Spouses Occupation
27 F. Parent’s Occupation
28 G. Children’s Occupation

- 1 II. This case is not about gun control.
- 2 A. Are you, or any member of your family, a member of a group or
- 3 association that advocates stricter gun control laws?
- 4 B. If you are a member of any such group, would your membership in that
- 5 group prevent you from deciding this case on its facts and the law as it
- 6 exists today?
- 7 C. You won't let a bias, for instance a belief that nobody should own or
- 8 possess firearms or that only police and the military should have
- 9 firearms, cause you to convict Defendants based upon your bias?
- 10 D. You won't let your passion for stricter gun control drive you to conclude
- 11 that Defendants "ought" to be in jail regardless of the facts?
- 12 E. You won't let your political goals motivate you to punish Defendants
- 13 because he has an opposing view on firearm issues?
- 14 F. How many of you, any members of your family or close friends have
- 15 guns in the home?
- 16 G. Would any of you support banning the private ownership of handguns?
- 17 H. Have you, or any member of your family member or close friends ever
- 18 been involved in a crime involving a gun?
- 19 III. Law Enforcement Credibility. Most people believe that the police and law
- 20 enforcement always tell the truth. I'd like to think that too. But sometimes
- 21 its not a matter of truth versus lies; sometimes it's a matter of interpreting
- 22 confusing or misleading statutes. The purpose of these questions is to find out
- 23 if you have a bias that would lead you to conclude that the police are more
- 24 entitled to be believed than the Defendants. If you have already come to the
- 25 conclusion that the Police always tell the truth and that criminal defendants
- 26 always lie, then you will not have discharged your duty to evaluate this case
- 27 with the presumption that all persons are innocent until proven guilty. And
- 28 that means that you must weigh the testimony of each witness after you have

1 heard that witness testify and that you are to take no notice of what they are
2 wearing, what they do for a living, or any other extraneous matter.

3 A. Have you, or any member of your family served as a law enforcement
4 officer?

5 B. Have you, or any member of your family served in any law
6 enforcement capacity?

7 C. Do you think you can suspend your judgment of the testimony of any
8 one witness until you have heard all the witnesses?

9 D. Will you automatically assume that a law enforcement officer is telling
10 the truth?

11 E. Will you automatically assume the defendant, if he takes the stand, is
12 not telling the truth because he is the one on trial?

13 IV. Pretrial Publicity

14 A. Have you read or heard anything about this case before coming here
15 today.

16 B. Because of the publicity do you think that the defendants can get a fair
17 trial?

18 C. What did the publicity in this case make you think about the
19 Defendants?

20 V. Catch-All Question. Can you think of any reason, knowing what little you
21 know about the case, that would prevent you from being impartial and
22 rendering a decision in this case based upon the facts as set forth during the
23 trial and based upon the law as instructed by our Judge?

24 Date: September 22, 2014

25 /s/ Donald Kilmer, Attorney at Law

26 Attorney for the Defendant

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