

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,)

)

Plaintiff,)

)

vs.) Case No. 08-2023-CR-3618

)

Jason Dean Dockter,)

)

Defendant.)

Jury Trial

Before

The Honorable Bobbi Weiler

District Judge

Friday, May 3, 2024

Burleigh County Courthouse

Bismarck, North Dakota

APPEARANCES:

FOR THE PLAINTIFF:

LADD ERICKSON

SPECIAL ASSISTANT STATE'S ATTORNEY

514 East Thayer Avenue

Bismarck, North Dakota 58501

FOR THE DEFENDANT:

LLOYD SUHR

ATTORNEY AT LAW

418 E. Rosser Ave, Ste. 102

Bismarck, North Dakota 58502

1 (THE FOLLOWING PROCEEDINGS WERE HAD AND MADE OF
2 RECORD, AS FOLLOWS, on May 3, 2024, commencing at 8:30 a.m.):

3 -----

4 (In open court, outside the presence of the jury.)

5 THE COURT: All right. We'll open 08-2023-CR-3618. We
6 are in the courtroom before the jury is brought in. It's
7 8:30. Mr. Suhr is here representing Mr. Dockter. Mr. Erickson
8 is here representing the State.

9 MR. ERICKSON: Sorry, Judge.

10 THE COURT: That's okay.

11 MR. ERICKSON: Now I'm struggling. How do I get it
12 off?

13 THE COURT: This is what happens when you're not in
14 your element, Mr. Erickson. Different courtroom.

15 MR. ERICKSON: Okay. There. Found the right button.
16 Sorry.

17 THE COURT: All right. I was told in an email that the
18 parties had some stipulations they wanted to put on the
19 record.

20 MR. SUHR: I can put those out, Your Honor.

21 THE COURT: Okay. Go ahead.

22 MR. SUHR: Thank you. So we had originally looked at
23 five witnesses for the State. The first witness was going to
24 be Rob Port. Mr. Port conducted a podcast in November of 2022
25 with my client. It was Mr. Erickson's intention to play that

1 podcast. Mr. Port would have been here for the purpose of
2 laying foundation for it. The defense is going to stipulate
3 to the foundation for the podcast. It is, I believe, 36
4 minutes long. Mr. Erickson's intent, as I understand, is to
5 play it in its entirety. We have no objection to that.

6 The only other thing I would have had questions of Mr.
7 Port for is -- is to inquire about the circumstances under
8 which the podcast came to be. In other words, did Mr. Port
9 reach out to Mr. Dockter for the podcast or was it Mr.
10 Dockter reaching out to him. Mr. Erickson and I spoke to him.
11 He informed me that it was Mr. Dockter that voluntarily
12 reached out and agreed to the interview, so Mr. Erickson is
13 going to stipulate to that fact as a background fact to the
14 to the podcast.

15 So with that question being eliminated, I really wouldn't
16 have any other questions for Mr. Port, so he would be
17 eliminated from the witnesses based on those two
18 stipulations.

19 Additionally, Your Honor, Mr. Erickson has provided me
20 with an exhibit and witness list. I believe that's been filed
21 with the Court. We are going to stipulate to foundation with
22 respect to each of the exhibits. I'm sure Mr. Erickson, when
23 he introduces them, will want to lay some background for the
24 jury as to what they are, but we won't be needing to go
25 through the foundation for those documents. I'm interested in

1 many of the same ones, so that should expedite some of the
2 the trial proceedings.

3 THE COURT: That would be all the exhibits he had on
4 his exhibit list he filed just on May 1st?

5 MR. SUHR: That is correct, Your Honor.

6 THE COURT: Okay. Are there any other exhibits that
7 you intend to offer that aren't agreed to at least
8 foundation-wise?

9 MR. SUHR: Yeah, I don't anticipate any defense
10 exhibits.

11 THE COURT: Okay.

12 MR. ERICKSON: Your Honor, I have a zip drive of that
13 podcast. I'll just put that in evidence. I have it set up --
14 we've stipulated to -- from three minutes, that's when the
15 interview starts, to 39.

16 THE COURT: Okay.

17 MR. ERICKSON: Doing it this way, Your Honor, actually
18 is going to save a couple hours of testimony through other
19 witnesses because it's all kind of explained in one shot,
20 particular things, so I have brief witnesses, basically,
21 because of the podcast.

22 THE COURT: Okay. Perfect. And then, Mr. Suhr, you
23 said you had a problem with the essential elements or a
24 change that you wanted to propose.

25 MR. SUHR: Yeah, Your Honor. Thank you. As I was going

1 back through these over the course of trial prep, I noted
2 something and looking specifically on page six of the Court's
3 instructions under essential elements, particularly element
4 six. In element six the Court has it broken out into two
5 revolving elements, so to speak. One is the acquisition of a
6 pecuniary interest and the other is a speculation or a wager.
7 The issue I have is if you take a look at 12.1-13-02, sub 2,
8 which is what we're dealing with here, the last clause in
9 that paragraph states in contemplation of such official
10 action. I believe that that phrase relates back, not just to
11 whether there has been a speculation or wager, but that it
12 also relates back to the acquisition of a pecuniary interest.
13 This is not an artfully written statute.

14 THE COURT: It's horribly written.

15 MR. SUHR: Pardon me?

16 THE COURT: It's horribly written.

17 MR. SUHR: Yes.

18 THE COURT: It's one long run-on sentence.

19 MR. SUHR: Yes. And I pounded through this thing for
20 about two hours reading and rereading this and my
21 interpretation of this, and I think the correct recitation of
22 of the elements is that we need to add that requirement of
23 contemplation, both to the acquisition of a pecuniary
24 interest and to the speculation or wager revolving element of
25 this statute. I think it requires that a public servant

1 either acquire a pecuniary interest or speculate or wager in
2 contemplation of some later official action. The placement of
3 that comma in between the word make and in in that last
4 sentence, I don't think bifurcates the contemplation
5 requirement in such a way that makes it only applicable to
6 the speculation component. And I think it's entirely
7 consistent with the logic of the statute is to prevent a
8 public servant from doing something in contemplation that
9 they're later on going to do something else. Whether it's
10 voting or what have you.

11 So what I think we need to do with the essential elements
12 and I would note this is consistent with the proposed
13 elements as submitted by Mr. Erickson. It's also consistent
14 with the proposed elements that I had proposed. I think what
15 we need to do is one of two ways to fix this very easy
16 grammatically. Either we add in 6A the language in
17 contemplation of such official action, and then it's just in
18 both 6A and 6B or what we do is we take it out of 6B and then
19 just make a subdivision 7, so to speak, that says in
20 contemplation of such official action, which would then allow
21 that requirement to relate to either or both of the revolving
22 elements.

23 THE COURT: Mr. Erickson?

24 MR. ERICKSON: I don't agree with that, Your Honor.
25 And where this gets complicated, these are from the model

1 acts. When I was doing the research on this, I went back and
2 looked at them. This paragraph two there doesn't have that
3 contemplation. You know, there's basically two statutes in
4 one statute here with the two paragraphs, so let's see the
5 way the Court had done it, you know, I thought the way I
6 proposed it -- I didn't like the way Mr. Suhr had broken down
7 that extra element, but the way I had proposed it, willfully
8 took an action and I have to look at what I propose, but --

9 THE COURT: Well, both of you had had it in one. I
10 broke it up into subsections because I think it's easier for
11 a jury. Both of you had had it in one long sentence.

12 MR. ERICKSON: Let's see. Yeah, I think the Court has
13 it right. I mean, as a result of -- yeah, I think --

14 THE COURT: You're not jurors, right? Okay. Good. Just
15 wanted to make sure.

16 All right. Go ahead.

17 MR. ERICKSON: I think the Court has it right, though.
18 I guess I -- the official action was likely a benefit as a
19 result of acquisition of a, property, transaction or
20 enterprise. I think that's correct the way --

21 MR. SUHR: And two things in response to that, Judge.
22 First of all, Mr. Erickson, is right that this statute is
23 somewhat born of the Model Penal Code. However, that's only
24 true of sub 1. I researched the Model Penal Code. Subsection
25 2 does not exist there. I -- quite frankly, I'm not sure

1 where sub 2 comes from. It was a part of the 1973 act that
2 created our entire Criminal Code. There is no testimony about
3 it. There is no legislative history explaining it. It was
4 tucked in with everything else that we currently have in our
5 code, so sub 2 is not actually a part of the Model Penal
6 Code.

7 The second thing I would note, the term in contemplation
8 of such official action, what that's relating to, Judge, is
9 one of the static elements. In other words, one of the
10 elements that's required no matter what. Official action must
11 be shown whether you are talking about acquisition of a
12 pecuniary interest or whether you were talking about
13 speculation or wager. And if an official action is required,
14 no matter which of those two we're dealing with, I don't know
15 how contemplation of that official action can only apply to
16 one course of conduct or the other. So I also think because
17 it's tethered to the term official action and official action
18 is a constant element in this case, the requirement of
19 contemplation must also then apply to both acquisition of a
20 pecuniary interest or speculation or wager.

21 THE COURT: I'll take it -- I'm going to take -- we
22 don't need to know this until after the jury is selected and
23 we get to jury instructions, so I'm going to think about it
24 and then during our break after we've selected our jury, we
25 can discuss it some more.

1 Anything else we need to talk about or were those the
2 only two issues?

3 MR. SUHR: The only other thing I had, Judge, is I did
4 submit in light of the Court's ruling on the 404, I did
5 submit a proposed limiting instruction.

6 THE COURT: Yes.

7 MR. SUHR: I think I've stated in there the grounds
8 for that. The charge here relates to the 2023 vote. And the
9 Court's order was clear that the prior votes were being
10 allowed in to provide that factual context. Those votes would
11 be outside of the statute of limitations. They are not the
12 basis of the charge, so to the extent that evidence or
13 testimony of those prior votes is received and they are
14 included in the stipulated exhibits, I would ask that there
15 be a limiting instruction making it clear to the jury that
16 Mr. Dockter is not on trial for those 2021 votes. They simply
17 lend the factual context that the Court described in its
18 order.

19 THE COURT: Mr. Erickson?

20 MR. ERICKSON: How he -- I understand where he's
21 coming from. I think the Court's already ruled. I struggled
22 with the way he wanted to describe it. If you would, you
23 know, like those are valuable to intent and lack of mistake.
24 He hasn't written as that doesn't matter. You should --

25 THE COURT: My worry with this is that, one, those are

1 your arguments. I don't need an instruction on that. You both
2 can make your arguments on those during your closings. But
3 also then, essentially, I'm telling the jury to ignore that
4 testimony is how I read this. Essentially, don't worry about
5 the 2021 votes. We're not here for that. We're only here for
6 the 2023 votes, so that was my concern about including that
7 limited instruction. Essentially, you're telling the jury to
8 -- I'm telling them, which I can't do, how to view evidence
9 that is given to them.

10 MR. SUHR: Well, actually, the limiting instruction
11 that I proposed, Judge, it allows them to consider it. I
12 actually used the language from the Court's order and
13 explaining to the jury the purpose for which those votes
14 would be allowed. My concern is they're going to think that
15 they're deciding, okay, if he voted in 2021, he must be
16 guilty. And that's not what he's charged with. He can't even
17 be charged with that because he's outside of the two-year
18 statute of limitations from the commission of the alleged
19 act. With this language what I'm -- what I think is
20 accomplished is it explains to the jury, yes, you can
21 consider those votes as a part of the overall factual
22 context, which I think is where the Court's order is, but
23 that's not what he's on trial for. The pleading here says on
24 or before May 1 of 2023. A juror could look at that and go,
25 well, April of 2021 is also before May of 2023, so are we

1 convicting him based on those votes? Are we convicting him
2 based on all of them? This is about the 2023 Health
3 Department vote because that's what's been charged. The
4 Court's order even noted that the 2023 vote is the subject of
5 this charge.

6 So my limiting instruction borrows from the language of
7 the Court's order, and I think is consistent with it, but
8 also eliminates a confusion on the part of the jury to decide
9 the question of guilt or innocence based on votes not subject
10 of this charge.

11 THE COURT: Any further -- I'm going to take this
12 under advisement too because, again, this is not until the
13 final jury instructions, but Mr. Erickson?

14 MR. ERICKSON: If he wants to -- the way he described
15 it, I wouldn't agree with, but there may be something that is
16 an acceptable cautionary.

17 THE COURT: Okay.

18 MR. ERICKSON: Not that this is irrelevant. It's, you
19 know, something he could come up with a better word like goes
20 to intent or something, you know? But, Your Honor, just so
21 the Court's aware, too, just in that contemplation language,
22 that wasn't considered here. I don't have evidence to satisfy
23 that, you know, if that's added to the essential elements
24 here, and then if we pick a jury, I don't have something to
25 present there, so that is important decision-making beginning

1 of this.

2 THE COURT: Well, the absence of evidence on an
3 essential element is not a reason to not include it.

4 MR. ERICKSON: No, but it's adding a new element from
5 a different part of the statute to the one that's charged and
6 that's not what's prepared for here.

7 THE COURT: Well, I'm going to take them both under
8 advisement. We will get a jury and then I'll make my final
9 decisions on those two issues.

10 Anything else we need to discuss, Mr. Suhr?

11 MR. SUHR: Just I would request sequestration of
12 witnesses. I do have two anticipated witnesses. I don't know
13 if Mr. Dockter will testify or not, but I have explained
14 those to Mr. Erickson.

15 THE COURT: Okay. Anything else, Mr. Erickson?

16 MR. ERICKSON: I'm fighting crud and I don't know what
17 the deal is. I don't ever get colds, but I'm going to be -- I
18 got a pharmacy in my bag here, so you might see me sneeze or
19 something or cough.

20 THE COURT: Okay. That's fine. I knew on Monday you
21 didn't sound -- you sounded a little stuffed up, so --

22 MR. ERICKSON: I thought I was over it. It just keeps
23 lingering and lingering.

24 THE COURT: Well, it's fine with me if you've got
25 everything you need there. We do have Kleenexes if you need a

1 box down there.

2 MR. ERICKSON: Thank you.

3 THE COURT: Yep. Anything else, Mr. Suhr?

4 MR. SUHR: No, Your Honor. Thank you.

5 THE COURT: Mr. Erickson?

6 MR. ERICKSON: Nothing.

7 THE COURT: All right. We'll bring the jurors in.

8 We'll start seating them. They're probably going to have to
9 sit on this side of the courtroom. Can we fit them all in one
10 side? Yes?

11 BAILIFF: We'll try.

12 THE COURT: All right. So any spectators will have to
13 sit on this side for now, and then once the jury is -- we're
14 down to the jurors we need, then you can sit wherever you
15 want. If you are here with a news cast -- I don't see anybody
16 here. Might have to address that before we start the trial
17 because I don't think they're going to show up for the jury
18 selection.

19 So anything else? Doesn't look like it. All right. We'll
20 take a recess until 9:00. Thank you.

21 (Recess taken.)

22 (In open court.)

23 (All prospective jurors present.)

24 THE COURT: All right. Good morning, everybody. We are
25 set for a jury trial in 08-2023-CR-3618. The caption of the

1 case is the State of North Dakota versus Jason Dean Dockter.
2 It is now -- we don't have a clock in here. 9:01 a.m. on May
3 3, 2024. Mr. Dockter's charged with having committed the
4 crime of speculating or wagering on an official action or
5 information.

6 My name's Bobbi Weiler. I'm one of the judges here in the
7 South Central Judicial District. There's ten judges in this
8 district and two referees. I'll be presiding over the case.
9 The clerk to my left will be taking -- handling all the jury
10 procedures, so if you have any questions regarding your jury
11 service today, you can go to the clerk's office. Their office
12 is on the second floor. My court reporter is Kayla today. She
13 will be taking notes and taking down every word that is
14 spoke, so I will at time to time tell people to slow down so
15 that she doesn't miss anything. We have three bailiffs today
16 which you must have met when you came in. They are here to
17 assist you with anything that you need. They can convey any
18 questions you have to me, and then we can discuss those. If
19 you have any questions regarding anything on jury service,
20 you can talk to the bailiffs and they'll let us know what you
21 need.

22 I'm going to allow the attorneys and the parties to
23 introduce themselves. Mr. Erickson.

24 MR. ERICKSON: Thank you, Your Honor.

25 My name's Ladd Erickson. I'm the McLean County State's

1 Attorney and I'm a Special Assistant Burleigh County State's
2 Attorney here today. I'll just tell you I'm fighting some
3 sort of a cold. I'm not supposed to be contagious, but I have
4 to kind of dress a little casual and you might see me
5 changing my clothes a little bit here with taking this on and
6 off to regulate the temperature.

7 Good morning, everybody. Thank you.

8 THE COURT: Mr. Suhr.

9 MR. SUHR: Thank you, Your Honor. Good morning. My
10 name is Lloyd Suhr. I'm an attorney in private practice in
11 Bismarck. Seated next to me on my immediate right is my
12 client, Jason Dockter, and seated to my far right is our
13 associate, Kayla Peterson. Just going to be just assisting
14 during jury selection today. Thank you.

15 THE COURT: Madam clerk, have you called the role of
16 the jury.

17 CLERK: I have, Your Honor.

18 THE COURT: Can you please swear in the panel?

19 (All perspective jurors sworn in.)

20 THE COURT: All right. Thank you. You can be seated.
21 We're going to begin with voir dire. The object of jury
22 selection is to get a fair and impartial jury today. If you
23 are asked to leave, please don't take offense. It just might
24 mean that you're better for a different jury than you -- than
25 what we're here for today, so I'm going to start with a few

1 questions and then both attorneys will be allowed to ask a
2 few questions as well. I am going to start the questions with
3 the jury panel that is seated in the jury box. If someone is
4 asked to be excused, I will bring up another juror from the
5 back. It just speeds up the process, so that we only have 18
6 jurors answering questions instead of the 40 or so we have
7 here today, so can everybody hear me?

8 (All jurors nodding in the affirmative.)

9 THE COURT: Okay. Is everybody 18 years old?

10 (All jurors nodding in the affirmative.)

11 THE COURT: Okay. Is everybody a resident of Burleigh
12 County? Nobody's moved to Mandan in the last month?

13 (All jurors nodding in the affirmative.)

14 THE COURT: Okay. Does anybody know Mr. Erickson, the
15 prosecutor?

16 (No affirmative responses.)

17 THE COURT: All right. And anybody know Mr. Suhr?

18 Oh, juror number 16? Okay. Put that up to your mouth just
19 so that we can hear you.

20 How do you know Mr. Erickson?

21 JUROR NO. 16: I'm not sure. We may have played sports
22 together at one time.

23 THE COURT: How long ago do you think?

24 JUROR NO. 16: 80s, early 80s.

25 THE COURT: All right. So you don't know -- you

1 haven't -- you haven't had contact with him in the last few
2 years?

3 JUROR NO. 16: No, ma'am.

4 THE COURT: Okay. Sounds good. Anybody else?

5 All right. Mr. Suhr, does anybody know the defense
6 attorney?

7 Okay. Juror number 4, how do you know Mr. Suhr?

8 JUROR NO. 4: I used to work in an office next door to
9 him.

10 THE COURT: Okay. And did you have any personal
11 contact with Mr. Suhr?

12 JUROR NO. 4: Not really, no.

13 THE COURT: Just seeing him walking in and out of the
14 office?

15 JUROR NO. 4: Say hey, yep.

16 THE COURT: Any reason that you can't be fair and
17 impartial based upon that knowledge?

18 JUROR NO. 4: No.

19 THE COURT: Okay. And, Mr. Dockter, Mr. Dockter is a
20 state representative. You may have seen his name. What I am
21 concerned about today is if anybody has a personal
22 relationship with Mr. Dockter.

23 Juror number 14?

24 JUROR NO. 14: I know his wife.

25 THE COURT: And how do you know his wife?

1 JUROR NO. 14: I am her dentist.

2 THE COURT: Okay. And so do you do any social events
3 with her? Go out to lunch or anything like that?

4 JUROR NO. 14: No.

5 THE COURT: And have you learned anything by your
6 interactions with her about this case today?

7 JUROR NO. 14: No.

8 THE COURT: Okay. Any reason you can't be fair and
9 impartial today?

10 JUROR NO. 14: No.

11 THE COURT: Okay. Anybody else?

12 (No affirmative responses.)

13 All right. So the attorneys like to know some of the
14 background of the jurors when they're making a decision on
15 their jury and so what I'm going to have the jurors in the
16 box go through is give us a little background. I can start so
17 you know what we're talking about or what we want to hear.

18 Again, my name is Bobbi Weiler. I'm a judge here. My
19 husband's name is Mark. He works in the oil industry. We have
20 three kids, triplets, who just turned ten last week. I've
21 lived in Bismarck since college, so 20 years now. That ages
22 me, so I'll start with juror number one.

23 JUROR NO. 1: My name is Richard Greff. I work at
24 AMCON Distributing. Been there for over 26 years. My wife is
25 Sherry. We have two children and four grandchildren. My

1 daughter lives in Virginia. My son lives in Minneapolis. My
2 wife works at Aetna Healthcare.

3 THE COURT: Okay. Thank you. And just whatever you're
4 comfortable telling us. Juror number two.

5 JUROR NO. 2: I'm Linda Homan and I am retired and I
6 have two children, grown, and I worked at Aetna and at St.
7 Alexius for all of my career.

8 THE COURT: Thank you. Juror number three.

9 JUROR NO. 3: My name is Michelle Schafer. I was born
10 and raised here in Bismarck and I work at Bobcat.

11 THE COURT: Okay. Thank you. Juror number four.

12 JUROR NO. 4: My name is Lena Sedevie. I am married
13 and I have one daughter and I work as a legal assistant.

14 THE COURT: And what law firm do you work at?

15 JUROR NO. 4: Mulloy Law Firm.

16 THE COURT: Sorry?

17 JUROR NO. 4: Mulloy.

18 THE COURT: Mulloy? Okay. And then what does your
19 husband do?

20 JUROR NO. 4: He works as a hockey coach.

21 THE COURT: Okay. Thank you. Juror number five.

22 JUROR NO. 5: My name's Kameron Nagel. I'm from
23 Bismarck and I cut concrete.

24 THE COURT: Okay. Thank you. Juror number six.

25 JUROR NO. 6: Craig Sauer from Bismarck. I'm a foreman

1 for a construction company in town and divorced.

2 THE COURT: Thank you. Juror number seven.

3 JUROR NO. 7: My name is Kyle. I am married with two
4 boys. For most of my career I was coaching Division 1
5 Athletics and now I have changed into trying to own a
6 business.

7 THE COURT: What kind of business do you own?

8 JUROR NO. 7: I own a restaurant business.

9 THE COURT: Okay. Juror number eight?

10 JUROR NO. 8: My name is Tim Lapp. I work for A&I
11 Distributing and on weekends I do security work for BisMan.

12 THE COURT: Thank you. Juror number 9.

13 JUROR NO. 9: Hi. I'm Amy Tollefson-Gader. I'm
14 divorced. I have one son and a granddaughter and I work at
15 Sanford as a CNA.

16 THE COURT: Juror number 10.

17 JUROR NO. 10: Robert Schaff. Retired. Married 34
18 years. Two children.

19 THE COURT: Juror number 11.

20 JUROR NO. 11: Sarah Ross. I have two kids. I work for
21 a software technology company.

22 THE COURT: Thank you. Juror number 12.

23 JUROR NO. 12: Kevin Rath. Married. Two children.
24 Three grandchildren. Drive truck for 45 years.

25 THE COURT: What's your wife do?

1 JUROR NO. 12: She works for Worker's Comp.

2 THE COURT: Okay. Thank you. Juror number 13.

3 JUROR NO. 13: I'm Taylor Bergquist. I work at CHI St.

4 Alexius as an athletic trainer and I teach at the University

5 of Mary.

6 THE COURT: Juror number 14.

7 JUROR NO. 14: I'm Katie Stewart. Dentist here in

8 Bismarck and married and three teenage daughters.

9 THE COURT: What's your husband do?

10 JUROR NO. 14: He is mostly a dad who's wrapped around

11 their fingers really tight, but he's an IT guy as well.

12 THE COURT: Okay. Thank you. Juror number 15.

13 JUROR NO. 15: My name is Elizabeth Heidrich. I am

14 recently widowed. I have seven children and 26 grandchildren.

15 THE COURT: You said you're a retired. What did you do

16 when you were working?

17 JUROR NO. 15: I worked for my son-in-law for Extreme

18 Cleaning.

19 THE COURT: Okay. Thank you. Juror number 16.

20 JUROR NO. 16: My name is Patrick Sanders. I'm a

21 regional manager for an oil field company. Married. Three

22 kids. My wife works for Merck Pharmaceuticals. A couple grand

23 kids.

24 THE COURT: Thank you. Juror number 17.

25 JUROR NO. 17: Brandy Bentley. I work for the North

1 Dakota Information Technology Department. I head up the
2 procurement team and I have two children.

3 THE COURT: Thank you. And juror number 18.

4 JUROR NO. 18: My name is Amanda Weigel. Married.
5 Three children.

6 THE COURT: Okay. And what's your husband do?

7 JUROR NO. 18: He is a service technician for Bobcat
8 of Mandan.

9 THE COURT: Okay. And are you working?

10 JUROR NO. 18: I work at Dakota Eye.

11 THE COURT: Dakota Eye. Okay. Thank you. All right. So
12 has anyone been on a jury before?

13 All right. A few. Let's start with juror number 12. What
14 kind of jury did you sit on, a criminal or a civil? Do you
15 remember?

16 JUROR NO. 12: Civil, I believe. It's been a while.

17 THE COURT: And how long ago was it?

18 JUROR NO. 12: I'm guessing four to five years.

19 THE COURT: Okay. And do you remember did they find
20 fault for anybody if it was a civil case? If you don't
21 remember, that's fine, too.

22 JUROR NO. 12: I don't remember.

23 THE COURT: Okay. Juror number 11, you had your hand
24 raised? How long ago was your service?

25 JUROR NO. 11: 15 years.

1 THE COURT: Do you remember what kind of case it was?
2 JUROR NO. 11: Contact by bodily fluid.
3 THE COURT: Okay. And so a criminal case. Do you
4 remember did the jury find the person guilty or not guilty?
5 JUROR NO. 11: Guilty.
6 THE COURT: Okay. In the back, I think, juror number
7 2, did you have your hand raised?
8 JUROR NO. 2: I did.
9 THE COURT: Okay. And what kind of trial was it?
10 JUROR NO. 2: I believe it was a criminal case.
11 THE COURT: Okay. How long ago?
12 JUROR NO. 2: Oh, over ten years ago.
13 THE COURT: Do you remember if they found the person
14 guilty or not guilty?
15 JUROR NO. 2: Not guilty.
16 THE COURT: Okay. And in the back we had another hand
17 raised, I think. Okay. Juror number one.
18 JUROR NO. 1: Yeah, it was about 30 years ago and it
19 was a meth case and he was both guilty on some charges and
20 not guilty on others.
21 THE COURT: Okay. And anybody else? No one else had
22 their hand raised. Has anybody been a party to a lawsuit, a
23 plaintiff or a defendant?
24 (No affirmative responses.)
25 THE COURT: Has anybody personally been in law

1 enforcement or have somebody close to them in law
2 enforcement, immediate family member or close friend? Juror
3 number eight.

4 JUROR NO. 8: That was my dad. He used to be a deputy.

5 THE COURT: Where at?

6 JUROR NO. 8: Here.

7 THE COURT: In Burleigh County?

8 JUROR NO. 8: Burleigh County.

9 THE COURT: Okay. And how long ago was that?

10 JUROR NO. 8: Got to be -- got to be about 40 years
11 ago.

12 THE COURT: Anything about his experience as an
13 officer affect your decision -- or your ability to be fair
14 today?

15 JUROR NO. 8: Yeah, he always showed up where we were
16 doing something wrong.

17 THE COURT: Okay. Anybody else?

18 (No affirmative responses.)

19 THE COURT: All right. Mr. Erickson, you have a few
20 witnesses on your list. Would you like to list those and
21 we'll see if any of the jurors know those individuals?

22 MR. ERICKSON: Sure.

23 Your Honor, I guess, Rob Port is technically not a
24 witness, but we'll be mentioning him.

25 THE COURT: Okay.

1 MR. ERICKSON: Because we've stipulated so just to
2 make sure I get them here. Josh Gallion, who is the North
3 Dakota State Auditor; John Boyle, who is the OMB Division
4 Director for Facilities. John Bjornson, who is the Director
5 of the Legislative Council. Rebecca Binstock, who is the
6 Executive Director of the North Dakota Ethics Commission. Is
7 that everybody, Lloyd?

8 MR. SUHR: (Nodding head.)

9 MR. ERICKSON: Those would be my witnesses, Your
10 Honor.

11 THE COURT: Okay. And when I'm asking if someone knows
12 them, I -- you may have heard their names before. What I'm
13 looking for is anybody go and have lunch with these
14 individuals, have a closer relationship with anybody? Anyone
15 recognize those names as someone they know?

16 Okay. All right. This case has gotten some publicity in
17 the news. I don't want -- I don't want you to tell me what
18 you've read or seen if you have read or seen anything. But
19 what I do need to know is if any of you have seen anything
20 about this case in the news, public media, anything like
21 that. Has anyone heard anything about this case?

22 Juror number 17, did you see something in the newspaper,
23 on social media?

24 JUROR NO. 17: I think just in the news.

25 THE COURT: Okay. How recently was that?

1 JUROR NO. 17: Just the other day when it's said it
2 was going to trial.

3 THE COURT: Okay. And did you read the entire thing?

4 JUROR NO. 17: No.

5 THE COURT: Okay. Anything about reading that would
6 affect your ability to be fair and impartial today?

7 JUROR NO. 17: No.

8 THE COURT: Anybody else? Okay.

9 Does anybody got anything that would prevent them -- this
10 is just a one-day trial. We should be done by 5:00. Prevent
11 them from being able to sit today? Do you have a surgery
12 today you need to get to? Someone has a flight at 2:00 they
13 can't miss? Anything like that? I know you probably have
14 work. I'm more concerned about things that cannot be
15 rescheduled.

16 So, juror number 10?

17 JUROR NO. 10: You said this was for the 8th; correct?

18 THE COURT: What?

19 JUROR NO. 10: The trial is when?

20 THE COURT: Today. We'll be done by 5:00.

21 JUROR NO. 10: Okay. Then I'm fine.

22 THE COURT: Okay. Sounds good. Anybody else?

23 Juror number 8?

24 JUROR NO. 8: I have to be somewhere at 5:00.

25 THE COURT: What kind of thing do you have to do? Is

1 it a personal or --

2 JUROR NO. 8: It's for work.

3 THE COURT: Okay. And it can't be moved?

4 JUROR NO. 8: I could call and tell them I can't make

5 it.

6 THE COURT: Okay. Because it's like we -- I highly

7 doubt you'll be able to -- I don't know where you're going,

8 but it could be likely we go all the way to 5:00 today. Okay?

9 And you'll be able -- we take breaks. And we also have a

10 lunch break, so if you need to call anybody to get kids

11 picked up or to reschedule something, you'll have the

12 opportunity to do that.

13 All right. In -- last question, is there any reason

14 sitting here today that you cannot be fair to the parties?

15 You've not heard anything about the evidence. Any reason you

16 can't be fair today?

17 (No affirmative responses.)

18 All right. I'll allow the attorneys to ask questions

19 then. Mr. Suhr.

20 MR. SUHR: Thank you, Your Honor. Can I use the

21 podium?

22 THE COURT: You can. Do we have any IT people in the

23 jury right now? Oh, there we go.

24 MR. SUHR: Okay. Everybody hear me? Okay. Let's hope

25 that's not an omen.

1 Good morning. The judge asked some of the questions that
2 I do have for you, but I do have some follow-up questions
3 that I want to touch on.

4 Juror number 10, I think you said you were retired. I
5 didn't get what you were retired from.

6 JUROR NO. 10: I'm sorry. I was in construction most
7 of my career.

8 MR. SUHR: Okay. What kind of construction?

9 JUROR NO. 10: Well, I started 18 years as a
10 carpenter, 18 years as a welder and then I retired as a truck
11 driver.

12 MR. SUHR: So little of everything?

13 JUROR NO. 10: (Nodding head.)

14 MR. SUHR: Okay. So I want to start by following up on
15 whether you folks know anybody that's in the jury panel. We
16 asked you if you know me, if you know Mr. Erickson, you know
17 the witnesses. I have a couple of possible witnesses that I
18 want to present to you as well. But does anybody know anybody
19 else in the jury panel and when I say that, I'll qualify it.
20 I'm asking about a relationship where you're picked to sit on
21 this jury and that other person is picked to sit on this
22 jury. You might be afraid to exercise your own vote because
23 you're worried about offending them or what they think. So is
24 there anybody here who if you were seated on this jury, there
25 would be somebody else who's also in the jury panel where if

1 you were both there, it would affect your ability to be fair
2 and impartial. So, juror 9, I saw your hand.

3 JUROR NO. 9: I know one of the jurors but it wouldn't
4 affect my decision making.

5 MR. SUHR: Okay. And are they -- is that juror in the
6 box with you right now or are they out in the gallery?

7 JUROR NO. 9: No. Out in the gallery.

8 MR. SUHR: Okay. And if you and that juror were seated
9 together, it wouldn't be a problem?

10 JUROR NO. 9: No.

11 MR. SUHR: Okay. Thank you. I thought juror 6, I
12 thought I saw your hand shift up.

13 JUROR NO. 6: I know a guy who was my boss.

14 MR. SUHR: You know who?

15 JUROR NO. 6: Another one of the jurors.

16 MR. SUHR: Okay. They're going to want you to use your
17 microphone so that the court reporter can pick you up.

18 JUROR NO. 6: Yeah, I was one of the jurors in this
19 pools boss for 15 years, something like that.

20 MR. SUHR: Okay. Which juror is that?

21 JUROR NO. 6: (Indicating.)

22 MR. SUHR: Number 10. Okay. So, juror number 6, I'll
23 ask you if you're seated on this -- well, maybe I should ask
24 juror 10. If you two were seated together, juror 10, would
25 you be inclined if you -- if you wanted to vote one way and

1 your former boss wanted to vote another, would you be
2 inclined to shift your vote just because he thinks otherwise?

3 JUROR NO. 10: No. It would make no difference.

4 MR. SUHR: Okay. Not your boss anymore; right?

5 Juror 6, how about you?

6 JUROR NO. 6: Nope, I don't think so.

7 MR. SUHR: Okay. So you could both be fair and
8 impartial if you were seated?

9 JUROR NO. 6: (Nodding head.)

10 MR. SUHR: Okay. Thank you. Did I miss anybody in the
11 jury box. Juror number 2?

12 JUROR NO. 2: Yes, I do know Mr. Greff here.

13 MR. SUHR: Okay.

14 JUROR NO. 2: I worked with his wife and -- but I
15 don't feel like being on the same jury with him would have
16 any impact on my decision.

17 MR. SUHR: Okay. Thank you.

18 Juror 1, same question to you. Any issue with that?

19 JUROR NO. 1: No, not at all.

20 MR. SUHR: Okay. We just want people that can come in
21 and exercise their own discretions.

22 The judge had asked you, you know, this case has gotten
23 some media attention. So as we're going through some of the
24 questions, if something comes to mind, please just raise your
25 hand and ask. Okay? Or let us know so we can follow up, but

1 is there anybody who saw a news story on this or researched
2 it on social media or read an online story? I think juror
3 number 17, you mentioned that and I'll follow up with you,
4 but is there anybody -- this involves the construction or the
5 renovation of a building in south Bismarck for the North
6 Dakota Attorney General's Office and got some media attention
7 from that. Anybody -- is that ringing a bell for anybody;
8 that maybe you have heard something about it and it wasn't
9 just ringing a bell at first?

10 Okay. Juror number 6?

11 JUROR NO. 6: Yeah, I've heard about it. Just
12 something like overpayment or something like that if I
13 remember right.

14 MR. SUHR: Okay. And without going into the details of
15 what you think you've heard, what sources have you -- have
16 you heard things from?

17 JUROR NO. 6: Oh, on the AM radio. Pretty much all
18 that and Facebook, I guess.

19 MR. SUHR: Okay. So social media and radio. When you
20 say radio, like news broadcasts or podcasts or what?

21 JUROR NO. 6: Morning talk show.

22 MR. SUHR: And who would you listen to?

23 JUROR NO. 6: I can't think of his name now. Lies.
24 Daryl Lies on KFYZ.

25 MR. SUHR: Okay. Okay. How about Joel Heitkamp or Rob

1 Port?

2 JUROR NO. 6: None of those, no.

3 MR. SUHR: Okay. So based on what you've heard, has
4 this been something recently that you heard these stories or
5 --

6 JUROR NO. 6: No. It's -- it's been a while. I can't
7 really remember, but I just remember hearing it.

8 MR. SUHR: Okay. And based on what you've heard --
9 because if you're seated on this jury, you're going to hear
10 from witnesses, you're going to see exhibits and decide the
11 case based on what you hear and see in this courtroom. If
12 you were picked on this jury, juror number 6, would you be
13 inclined to decide the case based on what you heard on the
14 news, would that plug into your decision-making, or can you
15 limit yourself to what you hear in court, what Mr. Erickson
16 and I present in court to you?

17 JUROR NO. 6: No, I guess, I'm kind of biased on it,
18 I guess, a little bit.

19 MR. SUHR: What do you mean you're kind of biased by
20 it?

21 JUROR NO. 6: Just seems to me like it was theft of
22 taxpayer money.

23 MR. SUHR: Okay. Theft of taxpayer money by who?

24 JUROR NO. 6: Whoever was putting the building up and
25 doing the renovations in the building down there.

1 MR. SUHR: Okay. So as you sit here today in the jury
2 selection phase of this case, do you believe that you can
3 fairly and impartially listen to the evidence or is your mind
4 already made up?

5 JUROR NO: Oh, I think I could if I heard both sides.

6 MR. SUHR: Okay. Based on what you've heard in the
7 media, does Mr. Dockter have to prove something to you?

8 JUROR NO. 6: Yeah, I'd like to hear all the -- you
9 know, both sides of the story, I guess.

10 MR. SUHR: I'll come back to that, juror number 6,
11 with with a later question, but is there anybody else who has
12 heard something in the media in some way that would affect
13 your ability to limit your decision of the case to what you
14 hear in court during the trial?

15 (No affirmative responses.)

16 Okay. Anybody here Listen to Joel Heitkamp, talk show
17 host?

18 (No affirmative responses.)

19 Anybody here listen to Rob Port? Mr. Erickson mentioned
20 him, his name. He won't be testifying, but his name will come
21 up. He does some podcasts. Covers political stories. Anybody
22 listening to Mr. Port?

23 (No affirmative responses.)

24 Anybody know who Mr. Port is?

25 Okay. Juror 12, you know who he is. How do you know who

1 he is?

2 JUROR NO. 12: I personally don't know him, but I know
3 about him with republican convention stuff and things like
4 that.

5 MR. SUHR: Okay. Okay. But you don't listen to his
6 show or or follow his podcasts or anything.

7 JUROR NO. 12: No, I don't.

8 MR. SUHR: Okay. You're going to hear a recording in
9 this case, you're going to hearing a recording that Mr. Port
10 did. Would the fact that Mr. Port did a podcast in this case,
11 would that affect your ability to be fair and impartial at
12 all? Would you be more biased against or for something Mr.
13 Port did?

14 JUROR NO. 12: Probably not.

15 MR. SUHR: You say probably not. Not sure or --

16 JUROR NO. 12: I think I'd be all right.

17 MR. SUHR: So can you be fair and impartial as you sit
18 -- if you're seated on this jury?

19 JUROR NO. 12: Yes, I can.

20 MR. SUHR: Okay. Anybody here have either on your own
21 or a close friend or family member who has experience in the
22 legislative process? Maybe you've testified on a bill or you
23 followed a bill. Juror number 17.

24 JUROR NO. 17: I work for a state agency so we are
25 involved in legislative session.

1 MR. SUHR: Okay. Now, you work, I think you said for
2 ITD?

3 JUROR NO. 17: Yep.

4 MR. SUHR: What do you for ITD, like a help desk kind
5 of thing?

6 JUROR NO. 17: I'm a procurement officer.

7 MR. SUHR: Okay. So you buy things?

8 JUROR NO. 17: I do.

9 MR. SUHR: Okay, so when ITD needs equipment or
10 supplies or whatever, that comes through you. You process the
11 work orders, render payment, that kind of thing?

12 JUROR NO. 17: Yes.

13 MR. SUHR: Okay. Do you work with the Office of
14 Management and Budget?

15 JUROR NO. 17: Yes.

16 MR. SUHR: Do you work specifically with John Boyle?

17 JUROR NO. 17: I've been in a handful of meetings
18 with him, but it's very sporadic.

19 MR. SUHR: Okay. John Boyle is a potential witness in
20 this case. If he gets on the stand and he testifies, how, if
21 at all, would that affect you listening fairly and impartial?
22 Are you -- are you going to be of the mindset, oh, John Boyle
23 is on the stand. Every word he's about to say is true and
24 correct in the courtroom?

25 JUROR NO. 17: No.

1 MR. SUHR: Or is he just going to be one other witness
2 that you'll listen to?

3 JUROR NO. 17: He would just be another witness.

4 MR. SUHR: Do you know Mr. Boyle personally?

5 JUROR NO. 17: No.

6 MR. SUHR: How long have you been the procurement
7 officer for ITD?

8 JUROR NO. 17: Since2008.

9 MR. SUHR: Okay. Are you the only procurement officer
10 or do you share that with another --

11 JUROR NO. 17: I now have two other procurement
12 officers that report to me.

13 MR. SUHR: Okay. Are you familiar with the building
14 that --

15 JUROR NO. 17: Yes.

16 MR. SUHR: Okay. That's at issue in this case, the
17 Burlington Drive building?

18 JUROR NO. 17: Yes, we were actually down in that
19 building while our building was being fixed.

20 MR. SUHR: So did you hear anything while you were in
21 the building?

22 JUROR NO. 17: No.

23 MR. SUHR: That --

24 JUROR NO. 17: I actually -- I wasn't in the building.
25 Part of our staff was in the building. I was in another

1 building.

2 MR. SUHR: Okay. So ITD was in the building, but you
3 physically were not -- were not located there?

4 JUROR NO. 17: Right.

5 MR. SUHR: Did you hear anything about the, you know,
6 the construction process or anything about how this all came
7 to be that if you were picked for this jury, you would -- you
8 would substitute for evidence you hear in the courtroom or
9 supplement?

10 JUROR NO. 17: No.

11 MR. SUHR: Tell me why you think you could be fair --
12 having worked for an agency that was involved, having been in
13 the building, tell me why you think you could be fair?

14 JUROR NO. 17: Well, the burden of proof is on the
15 prosecution, right, and I deal a lot with our Attorney
16 General's Office and I deal with contracts quite a bit, so
17 I'm very familiar with things like that. So, no, I would be
18 fair and impartial.

19 MR. SUHR: Okay. And we might hear some other names
20 from the Attorney General's Office that aren't going to be
21 here. You might hear the name Troy Seibel. You know that
22 name?

23 JUROR NO. 17: I know the name, yes.

24 MR. SUHR: Liz brocker, do you know that name?

25 JUROR NO. 17: I know that name.

1 MR. SUHR: Wayne Stenehjem, I'm going to guess you
2 know him?

3 JUROR NO. 17: Yep.

4 MR. SUHR: Drew Wrigley?

5 JUROR NO. 17: I know the name.

6 MR. SUHR: Okay. Now, Drew Wrigley, of course, is our
7 current Attorney General. Wayne Stenehjem, long-time prior
8 Attorney General before he passed away in 2022, but do you
9 have any relationships with any of those folks?

10 JUROR NO. 17: No.

11 MR. SUHR: That would -- would be something you would
12 take into the jury process with you?

13 JUROR NO. 17: No.

14 MR. SUHR: Anybody who themselves or close friend or
15 family member have been involved in the legislative process?
16 Maybe you've watched a bill or you've been following a bill.
17 Juror 14?

18 JUROR NO. 14: I've worked through -- through the
19 North Dakota Dental Association. We've had a few bills over
20 the last 8-9 years that I've been a part of here or there.

21 MR. SUHR: Okay. So have you testified before any
22 committees or have you watched floor debates?

23 JUROR NO. 5: Yeah, both.

24 MR. SUHR: Okay. What was that experience like for
25 you?

1 JUROR NO. 14: Oh, I mean, I'd rather be fixing teeth.

2 MR. SUHR: Okay. Well, I think we can probably all
3 share that sentiment.

4 Is there anything about that experience with the
5 legislative process, knowing that this case would involve
6 testimony about the legislative process, anything about that
7 that would impact your ability one way or the other to be
8 fair and impartial?

9 JUROR NO. 14: No.

10 MR. SUHR: Okay. Thank you. Did I miss anybody?

11 (No affirmative responses.)

12 Okay. Mr. Dockter is a representative in North Dakota
13 Department -- or the House of Representatives, a Republican.
14 I made the joke before this that the jurors are going to be
15 in a room with their favorite two demographics, lawyers and
16 politicians and my question for you to start with is this, is
17 there anybody here who has really strong opinions about
18 politicians as a -- as a demographic, as a group? We're in
19 an election year right now. Of course, our former president,
20 Donald Trump, is on trial. You know, the election ads are
21 starting to, you know, come back faster than the green grass,
22 so is there anybody here who goes, oh, my god, election
23 season and sees all these ads, come on, and just dreads it.
24 Juror 9, you're kind of smiling.

25 JUROR NO. 9: It's just how you're being relatable.

1 MR. SUHR: Okay. How about that though? I mean, you
2 know, all these political ads are coming out when you see
3 them come on, do you change the channel?

4 JUROR NO. 9: I don't have TV at home.

5 MR. SUHR: Oh, okay. Well, then you don't have to do
6 that. Is there anybody here when you see these ads come on
7 and you're like, ah, I'm so sick of politicians already.
8 Juror number 1., I knew there was somebody. Tell me about
9 that.

10 JUROR NO. 1: Well, at first, it's always informative
11 a little bit, but then they start the attacking and that just
12 shuts me down right away.

13 MR. SUHR: Okay. Okay. So, juror 1, do you have any
14 strong opinions about politicians in general? Some people do.
15 They think there's no good politicians and they think that
16 politics is nothing but a scam and that's fine, but my
17 question for you is do you have any strong opinions about
18 politicians as a group that would affect your ability to be
19 fair and impartial if Mr. Dockter, who is a politician, is
20 tried today and you're on his jury.

21 JUROR NO. 1: No, I don't have any issues.

22 MR. SUHR: Is there anybody who's going to look
23 differently at Jason Dockter because he is a politician.
24 Juror 6, how about you?

25 JUROR NO. 6: I think so because I don't know. I'm of

1 the opinion that a lot of them are in there to enrich
2 themselves, especially in federal government.

3 MR. SUHR: Okay. So you know that Mr. Dockter is a --
4 is a politician and you've got your views on them. Can you
5 give him a fair trial? We've got two things now where you've
6 expressed some concern as they're piling up. How does that
7 affect your ability to be fair?

8 JUROR NO. 6: I think -- I don't know. I'd lean
9 towards my feelings of it, you know, the way it -- the way I
10 think of them. Not all of them, but --

11 MR. SUHR: Is there a thumb on the scale in favor of
12 the State because you're not a fan of politicians and Mr.
13 Dockter's a politician?

14 JUROR NO. 6: To be honest, I think so, yes.

15 MR. SUHR: Okay. So Mr. Dockter would have to do some
16 catching up to do from the very start to get a fair trial
17 with you?

18 JUROR NO. 6: Yep.

19 MR. SUHR: Would that be fair to say then you're not
20 sure you could be fair and impartial?

21 JUROR NO. 6: Probably not, yeah. Unless I heard both
22 sides.

23 MR. SUHR: Did I miss anybody? Anybody -- how about
24 you, juror 16, what do you think? How you how do you feel
25 about politicians?

1 JUROR NO. 16: Well, I follow the -- more on the
2 national level than the federal level.

3 MR. SUHR: Okay.

4 JUROR NO. 16: I mean, everybody has a bias towards
5 one way or the other, but on the more local level, I really
6 don't follow local politics a lot.

7 MR. SUHR: Okay. Ever heard of Jason Dockter before
8 today?

9 JUROR NO. 16: No, sir.

10 MR. SUHR: Okay. So him being a politician, is
11 that -- is that going to affect you if you're seated on this
12 jury?

13 JUROR NO. 16: No.

14 MR. SUHR: Juror 17, how about you? You've got a
15 little bit of connect to this because you work for an agency
16 that was someone involved. Is Mr. Dockter being a politician,
17 is that -- is that an issue for you? You go to the
18 legislature to get funding; right?

19 JUROR NO. 17: I don't go, but, yes, our agency goes.
20 No, it doesn't matter to me.

21 MR. SUHR: Okay. Did I miss anybody? And if I don't
22 ask something and you think we should know it, just raise
23 your hand. We would rather know. We can't get into all of
24 your heads and ask everything that might be relevant, but,
25 certainly, you think, hey, here's something that I that the

1 attorneys and the judge may want to know, please just
2 volunteer it. That's perfectly fine.

3 Anybody ever had to testify on a bill?

4 (No affirmative responses.)

5 Anybody have very strong views about certain
6 administrative agencies or government as a whole where you
7 don't trust government?

8 Juror 10, how about you? Do you have any -- like some
9 people, for example, are not fans of DHS, Department of Human
10 Services. Some people are not fans of the Department of
11 Transportation, especially when they're sitting in the lobby
12 waiting for their number to be called from one of those
13 kiosks, but you -- have you ever had negative experience with
14 a state agency that's frustrated you.

15 JUROR NO. 10: Well, I guess with Department of
16 Transportation, I guess there's plenty of legislation that
17 goes down that always makes our life a little miserable, but
18 I could be open-minded enough.

19 MR. SUHR: And it's road construction season now, too;
20 right?

21 JUROR NO. 10: Exactly.

22 MR. SUHR: Anybody here have an experience with an
23 administrative agency, because you're going to hear some talk
24 about some administrative agencies, but anything when you --
25 when you hear about certain administrative agencies, you just

1 roll your eyes and mash your teeth and you had a negative
2 experience with them. Your grandmother applied for Medicaid
3 benefits with DHS and got denied. Angry with them, anything
4 like that that would bias you towards any administrative
5 agency? And it's okay if you do. We're just trying to find
6 out. Juror number 9.

7 JUROR NO. 9: My mom used to work for DPI and my dad
8 would testify nationally -- like at the national level for
9 them.

10 MR. SUHR: Okay. DPI, Department of Public
11 Instruction?

12 JUROR NO. 9: Yeah, I'm just letting you know that
13 connection there.

14 MR. SUHR: Okay. Anything about that that you bring
15 into the case with you if you were seated?

16 JUROR NO. 9: No. No.

17 MR. SUHR: Thank you. Juror 11, I pick on people
18 randomly, so if you think by being quiet you're safe, you're
19 not. But, juror 11, what about that? Do you have any issues
20 with any administrative agencies that you've dealt with in
21 state government, bureaucratic, or frustrating, anything like
22 that?

23 JUROR NO. 11: No, I don't know that I've really dealt
24 with any administrative agencies per se.

25 MR. SUHR: Okay. So like DHS or the AG's office,

1 anything like that?

2 JUROR NO. 11: (Shaking head.)

3 MR. SUHR: Okay. Anybody have any close friends or
4 family who work for the Attorney General's Office?

5 (No affirmative responses.)

6 Anybody have any close friends or family who work for
7 the Department of Health and Human Services now? Juror 14,
8 are you just --

9 JUROR NO. 14: Are you just -- okay. I didn't know if
10 you were raising your hand or if you were just fidgeting.
11 Okay. Nobody? You're going to hear about the State Auditor's
12 Office. I think Mr. Erickson referenced Josh Gallion, e's the
13 state auditor. Anybody here even know what the State
14 Auditor's Office is or does. Juror 6, you're nodding your
15 head.

16 JUROR NO. 6: Yeah, he's always on the Daryl Lies
17 show. Josh Gallion. They always talk to him.

18 MR. SUHR: Okay. So he's a potential witness here.
19 What do you think about if he takes the stand and testifies,
20 does he have more credibility or less credibility than any
21 other witness?

22 JUROR NO. 6: Oh, I think so. I think he seems like
23 the honest guy to me.

24 MR. SUHR: Okay. So if he takes the stand as a
25 witness in this case, you believe that -- would it be fair to

1 say that whoever he's testifying for, gets more points with
2 you?

3 JUROR NO. 6: Yeah, probably.

4 MR. SUHR: Do you think that would affect your ability
5 to give Mr. Dockter a fair and impartial trial?

6 JUROR NO. 6: There, again, I'd have to listen to both
7 sides just to be sure, but --

8 MR. SUHR: How about the Bureau of Criminal
9 Investigation. I'm going to be calling -- I think -- I'm
10 going to be calling two possible witnesses. One is Lonnie
11 Grabowska. Lonnie Grabowska, is actually the Director of the
12 Bureau of Criminal Investigation. He's actually the only law
13 enforcement officer you're going to be hearing from in this
14 case. I'll be calling him. Anybody know Mr. Grabowska?

15 (No affirmative responses.)

16 Anybody heard his name before? Lots of head shaking.
17 Okay. Anybody ever heard of the Legislative Council. Okay.
18 Juror 11, you're nodding your head. Finally got an answer.
19 Okay. What do you -- what do you know about the Legislative
20 Council? Because one of Mr. Erickson's witnesses is going to
21 be from the Legislative Council.

22 JUROR NO. 11: I don't know a whole lot just that I've
23 heard of that Council before.

24 MR. SUHR: Do you know what it does or?

25 JUROR NO. 11: Not really.

1 MR. SUHR: Okay. Just a name that sounds -- or title.

2 JUROR NO. 11: Yeah.

3 MR. SUHR: Okay. Okay. Lastly, the judge is going to
4 give you some instructions. So, basically, your role as
5 jurors, the way I always put it to people is this, judge,
6 does the law and you decide the facts, and then the Judge
7 gives you the legal instructions that you apply to those. One
8 of the instructions that you're going to get and I'm asking
9 this question in the -- in the context of gauging whether you
10 can be fair and impartial. One of the instructions you're
11 going to get is that as Mr. Dockter sits here today, he is
12 presumed innocent. That's something we all carry. The judge,
13 all of you, myself, Mr. Erickson, we all have what's called
14 the presumption of innocence where we are presumed innocent
15 when we are accused.

16 Is there anybody who disagrees with that, who thinks that
17 shouldn't be case? Juror 13. I said I would pick on people.
18 Front row always gets it. What do you think about that that
19 in our system, Judge is going to instruct you that Mr.
20 Dockter is presumed to be innocent. On a scale of 1 to 10,
21 how important is that to you. One, not important at all. Ten,
22 very?

23 JUROR NO. 13: Probably 10.

24 MR. SUHR: Okay. Why?

25 JUROR NO. 13: Because if I was accused of something,

1 I would want to be considered innocent and heard.

2 MR. SUHR: Okay. I've seen some head nods. Those are
3 people who are hoping I won't call on them, but you were
4 wrong. Juror number 7, you were nodding your head with juror
5 13. How important on a scale of 1 to 10 is that presumption
6 of innocence and why?

7 JUROR NO. 7: I would agree with 10, and I think for a
8 lot of the same reasons that everyone deserves to be heard.
9 Again, if I'm putting myself in that situation, I would like
10 to be able to be given a fair trial and be heard for what I
11 have to say as for all people, doesn't matter what position,
12 what you do as a professional, all people.

13 MR. SUHR: Okay. Was everybody able to hear juror
14 number 7? Is there anybody who disagrees with him? Who
15 thinks, no, I don't know. I mean, so I'm going to tell you I
16 do this too. You watch the 6:00 news, right, and they cover a
17 crime story. And what do they always put up? They always put
18 up the mug shot; right? And you see that mug shot and you go,
19 huh, I wonder what he did. Who does that? Who sees that and
20 instantly goes, I wonder what he did and then you listen to
21 the news story to hear what it's about. Anybody besides me do
22 that? Yeah, juror 4, juror 1, juror 14. You don't know a
23 thing about it yet, but that's our instinct; right? But my
24 question then, I guess, juror 4, I'll pick on you a little
25 bit. You work in a law office. Have you heard that term

1 presumption of innocence?

2 JUROR NO. 4: Yes.

3 MR. SUHR: Okay. You have attorneys in your office

4 that do criminal?

5 JUROR NO. 4: Yes.

6 MR. SUHR: Okay. Have you ever participated in a jury

7 trial?

8 JUROR NO. 4: Yes.

9 MR. SUHR: What would -- what did you do?

10 JUROR NO. 4: Just assisted the attorney.

11 MR. SUHR: Okay. So took notes?

12 JUROR NO. 4: Yep.

13 MR. SUHR: Okay. Did you help prepare for the trial?

14 JUROR NO. 4: I did, yes.

15 MR. SUHR: Scale of 1 to 10, how important is that

16 presumption and innocence?

17 JUROR NO. 4: 10.

18 MR. SUHR: Tell me why.

19 JUROR NO. 4: Same reasons as stated. I think facts

20 are important. Yeah, and everyone deserves a fair shot, I

21 think, so --

22 MR. SUHR: Okay. Anybody who disagrees with what juror

23 4 said?

24 (No affirmative responses.)

25 MR. SUHR: The Judge is also going to instruct you

1 that Mr. Dockter has the right to not testify and that hasn't
2 been decided that if he's going to or not. But what if he
3 doesn't? Juror 18, suppose you're picked on this jury and Mr.
4 Dockter doesn't testify. The Judge is going to tell you you
5 can't hold that against him. Are you?

6 JUROR NO. 18: Honestly, yes.

7 MR. SUHR: Tell me why.

8 JUROR NO. 18: Because if you're sitting there, you
9 have to prove to me that you -- more than likely you're
10 sitting there for a reason. So unless you prove to me that
11 you are not guilty, if you don't testify on your own behalf,
12 then I think you have something to hide.

13 MR. SUHR: Okay. So I'm glad -- I'm glad you said
14 that. Did everybody hear juror 18?

15 (Head nodding.)

16 Okay. So, juror, 18, I want to make sure -- I'm going to
17 paraphrase you. I want to make sure I get it right. You're
18 saying that if Mr. Dockter -- he has to prove he's not guilty
19 and if he doesn't take the stand, it's going to be hard for
20 you to find that he's not guilty?

21 JUROR NO. 18: Yes.

22 MR. SUHR: Okay. Who agrees with juror 18? Juror 6,
23 tell me why.

24 JUROR NO. 6: I don't know. It just seems to put up a
25 red flag to me but, you know.

1 MR. SUHR: Okay. So if he doesn't take -- he has a
2 constitutional right not to testify. Would you agree with
3 that?

4 JUROR NO. 6: Absolutely.

5 MR. SUHR: Okay. And the Judge is going to instruct
6 that. The Judge is also going to instruct you that you can't
7 hold that against him, but I was using this analogy -- the
8 Judge is going to give you an instruction and you're expected
9 to follow up; right?

10 JUROR NO. 6: Right.

11 MR. SUHR: But we're also human beings, so I use this
12 example in almost every trial, but suppose the Judge put a
13 500 pound barbell down on the floor and said, juror 18, I
14 want you to come around here and I want you to pick up that
15 barbell and I want you to hoist it over your head. I'm going
16 to bet you'd probably walk around here and you come over to
17 the barbell and you grab it and you do your absolute best to
18 hoist it over your head, but I'm betting you couldn't, even
19 though the judge told you to; right?

20 JUROR NO. 18: No, because I weight lift every day, so
21 I know what I can lift.

22 MR. SUHR: Okay. Fine. Juror 16, do you weight lift
23 every day?

24 JUROR NO. 16: No.

25 MR. SUHR: Okay. Juror 18, though, 1,000 pound

1 barbell. We'll increase the weight. How about that? The
2 point is just because the Judge instructs you on something,
3 you will do your absolute best but is it possible that you
4 can't set aside that expectation that Mr. Dockter testify,
5 not matter what the Judge tells you. I mean, is that going to
6 be too hard for you to do?

7 JUROR NO. 18: Honestly, because we're all human and
8 we all have that human side of us, just because you're
9 instructed to do something, doesn't mean that your mind is
10 going to allow you to do it.

11 MR. SUHR: Juror 6, how about you same? Same question.
12 I'm sure you'll do your best, but is that something that's
13 just too hard for you to overcome even if the Judge instructs
14 you?

15 JUROR NO. 6: No, it isn't.

16 MR. SUHR: Okay. So you can put that aside if he
17 doesn't testify?

18 JUROR NO. 6: Yeah. Yeah. Like I say, it just kind of
19 makes you a little skeptical.

20 MR. SUHR: Okay. Juror 18, what if he does testify?
21 Does that change anything?

22 JUROR NO. 18: Depends what he has to say.

23 MR. SUHR: Okay. So you have to wait and see, but you
24 expect it?

25 JUROR NO. 18: I would hope he would testify on his

1 own behalf of his innocence, but if he doesn't, then that
2 kind of puts a different precedent in my mind.

3 MR. SUHR: Is there anybody who shares -- and I'm glad
4 that juror 18 and juror 6 -- this is nothing. That's your
5 opinion. That's awesome that you share it with us. Is anybody
6 here -- juror 2, how about you, do you think that Mr. Dockter
7 should testify even though he doesn't have to and will you
8 hold it against him if he doesn't?

9 JUROR NO. 2: No, I think he should go on the advice
10 of his attorney.

11 MR. SUHR: Juror 3, what do you think about that?

12 JUROR NO. 3: I guess, I kind of feel the same way as
13 18. Just kind of gives a little red flag, yeah.

14 MR. SUHR: Okay. So if the Judge will instruct you
15 that he doesn't have to testify, are you going to hold that
16 against him if he doesn't? Is it -- is it -- is it going to
17 affect your ability to be fair in this case if he doesn't
18 testify?

19 JUROR NO. 3: Honestly, I'm not sure.

20 MR. SUHR: Juror 4, you work in a law office. You've
21 heard, I'm assuming, the right not to testify. What do you
22 think about that?

23 JUROR NO. 4: I think it's a personal choice if they
24 want to testify or not, and beings you're a private attorney,
25 he'd hired you on his behalf to speak for you, so I don't

1 think there's an issue with him testifying or not testifying.

2 MR. SUHR: Anybody have anything they want to add to
3 that that hasn't been asked or hasn't been said?

4 (No affirmative responses.)

5 Another instruction the Court is going to give you --
6 we're just about done. But another instruction that the Court
7 is going to give you is on the burden of proof. In other
8 words, the burden is on Mr. Erickson, okay, to prove Jason,
9 Dockter is guilty. 100 percent of the burden is on Mr.
10 Erickson to prove beyond a reasonable doubt that Mr. Dockter
11 is guilty. Mr. Dockter does not have any burden to prove he
12 is innocent. That is the law that you are going to be
13 instructed on.

14 Juror number 15, how important is it on a scale of 1 to
15 10 to you that the burden is on the State to prove guilt,
16 rather than the burden of the defendant to prove innocence.
17 How important is that?

18 JUROR NO. 15: It's a 10.

19 MR. SUHR: Tell me why.

20 JUROR NO. 15: That's his -- that's his job. That's
21 how the process works and that's what's fair.

22 MR. SUHR: Now, juror 18 has said I think he needs to
23 prove he's not guilty.

24 JUROR NO. 15: I disagree.

25 MR. SUHR: Okay. Tell me why.

1 JUROR NO. 15: Because that's not -- that's not how
2 the process works and that's not fair.

3 MR. SUHR: Was everybody able to hear juror 15's
4 response?

5 (Nodding heads.)

6 Okay. Is there anybody who disagrees with juror 15 that
7 the burden is Mr. Erickson's and that's where it belongs and
8 can you keep it there if you're picked up on this jury? Juror
9 number 5, how about you? Burden is on Mr. Erickson. What do
10 you think about that?

11 JUROR NO. 5: I agree.

12 MR. SUHR: Tell me why.

13 JUROR NO. 5: Like she said, that's just how the
14 process works and how it should work.

15 MR. SUHR: Okay. And if you are seated on this jury,
16 will you -- can you follow that instruction or would you
17 expect Mr. Dockter to prove he's innocent?

18 JUROR NO. 5: No. I could.

19 MR. SUHR: Okay. Last instruction that I want to talk
20 about that the Judge is going to give you that I think goes
21 to your ability to be fair and impartial is that burden in
22 this case is proof beyond a reasonable doubt. It's the
23 highest legal burden in our system. Okay. Juror number 16, on
24 a scale of 1 to 10, how important is it that the burden be so
25 high on the prosecution before a jury can convict?

1 JUROR NO. 16: It's everything.

2 MR. SUHR: Tell me why.

3 JUROR NO. 16: It's -- well, we can't -- if we -- if
4 it is an -- I would normally use the term absolute, but if we
5 don't hold it to that high standard, then we really haven't
6 presumed some -- the defendant to be innocent to begin with.

7 MR. SUHR: Okay. Did everybody hear juror 16?

8 (Nodding heads.)

9 Okay. And, juror 6, what do you think about that? I keep
10 picking on you because you're giving -- I mean, you've given
11 me some good information and I want to follow up. What do you
12 think about that? The burden is proof beyond a reasonable
13 doubt. It's the highest legal burden. That's on the State.

14 How do you feel about that?

15 JUROR NO. 6: I agree 100 percent. They brought the
16 chargers on, so they need to prove it on, you know,
17 reasonable doubt that he's guilty.

18 MR. SUHR: Okay. Anybody who disagrees with that?
19 Anybody who thinks that's not fair. Why is it so hard for the
20 State. Why is it such a high burden? I don't know if I like
21 that. Juror 8, what do you think about that?

22 JUROR NO. 8: It should be.

23 MR. SUHR: Why?

24 JUROR NO. 8: They got to prove that he did wrong or,
25 you know, prove the whole thing or, you know, bring the

1 witnesses and everything.

2 MR. SUHR: Okay. So can everybody here agree that
3 that's -- that that's a standard you would apply if you were
4 seated on this jury?

5 (Nodding heads.)

6 Last question, is there anything that I haven't asked you
7 that you think we should know before deciding whether or not
8 you should be seated on this jury? Anything that you think,
9 hey, he didn't ask me about this and he probably should know
10 this. The Judge might want to know, Mr. Erickson might want
11 to know. Anything that I have not asked you about that you
12 think matters?

13 (No affirmative responses.)

14 Okay. I thank you all for your time. I pass for cause.

15 THE COURT: Okay. Mr. Erickson, do you have any
16 further questions?

17 MR. ERICKSON: Did you want to mention your other
18 witness? I thought about doing it, but then you said --

19 MR. SUHR: Oh, you know what? Thank you. I did miss
20 that. Sorry about that and I'm glad Mr. Erickson brought it
21 up. I do have another potential witness, Emily O'Brien. She's
22 the Chair of the Legislative Audit Fiscal Review Committee. I
23 can't remember these acronyms. Anybody know -- she's from
24 Grand Forks. She's a representative out of Grand Forks.
25 She'll be here today. Anybody know Ms. O'Brien or familiar

1 with her? Thank you, Ladd.

2 (No affirmative responses.)

3 Okay. Now that's my last question. Thank you. And I pass
4 for cause.

5 THE COURT: Mr. Erickson, do you have any questions?

6 MR. ERICKSON: Just one, Your Honor.

7 I have the burden of proof. I have to prove this case
8 beyond a reasonable doubt. I prepared a case to do that here
9 today. If I do prove this case beyond a reasonable doubt to
10 you, if you sit on this jury, is there any reason you can
11 think of that you could not return a guilty verdict? In other
12 words, you're confident the evidence sustained the charge. It
13 should have been charged and you might -- some people have a,
14 maybe a religious or a background reason, where holding
15 someone in judgement is really difficult. That's come up
16 before when I've asked this question. Does anybody think
17 they'd be in a very uncomfortable position that if the case
18 is proved beyond a reasonable doubt, you still couldn't
19 return a guilty verdict for any reason? Juror 14.

20 JUROR NO. 14: So I could -- I feel like I could do --
21 you know, be reasonable. I just feel like -- I really like
22 Jason's wife. She's a patient of mine, and if I heard
23 evidence that, you know, that I had to presume he was guilty,
24 I'd feel bad.

25 MR. ERICKSON: Thank you. Does anybody else kind of

1 have that position here? It's -- this is a case that, you
2 know, you're dealing with a legislator. You're not dealing
3 with a person that, you know, did a horrible crime. You know,
4 we're dealing with an offense here that is charged, but it
5 doesn't mean you're dealing with someone that has a, you
6 know, a criminal milieu or something like that, so does
7 anybody feel uncomfortable about that, besides juror 14. I --
8 that's kind of what I was thinking might be an issue.

9 (No affirmative responses.)

10 Okay. Thank you very much, Your Honor. I pass for cause.

11 THE COURT: Okay. All right. We'll pass the sheet
12 between the attorneys so it will just take a few minutes.

13 (Sheet passed back and forth.)

14 THE COURT: All right. So the following -- it's easier
15 for me to read the jurors that are going to be excused
16 instead of listing the others because there's less. So if I
17 say your number, that means you have been excused, and I want
18 you to stay in your seats because I do want to address all
19 the jurors as well but just so you know.

20 So juror number 14, juror number 3, juror number 6, juror
21 number 18, juror number 12, juror number 8. You've all been
22 excused. The remainder --

23 MR. SUHR: Your Honor, 14 wasn't excused.

24 THE COURT: Yeah -- I don't think anybody. Okay. Come
25 forward.

1 (Sidebar held.)

2 THE COURT: All right. So 14, 3, 6, 18, 8 and 12 have
3 been excused. The remaining jurors are on the jury, so you'll
4 be with us today and actually we've gotten all of our jurors
5 from this first panel, so I know all the jurors in the back
6 you were excited to come up here and you wanted to sit on
7 this jury, but we actually do have all of our jurors here
8 today, but I did want to thank all of the jurors in the back
9 and the 6 that are excused here for coming in today. I know
10 that we can't do our jobs without you coming in. If you want
11 to stay and watch, you -- feel free to stay and watch. You
12 probably will get jury summoned again because we do have a
13 lot of jury trials in Burleigh County. The lucky thing about
14 living in Burleigh county is you do get to come in for jury
15 service.

16 So thank you all, again. If you have any questions
17 regarding your jury service, you can stop at the clerk's
18 office or sometimes they'll send somebody down if there's a
19 lot of questions and they can meet you in the room that you
20 guys came into to begin with.

21 The 12th jurors, though, that have been selected, your
22 jury room is going to be through this door.

23 MR. SUHR: Judge. I'm sorry. Can we approach one more
24 time?

25 THE COURT: Yes.

1 (Sidebar held.)

2 THE COURT: All right. So thank you all for coming in.
3 If you have any questions, go to the second floor and so
4 we'll take a break. We're going to take a break for -- we'll
5 say -- we'll come back at 10:20. That gives you a little more
6 than 10 minutes. It'll allow you to make any phone calls to
7 your work or if you need to get kids picked up, make those
8 calls. We will take a break every hour, so if you have any
9 questions or need anything in that jury room, ask one of the
10 bailiffs and they should be able to provide if you need a
11 water or anything to drink. I do allow you to bring drinks in
12 here. I bring my coffee. You can bring coffee if you'd like,
13 anything you want to drink into the courtroom when you come
14 back. So thank you, everybody. We will take our break. Oh,
15 sorry. Yeah, so our clerks can go back to the second floor,
16 we are going to swear in those 12 jurors, so jurors -- the 12
17 jurors remaining, if you want to stand, we'll swear you in
18 real quick and then we'll let everybody leave.

19 (Jurors sworn in.)

20 THE COURT: Thank you. We will take our break.

21 (Recess taken.)

22 THE COURT: We'll reopen 08-2023-CR-3618. The jury is
23 not in the courtroom. We had a few issues we needed to
24 discuss before we start the trial. So, Mr. Suhr, had
25 requested a change in page 6 of the jury instructions. My law

1 clerk did some research. I was able to review all of that
2 before coming in today. I am not going to be changing the
3 essential elements. In the Court's opinion the in
4 contemplation of an official action goes only with the second
5 portion of that. It's not going with the first portion,
6 essentially, an alternative way of arguing it.

7 So I'm going to leave the jury instructions, at least the
8 essential elements, the way they are in the instructions
9 currently. Anything else then -- I know the jury had asked if
10 they could have notes. I have allowed that, but I don't have
11 the note-taking instruction in here. We can include that in
12 the final jury instruction and that would be fine with me.

13 Any objections to that, Mr. Suhr?

14 MR. SUHR: No.

15 THE COURT: Mr. Erickson?

16 MR. ERICKSON: No, Your Honor. And are we using -- is
17 that bothering you, that static? That's what I mean and I --
18 are you guys using the podium for your opening?

19 MR. SUHR: I probably will if I don't cut myself on it
20 again.

21 THE COURT: Where did you cut yourself? We need to let
22 them know that.

23 MR. SUHR: I nicked my hand when I was pulling it
24 across the courtroom.

25 THE COURT: So we better send an email. So it's --

1 there's a little static, but it's not bothering you? Yeah. Do
2 you guys want to use the lapel mics or do you want to try to
3 use that?

4 MR. ERICKSON: That's fine with me.

5 THE COURT: Okay. It's just fuzzy over my speaker. I
6 think it's only affecting me. I can still hear you. It's
7 fine.

8 Okay. All right then we will just leave it. Anything else
9 we need to discuss before we bring in the jurors, Mr.
10 Erickson?

11 MR. ERICKSON: Your Honor, on that -- just on that
12 podcast. I do have a hand transcript. I don't want that to go
13 to the jury. We've agreed not, but since you're just going to
14 get this into the record, maybe a non-jury exhibit goes into
15 the record if there's an appeal. You know, this is not a jury
16 exhibit, but it goes in the record for the Court.

17 MR. SUHR: I'm fine with that. I mean --

18 MR. ERICKSON: So I don't know how to mark it, but --

19 THE COURT: Yeah. What -- just do you want him to go
20 off of the last one that he has? What's the last exhibit you
21 have numbered?

22 MR. ERICKSON: I'm not going to number them until --
23 so it'll be around 8 or 9.

24 THE COURT: Let's just go with 10 then.

25 MR. ERICKSON: 10?

1 THE COURT: Yeah, we'll just -- just in case.

2 MR. ERICKSON: Okay.

3 THE COURT: All right. So we're admitting that for the

4 record, but not for the jury.

5 MR. ERICKSON: That's correct, Your Honor.

6 Okay. Anything else, Mr. Erickson?

7 MR. ERICKSON: No, Your Honor.

8 THE COURT: Anything else, Mr. Suhr?

9 MR. SUHR: Just -- I have my witnesses subpoenaed,

10 Your Honor. I think we're actually going to be right on mark

11 with this for 1:00.

12 THE COURT: Okay. And I'm not sure how long Mr.

13 Erickson's witnesses will take, but I do -- we will take an

14 hour, hour and 15 minute-lunch, so we'll see where we're at.

15 Anything else then?

16 MR. SUHR: No, Your Honor. Thank you.

17 THE COURT: All right. We can bring in the jury then.

18 Thank you.

19 (Jury members present in the courtroom.)

20 THE COURT: You can be seated when you come in. We're

21 just standing for you. The record will reflect that the

22 jurors are now back in the courtroom and we're going to start

23 with jury instructions. So I'm going to read some jury

24 instructions to you now, and there will be further jury

25 instructions after the close of the evidence portion of the

1 trial.

2 (Opening jury instructions read.)

3 THE COURT: Mr. Erickson, are you prepared for your
4 opening?

5 MR. ERICKSON: I am, Your Honor. Thank you.

6 Counsel, may it please the Court. Ladies and gentlemen of
7 the jury, I'm going to overview the evidence that I intend to
8 present today. It's sort of a different kind of case and the
9 first part is we're going to play an actual podcast as our
10 first piece of evidence. We've stipulated to foundation.
11 We've worked hard both sides to cut to the chase, so we can
12 both make our arguments to you. So there's been a lot of
13 preparation by both sides to get this case presented to you
14 thoroughly. The podcast is by a guy named Rob port with Mr.
15 Dockter. Mr. Dockter kind of came about in -- there was a
16 state audit that you're going to hear about from the State
17 Auditor later in the afternoon. And in reaction to that, Mr.
18 Dockter reached out, provided a lot of documents to Mr. Port,
19 who does podcasts. He also writes for the Fargo Forum and
20 offered himself to be available to be interviewed publicly
21 about things that he disputed with the audit and he did that.
22 And because there's a good explanation of a lot of things,
23 there'll be some other testimony that might not match some of
24 the representations in the podcast later, but you'll get a
25 good overview of the situation here. So about a 35-minute

1 podcast will be played for you that Mr. Dockter did with Mr.
2 Port to kind of explain the situation with a building in
3 south Bismarck that was For sale. It had a Health Department
4 lease in it. It previously had IT in it, and had some open
5 space. The Attorney General's Office was in desperate need to
6 replace a BCI building, that's Bureau of Criminal
7 Investigation, and consolidate some other offices. This
8 actually started before 2019. But they were unsuccessful in
9 getting a place that would work that they could lease and at
10 some point Mr. Dockter, who's a legislator, but also a
11 citizen, and we have a citizen legislature here. Not a
12 full-time legislature like Congress. He does property
13 management. He does things like that. So him and Lonnie
14 Grabowska, the BCI director, had a conversation that led to
15 things getting referred as a point person to Deputy Director
16 of the Attorney General's Office, Troy Seibel, working with
17 Mr. Dockter and his partners developing a lease.

18 I'm going to avoid getting into a lot of weeds here in my
19 opening statement. I think there might be some things brought
20 before the Court on rulings that I don't want to say now that
21 defense might have a problem with. So I'm just going to give
22 you a quick overview. A lot of details here are going to come
23 out in the testimony.

24 Nonetheless, the building got a lease put forth by a guy
25 -- or put before a person at Office of Management and Budget

1 named John Boyle, who you'll hear from today. He is our
2 Director of Facilities and if the State ever enters into a
3 lease, he's got a sign off on its terms.

4 So Mr. Dockter and Mr. Seibel, the Deputy Director of the
5 Attorney General's Office, they develop a lease that Mr.
6 Dockter and his people need to satisfy their creditor, their
7 bank, so they can buy this building, inherit a Health
8 Department lease on it, which they'll get paid and then have
9 a new Attorney General lease on that building. They present
10 the lease to Mr. Boyle. His job is to look out for the
11 taxpayer dollars. Is this a fair deal? He rejects the lease.
12 It's too much money.

13 Okay. Later after they go back, retool the lease, they
14 come up with terms that are acceptable to Mr. Boyle. He'll
15 testify that the second time they came in, square footage,
16 price and stuff was fair to the taxpayer basically, so he put
17 his signature on it. Then he's basically done with this
18 building.

19 What happens later is lots of construction happened. He's
20 not involved. He gets invited by a partner of Mr. Dockter to
21 go look at the building and as soon as he gets in there, he
22 can see this building is not related to the lease he signed.
23 This has got a lot more cost in it than he contemplated when
24 he signed that lease. There's a lot of money now that is
25 going to have to be accounted for. There was no public

1 bidding or contracting. And so when he rejected the lease,
2 basically the State's evidence is going to be a number of
3 construction projects between Troy Seibel and Jason Dockter,
4 who's now the property owner through some various businesses,
5 also has construction companies that get the money to do the
6 remodeling and the additions to this property as construction
7 companies plus property owners.

8 One of the elements you're going to hear a lot about in
9 testimony is about developing a pecuniary interest in
10 property as part of the elements of the offense, and in this
11 case buying property, getting leases on property, getting
12 paid by the state to do construction on property is all going
13 to be pecuniary interest evidence that you're going to hear
14 throughout the day.

15 The second issue, a critical issue, is you change then to
16 our citizen legislature. Mr. Dockter puts on his hat as a
17 representative. Okay. As a member of the House of
18 Representatives. And the House of Representatives has made a
19 pretty clear set of rules and the statute before you is cited
20 in those rules; that legislators need to be careful about
21 taking official actions that have benefited their own
22 pecuniary interests to maintain confidence in our government.

23 Right? So some appropriation bills come in for the Health
24 Department that has a lease for the Attorney General. Mr.
25 Dockter does not recuse himself and in 2021 votes on both

1 appropriations, even though he had already acquired a
2 pecuniary interest in this property, benefiting by, if you
3 look at the definitions on an official action, is a vote.
4 Voting on something that benefits you privately. Legislature,
5 our citizen legislature, wants the two things separate under
6 the rules and the statute. So he votes on them.

7 In 2023 there were some complaints made. This thing
8 started hitting the media. Mr. Stenehjem had passed away. New
9 Attorney General came in. Based on that, we have something in
10 North Dakota called the North Dakota Ethics Commission. And
11 any one of us, okay, can file a complaint against anybody
12 with them. That doesn't mean there's any merits to those
13 complaints, but they have an obligation to look into it, so
14 some complaints had been made. I'm not suggesting their
15 meritorious or not. We're not going to get into those in this
16 trial. But because of that, the executive director of the
17 Ethics Commission, her name is Rebecca Binstock. Start the
18 2023 legislative session. She's got these complaints. Has a
19 conversation with Mr. Suhr and she issues precautionary; that
20 we're looking at this. Make sure Mr. Dockter does not vote on
21 the Attorney General Bill, which he was absent that day. What
22 she wasn't aware of, because her investigation was
23 preliminary, is they also had a pecuniary interest from the
24 Health Department, so she didn't mention that because she
25 didn't know about it but it's the same concept. And then in

1 2023 Mr. Dockter voted on the -- on the Health Department
2 bill that funded -- ultimately would fund the lease that he
3 had acquired a pecuniary interest in is, essentially, the
4 case here. Is you're not separating your legislative function
5 from your personal benefits.

6 John Bjornson, as the Director of Legislative Council,
7 he's really a keeper of record here. In fact, most of my
8 witnesses are kind of like that. He's going to put in the
9 votes. We've agreed to the exhibits. If there was an effort
10 to recuse yourself from the votes, it would show in the house
11 journals, things like that.

12 And my last witness is going to be the State Auditor.
13 They were directed by a legislative committee to come in and
14 take a look at this. There's cost overruns. There's not a
15 budgeted appropriation. He's going to explain that. We might
16 be objecting to some things, so I'm not going to get into
17 details, but our State Auditor for the State of North Dakota
18 is going to come in and offer some testimony about problems
19 he saw in the development of the pecuniary interest in this
20 case and how it came about and the situation we're in.

21 I'm not going to talk about the defense witnesses, but
22 there's a lot of things in this case that there really isn't
23 an adversarial relationship between the parties. We're going
24 to be jointly arguing different nuances, but in the end I'll
25 be back before you to make some arguments when you've heard

1 all the evidence. Thank you.

2 THE COURT: Mr. Suhr, does that -- do you wish to make
3 an opening statement now or do you want to reserve it?

4 MR. SUHR: I'd make it now, Judge.

5 THE COURT: Go ahead.

6 MR. SUHR: So Abraham Lincoln in the Gettysburg
7 Address, he described our government as one of the people, by
8 the people, for the people. And Mr. Erickson tapped into that
9 when he referenced what we have as a citizen legislature.
10 He's correct. Our legislature is made up of your neighbors,
11 your friends. It's teachers, doctors, lawyers, property
12 managers, social workers, law enforcement who have lives
13 outside of the 80 so days per every other biennium that our
14 legislator serves.

15 Jason Dockter is a Republican in the House of
16 Representatives. He represents District 7, which is in North
17 Bismarck. He's been a Republican with District 7 for
18 approximately 12 years. Elected at first in 2012.

19 This case goes back to about 2019, so you go to the
20 Capitol. It's during the session and Jason Dockter is at the
21 Capitol and he bumps into an old friend, Lonnie Grabowska. He
22 has known Lonnie Grabowska since middle school. Lonnie
23 Grabowska was just recently at that time appointed to be the
24 Director of the Bureau of Criminal Investigation. If you want
25 to have an analogy for that, think of BCI as like the State

1 version of the FBI. They bump into each other.
2 Congratulations are offered and Lonnie says -- there becomes
3 small talk about office space and Lonnie says, you know,
4 we're packed. We are -- we're spread all over the place. We
5 have a building up in north Bismarck on State Street, old
6 building built in the 50s, flat top roof. You might have
7 driven by it on your way up to Walmart or whatever, but we
8 really need to be able to take everybody and put them all in
9 one space and run more efficiently. And Jason says, well, I
10 might know of a building. I can hook you up with a realtor
11 and there might be a building available and it turns out this
12 is the old Sykes building, if you're -- if you're familiar
13 with south Bismarck, the old Sykes building. At that time
14 there were two tenants in that building, one was the North
15 Dakota Department of Health, so half the building is
16 Department of Health, the other ITD. And ITD was going to be
17 moving out of that building. They had a, I think, a new
18 construction that they were working on but there was some
19 issues with that, so they were going to be vacating and that
20 second half of the building was going to be open, and I'm --
21 I'm going to join Mr. Erickson in this, we're not going to
22 get into the weeds with a lot of the mechanics about how the
23 process necessarily unfolded because that's not why you're
24 here, but what ultimately ended up happening is in 2020,
25 Jason, who owns a partial interest, a 12.5 percent interest

1 in a company called Stealth Properties, they ended up buying
2 this property and it was leased to the Attorney General's
3 Office and to the Department of Health.

4 Keep in mind, Department of Health was already a tenant
5 at the time that this unfolded. Well, when the Attorney
6 General's Office moved in, the Attorney General's Office is
7 like a big umbrella and underneath that umbrella are a number
8 of Divisions, so you've got the Bureau of criminal
9 Investigation, the lottery, fire Marshal. So you have a lot
10 of very different administrative functions performed under
11 this umbrella and the needs of the building met that, in
12 part. Not in entirety. So they needed, for example, BCI's a
13 law enforcement agency, they needed bulletproof paning. Okay.

14 They had an armory room for firearms. The lottery was a part
15 of this. They needed very secure IT services for lottery
16 servers and for sensitive digital information. There's a
17 cyber crimes division of BCI that required very specific
18 architecture for purposes of the cyber crime work that was
19 done. So as the project, as the renovation and the addition
20 unfolded, the costs went up, yes.

21 Jason Dockter had nothing to do with that. Nothing. Those
22 were requests by the Attorney General's Office as the project
23 unfolded that we're going to need an addition. We're going to
24 need renovations. We're going to need this. We need this wall
25 moved. We need a server here. So those requests were

1 accommodated and, yes, building costs money. This is
2 unfolding during Covid. What happened during Covid? You
3 couldn't get anything. You know, not only was the shelves
4 bare toilet paper, but anybody that built a house or was
5 trying to do any kind of a construction project found
6 themselves lacking in materials, lacking in supply. We
7 probably all very fondly remember that. Point being, this
8 project became expensive and there was a cost overrun and
9 then, yes, Attorney General Stenehjem passes. This cost
10 overrun is brought to the attention of his successor, current
11 Attorney General, Drew Wrigley. A subsequent Auditor's
12 investigation is conducted. As a result of that Auditor's
13 investigation, these complaints are referenced.

14 Here's what the case is about: the case is about whether
15 or not, and then you're going to hear evidence of this, Mr.
16 Erickson referenced John Bjornson, listen to his testimony
17 very carefully. He's the chair. He's the Executive Director
18 of what's called the Legislative Council. They're a function
19 of government that serves year round and they provide
20 services to the legislature. Okay. They provide policy. They
21 provide -- they Implement requirements. When we have a new
22 class of freshmen legislators, they write the rules. Okay.
23 That these freshmen legislators are expected to follow. They
24 help write bills and they revise them. They have a team of
25 lawyers that do that. So they -- they have a year-round

1 function, even though the legislature does not always sit in
2 session.

3 And you're going to hear him testify that you got the
4 House and you got the Senate, and each of them have their own
5 set of rules that they are required, and I emphasize that,
6 required, to follow. One of those is a rule that you're going
7 to see and you're going to hear about it, it's House Rule
8 321. And what that rule basically says is this that a member
9 of the House who is present for a vote shall vote. Meaning,
10 they are required to vote on a bill unless there is an
11 interest that is direct, individual, unique and substantial
12 to that particular legislature.

13 Now, why is that important? You're going to hear
14 testimony about this? Again, going back to what Mr. Erickson
15 said. We are a citizen's legislature. Okay. You may, for
16 example, have a teacher serving in the legislature. A lawyer,
17 doctor, construction worker, an accountant, and they all have
18 interests outside of the legislature and these kinds of
19 conflicts can arise, so -- under the House rules and the
20 Senate rules for that matter, a legislator may still vote
21 without problem as long as they have no interest in it that
22 is direct, individual, unique and substantial, and you're
23 going to hear about that rule and it is expected. It is a
24 requirement that legislators follow it. And you're going to
25 hear Director Bjornson talk about that more. And you're going

1 to hear him testify about, in this particular case as Mr.
2 Erickson had referenced, there were some votes in 2021 and
3 2023 that Mr. Dockter participated in. He voted in 2021 on
4 the Health -- or the Attorney General's Bill, you're going to
5 hear about that. You're going to hear, because you're going
6 to get the actual bill, you're going to hear that they had an
7 overall budget of over 42 million dollars that year. You're
8 going to hear that he was 1 of 91 votes on that bill. You're
9 also going to hear that in 2021 he had voted for the Health
10 Department bill, the budget, because, of course, where do
11 these agencies get their money? They get it from the
12 legislature; right? Who votes on the appropriations bills,
13 the budget bills? The legislature does.

14 In 2021 he also voted on the Health Department bill.
15 Another 40 plus million dollar budget. He was 1 of 88 votes
16 on that bill. 2023, he voted on the Health and Department of
17 Human Services. By that point, the Department of Health and
18 the Department of Human Services had merged into sort of a
19 single entity. He voted on that bill in 2023. Budget of over
20 44 million dollars. And he was 1 vote out of 92. You will
21 hear his votes we're not going to make a break these budgets;
22 that these agencies required this budgeting to provide
23 services to the constituents of the State.

24 You're not going to hear that these bills referenced in
25 any way Jason Dockter. You are not going to hear that they

1 referenced in any way Stealth, his company. You are not going
2 to hear that they referenced in any way the Burlington Drive
3 building, the old Sykes building.

4 You're going to hear from Director Bjornson what an
5 interpretation consistent with the State's theory of this
6 case would do to our legislature, our citizen legislature.
7 Grind it to a halt.

8 There was a 2023 budget bill for the Attorney General's
9 Office that Representative Dockter, that Jason Dockter was
10 not there for, so that's not really before you at this point,
11 but 51 million budget. Still passed without his vote.

12 You're going to hear Director Bjornson talk about what
13 Jason Dockter, had he been on the floor for those 2021 votes
14 and 2023 votes and stood up and said, I think I have a
15 conflict, you're going to hear what in 36 years the
16 Legislative Council and working with every single biennium
17 session, you're going to hear what he has to say about what
18 the outcome of that would have been had Jason Dockter stood
19 up and said I think I might have a conflict. You're going to
20 hear he would have been allowed to vote anyway because he
21 didn't have the requisite conflict.

22 This case is about a legislator doing their job and being
23 prosecuted for a crime. You're going to hear from Jason
24 Dockter. You might think, well, why did I make such a big
25 fuss in jury selection about that? Because I want to know if

1 you'd expect him to. You're going to and he'll get up on the
2 stand and he'll tell you in his own words why he voted, why
3 he didn't believe there was a problem doing it, why he
4 believes that when he devoted he did so in service to the
5 constituents of District 7, because we are a government of
6 the people, by the people and for the people and that's what
7 he did.

8 And at the end of this case, I will ask you to come back
9 with a verdict that only makes sense and that is a verdict of
10 not guilty. Thank you.

11 THE COURT: Mr. Erickson, are you ready to call your
12 first witness or did you want to play the video?

13 MR. ERICKSON: Your Honor, I move to admit State's
14 Exhibit Number 1, which is the zip drive of a podcast by Mr.
15 Rob Port.

16 THE COURT: Okay. Any objection?

17 MR. SUHR: No objection based on prior stipulation,
18 Your Honor.

19 THE COURT: Okay. Court will admit Exhibit 1 and then
20 you wanting to publish this?

21 MR. ERICKSON: Yes, Your Honor. I'd ask permission to
22 publish.

23 THE COURT: You can do so.

24 MR. ERICKSON: Just for the record, we're going to
25 play from 3 minutes to 39 minutes.

1 (Exhibit 1 played.)

2 THE COURT: Mr. Erickson, do you have a witness we can

3 get done before noon?

4 MR. ERICKSON: Yes, Your Honor. I'll call Mr. John

5 Boyle.

6 THE COURT: Do you need to go get him?

7 MR. ERICKSON: He should be right outside.

8 THE COURT: Okay. All right. If you want to come

9 forward, we'll swear you in.

10 (Witness sworn in.)

11 THE COURT: The witness stand is right there. You have

12 to walk around and then that chair I don't think moves much,

13 so you'll just have to scoot up a little.

14 As soon as he's ready, Mr. Erickson, you can start your

15 examination.

16 MR. ERICKSON: Thank you, Your Honor. Pursuant to the

17 previous stipulation of the parties, I have State's Exhibit 2

18 and 3. State's Exhibit 2 is a lease to Stealth Properties for

19 the Department of Health and Human Services and the other --

20 State's 3 is a lease to the North Dakota Attorney General's

21 Office and Stealth Properties. I move to admit State's 2 and

22 3.

23 THE COURT: Any objection, Mr. Suhr?

24 MR. SUHR: No objections to 2 and 3, Your Honor.

25 THE COURT: The Court will admit Exhibits 2 and 3.

1 DIRECT EXAMINATION

2 BY MR. ERICKSON:

3 Q. Sir, you're Mr. John Boyle?

4 A. Yes.

5 Q. Can you pull that mic up a little closer?

6 A. Yes, I am.

7 Q. Okay. Is there a yellow light on there or a green

8 light.

9 A. There's a green light on.

10 Q. Okay. Thank you. What do you do for a living, sir?

11 A. I am the Director of Facility Management within the

12 Office of Management and Budget at the State of North Dakota.

13 Q. And it's my understanding you're getting towards the

14 end of your career?

15 A. Yes. Today is my last day.

16 Q. Okay. Interesting way to spend it. What do you do for

17 OMB?

18 A. So the Office of the Facility Management Division, we

19 oversee everything that occurs on the Capitol grounds, so the

20 daily operations, all the projects that occur on the Capitol

21 grounds. We take care of the Governor's residents, and then

22 another role I have is I sign the leases for State agencies

23 for properties in Bismarck and outside of the City of

24 Bismarck.

25 Q. Okay. So you're the guy that has to sign off on these

1 leases. If a state agency wants office space, got to come
2 through you?

3 A. That's correct.

4 Q. And how does that work? How's that process supposed
5 to work?

6 A. So the the way the process works is because right now
7 I'm just really a one-man show. We did just hire a leasing
8 manager to assist. So most agencies will negotiate their own
9 leases. They're not required to ask us for assistance. Some
10 do ask us for assistance. So when I receive -- usually I just
11 received the first draft of a lease and review it. I make
12 sure that the rents are within market rents wherever they're
13 located throughout the state. And then if they are, then I
14 usually contact the person who sent it to me and said, the
15 lease looks good. Go ahead and send it to your Assistant
16 Attorney General and they review all the clauses to make sure
17 all the clauses are in the lease. After they sign it, it
18 comes back to me for signature. And like I said, I kind of
19 check what the rent per square foot is, if there's common
20 area, charges, things like that to make sure they're in line
21 with leases in the city.

22 Q. So as part of your job, you start -- you keep track
23 of market rates and lease rates and stuff so you know if the
24 State's getting a good deal or a bad deal?

25 A. Yes. We -- we usually -- the way we keep track is we

1 usually compare them to what other State agencies are paying
2 in that -- in that market.

3 Q. Okay. And as part of your OMB, do you have a Risk
4 Management Division also?

5 A. Yeah. Within the division -- within the office of
6 OMB, which is the agency, one of the divisions is risk
7 management.

8 Q. Okay. And if you're working on a lease for the State,
9 you have the ability to have a risk assessment on the terms?

10 A. Within the lease, there's two clauses. There's an
11 indemnification clause and an insurance clause, and those two
12 clauses are the ones that risk management are in. All the
13 other clauses are, and including those two, are reviewed by
14 each State agency's Assistant Attorney General.

15 Q. Okay. Did Jason Dockter and someone from the Attorney
16 General's Office approach you with a proposed lease at some
17 point initially for a property in south Bismarck on
18 Burlington Avenue?

19 A. Yes.

20 Q. Do you remember about when that was?

21 A. The first -- the first time I saw a lease was in
22 early March. March -- well, it was March 2nd was the first
23 draft that I saw, but there were a lot of communications
24 before that, but the first draft that I saw of the lease was
25 on March 2nd.

1 Q. Okay. And who is Jason -- and Jason Dockter is one of
2 the people communicating with you?

3 A. Yeah. That's who sent me the email with the -- with
4 the draft lease attached for my review.

5 Q. Who's the -- who's he working with at the Attorney
6 General's Office?

7 A. I did -- it's my assumption it was Troy Seibel.

8 Q. Okay. Did you later have contact with Troy Seibel and
9 Mr. Dockter?

10 A, oh, yes. Yeah. There -- at a later time -- when that
11 first lease came, I thought the rent was a little too high,
12 so the -- we had spoken and it got revised down to \$9.00 --
13 it ws 11.68. It got revised down to \$9.50.

14 Q. So Mr. Seibel, the Deputy Director of the AG's Office
15 and Mr. Dockter propose a lease to you. The law requires you
16 to sign off on this. You don't do it because it's too
17 expensive for the State?

18 A. At first it was just Jason Dockter sent it to me. I'm
19 assuming Troy saw it too, but we didn't really get -- the one
20 at 11.68, when it was sent to me, it was just from Jason, so
21 I don't know if -- I'm assuming Troy saw it.

22 Q. Okay. So you reject that lease?

23 A. That's correct.

24 Q. Did the -- did you get approached again by Mr. Seibel
25 and Mr. Dockter about signing a lease that was more

1 acceptable to you?

2 A. Yes. So the new lease Jason sent me with \$9.50, I
3 said, yes, that's fine. That was a couple weeks later in
4 mid-march and then on April 24th then Troy and Jason came up
5 to my office and that's when I signed the lease on April 24th
6 of 2020.

7 Q. And you found those terms to be acceptable?

8 A. Yes.

9 Q. And there was 950 a square foot for a lease cost?

10 A. Yes.

11 Q. Down two-three bucks from where they originally
12 wanted it?

13 A. Yes.

14 Q. And then there was some construction, remodeling
15 terms in there, so much a square foot they could charge?

16 A. Yes.

17 Q. You found that okay?

18 A. Yes.

19 Q. After you -- and you signed that lease?

20 A. Yes.

21 Q. After you signed that lease, were you involved at all
22 in this building on Burlington Avenue?

23 A. No. The -- there's nothing in State Statute that
24 requires that they use our agency to help. My role just ends
25 after I signed the lease unless they ask me for assistance.

1 Q. Okay. At some point did you -- so you're out of it.
2 You're not paying -- all the rest of the stuff that happens
3 after this, you're not involved in it at all?

4 A. That's correct.

5 Q. But at some point were you asked to go down and take
6 a look at the building after some construction had been done?

7 A. Yes. So in reviewing emails, I did get a request in
8 February of '21 if there was a time we could get together. I
9 don't think we did because it was during a legislative
10 session, but then I received an email in August of '21
11 saying, hey, the building is done, do you want to meet one of
12 the partners down there to walk through the building and I
13 said, sure. I'd love to walk through it.

14 Q. Okay. Did you do that then?

15 A. Yeah, so we met down there. I can't remember what day
16 it was in August, but it was in August, the latter part of
17 August.

18 Q. Okay. And you went and did a tour of the building?

19 A. Yes, we first looked at the outside and then we went
20 inside and saw the remodel and the addition.

21 Q. Did you have any Impressions from when you looked at
22 the building compared to when you signed initially off on
23 that second lease attempt, did you have any impressions that
24 that was the same building that you had signed off on?

25 A. When we went inside, it was pretty obvious that the

1 existing space, which was approximately 20,000 square feet,
2 the remodeling that was done in that space, I thought to
3 myself, there's no way this could have been \$50.00 a square
4 foot.

5 Q. And --

6 A. There was just too much work that had been done
7 compared to what the space looked like before.

8 Q. When you signed off on that lease did, Mr. Seibel or
9 Mr. Dockter inform you that there was going to be masses
10 amounts of construction underneath that lease to fill out the
11 space and remodel it?

12 A. I mean, I -- for massive, I don't know, but I thought
13 for sure it would be within the dollars amount that were in
14 the lease for remodeling costs and to do any type of an
15 addition.

16 Q. Okay. You had two different impressions then, when
17 you saw the building versus the impression you were given
18 when you signed the lease. This is two different things?

19 A. That's correct. Correct.

20 Q. Did you later find out that there are huge cost
21 overruns?

22 A. Yeah. That same day I was down visiting, walking the
23 building with the partner, it was brought to my attention
24 that the cost did go over the -- I think it was \$50.00 a
25 square foot remodeling and \$200.00 a square foot for

1 additional space.

2 Q. And to get that paid for, there needs to be a new
3 lease; correct? Or something?

4 A. There would have to be an amendment.

5 Q. Does that -- from what you looked at when you looked
6 at the building, does that get you back to that original
7 lease that you rejected as too much expense for the State to
8 pay for office space?

9 A. Well, I guess it looked like a building that was
10 worth a lot more than \$9.50 a square foot.

11 Q. Okay. When you were trying to get a handle on this,
12 then, this building kind of morphed. Was there a bidding
13 process for any of this or does OMB use that or was there
14 written contracts, anything like that presented to you?

15 A. No. No, there -- by State law, we have to use, you
16 know, certain Century Codes on how we build out and run
17 projects. We don't require private entities to use those
18 State laws, but the simple answer is no, I never saw any
19 documentation of any kind of contracts or change orders or
20 anything like that. I wasn't involved.

21 Q. So if the Attorney General's Office and Mr. Dockter
22 and his partners used the OMB process that's set up by the
23 legislature, there would have been bidding. There would have
24 been written contracts with generals, things like that. How
25 how would that have -- how is that supposed to work under the

1 law?

2 A. Yeah. Okay. So under the current State statute, any
3 improvement, public improvement that's over \$200,000 has to
4 have an architect involved and then it has to go out to bid,
5 advertised at least 21 days and usually you have a general, a
6 mechanical, an electrical prime contractor and the architect
7 would put together bid packages and advertise it, and then it
8 -- then you'd have a formal bid open to the public. You'd
9 read all the bids and by State statute, we have to go with
10 the lowest responsible bidder. And so that would -- that
11 would have been the process. And then any change orders that
12 would have occurred after that -- well, after we figure out
13 who the contractor would be, then we'll, of course, we would
14 do a contract which would be reviewed by the Attorney
15 General's Office, and it includes a State addendum that they
16 have. And then -- and then once those are all executed, then
17 that's when the project begins or there would have been a bid
18 bond to make sure that the -- that the -- it would have been
19 for five percentage of what the total project cost is for
20 each one of those bonds, and then once all the paperwork's
21 done, then the project would begin.

22 Q. So if this project would have been run through OMB,
23 that's basically what would have happened?

24 A. That's what we would have suggested. Again, it's --
25 those are for public improvements and because it's a private

1 landlord, it would have -- they don't have to follow the
2 State statutes, but I would have recommended we do it that
3 way.

4 Q. Okay. Instead of no contracting, no bidding, no
5 general, no -- none of the process that typically safeguards
6 the taxpayer was used here?

7 A. That's correct.

8 MR. ERICKSON: Okay. That's all the questions I have,
9 Your Honor.

10 THE COURT: Mr. Suhr, do you have any questions?

11 MR. SUHR: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SUHR:

14 Q. First of all, congratulations on your pending
15 retirement.

16 A. Thank you.

17 Q. I agree with Mr, Erickson, heck of a way to finish
18 your last day, but I just have a few questions for you, Mr.
19 Boyle.

20 So you were involved in the process of this lease being,
21 ultimately, signed on behalf of OMB; correct?

22 A. Correct.

23 Q. So you saw a draft of it; correct?

24 A. Correct.

25 Q. You reviewed that draft?

1 A. Yes.

2 Q. And when the terms were satisfactory, you signed off
3 on the lease?

4 A. Yes.

5 Q. Okay. And would you agree that the terms of that
6 lease were consistent with, if even better than, market
7 value?

8 A. Yes.

9 Q. There were some questions about when you were first
10 approached about signing the lease and I want to be sure
11 we've got our timeline right. You said March 2nd. Are you
12 talking of 2020?

13 A. Yes, sir.

14 Q. Okay. And then the lease was signed in April of 2020?

15 A. Yes.

16 Q. So there was a back and forth process between March,
17 of 2020 and April of 2020 where a lease was presented to you,
18 you reviewed it, you had concerns about the per square foot
19 amounts and you went back and expressed those concerns. They
20 were addressed to your satisfaction and then the lease was
21 ultimately signed?

22 A. That's correct.

23 Q. Okay. And you were dealing with Mr. Dockter in that
24 process?

25 A. Yes.

1 Q. Were you also dealing with a CJ Schorsch?

2 A. I mean, I dealt with CJ some. The lease -- he's the
3 one I met with in August of 2021 to walk through, so he kind
4 of handled the construction part, but I went back and
5 reviewed the -- my emails and they were all with Mr. Dockter.

6 Q. And you're aware CJ Schorsch is Mr. Dockter's
7 business partner in the management company; correct?

8 A. Oh, yes. Yes.

9 Q. Okay. And you weren't involved in any of the change
10 orders that the Attorney General's Office had requested with
11 respect to the building; correct.

12 A. That's correct.

13 Q. Now, the Office of Management and Budget, they work
14 with a lot of different State agencies, don't they?

15 A. Yes, sir.

16 Q. Would you agree that the Attorney General's Office
17 oversees a lot of different divisions?

18 A. Yes, they do.

19 Q. And that would include the Bureau of criminal
20 Investigation; correct?

21 A. That's correct.

22 Q. And that would include the lottery; correct?

23 A. That's correct.

24 Q. And that would include the fire marshal; correct?

25 A. At the time that's correct. They've since moved to

1 insurance.

2 Q. And all of these different divisions of the AG's
3 Office have different infrastructure needs; correct?

4 A. That's correct.

5 Q. And the change orders that were coming with respect
6 to this, building, who made those, if you know?

7 A. I don't know. But, yeah, I'll just say I can assume,
8 but I don't know.

9 Q. In your experience, who would you expect to make a
10 change order in a construction project on behalf of a
11 specific agency?

12 A. Yeah, so during a project, you know, there's three
13 folks that can initiate a change order. One is the owner, one
14 is the architect or engineer because they might have missed
15 something on a drawing and then one might be the contractor.
16 Sometimes a change order could be a deduct change order.
17 They're always not additions. So either one of those three
18 parties could request a change order or request information
19 to receive a cost. F they agree on what the cost is, then
20 that's when the change order would occur.

21 Q. So it would make sense if there were unique needs of
22 this building for BCI, such as, bulletproof panels, for
23 example, that would come from BCI.

24 A. Oh, absolutely, yes.

25 Q. And if there were unique ITD needs, for example, the

1 lottery servers and software, that would come from the
2 Attorney General's Office as well; correct?

3 A. Correct.

4 Q. Okay. And you weren't involved in those, though?

5 A. Not at all.

6 Q. So you wouldn't have any information one way or the
7 other about that?

8 A. That's correct.

9 Q. You testified that the OMB bidding process was not
10 used here because we're dealing with a private landlord;
11 correct?

12 A. That's correct.

13 Q. So there's nothing illegal about not using the
14 bidding process here when you have a private landlord;
15 correct?

16 A. That's correct.

17 Q. The Attorney General's Office was involved in this
18 project throughout the entirety though; is that right?

19 A. That's correct.

20 Q. And the Attorney General's Office has, what, in it?
21 Attorneys?

22 A. Well, and plus all those divisions that you mentioned
23 earlier.

24 Q. Correct. Did anybody from the Attorney General's
25 Office ever request that the OMB bidding process be used?

1 A. No.

2 Q. Did they express any concerns that it wasn't being
3 used?

4 A. No. Because there was no communication.

5 Q. Right. And that OMB bidding process typically applies
6 to government agencies only, although it could be used in
7 other settings?

8 A. That's correct.

9 Q. And the Attorney General's Office never asked for the
10 OMB bidding process to be used here?

11 A. That's correct.

12 Q. This construction process occurred during Covid?

13 A. That's correct.

14 Q. Were there other projects of State agencies that were
15 impacted by Covid?

16 A. Absolutely.

17 Q. How were they impacted in this instance?

18 A. Well, in timeline but -- so deliverables were very
19 much impacted. I mean, you probably heard of supply chain
20 issues, but one of the big costs, because of supply chain
21 issues, were the cost of mechanical equipment, electrical
22 equipment, went up substantially during that time.

23 Q. And were there increased costs to this project
24 because of Covid?

25 A. I don't know if that's why they were -- why it went

1 over.

2 Q. In your experience, though, did Covid have an impact
3 on material costs?

4 A. Yes.

5 Q. And materials were being obtained during Covid in
6 this project?

7 A. That's correct.

8 Q. And I believe you said mechanical equipment was more
9 expensive during Covid; correct?

10 A. That's correct.

11 Q. And to your knowledge was mechanical equipment being
12 obtained in the construction process of this building?

13 A. Yes, it was.

14 Q. So it would be a fair inference that Covid impacted
15 the costs by driving them up here as well?

16 A. Yes.

17 MR. SUHR: Okay. Thank you. I have nothing further,
18 Judge.

19 THE COURT: Mr. Erickson?

20 MR. ERICKSON: No redirect, Your Honor. I'd ask that
21 he be excused.

22 MR. SUHR: No objection, Judge.

23 THE COURT: Okay. So you can be excused from your
24 subpoena. You can stay and watch if you'd like, but you can
25 also leave. It's up to you. Thank you. Congratulations on

1 retirement.

2 MR. BOYLE: Thank you.

3 THE COURT: And we are also going to retire at least
4 for lunch, so everybody can go and get their lunch. I like to
5 give a little longer time because if you do have to walk to
6 one of the restaurants downtown, there is several. You can go
7 home as well. It's up to you. I allow you to pick what you
8 would like to do. I am going to read the admonishment.

9 (Admonishment given.)

10 THE COURT: We will take an hour and 15 minutes, so I
11 will have the jury come back -- I think they want you back
12 probably 15 minutes early. The bailiffs will let you know
13 that just so we can get started at 1:15. Thank you.

14 (Recess taken.)

15 THE COURT: We will open 08-2023-CR-3618. We are back
16 from lunch. I just want to make sure with the attorneys
17 there's nothing that we need to talk about prior to bringing
18 the jurors in, Mr. Suhr?

19 MR. SUHR: Excuse me. No, Your Honor.

20 THE COURT: Mr. Erickson?

21 MR. ERICKSON: No, Your Honor.

22 THE COURT: I did want to put on the record we had a
23 bench conference during jury selection. I just want to put on
24 the record what that was; that Mr. Suhr thought Mr. Erickson
25 had wrote 4 and it was 14 and we had discussed there wasn't

1 much I could do about that.

2 Anything else you want to put on the record for that Mr.
3 Suhr?

4 MR. SUHR: No, Your Honor.

5 THE COURT: Mr. Erickson?

6 MR. ERICKSON: No, Your Honor.

7 THE COURT: Okay. We can bring our jury in then.

8 (All jury members back in the courtroom.)

9 THE COURT: You can sit wherever you want to. The
10 record will reflect that the jurors are now back in the
11 courtroom, and, Mr. Erickson, I think prior to lunch you were
12 going to call another witness.

13 MR. ERICKSON: Call Rebecca Binstock, Your Honor.

14 THE COURT: Can you see if Ms. Binstock is out there
15 as a witness?

16 MR. ERICKSON: She's in the courtroom.

17 THE COURT: Oh, she's in. Okay. You can come forward.

18 (Witness sworn in.)

19 THE COURT: You can have a seat in the witness stand.
20 That chair I don't think moves, so you may have to scoot up a
21 little to get to the microphone. As soon as she's ready, Mr.
22 Erickson.

23 MR. ERICKSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. ERICKSON:

1 Q. You're Rebecca Binstock?

2 A. Yes.

3 Q. And what do you do for a living, ma'am?

4 A. I serve as the Executive Director of the North Dakota
5 Ethics Commission.

6 Q. And what's your background? Can you just give a quick
7 paragraph on your history and background before we get into
8 the testimony?

9 A. Sure. Before I was the Executive Director of the
10 Ethics Commission, I started out as a teacher. I taught for a
11 few years. I then went to law school, graduated, and then I
12 was in private practice for a few years. Then for nearly nine
13 years I served as law clerk to Federal Judge Daniel Hovland
14 here in Bismarck.

15 I started with the Ethics Commission in September of
16 2022.

17 Q. And as the Executive Director, you work for an Ethics
18 Commission Board?

19 A. Yes.

20 Q. And you receive complaints from the public about any
21 number of things as the Ethics Commission?

22 A. The Ethics Commission receives a number of
23 complaints, yes.

24 Q. And regarding a building of the -- down in south
25 Bismarck on Burlington Avenue, did you -- did you, as a

1 Administrator of the Ethics Commission, receive some
2 complaints from people, members of the public, about this
3 building?

4 A. Yes. The Ethics Commission received a number of
5 complaints.

6 Q. Following up on that, did you have some contact with
7 the defense in this case?

8 A. With the defendant or the defense attorney?

9 Q. Defense attorney.

10 A. Okay. Yes. I had a conversation with Mr. Suhr.

11 Q. When was that about?

12 A. I believe it was on March 30th of 2023.

13 Q. Why did that come about?

14 A. Mr. Suhr reached out to me in a professional capacity
15 just to touch base on the -- what was happening with the
16 Ethics Commission, and so he reached out to me and we had a
17 conversation.

18 Q. Does that happen where people that there may be a
19 complaint in general filed have attorneys or themselves reach
20 out for advice things like that?

21 A. Yeah -- sorry.

22 Q. Was that sort of the context here?

23 A. Yes. Many times the Ethics Commission receives
24 questions about maybe looking for advice to prevent an issue
25 or, you know, now that there is a complaint pending or

1 something, what do we do or where do we go from here and
2 that's from attorneys and non-attorneys alike.

3 Q. Regarding Mr. Dockter, his client, what was your
4 advisement?

5 A. So Lloyd and I had a -- or, Mr. Suhr, excuse me, we
6 had a conversation and I ran him through just kind of a
7 little bit of an overview and we talked about the Ethics
8 Commission's conflict of interest rules and the legislative
9 -- I believe I mentioned the legislative rules as well that
10 apply, and then said I didn't want to be very direct, but
11 also said, hey, you know, pay attention to this in relation
12 to the -- to the Attorney General's budget.

13 Q. Okay. Did you mention the Health Department budget?

14 A. I did not.

15 Q. Why is that?

16 A. At the time the Ethics Commission did not have a
17 pending investigation and so I was unaware of anything to do
18 with the Health Department in relation to the building at
19 issue.

20 Q. But you were aware because of the complaints people
21 were filing --

22 A. Correct.

23 Q. -- that there was an AG issue with that budget?

24 A. Yes. So the Ethics Commission was aware that there
25 was an issue with the Attorney General's Office, but not with

1 the Health Departments budget -- excuse me, with the Attorney
2 General's budget, not the Health Department's budget.

3 Q. But your purpose, as an Executive Director, is to
4 apprise people how to avoid getting into complications or
5 conflicts with any rules?

6 A. That's our goal or at least we try to not have issues
7 and be proactive, so that's exactly what I was doing with Mr.
8 Suhr.

9 Q. In that nature of being proactive, do you offer
10 classes to different people so they can understand what the
11 rules are for them when they're public officials?

12 A. Yes. So the Ethics Commission is relatively new and
13 so we do provide training and outreach. In fact, it's kind of
14 a cornerstone of what we've been doing lately, but we do
15 educational sessions.

16 Q. And the -- did you do some legislatures?

17 A. At the -- yes. At the beginning of legislative
18 session in 2023, I was -- since I was the new Executive
19 Director, I had been the Second Executive Director of the
20 Ethics Commission, I did training with legislators, yes.

21 Q. And both Republican and Democrat, House, Senate,
22 everybody had a chance to go to the training?

23 A. So we coordinated with Legislative Council and then
24 with the caucus leaders to do it at what they call their
25 caucus meetings. I think that -- don't quote me on that's

1 what they call them, but we did it for the House caucus. We
2 did it for the Senate caucus and then we also did it for the
3 Democrats, but we did those together because there isn't as
4 many of them.

5 Q. Okay. Ms. Binstock, the jury has to decide strictly
6 on the State statute, not anybody else's rules. They may go
7 to some arguments the attorneys are going to make about
8 mental states, but when you did the training, is there any
9 confusion or contradictions between the statute that the jury
10 has to decide in this case and the legislative rules, those
11 type of things. How did you explain that when you did the
12 training for the legislators?

13 A. In the training that I did for the legislators, I
14 didn't talk about the statute at issue here today.

15 Q. Okay.

16 A. My training was limited to legislative rules and
17 conflict of interest rules that are adopted by the Ethics
18 Commission.

19 Q. Is there a -- is there conflicts between those two
20 sets of rules?

21 A. No, generally not.

22 Q. Okay.

23 A. The language is different, but they can be
24 interpreted together.

25 Q. Concepts are the same?

1 A. Concepts are exactly the same, yes.

2 Q. Okay. And you did that training for the legislators
3 in January as a member, so they understand the rules of the
4 road?

5 A. Yes. So I was brought on as Executive Director in
6 September of 2022 because of my education, background, that
7 was one of the reasons and the Ethics Commission wanted to be
8 proactive and so that was one of those instances that we did
9 that.

10 MR. ERICKSON: Your Honor, I have no further
11 questions.

12 THE COURT: Mr. Suhr?

13 MR. SUHR: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SUHR:

16 Q. Good afternoon, Ms. Binstock. You testified that in
17 your capacity as Executive Director, you would provide
18 trainings to legislators on ethical issues; correct?

19 A. That's correct, yes.

20 Q. And you've testified that there are legislative rules
21 in place. Are you familiar with House Rule 321?

22 A. Yes, I am familiar with it. I don't have a copy of it
23 in front of me or anything but, yes.

24 Q. But you're familiar with its substance?

25 A. I am familiar with its substance, yes.

1 Q. So House Rule 321, if I may, provides that every
2 member who was present in the House shall vote for or against
3 the question before the House; correct? Does that sound
4 right?

5 A. That's the beginning part of it.

6 Q. Okay. So that means if you're on the floor of the
7 House, you're required to vote unless certain circumstances
8 exist; correct?

9 A. There's another portion of that, so I think as to --

10 Q. Let's start with shall.

11 A. I don't want to make a -- I don't want to make a
12 legal conclusion, but, generally, you are correct, yes, Mr.
13 Suhr.

14 Q. You're -- you're an attorney, so you've interpreted
15 rules and statutes. The use of the word shall typically means
16 what?

17 MR. ERICKSON: Your Honor, can I -- I don't mean to
18 interrupt, but my next witness is the Director of Legislative
19 Council is the keeper records for the rule he's talking
20 about. She's kind of off her turf and he'll have every
21 ability to ask John Bjornson these questions. We're going to
22 actually put the rule into evidence.

23 THE COURT: Mr. Suhr?

24 MR. SUHR: Well, Your Honor, the witness was asked
25 about the any conflict between the Ethics rules and the House

1 rules, so I'm asking her about House Rule 321.

2 THE COURT: If she can answer those, she can answer
3 it, so I'll allow her.

4 A. (Witness continued.) Okay. Can you ask the question
5 again just for clarification?

6 Q. Sure. When Rule 321 says that the member shall vote,
7 in your experience as an attorney, shall means you must;
8 correct?

9 A. That's correct.

10 Q. Okay. Unless the House excuses the member; correct?

11 A. Yes, that's the remaining of it.

12 Q. And then there's some language in here about whether
13 a legislator can cast a vote for another member and that
14 doesn't apply here. But want to ask you about a portion of
15 Rule 321. It says any member who has a personal or private
16 interest in any measure or bill shall discuss the fact in the
17 House and may not vote thereon without the consent of the
18 House. You're familiar with that?

19 A. I am familiar with that, yes.

20 Q. So would I be correct to say that if a member thinks
21 that there's a conflict, they raise the issue on the floor
22 and then the floor votes on whether that individual can or
23 cannot vote; correct?

24 A. Yes. That's the historical practice, yep.

25 Q. It states their personal or private interests as you

1 used is an interest that affects the member directly,
2 individually, uniquely and substantially. You're familiar
3 with that language?

4 A. I am familiar with that language, yes.

5 Q. In the trainings that you -- you've conducted, did
6 you do a training in January of 2023 with the Republican
7 caucus?

8 A. Yes.

9 Q. And did you get asked about what that means when a
10 legislator has an interest that affects them directly,
11 individually, uniquely and substantially?

12 A. I don't remember if I was asked that question
13 directly.

14 Q. So you don't recall giving an example of owning a
15 cotton candy shop?

16 A. I likely did give an example, yes.

17 Q. And did you -- in that example -- do you remember
18 anything about the context of that example?

19 A. I do not.

20 Q. Do you remember telling the legislators that an
21 example of an interest that affects them directly,
22 individually, uniquely and substantially would be where, for
23 example, a legislator owned a cotton candy shop and there was
24 a bill to provide funding to that legislator for that cotton
25 candy shop that specifically named them; that that would be

1 an example of a direct, individual, unique and substantial
2 interest?

3 A. I believe I used that as an example. I can't be 100
4 percent sure because it was a long time ago, but it sounds
5 like an example that I've used.

6 Q. Have you reviewed any of the bills at issue in this
7 case, specifically the bill for the Health Department budget
8 from 2023?

9 A. I've looked through the bills, yes.

10 Q. Do you know if that bill mentions Jason Dockter?

11 A. The bill does not mention Mr. Dockter -- or
12 Representative Dockter by name.

13 Q. Does the bill specifically allocate any monies to
14 him?

15 A. Not by name, no.

16 Q. Does the bill reference any business entity, Stealth
17 Properties, for example?

18 A. It does not, no.

19 Q. Parkway Management?

20 A. Not that I'm aware of, no.

21 Q. D&S?

22 A. Not that I'm aware of.

23 Q. It's your understanding that he's accused of a crime
24 here because he voted on a bill?

25 A. Yes.

1 Q. That he had a pecuniary interest in?

2 A. That is correct.

3 Q. What if he would have voted no? What if he would have

4 voted against the budget? Still a crime?

5 MR. ERICKSON: Your Honor, she's not the judge here.

6 THE COURT: Yeah. Objection -- or overruled.

7 MR. SUHR: I'll withdraw the question.

8 THE COURT: Sustained, sorry.

9 MR. SUHR: Nothing further.

10 THE COURT: I don't want her to answer. All right. Any

11 other follow-up, Mr. Erickson?

12 MR. ERICKSON: No, Your Honor.

13 THE COURT: Okay. Can this witness be released from

14 subpoena or do you want her to stay?

15 MR. ERICKSON: I might not -- I might have to have her

16 rebuttal. I'm not sure what's going to happen.

17 THE COURT: Okay. So you're going to have to stay

18 under subpoena which means you have to stay sequestered and

19 then Mr. Erickson will let you know if we need you again.

20 Okay? Thank you.

21 MS. BINSTOCK: Thank you.

22 THE COURT: Do you have another witness, Mr. Erickson.

23 MR. ERICKSON: John Bjornson, Your Honor.

24 THE COURT: Okay. Mr. Bjornson, if you want to come

25 forward, we'll swear you in.

1 (Witness sworn in.)

2 THE COURT: You can go have a seat in our witness

3 stand and I don't think that chair moves much. You might need

4 to scoot up. As soon as he's ready, Mr. Erickson.

5 MR. ERICKSON: Your Honor, for the record and pursuant

6 to previous stipulations, I have State's 4 through through 7.

7 THE COURT: And what's number 4?

8 MR. ERICKSON: 4 is the legislative ethics rules

9 previously discussed.

10 THE COURT: Okay.

11 MR. ERICKSON: And I think that's a good enough

12 description.

13 THE COURT: Okay. And number 5?

14 MR. ERICKSON: Number 5 is the record House journal of

15 House Bill 2 -- or excuse me, Senate Bill 2004 from the 2021

16 legislative session.

17 Number 6 is Senate Bill 2003, the House journal and the

18 bill from the 2021 legislative session.

19 THE COURT: Any objection, Mr. Suhr?

20 MR. SUHR: No, Your Honor.

21 THE COURT: We will admit exhibits 4, 5 and 6.

22 MR. ERICKSON: Okay. I have 7 is the record of House.

23 Bill 1003 is State's Exhibit Number 7. And that has the

24 record and then 8 is House Bill 1004 from the 2021 -- 2023

25 legislative session, Your Honor. I move to admit all of

1 those.

2 THE COURT: So 7 and 8 are the 2023 votes or bills?

3 Okay. Any objections to 7 or 8, Mr. Suhr?

4 MR. SUHR: I don't believe so, Judge, but if I could
5 just have a moment to examine them.

6 THE COURT: Okay.

7 MR. SUHR: No objections, Your Honor.

8 THE COURT: Okay. We'll admit 7 and 8 as well.

9 MR. ERICKSON: Thank you.

10 DIRECT EXAMINATION

11 BY MR. ERICKSON:

12 Q. Okay. You're John Bjornson, Director of Legislative
13 Council or can you just give us your position?

14 MR. ERICKSON: Is this on?

15 THE COURT: Yeah, it's on.

16 Q. (Mr. Erickson continued questioning.) Can you just
17 tell us what your job is and what you do?

18 A. Yes. I'm John Bjornson. I'm the Director of the
19 Leegislative Council, North Dakota Legislative Council. It's
20 the nonpartisan, full-time staff for the legislative
21 assembly.

22 Q. Okay. So, essentially, you work for the legislature?

23 A. I work for the legislature.

24 Q. You're a part of the legislative branch, not the
25 executive branch?

1 A. That's correct. I'm part of the legislative branch,
2 not a part of the executive branch.

3 Q. Okay. One of the functions of your office is to keep
4 a record of everything that happens during the legislature?

5 A. That's correct.

6 Q. And do you also keep a record of the rules for
7 legislators to conduct themselves?

8 A. That is correct also.

9 Q. I'm going to hand you what's been marked as State's
10 Exhibit Number 4. Can you identify what this is?

11 A. This is a copy of the legislative assembly's joint
12 rule on ethics, Rule 1001, Legislative Ethics Policy; 2002 --
13 or 1002, Recognition of Ethical Standards; 1003, Recognition
14 of Constitutional and Statutory Provisions; and 1004 the
15 requirement that our office conduct classes on legislative
16 ethics.

17 Q. Okay. And does that document list the statutes that
18 legislators should apprise themselves up in the conduct of
19 themselves as legislators when they vote on bills?

20 A. Yes. Joint Rule 1003, the Recognition of
21 Constitutional and Statutory Provisions lists several
22 provisions, either in the Constitution or in State Statute
23 which relate to provisions that would potentially affect the
24 legislature in their role.

25 Q. So I'm a new legislator, they get this document, they

1 get some training from your office on what they have to do,
2 that's part of it there?

3 A. That is correct.

4 Q. It is the statute that had issued before this jury
5 mentioned in there that legislators need to be aware of?

6 A. My understanding is that the statute at issue North
7 Century Code Section 12.1-13-02 -- or 3 -- 2 and 3, I believe
8 --

9 Q. Two.

10 A. Yes, 2 is mentioned in there, yes.

11 Q. What does it say specifically as to --

12 A. In the rule?

13 Q. About that -- in the rule about that statute?

14 A. Members should apprise themselves of constitutional
15 provisions and statutes that prohibit conduct for which
16 criminal penalties may apply. Including and then they begin
17 this list of constitutional and statutory provisions. North
18 Dakota Century Code Chapter 12.1-12. I'll move ahead here, I
19 guess. North Dakota Century Code Section 12.1-13-02, which
20 prohibits acquisition of a pecuniary interest in property or
21 an enterprise in contemplation of official action or in
22 reliance on information accessed as a public servant.

23 Q. Okay. Can you in that go to Rule 321?

24 A. Okay.

25 Q. Okay. On 321 why don't you just read it in full,

1 please.

2 A. This is House Rule 321, Vote by Members. Every member
3 who is present before the vote is announced from the Chair,
4 shall vote for or against the question before the House,
5 unless the House excuses the member. A member cannot cast a
6 vote on behalf of another member unless the vote is cast
7 according to verbal instructions announced to the House by
8 that other member while in the chamber; however, any member
9 who has a personal or private interest in any measure or bill
10 shall disclose the fact to the House and may not vote thereon
11 without consent of the House. A personal or private interest
12 is an interest that affects the member directly,
13 individually, uniquely and substantially.

14 Q. Okay. So there's a couple parts to that, Mr.
15 Bjornson. One is if you're sitting in your chair when they're
16 voting on bills, you are required to vote?

17 A. That is correct.

18 Q. And if you feel like you have a conflict, you are
19 supposed to declare that to the House and then the House can
20 decide whether you can vote or not?

21 A. That is correct. If you feel the conflict is personal
22 -- well, a personal or private interest.

23 Q. Under the rules and by extension of the statute, does
24 it matter what the ultimate vote count on bills? Did the
25 legislature when they wrote their rules say, it doesn't

1 matter if this thing's going to pass 90 to 2, these are the
2 same rules, whether it's going to be a close vote. Is there
3 any difference to the rules that a legislator must go by?

4 A. No.

5 Q. Okay. Now, when a bill is voted on, is a journal kept
6 of those votes?

7 A. Yes.

8 Q. Okay. I'm going to hand you some bills from the 2021
9 and 2023 sessions. I'm going to have you -- first of all,
10 State's Exhibit Number 5. Can you identify what that is?

11 A. This is a page from the journal of the House dated
12 Thursday, April 29, 2021, the 76th legislative day.

13 Q. Okay. What's the bill at issue before the House that
14 day?

15 A. The first bill that came to the floor for a vote that
16 day was Senate Bill 2004 came before it for second reading,
17 which is the final passage vote. And that bill is an
18 appropriation for defraying the expenses of the State
19 Department of Health.

20 Q. Okay. And that's in 2023?

21 A. This is in 2021.

22 Q. 2021. Okay. Did Representative Dockter vote on that
23 bill?

24 A. Yes, he did.

25 Q. Okay. Did he -- did he vote for it by chance?

1 A. Yes, he voted yes.

2 Q. Now, if Rule 321 was an issue there and let's say
3 that he had stood up and declared a conflict. Told the House,
4 I just bought a building and this is paying for it. What
5 would that journal reflect?

6 A. The journal would reflect that he had stood up and
7 made that announcement and then whatever subsequent action
8 may have been taken by the chamber in response to that
9 announcement.

10 Q. So that would be reflected in the records. Is there
11 any indication that that happened?

12 A. There is not.

13 Q. I'm going to hand you what's been marked as State's
14 Exhibit Number 7. Can you identify what this is?

15 A. This is also a page from the the journal of the House
16 for Friday, April 23, 2021 and it's -- it begins with part of
17 the statement of purpose of amendment for a bill relating to
18 -- well, I'm not sure -- the Department of Human Services and
19 then it continues with the conference committee report for
20 House Bill 1003.

21 Q. Okay. And what was that bill for?

22 A. A bill back to provide an appropriation for defraying
23 the expenses of the Attorney General.

24 Q. And is there a vote -- that's the budget bill for the
25 AG?

1 A. That's correct.

2 Q. And what was the vote count -- what was Mr. Dockter's
3 vote there?

4 A. Representative Dockter voted yes.

5 Q. Okay. Was there any abstention or him asking
6 permission from the rest of the House?

7 A. The journal does not reflect that there was.

8 Q. Okay. I'm going to hand you what's been marked as
9 State's Exhibit Number 6. Could you identify that?

10 A. The first page is a copy of the journal of the House
11 on the 73rd legislative day. Turn the page. April 27, 2023.

12 Q. And what was the bill before the legislature there?

13 A. The -- there was consideration of conference
14 committee report on engrossed Senate Bill 2003. To follow up
15 -- your previous question, a bill to provide an appropriation
16 for defraying the expenses of the Attorney General.

17 Q. Okay. That's the Attorney General budget bill in
18 2023?

19 A. That's correct.

20 Q. And what did -- what was Representative Dockter's
21 status there?

22 A. Representative Dockter was absent and not voting.

23 Q. Okay. So he wasn't present there that day. He didn't
24 -- if he was there, he would have to vote or stand up?

25 A. This would indicate he was not present in the chamber

1 when the vote was taken. I can't tell from this whether he
2 was present when the roll was taken at the beginning of the
3 session.

4 Q. So for some reason he skipped the AG budget bill?

5 A. He was not present for that vote.

6 Q. In 2023?

7 A. Correct. And I'm going to hand you what's been marked
8 as State's Exhibit Number 8. Can you identify this?

9 A. This is also a House journal page from Tuesday, April
10 11, 2023.

11 Q. And does that have a budget bill number?

12 A. It has a bill -- House Bill 1004 in which the second
13 reading was occurring after -- this is a motion to concur in
14 the amendments to the -- to the previous chamber so in its
15 second reading of the bill.

16 Q. Okay. And was the bill voted on, the appropriation
17 bill?

18 A. The bill was voted upon, yes.

19 Q. And what was Representative Dockter's vote that day?

20 A. Representative Dockter voted yes.

21 Q. Did he ask for -- did he stand up under Rule 321 and
22 say, hey, I got a building that is paid for by this lease or
23 anything?

24 A. The journal does not reflect that.

25 MR. ERICKSON: Okay. Thank you. Your Honor, that's all

1 the questions I have.

2 THE COURT: Mr. Suhr, do you have any questions?

3 MR. SUHR: I do, Your Honor. Thank you.

4 CROSS-EXAMINATION

5 BY MR. SUHR:

6 Q. Mr. Bjornson, you said you're the Executive Director
7 with the Legislative Council.

8 A. Mr. Suhr, I'm the director, just not executive
9 director.

10 Q. Okay. How long have you been with the Legislative
11 Council?

12 A. I've been with the Legislative Council since the
13 summer of 1988, so almost 36 years.

14 Q. And in that time, what different hats have you worn
15 in your involvement with the Council?

16 A. I began in 1988 as counsel, just a general attorney
17 position. I eventually became assistant coordinator, then
18 code reviser. I believe I was assistant -- or I was legal
19 division director, and then director.

20 Q. And when did you become director?

21 A. I became director -- I was appointed May of 1988.
22 Took position -- took the position in September of 1988 --
23 excuse me, 2018, not '88.

24 Q. Okay. So you've been the director now for about six
25 years?

1 A. Approximately.

2 Q. You've described you're, essentially, you're staff
3 for the legislature; correct?

4 A. That is correct.

5 Q. Now, I know that the legislature only meets 80 days
6 every odd year, but the Legislative Council works every day
7 year round; is that correct?

8 A. That is correct.

9 Q. You work with interim committees?

10 A. Yes, we do.

11 Q. Which are committees that do work of the legislature
12 while the session is not in place?

13 A. Yeah, that's correct. We have about 27 interim
14 committees working right now.

15 Q. And, you know, just because some jurors may not be
16 familiar with what the the Legislative Council does, on a
17 day-to-day basis what are some things that the the staff of
18 the Legislative Council do for the legislature?

19 A. As Legislative Council staff, we provide non-partisan
20 staff services to the Legislative Assembly, the Legislative
21 Branch, the Legislative Committees. As part of that, we have
22 a legal division that has attorneys that draft bills, do
23 research, provide counsel to the -- to the Committees. We
24 have a staff of accountants that do the budget work for the
25 legislature. We have information technology staff that

1 support the legislature and the staff with respect to all IT
2 issues. We have a legislative library and other
3 administrative support personnel. We're the only staff for
4 the legislature. They do -- they do not have personal staff.

5 Q. So would it be fair to say that having been with the
6 Legislative Council for 36 years, you've been an active part
7 of each legislative -- each legislative assembly in that
8 time?

9 A. That would be correct. My first legislative session
10 was 1989.

11 Q. And you've mentioned some House Rules. There's House
12 Rules and there's Senate Rules; is that right?

13 A. That's correct.

14 Q. What is --

15 A. And there are joint rules.

16 Q. What is the difference between them?

17 A. Each chamber adopts rules of procedure for their
18 operation during the legislative session. As we mentioned,
19 we're a bi-annual legislature. They meet limited amount of
20 time, 80 days every 2 years. They are citizen legislators
21 that come to Bismarck and that they need rules to operate by.
22 So they -- they -- each chamber adopts rules and then they
23 adopt joint rules that both chambers have to approve
24 together.

25 Q. Now, Mr. Erickson referenced an Ethics rule,

1 Legislative Ethics Rule 1003; correct?

2 A. That is correct.

3 Q. And what -- what is your understanding of Ethics Rule
4 1003? What does that -- what does that say?

5 A. Joint rule -- I'm trying to remember. It's not in
6 front of me, but Joint Rule 1003 -- there's Joint Rule 1001,
7 1002, 1003 and 1004, I believe. 1003, as I recall is the one
8 that Mr. Erickson asked me about, is a section that basically
9 says, as a legislator, be aware of these constitutional and
10 statutory provisions that apply to your service as a
11 legislator.

12 MR. SUHR: Your Honor, could I have access to the
13 monitor to publish the text of this?

14 THE COURT: Yes.

15 MR. SUHR: I have it up in my laptop and I think I'm
16 plugged in.

17 THE COURT: Okay.

18 MR. SUHR: This one's not working?

19 COURT REPORTER: No.

20 MR. SUHR: Okay. Well, we'll do our best without the
21 visual help, but would it be fair to say that House Ethics
22 Rule 1003 lists a number of criminal statutes that every
23 legislator is expected to familiarize themselves with?

24 A. Yes.

25 Q. Okay. And that would include the statute in this case

1 12.1-13-02; correct?

2 A. Correct. That's correct.

3 Q. Okay. Now, you talked about the specific House rules.
4 What is the difference between the Ethics Rule that you've
5 just described, 1003 and the House Rules?

6 A. 1003, as I recall, is a Joint Rule. It's a rule that
7 was done by both chambers of the legislature so the House
8 Rules and the Senate Rules are, generally, they're the same.
9 They operate under the same process, but they adopt some
10 rules that should apply uniformly between the two Houses and
11 each chamber approves them separately, but they have to be
12 the same. So this is a joint rule that applies to both
13 chambers.

14 Q. And then there are House Rules and Senate Rules. The
15 House Rules apply to the House and the Senate Rules apply to
16 the Senate; is that right?

17 A. That is correct.

18 Q. Now, we've heard about House Rule 321, which I'll be
19 asking you a few questions about, but tell me how these House
20 Rules come to be. What's the process for the House Rules?

21 A. The rules are specific to each legislative assembly.
22 Meaning, we're on a 2-year cycle. Each 2 years we have a new
23 assembly. The -- before the assembly meets in January of each
24 odd number of year, there's what's called an organizational
25 session, about a 3-day session where the legislature

1 organizes itself, selects its leadership and begins to get
2 ready for the full session.

3 During that period, they review their rules and
4 procedure. The rules generally carry over from the previous
5 session, but during the interim process that you mentioned,
6 there is a committee that considers potential changes to the
7 rules. If they decide that they want to add a new rule or
8 amend a rule, it goes to this committee and then it goes to a
9 rules committee in each chamber. So there's a procedural
10 committee called the House Procedural Rules Committee and the
11 Senate Rules Committee. They will then bring that
12 organizational session, consider any potential changes to the
13 rules, they approve it. They send it to the full body in each
14 house, the Senate and the House and they vote upon those
15 rules to adopt them to guide their actions for that session.

16 Q. So an individual legislator like Jason Dockter, they
17 can't just sit down and write a rule and say, this is what I
18 want the practice to be and make it a rule. It goes through a
19 process; correct?

20 A. That is correct.

21 Q. And that process involves bipartisan, meaning, both
22 Republican and Democrat input?

23 A. That is correct.

24 Q. And votes are taken on whether a certain rule
25 amendment or a rule should be in effect?

1 A. That is also correct.

2 Q. So there's a structured process to how these rules
3 come to be?

4 A. That is correct.

5 Q. How long -- and how long have the House rules, in
6 particular, been around?

7 A. My assumption is that there have been rules -- under
8 the Constitution, each house has the ability to adopt rules
9 to guide their their procedure, so I assume they've had rules
10 since the First Assembly. I have rule books in my office that
11 that date back to the 1950s.

12 Q. And if there's a rule in the House Rules, is there
13 typically, in your experience, a very similar or mirror rule
14 to that effect in the Senate?

15 A. Yes, almost always.

16 Q. Okay. And that's so that the two chambers are
17 functioning in a similar fashion?

18 A. That is correct.

19 Q. So how -- you said that you've got books in your
20 office that show these house rules have been around since the
21 50s?

22 A. That is correct.

23 Q. How about specifically House Rule 321, do you know
24 how long that's been around?

25 A. Some form or fashion it goes back to the 50s. They

1 were numbered differently then. I know that this particular
2 rule is in the rule books -- all the rule books that I have
3 in some fashion, yes.

4 Q. Does a legislator have the discretion not to follow
5 one of these rules?

6 A. Well, you're asking a lawyer a question that I can --
7 but, yes, they -- I mean, no, they don't have the discretion
8 to not follow them. If they don't follow them, they will be
9 called to account by the presiding officer in the chamber or
10 -- everybody has discretion to do something, but the rules
11 are mandatory to be followed.

12 Q. So these rules are mandatory for legislators and if
13 they don't follow them, they can be held accountable?

14 A. That is correct.

15 Q. Now, I want to talk specifically about Rule 321. You
16 -- I'd hoped to be able to publish it, but as is often the
17 case in court, technology doesn't always cooperate with
18 lawyers so 321 -- and Mr. Erickson asked you about this,
19 provides that if a member is present in the House, they shall
20 vote. That's the starting point; correct?

21 A. That is correct.

22 Q. And if, however, they have a personal or private
23 interest in the subject matter of the vote, and if I'm
24 understanding this correctly, they can bring that to the
25 attention of the floor, so we're talking about the House

1 floor; right?

2 A. That is correct.

3 Q. And then the house floor decides whether or not that
4 particular member will or will not be allowed to vote; is
5 that right?

6 A. That is correct.

7 Q. And a personal or private interests means an interest
8 that affects them directly, individually, uniquely and
9 substantially; is that correct?

10 A. That is also correct.

11 Q. In the 36 years that you've been involved with the
12 with the Legislative Council, what is your understanding of
13 direct, individual, unique and substantial?

14 A. My understanding of is it's -- it would be something
15 that would affect them in a -- in a way that affects nobody
16 else and is of great significance.

17 Q. Okay. So, for example, if a bill, a budget bill,
18 we're calling it an appropriations bill, but that's
19 essentially -- it's a budget; right, an appropriations bill?

20 A. That's correct.

21 Q. Funds an agency. So if a budget bill were to give
22 money directly to Jason Dockter, name him or his business in
23 the bill, would you say in your 36 years that's a direct,
24 individual, substantial and unique example?

25 A. If it named him directly, yes, I would say that would

1 clearly be an individual interest.

2 Q. How frequently have you seen a legislator stand up
3 and assert the potential conflict envisioned in Rule 321?

4 A. It is infrequent. During the last legislative
5 session, I am aware of a couple. Certainly, fewer than 5,
6 maybe 2 or 3 or that's been sort of the common number, I
7 think. In part because they are citizen legislators, you
8 know, farmers, teachers, you know, nurses, whatever, so --
9 insurance agents. They're going to vote on bills. They may
10 even introduce bills that relate to -- a teacher might
11 introduce a bill that relates to education and in all
12 likelihood, a teacher is probably going to have -- be seated
13 on the education committee because of that expertise. So it's
14 something that doesn't just affect say that teacher. It
15 affects all teachers or it effects of a greater number of
16 people than just one.

17 Q. So it's not just that one legislator?

18 A. Correct.

19 Q. Okay. You used the term citizens legislature. Is
20 that a term of art coined within your vernacular or is that
21 referenced somewhere?

22 A. Well, it's -- I don't think it's referenced in our
23 Constitution, but it's -- it's certainly a term that I use
24 frequently to remind people that, you know, these are not the
25 legislators that are going to Washington D.C. These are the

1 people that are coming from from, you know, Edinburgh and
2 Wilton and Grafton to Bismarck for 80 days every 2 years and
3 the rest of the time they're doing something else.

4 Q. So Mr. Erickson introduced through you a number of
5 bills. I would like you to take a look, first of all, Mr.
6 Bjornson, at Exhibit 5, if you have those.

7 THE COURT: You have to come and get them from me, Mr.
8 Suhr. How many do you -- you want 5 through 8?

9 MR. SUHR: Yes.

10 Q. (Mr. Suhr continued questioning.) Mr. Bjornson, I
11 direct you first to exhibit 5. That's been introduced and
12 received as the Senate Bill 2004, which is the 2021 Health
13 Budget Bill; correct?

14 A. That is correct.

15 Q. And attached to that -- so you have the House journal
16 and you have the bill; right?

17 A. That is correct. The bill the -- the final version of
18 the bill, yes.

19 Q. Okay. So the House journal is sort of the record of
20 of the votes?

21 A. That is correct.

22 Q. The floor activity and then the bill itself is the
23 bill that they voted on in that capacity?

24 A. That is correct.

25 Q. Okay. So with respect to Senate Bill 2004, which is,

1 again, the 2021 Health Bill, that was on April 29th of 2021;
2 is that right?

3 A. That is correct.

4 Q. How many total votes were there on that bill?

5 A. You mean how many people voted on it or how many
6 times was it voted upon?

7 Q. If you add the total number of yays and nays, what's
8 the total?

9 A. There were 88 total votes cast, and there were --
10 that would make 6 members absent and not voting.

11 Q. And Mr. Dockter did vote, yes on that, did he not?

12 A. That is correct.

13 Q. So he was 1 out of 88 votes?

14 A. Correct.

15 Q. What was the total budget for the Health Department
16 in 2021?

17 A. The total budget appears to be 180,000,868 -- oh,
18 nope. Excuse me. I'm a line off there and I need to -- well,
19 yeah, that's the total of all funds, correct. \$180,000,000.
20 Almost 181,000,000.

21 Q. Okay. So he was 1 out of 88 votes on \$180,000,000
22 budget?

23 A. Correct.

24 Q. Does the bill mention Jason Dockter -- I mean, I'm
25 not talking about the vote, of course, that Representative

1 Doctker voted, but does the actual bill appropriate any money
2 to Jason Dockter?

3 A. No.

4 Q. Does it appropriate any money to Stealth Properties?

5 A. No.

6 Q. Does it mention the Burlington address?

7 A. I do not see it, no.

8 Q. Okay. Refer you now to State's Exhibit 6. This is the
9 Senate Bill 2003. It's the Attorney General's budget?

10 A. That's correct.

11 Q. For 2023 that Jason Dockter did not vote on this at
12 all; correct?

13 A. That is correct.

14 Q. Okay. And just to be clear, does that bill reference
15 Jason Dockter in any way?

16 MR. ERICKSON: Your Honor, I think I could save time
17 by just stipulating that no legislative bill in the history
18 of North Dakota has ever named a person like that or a
19 business and it never will.

20 MR. SUHR: I don't think Mr Erickson can testify to
21 that. We're talking about these bills.

22 MR. ERICKSON: I'll stipulate to that, so he doesn't
23 have to ask it all the time. It's never going to happen.

24 THE COURT: He says he'll stipulate that Mr. Dockter's
25 name is not in any of those bills.

1 MR. SUHR: If he'll stipulate that his -- that neither
2 Mr. Dockter, nor the business, nor the Burlington building is
3 in any of these bills in any way?

4 THE COURT: Named in any of the bills.

5 MR. ERICKSON: And never will be.

6 THE COURT: Okay. So that -- you'll stipulate, Mr. --

7 MR. ERICKSON: Yes. Yes.

8 THE COURT: Okay. Thank you. Ask your next question,
9 Mr. Suhr.

10 MR. SUHR: Thank you.

11 Q. (Mr. Suhr continued questioning.) Mr. Bjornson, if
12 the kind of conflict that's being alleged here came up every
13 day in the legislature and and legislators like Mr. Dockter
14 had to stand up and seek a conflict resolution every time
15 this happened with a citizens legislature, what would be the
16 impact on the operation of our legislature?

17 A. Could I ask you to rephrase or ask me that question
18 again so I follow you?

19 Q. Sure. It's being alleged that Jason Dockter shouldn't
20 have voted on any of these bills because the Burlington
21 address was being leased to -- was purchased by and being
22 leased to the State through Jason Dockter's entities. It's
23 being alleged he should have stood up and said I don't think
24 I can vote on this. Okay. You understand that's the
25 allegation?

1 A. I do.

2 Q. We have a citizens legislature?

3 A. We do.

4 Q. How does Mr. Dockter's involvement here if he stands
5 up and legislators like him stand up with this kind of an
6 involvement and recuse themselves from voting or asked to be
7 recused, how does that impact the operation of the
8 legislature on a day-to-day to do its business?

9 MR. ERICKSON: I guess I'm going to object. You said
10 this kind of a -- I don't know how Mr. Bjornson knows this
11 kind of involvement.

12 MR. SUHR: Well, Mr. Erickson clearly doesn't want the
13 answer to this question, so I'll rephrase it.

14 THE COURT: Oh, I -- I -- yeah, you can rephrase, but
15 we're going to have to lay some foundation if he's going to
16 know what all the legislators do for a living, how many times
17 it's going to cause a problem, so --

18 Q. (Mr. Suhr continued questioning.) Mr. Bjornson,
19 you've been with the Legislative Council for 36 years?

20 A. Almost.

21 Q. Okay. How many votes have you seen taken in that
22 time?

23 A. Well, generally there are in the neighborhood of 900
24 to a thousand or more bills each of those -- each session.
25 Each bill that's finally adopted amounts to probably 5 to 600

1 bills. Each of those has at least 1 vote in each chamber.
2 Sometimes if they -- the chambers don't pass the same
3 version, they go back and we have a second vote, so it's
4 possible there could be 4 or more votes on each bill, so I'm
5 just going to say thousands, you know, thousands.

6 Q. Okay. With a citizens legislature, how common is it
7 for any one legislator to have a tangential or some interest
8 in the subject matter of a given bill?

9 A. I expect with a tangential or some sort of interest
10 frequently because like I said, if a person's a teacher,
11 they're going to vote on education bills. If they're an
12 insurance agent, they'll vote on insurance bills, so it
13 happens, yes.

14 Q. And if you have a legislator with that kind of an
15 interest and every time one of these citizen legislators has
16 to stop proceedings to address this potential conflict, how
17 does that impact the operation of the legislation?

18 A. I would say it would it would slow the process. They
19 have 80 days which they can work every 2 years, so it would
20 certainly make it -- right now we're, you know, you can see
21 these were in the 70 -- 73rd and 76th day, so we get to the
22 end generally most sessions.

23 Q. Based on your 36 years with the Legislative Council,
24 had Jason Dockter stood up and raised a possible conflict
25 based on your experience and your involvement, would he have

1 been allowed to vote?

2 A. Historically, I would say yes. Typically, when
3 somebody stands up and I think there were, like I said, just
4 2 or 3., I believe there are 2 in the House last session and
5 and in both cases they were -- there was an immediate motion
6 by a member to allow that person to vote, and that's a
7 general process. I'm unaware of any cases, but I didn't -- I
8 can't go back 36 years, but I'm not aware of any cases in
9 which they -- there's -- that's not the process, a motion to
10 allow them to vote.

11 Q. So based on what you know of this case and would you
12 agree you have a fairly good knowledge of the facts of the --
13 of the allegation here?

14 A. I understand what's going on, yes.

15 Q. You believe he would have been allowed to vote?

16 A. I believe there would have been a motion to allow him
17 to vote, yes

18 MR. SUHR: Nothing further, Your Honor. Thank you.

19 THE COURT: Mr. Erickson.

20 MR. ERICKSON: Thank you, Your Honor. Could I have the
21 leases, Your Honor.

22 THE COURT: Yes. Just 2 and 3?

23 MR. ERICKSON: Yes. State's Exhibits 2 and 3.

24 REDIRECT EXAMINATION

25 BY MR. ERICKSON:

1 Q. Mr. Bjornson, you were kind of used for something
2 that was off the turf of why I called you here. You were
3 basically to put in the record, but there is, obviously,
4 tangential impacts; right?

5 A. Yeah.

6 Q. To a legislator that farms. Legislature passes
7 something in general for farm -- helping farmers or roads
8 that helps a farmer; right?

9 A. Correct.

10 Q. Is that any different, do you think, under these
11 rules that somebody gets a no bid contract with a State
12 agency that allows them to build -- buy a multi-million
13 dollar building and then use their own construction companies
14 to add millions of dollars more that they're going to get
15 paid by the State through leases worth millions of dollars.
16 Specifically to them, not in general. Is that different than
17 a tangential interest?

18 MR. SUHR: Your Honor, I think I'll object as to the
19 form of the question. Second of all, it assumes facts not in
20 evidence. Previous testimony was that the OMB bidding
21 requirements do not apply to a private landlord. Mr.
22 Erickson's question presumes that you had to have an open
23 bidding process. That is not what was testified to earlier.
24 Secondly, I object to the form of the question as being
25 argumentative.

1 THE COURT: Overruled. He can answer.

2 A. (Witness continued.) I don't --

3 Q. Let me reframe it easier. We have to use common sense

4 in all this stuff; right?

5 A. Right.

6 Q. Teacher gets elected, bill comes in that affects

7 teachers in general. That doesn't mean they're conflicted and

8 not working on that; right? But coming in and an

9 appropriation specifically worth a ton of money for you,

10 that's a little different than tangential, isn't that?

11 A. It could be. It may be.

12 MR. ERICKSON: All right. Thank you. That's all I

13 have, Your Honor.

14 THE COURT: All right. Thank you. And this witness

15 can be released from his subpoena?

16 MR. ERICKSON: Yes, Your Honor.

17 MR. SUHR: No objection.

18 THE COURT: All right. Thank you. That means you can

19 stay or you can leave. It's up to you. All right. Have a good

20 day.

21 Mr. Erickson, do you have any other witnesses?

22 MR. ERICKSON: Josh Gallion, Your Honor.

23 THE COURT: Okay. I am going to take a break though

24 first, our first afternoon break before we start. I -- let's

25 take a 15-minute break. We'll come back at 2:25.

1 Jurors, I'm going to read the admonishment to you again.

2 (Admonishment given.)

3 THE COURT: Thank you.

4 (Recess taken.)

5 THE COURT: Reopen 08-2023-CR-3618. We are back from
6 our break. The jury is seated in the courtroom. Mr. Erickson
7 you were going to call your witness.

8 MR. ERICKSON: Josh Gallion, Your Honor.

9 THE COURT: All right. You want to come forward? We'll
10 swear you in.

11 (Witness sworn in.)

12 THE COURT: Have a seat in the chair in front of you
13 that I don't think you move so you may have to scoot up a
14 little. As soon as he's ready, Mr. Erickson.

15 MR. ERICKSON: Thank you.

16 DIRECT EXAMINATION

17 BY MR. ERICKSON:

18 Q. Sir, your name is Josh Gallion and you have been
19 elected by the people of North Dakota to be our State
20 Auditor; is that correct?

21 A. That's correct.

22 Q. How long have you been so?

23 A. Since January 1 2017.

24 Q. Can you just give a little background that you had
25 before that.

1 A. Prior to being State Auditor, I worked with the
2 Public Service Commission as their Chief Financial Officer. I
3 spent time at the Department of Transportation and before
4 that I also worked in private sector for an industrial supply
5 company and I'm a United States military veteran.

6 Q. Okay. And what does the State Auditor do?

7 A. State Auditor is responsible for conducting
8 performance audits, financial statement audits. We do some
9 special reviews and special investigations, compliance
10 reviews of state government, local government, and our
11 division that looks at federal leases or mineral leases on
12 federal lands.

13 Q. Okay. And how does someone get an audit if they want
14 one?

15 A. North Dakota Century Code requires routine audits of
16 government entities. There's also the Legislative Audit
17 Fiscal Review Committee who can order an audit and then
18 there's also ways for the citizens to do a petition audit. I
19 also have the authority to order audits as necessary.

20 Q. Okay. Related to the building at Burlington Avenue,
21 the subject matter of this case, how did your involvement
22 come about?

23 A. The North Dakota Legislature or the Legislative Audit
24 Fiscal Review Committee ordered that investigation.

25 Q. Okay. And what were they asking you to do?

1 A. Initially, they wanted me to do a performance audit
2 and the timeframe they were trying to get us to do this in
3 was 90 days, which is not feasible and so through our
4 discussions, we agreed to do kind of an abbreviated process
5 which would be one of our more special investigations is what
6 we'll call them.

7 Q. So it's not technically an audit?

8 A. It is not an audit.

9 Q. Okay. You were asked by a committee to get them some
10 understanding of what happened with this building, basically?

11 A. Correct.

12 Q. And did you use generally accepted accounting
13 practices to get to that investigation or what would be --
14 what couldn't you do?

15 A. The full audit -- by not doing the performance audit,
16 allows us to exclude some of the required procedures.
17 However, when the team conducted this investigation, we did
18 use some audit polices and procedures within it.

19 Q. Okay. And that's a legislative committee. Is Jason
20 Dockter on that committee.

21 A. No.

22 Q. Do you know Jason Dockter?

23 A. I do.

24 Q. And he's in court here sitting next to his attorney?

25 A. Yes.

1 Q. Okay. So when did you have to -- when did you -- when
2 were you asked by the Legislative Committee to look into
3 this?

4 A. That dates in the report. I want to makes sure --
5 sorry. I believe it was in 2022.

6 Q. And that's an interim committee at that point?

7 A. Correct.

8 Q. So that's before the 2023 session?

9 A. Yes. Sorry I'm trying to find it.

10 Q. Okay. All right. Let's move on. Do you have some --
11 you as a state agency has to -- you have to put in your own
12 bill for appropriations to get funded by the legislature;
13 correct?

14 A. No. Our -- we submit our budget request to the Office
15 of Management and Budget. The Office of Management and Budget
16 prepares those appropriation bills and those get submitted to
17 the legislature.

18 Q. Okay. You're generally familiar with how
19 appropriations work though?

20 A. Correct.

21 Q. And the state agency, the executive branch, asks for
22 x amount for employees, vehicles, whatever? The legislature
23 decides or not on that appropriation. Is that how that's
24 supposed to work?

25 A. Correct.

1 Q. Then when you come in after and try to audit what
2 happened with those appropriations, how does that work?

3 A. So we will look at the way those funds were used, if
4 they followed legislative intent. So we will audit based on
5 those appropriations and then the decisions that were made
6 with those funds.

7 Q. So when you looked into this particular building and
8 this particular matter, primarily it's between the Attorney
9 General's Office and Mr. Dockter and his partners. How did
10 you determine how they got funded for this building?

11 A. We looked at those appropriations and there was not
12 an appropriation listed for a capital project.

13 Q. And that's how it would be described if there was. It
14 would just say capital project and a number?

15 A. There would likely be some kind of a capital project
16 appropriation used for a large project, yes.

17 Q. Have you ever seen it where they actually name a
18 person? This is going to Ladd Erickson. This is going to
19 Jason Dockter? I mean, do they do that in the bill?

20 A. No.

21 Q. They just say a capital appropriation and then you
22 explain it to the committee. His is what we're going to do.
23 We've got a big building issue going on?

24 A. Correct. They would list -- you know, I mean in a
25 situation like this, the Attorney General's Office might

1 identify that they have a need and then the legislature would
2 appropriate dollars if they agreed with that need and then
3 those funds would go into -- if it's a building, it would be
4 a capital project line.

5 Q. When you looked into how this building got funded,
6 Burlington, what did you find within the Attorney General's
7 budget on how they paid for this?

8 A. So we looked at the amounts that was paid above the
9 allowance on the contract, and I think the payment was around
10 1.342 million dollars and then we evaluated where did those
11 funds come from and I believe it was from four different
12 divisions there.

13 Q. Did you describe those in your report?

14 A. I did.

15 Q. And are those described on page 13?

16 A. They are.

17 Q. And would you just look at the bottom block. Would
18 you announce your findings that you found on how this got
19 paid for?

20 A. This --

21 MR. SUHR: Your Honor, I'm going to object. If he's
22 going testify from the contents of a report not offered or
23 received into evidence. He can testify from -- he can use the
24 document to refresh. He cannot read from the document into
25 the record.

1 THE COURT: Mr. Erickson?

2 MR. ERICKSON: I can rephrase, I guess.

3 THE COURT: Thank you.

4 Q. (Mr. Erickson continued questioning.) Did you find so
5 specific areas that were used -- that were used to pay for
6 this building?

7 A. Yes. They used general operating dollars within the
8 Attorney General's Office. They pulled it from the law
9 enforcement division, from the criminal justice system and
10 then they also pulled money from the lottery.

11 Q. And what brought about the LAFRC, we call it LAFRC,
12 that committee that asked you to look into this and that was
13 -- that was cost overruns. Did you look into that?

14 A. We attempted to look into cost overruns. What we
15 tried to identify is, you know, when you use a term cost
16 overrun, there should be a base plan and so we tried to
17 identify what was that -- what was that base project? But we
18 could never get the documentation for the original plan, you
19 know, leading to, you know, change orders or cost overruns.
20 We were trying to get to that information but we never could.

21 Q. Okay. So when we use cost overruns, I think - can you
22 describe what the 1.3 million, what was that?

23 A. The 1.342 million was the portion of the building
24 costs for the remodeling and the build out for the addition
25 that the contractors charged to the Attorney General

1 General's Office. The total invoice was 1.742 Million;
2 however, they didn't have the full amount to pay. So the
3 Attorney General's Office paid 1.342 million, pulled it from
4 the different areas that we provided. The other 400,000 was
5 intended to be part of an additional lease, but all of that
6 was above and beyond the amounts in the lease agreement that
7 the contractor was going to pay for remodeling and additional
8 costs.

9 Q. So, in substance, what your investigation found was
10 1.3 million was taken from things appropriated for other
11 reasons and put into this building?

12 A. Correct.

13 Q. That wasn't before the legislature when the
14 appropriation bills came in?

15 A. Correct.

16 Q. And then you're still short money to pay for the cost
17 of this building as it was at the time.

18 A. Correct.

19 Q. Okay. And how much are we short?

20 A. The 400,000 was still owed and that was to be done
21 through a lease addendum that they were going to add on to
22 the first, I believe it was 5 years.

23 Q. Okay. So the 400,000 would be paid for 5 years by
24 adding to the cost of the lease?

25 A. Correct.

1 Q. Would that get back -- how would that affect the per
2 square footage in the lease?

3 MR. SUHR: Your Honor, I guess I'm going to object as
4 to what the relevance of the line of questioning is. I
5 understand trying to establish the dollar figures, but we're
6 getting into nuances of the auditor's report. That's not what
7 this case is about. The case is about a vote, so I object as
8 to relevance.

9 THE COURT: I'll give him some leeway. He can answer.

10 A. (Witness continued.) Can you repeat that one more
11 time?

12 Q. Okay. Let me try to be more pointed. You know who
13 John Boyle is?

14 A. I do.

15 Q. He offered this jury some testimony that he rejected
16 a lease that was too much -- too expensive. Okay. Then he
17 later signed the lease that was in line with market rates.
18 Now, we have to incorporate 400,000 into that cheaper lease.
19 Does that put it back up to where it's not a fair deal to the
20 taxpayer?

21 A. It increased the lease cost and at the end the
22 Attorney General's Office had approximately 2,600 square feet
23 less than what they originally had before the move.

24 Q. So they ended up getting smaller and paying more?

25 A. Less space, more cost.

1 Q. And did you look at how the contracting was done and
2 where the funding that was sending over to the contractors in
3 part of your report?

4 A. We evaluated the information that we were provided.
5 The Attorney General's Office had collected a lot of
6 information from the contractors. They gave all of that to
7 us. We were also able to collect some additional information
8 and what we were trying to understand, because there was no
9 plan, original plan, for the the project, we were trying to
10 make sure that the amount being charged to the Attorney
11 General's Office was valid because the total amounts -- the
12 allowances for the build out and the remodel was around 3
13 point something million dollars, and then there was the 1.742
14 above and beyond that, so it was around 5 and a half million
15 dollars for the cost of this. We were trying to make sure
16 that those were appropriate.

17 Q. So was there a main contractor that you looked into
18 when you audited where the money went?

19 A. We evaluated several of them. There were a couple
20 that stood out that we had a difficult time trying to
21 determine the validity of those. Frontier Contracting was one
22 of those where we saw transactions. We saw amounts coming out
23 of the building loan, but we could not obtain documentation.

24 Q. And on page 15 of your report, Auditor --

25 A. Yes.

1 Q. Did you specifically look into what Frontier
2 Contracting's involvement was here?

3 A. We did evaluate Frontier Contracting. We did some
4 questioning whether or not there was a contractor's license
5 based on the type of work and in the report we do identify
6 that they didn't possess one.

7 MR. SUHR: I'm going to object, Your Honor. He's
8 testifying from the report. Hearsay.

9 MR. ERICKSON: Yeah, that's fine.

10 THE COURT: All right. You can rephrase, Mr. Erickson,
11 please.

12 Q. (Mr. Erickson continued questioning.) As part of your
13 you're looking into Frontier, did you determine its owners?

14 A. I did.

15 Q. Who are the owners?

16 A. The listed owners were CJ Schorsch and Jason Dockter.

17 Q. Okay. And they're the ones that are getting the money
18 for the changes to the building. That's where you're
19 following the receipts.

20 A. Correct.

21 Q. Was it clear, though, from your investigation on the
22 forms they provided or you could obtain how this money
23 corresponded with the work?

24 A. No. The invoices from Frontier Contracting were vague
25 and we also had other invoices from other vendors for very

1 similar services. And when we looked at one of them,
2 particularly, it was for the floor covering and the square
3 footage of the carpet was already included in our -- in our
4 documents from a local floor covering company. However,
5 there's also a Frontier Contracting invoice for floor
6 covering.

7 Q. Okay. So you couldn't get to a bottom line on the
8 costs and why they were done?

9 A. No.

10 Q. Because of the lack of documentation?

11 A. Correct.

12 Q. And then did you actually go inspect the building or
13 talk to people down there?

14 A. We did. We did -- we did a walk through and we did
15 visit with division directors at the -- at the site.

16 Q. It's been represented in this case that one of the
17 goals was to get the Attorney General divisions all under one
18 roof. Did that happen?

19 A. No. Yes, the initial plan was to bring all of the
20 divisions together that were out of the Capitol into one
21 location. The plan initially did not include the fire marshal
22 and I think today the Medicaid Fraud Control Unit is not down
23 there and I believe there's one other unit that did not get
24 into the building.

25 Q. And that was because?

1 A. Lack of square footage.

2 Q. It's too small?

3 A. It's too small.

4 Q. Was there also concerns about the way the building
5 ended up with after the construction as far as usable space?

6 A. Some of the concerns that were mentioned to us was
7 lack of offices. In previous space, you know, supervisors
8 would have their own offices so that they could interact with
9 employees. Now they were in cubicles. There were issues that
10 they brought to us regarding space for the administrative
11 staff. And then there was issues with the way the records
12 storage area was handled, which wound up being just in the
13 middle of a large room for all of the case files.

14 Q. So that Sykes building -- or that building was Sykes
15 at one point, a big call center and you went and toured it
16 yourself?

17 A. I have.

18 Q. So you -- basically you got a big room with a bunch
19 of cubicles and file cabinets for all sorts of divisions
20 mixed together now?

21 A. In one -- just in the middle of the room.

22 Q. And that's -- why did that happen?

23 A. I don't know why they wound up like that.

24 Q. Is it possible they just ran out of money because
25 this wasn't appropriated in the first place.

1 MR. SUHR: Objection. Calls for speculation. Asked and
2 answered.

3 THE COURT: Sustained.

4 MR. ERICKSON: That's all I have, Your Honor.

5 THE COURT: Mr. Suhr, do you have any questions?

6 MR. SUHR: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MR. SUHR:

9 Q. Mr. Gallion, do you remember saying that you thought
10 that your audit report was rushed?

11 A. The report is -- was done in the 90-day timeframe
12 that we were provided.

13 Q. Do you remember saying that it was rushed?

14 A. I do not recall that.

15 Q. The \$400,000 additional amount, isn't it true that
16 money actually was in the budget to cover that and never had
17 to be re-added back into an amended lease or an additional
18 lease?

19 A. Can you say that one more time?

20 Q. So you testified that there was 1.3 million that had
21 to come from various sources that you've referenced; correct?

22 A. Correct.

23 Q. And then there was an additional 400,000 that you
24 said was going to be paid in the form -- or covered in the
25 form of adding to the lease for a period of time; correct?

1 A. Yeah.

2 Q. Isn't it true that that 400,000 was actually paid?
3 That there was money in the budget and the lease never had to
4 be added to to compensate for the 400,000?

5 A. My understanding is that they started to make
6 payments on that, but that lease addendum was never signed.
7 At the time of our report, that was still pending.

8 Q. But was money found in the budget or was money
9 located in the budget to cover that 400,000?

10 A. To pay the lease agreement?

11 Q. Yes, sir.

12 A. They must have found it in the budget to make that
13 payment.

14 Q. You testified the Medicaid Fraud Unit is not at the
15 Burlington building?

16 A. At the time of the report, that was mine -- I was
17 under the impression that they were not included in that --
18 in this.

19 Q. What about today, do you know?

20 A. I don't know today.

21 Q. You testified that there was less space in this
22 building than the Attorney General previously had; is that
23 correct?

24 A. Correct.

25 Q. Okay. Have you actually examined the plans?

1 A. The team looked at all of the lease agreements from
2 before this lease and calculated the square footage and based
3 on our report at the time, it was 2600 square feet less today
4 than what they previously had.

5 Q. Do you know, however, though if pro rata, the usable
6 square footage, in the Sykes building, the Burlington
7 building, actually allowed for more access than the previous
8 building, even though it was less square footage, there was
9 more usable space because there were no dead-end hallways or
10 awkward corners?

11 A. We were not able to look at previous spaces.

12 Q. So your testimony that there was less space is based
13 on incomplete information?

14 A. It's based on the documents that we were able to see.

15 MR. SUHR: I don't have anything further, Judge. Thank
16 you.

17 THE COURT: Mr. Erickson?

18 MR. ERICKSON: No redirect, Your Honor.

19 THE COURT: Can this witness be released?

20 MR. ERICKSON: I would ask that be so.

21 MR. SUHR: No objection.

22 THE COURT: That means you can stay and watch or you
23 can go if you'd like. Thank you.

24 Mr. Erickson, do you have any other witnesses?

25 MR. ERICKSON: I do not, Your Honor. At this point the

1 State of North Dakota will rest. Thank you.

2 THE COURT: Okay. I know we just took a break, but I'm
3 going to have to speak with the attorneys for a couple
4 minutes, so I'm going to have the jury go back to the jury
5 room for probably five minutes or so. I'm going to read the
6 admonishment since you are leaving again.

7 (Admonishment read.)

8 THE COURT: Thank you. The record will reflect that
9 the jury has now left the courtroom.

10 Mr. Suhr, did you want to make any motions?

11 MR. SUHR: I would, Your Honor. Thank you. And, I
12 guess, just for clarity of record at the risk of overkill, I
13 think now that the State has rested, I'd once again renew my
14 objection to the jury instructions just for the record. I
15 would incorporate by reference to those prior objections
16 made.

17 And at this point, I would move for a judgment of a
18 acquittal under Rule -- North Dakota Rule of Criminal
19 Procedure 29 on the basis that the State has failed to
20 present a prima facie case justifying the matter be presented
21 to the jury for deliberation.

22 MR. ERICKSON: I resist, Your Honor.

23 THE COURT: Okay. Court's going to deny the motion and
24 also the renewal of the previous objections to the jury
25 instructions.

1 Mr. Suhr, do you know, is your client going to want to
2 testify or do you have witnesses you're going to call.

3 MR. SUHR: I have two witnesses that would testify and
4 Mr. Dockter will be last.

5 THE COURT: Okay. We don't -- we just took a break. Is
6 there any reason you need a break?

7 MR. ERICKSON: No.

8 MR. SUHR: Both of my witnesses are here and ready.

9 THE COURT: Okay. Why don't we bring our jury back in?

10 All right. The record -- everybody can be seated. The
11 record will reflect that the jury is now back in the
12 courtroom.

13 And, Mr. Suhr, did you want to call a witness?

14 MR. SUHR: Yes, Your Honor. I would call Lonnie
15 Grabowska.

16 THE COURT: All right. If you want to come forward,
17 we'll swear you in and then you can have a seat in the
18 witness chair.

19 (Witness sworn in.)

20 THE COURT: That chair doesn't move so you might have
21 to scoot up a little to get to the microphone. Thank you.

22 As soon as he's ready, Mr. Suhr.

23 MR. SUHR: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. SUHR:

1 Q. Good afternoon. Can you state your name for the
2 record, please.

3 A. Lonnie Grabowska.

4 Q. And what do you do for a living, sir?

5 A. I am currently the Director of the North Dakota
6 Bureau of Criminal Investigation.

7 Q. What does that mean? What do you do?

8 A. As BCI, we are the criminal investigators and
9 narcotics investigators for the State of North Dakota, so we
10 are proactive in drug work where we run 11 task forces around
11 the state and we are reactive in criminal investigations in
12 which political subdivision such as chiefs or sheriffs could
13 ask us for assistance.

14 Q. Structurally speaking, are you your own agency or do
15 you fall under the purview of another agency?

16 A. The Bureau of Criminal Investigation is 1 of 13
17 divisions under the Office of the Attorney General.

18 Q. So you're supervised or overseen by the Attorney
19 General's Office?

20 A. Correct. The Chief Deputy Attorney General Claire
21 Ness would be my direct supervisor as a division.

22 Q. How many employees does BCI have in terms of law
23 enforcement officers?

24 A. Law enforcement officers we are at 65 as of today.

25 Q. Is that around the entire state?

1 A. Correct. Around the state.

2 Q. And how many are in the Bismarck area?

3 A. In the Bismarck area we have approximately 15.

4 Q. And then I'm assuming you have office space where you
5 have clerical staff, administrative support, that kind of
6 thing?

7 A. Correct.

8 Q. Do you have any idea how many support staff you have?

9 A. Support staff we are right about 46.

10 Q. Okay. Where are you currently -- where's your office
11 currently located, Director Grabowska?

12 A. We're currently located at 1720 Burlington Drive.

13 Q. And how long have you been in there?

14 A. We have been in since 2017.

15 Q. Prior to you -- well, let me ask you this, you say
16 2017. How sure are you of that date?

17 A. I'm not. I'm sorry. I forgot about that. That's --
18 we've only been in there since 2020, I believe.

19 Q. Okay.

20 A. Yeah, that makes more sense.

21 Q. Okay. So prior to you being in the Burlington
22 space -- this is the old Sykes building?

23 A. It is.

24 Q. Just so -- the jury hears, you know, the Sykes
25 building and I think they have a better idea than they do

1 Burlington, but are all of your local staff able to fit in
2 the building?

3 A. We are currently. In the building we have a
4 approximately four cubicles that are open and one office for
5 BCI staff.

6 Q. So you have some extra space?

7 A. Correct.

8 Q. How about before you moved into the Sykes building,
9 did you have all of your staff in one locale?

10 A. We had most of our staff up at headquarters that are
11 there now and moved with us down south to the old Sykes
12 building. We do have a drug unit that's in Bismarck, but
13 that's been separate from us.

14 Q. Okay. So before the Burlington address, would you say
15 you had your staff more scattered about?

16 A. Yes. We had an actual building that was spread out
17 more there. We had kind of taken over that building over a
18 20-year time period.

19 Q. Okay.

20 A. We started in the basement and slowly purchased or
21 started renting the rest of that building at State Street
22 until we were just kind of out of room.

23 Q. So you ran out of room with where you were before the
24 Sykes building, is that a fair statement?

25 A. Correct.

1 Q. When did BCI start realizing that they needed more
2 space?

3 A. We started looking into space, I would say, probably
4 back as early as 2015 or 2017 sessions. We started working
5 with the Attorney General on our concerns that we were going
6 to eventually run out of space with our lease coming due in
7 2021.

8 Q. What kind of space options were considered when BCI
9 started looking?

10 A. When we started looking, we looked at a few options.
11 One was we were going to possibly try to build a building. We
12 went and did a little research with South Dakota to see what
13 our equivalent peer partners had there. We also looked around
14 the town a little bit to see what we had as far as options,
15 but there really wasn't a lot to look at at times.

16 Q. What -- like you said there were some buildings you,
17 considered, what buildings were those?

18 A. We did walk throughs at the old Sears building at
19 Gateway Mall. We also did a walk through of Saxvik school w
20 it was available over on, I believe, that's 19th in town.
21 Those are two locations I remember doing a walk through on.
22 Both of those were walked through by by BCI, Attorney
23 General's Office and Mr. Boyle, John Boyle, with the State
24 and both turned out to be spaces that just were going to be
25 too costly to remodel.

1 Q. So eventually you do end up in the Burlington Drive,
2 the Sykes building; correct?

3 A. Correct.

4 Q. You know Jason Dockter?

5 A. I do.

6 Q. How long have you known him?

7 A. Known Jason for probably around 35 to 36 years.

8 Q. Do you call him Jason?

9 A. Yes.

10 Q. You ever call him Doc?

11 A. I do.

12 Q. Okay. So you've known him for 35-36 years. Not going
13 to ask you how old you are, but that puts you in middle
14 school, elementary school?

15 A. It did, yes. So first time I met Jason was in middle
16 school when we went to school together and then we did sports
17 together throughout the years through high school.

18 Q. Okay. Still continue to socialize with him over all
19 of these years when you see him?

20 A. Yes. If I see Jason, we're very, very apt to go and
21 say hello to each other and see how everyone's doing within
22 our families.

23 Q. Now, as director of BCI, do you -- do you have
24 involvement when the legislative biennium is in play?

25 A. Yes, very much.

1 Q. Does that take you up to the Capitol?

2 A. It does. During most legislative sessions, I would
3 assume that the months of January and February are probably
4 the most heavy where I'm up there and I would assume that is
5 about three to four days out of the week I'm up at the
6 Capitol during those months.

7 Q. In 2019 did you have a conversation with Jason
8 Dockter up at the State Capitol about your space needs?

9 A. Yes.

10 Q. How did that conversation happen to come about?

11 A. Sure. I remember the conversation. Exactly where it
12 was in the Capitol or our outside, I do not recall exactly,
13 but it was in passing talking to Jason just to catch up on
14 how things were going. And at that point we talked about that
15 I'll be needing space for BCI and that we were looking for
16 space.

17 Q. So was it in like the common areas of the Capitol or
18 was it in a committee room or where was it?

19 A. I don't recall exactly where, but I do not remember
20 anything like it being in a committee room. Normally it would
21 have been in passing in the hallways. That's where you
22 normally run into a lot of the legislators at.

23 Q. Okay.

24 A. Jason was never on judiciary committees with me, so
25 we didn't testify in front of him on things. He was in other

1 committees. So if I did see him, it was usually either in the
2 Capitol Cafe, in the hallways or in the parking lot.

3 Q. Who was the first one to bring up BCI's need of space
4 that as still at issue in 2019?

5 A. It was probably me bringing it up first.

6 Q. Why would you bring that up?

7 A. I think just talking about how things are doing at
8 work and how things are and at that time that was one of the
9 major projects we were working on, so I believe I just shared
10 that and said we're looking for space.

11 Q. Do you remember what Jason's response was?

12 A. If I remember correctly, it was, maybe I can help
13 with that. Maybe I can help you find somewhere or make some
14 connections.

15 Q. Now, were you interpreting that as him trying to make
16 some kind of play for him to make money or what -- how did
17 you read that?

18 A. I, of course, knew Jason was a -- was a legislator at
19 the time, but at that moment, he and I talking was not
20 uncommon, so I just figured that was conversation between two
21 people who know each other and him being able to offer some
22 assistance to us.

23 Q. Did you feel like you were talking to Jason Doctker,
24 legislator or Jason Dockter, friend?

25 A. At that point I would say Jason Dockter friend

1 because that's who -- that's how we normally met and talked.

2 Q. That Jason is a legislator. He was also the campaign
3 treasurer for former Attorney General Stenegjem; correct?

4 A. He was.

5 Q. Did you feel like he was throwing his weight around
6 as former campaign treasurer for Wayne Stenehjem?

7 A. No.

8 Q. Did he help facilitate the process of you,
9 ultimately, getting the space at the Sykes building?

10 A. Yes.

11 Q. Okay.

12 A. So we were able to make a connection. There was one
13 point during the process when we were looking at the Sears
14 building and Saxvik that we talked about possibly even
15 building a building is what we would have liked to have had,
16 but it's costly. Jason looked at a few options there. Nothing
17 really panned out and then the building down by Sykes became
18 available and then we started the communications between
19 Jason and the, then, Chief Deputy Attorney General, Troy
20 Seibel, and which include also a walkthrough of the current
21 space we're in.

22 Q. So when that process started, who was the first to
23 reach out to who? Between you and Jason, who reached out to
24 who first and said let's start the process?

25 A. That would have been me reaching out to him asking if

1 we could start the process to see if he or his partners had
2 any options, and then we started to include the Chief Deputy,
3 Troy Seibel, at that point, so that we could get everyone at
4 the same table to see if there was options out there for us.

5 Q. How's the space working out?

6 A. Space is adequate for us. Right? Nobody -- or
7 everybody always wants more in space, if possible and as the
8 agency grows, we're growing a bit, but it is much newer and
9 nicer than the space we were in on State Street.

10 Q. Is it performing the function it was intended?

11 A. It is, yes.

12 Q. Okay. Over the process of the building, would it be
13 fair to say, BCI is a unique agency because it's law
14 enforcement?

15 A. We are unique especially under the Office of the
16 Attorney General. We are the only sworn division under the
17 Office of the Attorney General. So, yes, we are unique within
18 the AG for sure.

19 Q. And would it be fair to say that the office space,
20 the building space that you required, needed to be customized
21 or unique to the needs of BCI? That, for example, a law firm
22 might not need?

23 A. I would have to assume that it was because we asked
24 for certain things, a certain entrance point with security
25 measures, certain mailboxes in locations where the offices

1 were in the addition of the garage, so we also needed that
2 for the storage of our equipment and firearms.

3 Q. Okay. So there were security features to the building
4 that you needed because of your law enforcement status?

5 A. Correct.

6 Q. Do you have an armory on site?

7 A. We do.

8 Q. Do you need a vault for your firearms that are stored
9 in there?

10 A. We do.

11 Q. Was that something that had to be added on?

12 A. Yes, we had the vault added off to a -- as part of
13 the garage area. We have that there along with a place to
14 store ammunition and tactical gear.

15 Q. Are you -- are you familiar with how as the process
16 was moving on, how additional needs were identified by the
17 Attorney General's Office and/or BCI?

18 A. Yes. At that time what would normally happen is if we
19 had an ask or an expansion on the current plan, I would bring
20 that concern to the Chief Deputy Attorney General, Troy
21 Seibel, and then Troy would communicate that with either the
22 property owners under Stealth, and that's how that
23 communication took place.

24 Q. So would it be fair to say that all of the
25 communications were routing eventually through the Attorney

1 General's Office?

2 A. Yes. After we initially met and started looking at
3 the building, all the architecture, plans changes and
4 updates, that was done primarily between Troy Seibel and
5 Stealth.

6 Q. So were the changes that were needed, were those at
7 the request of BCI as the needs were identified during the
8 course of the construction project?

9 A. Sure. Yes. Some of those would come up if we decided
10 that we had forgotten something or needed an extra space, we
11 would take that request up to Troy, who would then forward
12 that on.

13 Q. Were there times where you thought maybe a particular
14 feature of a plan would work and then you realized maybe
15 that's not going to be so effective and we need to change
16 things like move a wall here or a door there?

17 A. Yes. That -- and one -- kind like the mailboxes. We
18 thought we'd ordered the correct size mailboxes. We had not.
19 We had done short and we couldn't get our envelopes into
20 them, so those small type of things like that happened quite
21 often as the building is being developed.

22 Q. Okay. And were there some changes that were bigger in
23 nature and some changes that were smaller?

24 A. I would say probably the larger one was the expansion
25 of the garage area.

1 Q. What did that involve?

2 A. We had a garage area up on the north side of Bismarck
3 where we stored our evidence vehicles, our tactical training
4 gear, and all of our extra supplies because we didn't have
5 room at the 4205 State Street location, so that size garage
6 had to be mirrored on the south location. Chief Deputy
7 Attorney General at the time, Troy Seibel, indicated we would
8 not be maintaining that garage space, so we had to duplicate
9 that at the south location.

10 Q. So there were changes that came up over the course of
11 the construction project that weren't necessarily foreseen at
12 the very beginning?

13 A. Yes.

14 Q. Okay. Were there any changes or improvements on the
15 construction or renovation project that you thought were
16 frivolous?

17 A. No, it isn't a frivolous location. We've had
18 legislators down who've done walk-throughs of it and looked
19 and once we get them in, they usually ask if this is it and
20 we'll say yes. It is offices around the outside, large amount
21 of cubicles in the middle and even our files are out in the
22 open in the middle. We just didn't have enough space to have
23 a file room. We had to people in there instead.

24 Q. Did you feel any pressure to work with Jason on this?

25 A. No.

1 MR. SUHR: Thank you. Nothing further, Judge.

2 THE COURT: Mr. Erickson, any questions?

3 MR. ERICKSON: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ERICKSON:

6 Q. I have a cough today, Director. You and I have known
7 each other since the 90s. We started together back in Mandan,
8 so this is kind of old home days here; right? And how long
9 you've been director?

10 A. Since 2018.

11 Q. And before that, you were deputy director?

12 A. Correct, sir, yes.

13 Q. Okay. Under Dallas Carlson, so you're pretty
14 familiar with the appropriation process, being up at the Hill
15 during the session, getting budgets, stuff like that?

16 A. Yes. I started actively participating in the 2009
17 session.

18 Q. So you've been doing it for quite a while?

19 A. Yeah.

20 Q. So you had this initial contact with Mr. Dockter. It
21 sounded a lot like from your testimony then everything got
22 turned over to Mr. Seibel for him to work with Mr. Dockter?

23 A. Correct, yes. After Jason and I met and talked about
24 some possibilities and we started working with him on that
25 location. We did a walk through down there when NDIT had just

1 left it and Troy Seibel was there. Jason was there. CJ was
2 there and a couple of our supervisors and we did a
3 walk-through. After that walk-through, a lot of those
4 conversations went between Troy Seibel and Jason or to
5 Stealth Technologies (sic). We were involved only on updates
6 and questions if he needed something.

7 Q. Okay. So primarily Mr. Seibel, who's no longer with
8 the Attorney General's Office, but your former person you
9 answered to, took the reigns?

10 A. Correct.

11 Q. And there's quite a history here, but Mr. Seibel is
12 working out this lease and he let you and the other division
13 directors know that you got one week to let me know if you
14 got feedback because we're going to sign this. I saw those
15 emails. Do you remember that?

16 A. Yes.

17 Q. So now all these important divisions that the public
18 has at the Attorney General's Office, the Lottery, Consumer
19 Protection, BCI, you're given one week to decide if this
20 space is going to work; that's Mr. Seibel emailing you;
21 right?

22 A. Correct.

23 Q. And to say -- would it be an understatement for me to
24 say there was severe blowback from the division directors
25 that this space is totally inadequate?

1 A. Correct. There were -- there were -- there were
2 division directors that did not like the idea of moving from
3 where they were to where that space was and the idea of what
4 they saw on the plans didn't make them exactly happy to where
5 they were.

6 Q. And BCI itself expressed concerns about moving to the
7 south side of town. You -- your agents, their families
8 they're on the north side and they did not want to move the
9 south side?

10 A. There were some sworn and non-sworn personnel who
11 lived on the north side and didn't like the idea of moving to
12 the south side.

13 Q. So a week later, despite the objections, the lack of
14 square footage, the lack of this being an appropriate
15 building, Mr. Seibel and Mr. Dockter sign a lease for this
16 Burlington property for the Attorney General's Office to move
17 there later?

18 A. Correct. Troy was the one who would have signed the
19 lease on our behalf.

20 Q. And because of the blowback of all the divisions and
21 the inadequacy of the building, there's going to be
22 substantial construction to make this thing even plausible;
23 isn't that right?

24 A. There was quite a bit of construction after that.

25 Q. And to the point where we could never actually get

1 the problem solved because the Attorney General's Office ran
2 out of money; right?

3 A. I don't exactly know how much money they had
4 allocated at the time, but I don't know exactly what the
5 money difference was there.

6 Q. Well, there was no money allocated for this building;
7 correct?

8 A. Correct.

9 Q. So you were part of the victim of that; right?
10 Because your budget that was allotted to you, that had to be
11 taken away and put into the building as was other divisions
12 to get this thing rolling.

13 A. Yes. I would assume that the finance folks or the fin
14 admin crew as we call them in our division would have had to
15 have taken from the existing funds from the 13 divisions.

16 Q. Well, let's go back to your experience since 2009 of
17 being up on the Hill during the session with legislators.
18 Have you ever seen anything like this before where the
19 legislature is asked the fund law enforcement and fire
20 Marshals and all these divisions, and then they do. They buy
21 -- they buy the needs. And then after those monies are
22 appropriated, they're totally repurposed for something that
23 was never on the table at the legislature. Have you ever seen
24 anything like this before?

25 A. We are -- at my level, what I would normally do for

1 the finance site is I would go in and testify to what BCI
2 needed. That discussion would normally happen at a conference
3 committee or later. And often times we weren't part of those.
4 The AG at the time would actually bring us in if the
5 conference committee itself had a question about a BCI ask, a
6 full-time employee or an expansion of a program or something.
7 So I wasn't really involved in a lot of that level of it. So
8 I can't say that I've seen a lot of that because we're just
9 not privy to it.

10 Q. Well, you would have seen, Director -- I don't want
11 to drill into it too hard, but you would have seen how the
12 appropriation process works?

13 A. Yes.

14 Q. And important, particularly, since we're running AG
15 Office budget here, it's straight pool with legislators;
16 right? You just get in there and tell them what you need and
17 you're not puffing here. You're law enforcement, so this is
18 the deal; right?

19 A. Yeah. That was the portion that I played. If they had
20 questions about what we were asking for, I would go in and
21 give them that information. That was straightforward
22 information.

23 Q. They agree. They fund you. They give you what you
24 need. But then after the session that money doesn't get spent
25 on what was testified to. It's a capital building project

1 that's not mentioned anywhere that gets put on the -- in a
2 building that's so small --

3 MR. SUHR: Your Honor, I'm going to object. This is
4 beyond the scope of the direct exam. Director Grabowska was
5 asked about the process under which he became involved with
6 the building, the conversation that he had with Mr. Dockter
7 and then the adequacy of the building. He's getting into
8 testimony about nuances of the appropriation process in which
9 he is not in a position to testify to and testimony of
10 Auditor Gallion, so I object on the grounds of relevance and
11 lack of foundation.

12 THE COURT: Mr. Erickson?

13 MR. ERICKSON: I disagree, Your Honor. I think it's on
14 point with the testimony here.

15 THE COURT: I'll allow him to testify to his
16 knowledge.

17 Q. (Mr. Erickson continued questioning.) Well, from your
18 knowledge, Director, this is a kind of a one-off in both of
19 our careers, right -- your career?

20 A. I don't know that I've seen something like this
21 before, but again, I'm not privy to that level of budgetary,
22 balance that the fin admin folks are with the appropriators.
23 We work on just what the BCI budget is under the Attorney
24 General, so I don't have that knowledge of what's going on
25 with the funds after that or with the other divisions.

1 Q. And you cooperated with the State Auditor when they
2 were doing their investigation into this?

3 A. Correct. Mr. Gallion and, I think, two of his
4 auditors came down and did a walk through on the building and
5 then also met with several of us at the -- at that south
6 location.

7 Q. And when you speak for your division, that's just
8 BCI, but he did the other divisions also similarly with the
9 AG's office that were down there now or involved in this?

10 A. I believe he did, yeah. I wasn't part of those. He
11 just came in and met with us on one day.

12 Q. Is it fair to say that there's concerns about the
13 lack of conference rooms, bathrooms, offices for all the
14 divisions, file storage, break areas, copy room, adequate
15 room for assistants, administrative assistants, all those
16 things were kind of left there?

17 A. Those were concerns that that were brought up,
18 correct.

19 Q. After the project was done?

20 A. I don't know if they were brought up prior to it or
21 not, but definitely after it had been brought up.

22 Q. Is there still -- so this is a work in progress down
23 there?

24 A. For right now, yes. If there's something we need on
25 the property, we go to Stealth and start processing with them

1 to see if it's possible. As far as what's there now, we don't
2 have a lot of room to actually expand, but we do have some.

3 Q. So we're already, according to the testimony here in
4 this trial, we're already 1.7 million over. You guys ran out
5 of money and yet we're not done with the building yet and
6 we're already way over budget on what a fair market lease
7 would be?

8 A. I don't know of any current planned expansion on the
9 building at all that I'm aware of. I think how the building
10 is is where it is today.

11 MR. ERICKSON: Thank you, Director. That's all the
12 questions I have.

13 THE COURT: Mr. Suhr, any follow-up?

14 REDIRECT EXAMINATION

15 BY MR. SUHR:

16 Q. Would Troy Seibel be the person to ask some of these
17 questions that Mr. Erickson has asked you?

18 A. Yes. Troy would be the one to probably speak to about
19 those communications and that planning process.

20 MR. SUHR: Nothing further, Judge.

21 THE COURT: Can this witness be released?

22 MR. SUHR: I'd have no objection to that, Your Honor,
23 and I would ask he would be.

24 MR. ERICKSON: Neither would I.

25 THE COURT: All right. So that means that you can stay

1 and watch or you can go if you'd like. Thank you.

2 Mr. Suhr, do you have any other witnesses?

3 MR. SUHR: Defense calls Emily O'Brien.

4 THE COURT: Ms. O'Brien, if you want to come forward,
5 we'll swear you in.

6 (Witness sworn in.)

7 THE COURT: You can have a seat in the witness stand
8 there. That chair doesn't move much, so you'll have to scoot
9 up to get to that microphone.

10 As soon as she's ready, Mr. Suhr.

11 MR. SUHR: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. SUHR:

14 Q. Can you state your name, please.

15 A. Yes. Emily O'Brien.

16 Q. And, Ms. O'Brien, where do you live?

17 A. Grand Forks, North Dakota.

18 Q. What do you do in Grand Forks?

19 A. I currently serve as the Chief Operating Officer for
20 Bioscience Association of North Dakota. I am a state
21 representative for District 42 and then I always kind of joke
22 that I'm the voluntold (sic) for my partner's company in
23 construction and general contracting.

24 Q. Okay. So you're -- you're a legislator?

25 A. Yes.

1 Q. You said District 42, that's in Grand Forks?

2 A. Yes.

3 Q. How long have you been in elected representative?

4 A. 8 years.

5 Q. In Your Capacity as a legislator, do you serve on or
6 work with any commitments?

7 A. Yes. So right now we are in the interim and so this
8 is a -- we serve every other year for 80 days and so right
9 now we're in the interim and it's where we do studies. So I
10 serve on 7 interim committees right now. I am the chair of
11 the Legislative Audit and Fiscal Review Committee, serve on
12 Budget Section, Government Finance, Healthcare Committee, and
13 I'm missing a couple other ones. And then I'm on two
14 procedural committees, a rules and committee on committees.

15 Q. So you're the chair of what you described as the
16 Legislative Audit and Fiscal Review Committee?

17 A. Yes.

18 Q. Okay. So before this case, I've never heard of them,
19 sorry. What does that committee do?

20 A. So the legislative Audit and Fiscal Review Committee,
21 we're like the checks and balances for the State. So we
22 receive reports from the State Auditor's Office, or a
23 third-party auditor and making sure that the dollars that are
24 appropriate for various agencies or entities throughout the
25 State are utilizing them responsibly, they are doing the

1 legislative intent and then how they were supposed to be
2 appropriated and then we'll receive that information back in
3 our committee. There's 15 members, and it's, you know,
4 whether it's no audit findings, good, bad or ugly, we'll take
5 that information and then go back and if we need to make
6 corrections or how to improve our processes across the State,
7 that's the purpose of our committee and we meet quarterly.

8 Q. And how long have you been the chair of that
9 commitment?

10 A. I have been the chair -- I was appointed to the chair
11 in -- would have been the last summer. I was the vice chair
12 previously, so I've been on the committee for three years
13 now.

14 Q. Total membership time?

15 A. Yes.

16 Q. I'm going to use -- it's -- is it LAFRC, is that how
17 you --

18 A. LAFRC would be the acronym for it.

19 Q. L-A-F-R-C?

20 A. Yes.

21 Q. Okay. I'm going to call it the LAFRC committee for
22 simplicity purposes. But the LAFRC committee had ordered an
23 audit be done by the State Auditor's Office; correct?

24 A. Correct.

25 Q. Involving a construction and renovation project in

1 south Bismarck at the Burlington Drive/Sykes building?

2 A. Correct.

3 Q. Why was that ordered?

4 A. It was actually brought to our attention by the
5 Attorney General's Office. We had a new attorney general that
6 had taken that post and a couple months after he was in that
7 position, he brought it forward that there may have been some
8 concerns and wanted it to be looked at to ensure that, you
9 know, policies and procedures were being followed.

10 Q. And you're familiar with that audit report?

11 A. Yes.

12 Q. What do you think of it?

13 A. I think the audit report that we had received from
14 the State Auditor's Office, it was expedited and so I don't
15 think it was very thorough in trying to get all the
16 information, and there was a reason why it was expedited to
17 get it addressed promptly, but I think it was -- there was
18 holes in it.

19 When we had received it at the committee, I remember
20 sitting there thinking that this had happened during Covid
21 when everyone was trying to figure out how to operate and how
22 to continue business as normal, and when you have an
23 important agencies such as BCI and the lottery and Health
24 Department that are providing very important duties for our
25 state, they had to continue business. And so how do you, you

1 know, move forward as normal listening to the information
2 that we were given at that time, knowing that there was more
3 to this story that we weren't getting all the details.

4 Q. Okay. Now you said that there was a transition in
5 terms of the Attorney General. I assume you are talking about
6 after Former Attorney General Wayne Stenehjem passed and then
7 his successor, Drew Wrigley took office?

8 A. Correct.

9 Q. And that was in early 2022; is that right?

10 A. Yes.

11 Q. So you're a legislator yourself?

12 A. Yes.

13 Q. And you're with the House of Representatives?

14 A. Yes.

15 Q. So you're familiar with the House rules?

16 A. Yes, I am.

17 Q. Are you familiar with House Rule 321?

18 A. Yes, I am.

19 Q. What is your understanding of that -- the
20 requirements of that rule.

21 A. So the rules -- so I serve on the Rules Committee and
22 how that process works is we meet in organizational session,
23 so that would be in December and we meet to discuss --
24 there's three parts to the rules. And so we have the House
25 Rules, the Senate Rules, and then there's Joint Rules. And

1 usually they are parallel to each other to ensure that
2 everyone is following those processes. And then we take
3 action on them and those will be the procedural rules
4 throughout the legislative session, which then begins that
5 following month in January and Rule 321, my understanding is
6 it has -- when there is a conflict that would arise, I'll use
7 myself as an example. If I feel like I have a conflict in
8 something, I would stand up either on the floor if we're
9 voting on the floor on the bill or having a conversation in
10 committee and about to vote on a bill, I would declare my
11 conflict and then the committee would decide if they felt
12 that I had a direct conflict and it would have to be a
13 direct, substantial conflict that would benefit me personally
14 and so if we were on the House floor, you would stand up and
15 declare conflict. The speaker would ask 14 people if they
16 would rise and it would be discussed if that individual could
17 vote. And if they felt like there was a conflict, they would,
18 you know, decide how to proceed, allowing that person to vote
19 or not allowing that person to vote.

20 Q. Are those 14 people picked at random or how are they
21 determined?

22 A. Yeah, everyone -- you just have 14 people that would
23 stand up and sometimes you get 20, sometimes you don't get
24 enough and so it usually depends. Usually we have more than
25 enough that will stand up on the floor.

1 Q. So does Rule 329 (sic) require a legislator to vote
2 if they're present on the floor unless they have that direct,
3 unique, individual and substantial interest?

4 A. I'm sorry. Can you repeat the question? Does 321
5 require?

6 Q. Yeah. Does -- do you -- do you know if the language
7 of Rule 321 addresses whether or not a legislator shall vote
8 if they are on the floor?

9 A. No, I don't believe it says you shall vote.

10 Q. Okay. Do you have a copy of the rule in front of you?

11 A. I do not.

12 Q. Would looking at a copy of the rule refresh your
13 recollection as to what the rule actually provides?

14 A. Yes.

15 MR. SUHR: Okay. One minute.

16 THE COURT: I think it's Exhibit -- if you want to
17 grab it.

18 MR. SUHR: Yes.

19 THE COURT: Exhibit 4.

20 MR. SUHR: Permission to approach, Your Honor.

21 THE COURT: You can.

22 A. (Witness continued.) Okay. Excuse me. Yes, it does
23 say shall vote for or against a question before the House. So
24 it says every member who is present before the vote is
25 announced from the chair shall vote for or against the

1 question before the House, unless the House excuses the
2 member.

3 Q. Okay. And you're on the Rules Committee that actually
4 passes those?

5 A. Yes.

6 Q. So are those intended for all legislators to be
7 followed as requirements?

8 A. Yes.

9 Q. So they have to vote unless they are excused because
10 of that requisite interest?

11 A. Correct.

12 Q. Okay. And it says that interest has to be a direct,
13 individual, unique and substantial interest; correct?

14 A. Yes.

15 Q. What kind of training or guidance have you received
16 on what a direct, individual, unique, substantial interest
17 is?

18 A. So we -- I wouldn't say there's been very like
19 in-depth specific training but our first week of session in
20 January, I think it was of 2021 it would have been, we had
21 the Ethics Commission come in and and discuss our conflicts
22 of interest, statements of interest, so when you are running
23 for any sort of position, it doesn't matter -- in the North
24 Dakota Century Code, it's president, vice president, down to
25 the soil conservation board to the school board and as a

1 legislator, we fill out these forms that are statements of
2 interest and it discloses everything that you're invested in,
3 where you work, if you have ownership in different entities,
4 or your retirement. It -- all of it is disclosed on these
5 forms. And we had the Ethics Commission come in and they
6 wanted to present to us their requirements for conflicts of
7 interest. And as legislators we, after being elected, we
8 thought that this was duplicative effort of what we already
9 do and this was just to our House Republican Caucus, the
10 presentation. So it was a group of us that were in there and
11 the feedback was that it was duplicative; that it was
12 already, you know, a process and transparent and felt that
13 this Rule 321 was already covering what that intention was.

14 Q. Okay.

15 A. By the Ethics Commission.

16 Q. So have you received some kind of guidance or
17 training on what direct, individual, substantial and unique
18 means?

19 A. No.

20 Q. Was an example given at that training?

21 A. Yes. We -- there was a couple of different examples
22 that were discussed, but the one that had really stuck out
23 was the director for the Ethics Commission had discussed her
24 personal business and the example was that if there was a
25 grant and it was, say, \$50,000, I can't remember the exact

1 monetary amount, and it went specifically to that entity if
2 we passed a law. So in our appropriations budgets, it could
3 say you know, \$50,000 to x, y and z cotton candy business.
4 And that would have had a direct conflict because it goes to
5 a very specific entity. It's not open for anyone to apply for
6 or to follow the process if -- for that open -- for that open
7 process, I guess.

8 Q. Okay. So you're a legislator yourself. We've heard
9 the term citizens legislature.

10 A. Yes.

11 Q. What does that mean?

12 A. So it's part-time and so I -- as I had explained
13 earlier, my various different roles in my day-to-day job, and
14 so we serve 80 days, so it's from January until about April,
15 May. And then we're -- we're still citizens where we are
16 working other jobs, whether it's -- we have teachers,
17 farmers, people that are retired, we have accountants,
18 lawyers. I work in bioscience. My wheelhouse is
19 entrepreneurial efforts and so there's people from all walks
20 of life and experiences that they come in and serve in the
21 legislature and I think it's pretty unique because we are a
22 state of 780,000 people and so it's very small and to get
23 people to run and serve, it's not easy, and so it's a
24 part-time deal and ends up, I think, sometimes being more
25 than your full-time job, but it's a part of -- part of public

1 service and being a public servant.

2 Q. You're familiar with the allegation against Mr.
3 Dockter?

4 A. I am.

5 Q. How would you have voted if you had been called to
6 the question on the floor whether he could vote?

7 A. I would have allowed him to vote.

8 MR. SUHR: Nothing further, Judge.

9 THE COURT: Mr. Erickson, any questions?

10 MR. ERICKSON: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ERICKSON:

13 Q. Ms. O'Brien, okay, you're on this committee. You're
14 the chair now, but when they ordered the audit, were you the
15 vice chair?

16 A. I was the vice chair.

17 Q. So that was last year and then after the --

18 A. It was two years ago.

19 Q. Two years ago. Okay. And then when it came - audit
20 came back, you switched chairs after the '23 session?

21 A. Correct. Yep. So with new leadership, they can
22 appoint different chairs.

23 Q. Did you have a lot to do with, you know, framing this
24 for Auditor Gallion? In others words, he was given a limited
25 timeframe. No subpoena power and his testimony is we couldn't

1 even do an audit with the resources we had.

2 A. I did not have anything to do with the timeframe. It
3 was discussed in our committee meeting of how to proceed,
4 especially with a session coming forward. It was advised that
5 the Attorney General's Office would be forthcoming in
6 anything that they wanted or needed to address. The concerns
7 that were brought forward that they would have the -- all the
8 information available to them.

9 Q. So when the report came out, it's in there. They got
10 90 days to do this -- and they called it an investigation?

11 A. Yes.

12 Q. And there wasn't a paper trail left or ever between
13 how this building thing came about so it's hard to audit
14 things that don't exist and a paper so they could track it;
15 right?

16 A. To my understanding, the paper trail that was
17 provided was from the property management company, and they
18 were trying to receive some of the documentation from the
19 state level and they were getting bits and pieces but not the
20 entire story.

21 Q. And they weren't getting the story from the property
22 management people either?

23 A. I don't believe that's the case because it -- our
24 Legislative Council also had a -- it was like an 800-page
25 plus binder of all the communications that were going on.

1 Q. Yeah. I've gone through that, but that doesn't answer
2 the questions that are missing things that are -- where money
3 was being spent.

4 A. I would disagree with that because everything was
5 laid out there. The one thing that hasn't happened is the
6 reconciliation piece of finalizing because they were changing
7 -- directors had the authority to put in requests for --
8 underneath the Attorney General's Office and then when the
9 budget kept increasing of the requests that were happening,
10 it started to get reigned back in.

11 Q. The heart of the audit -- of the auditor
12 investigation was about the misappropriation of money that
13 was appropriated for other purposes. That -- you don't have
14 any questions about that happening here, do you?

15 MR. SUHR: Your Honor, I'm going to object to the form
16 of the question. There's been no allegation of
17 misappropriation of funds.

18 THE COURT: If you can reword it, Mr. Erickson.

19 Q. (Mr. Erickson continued questioning.) The way that
20 this got paid for wasn't some -- you're on the appropriations
21 during the session; correct?

22 A. Yep. Correct.

23 Q. There wasn't any line items coming through you --
24 your committee for Capital expenditures?

25 A. This -- the funding that was used for this was

1 through Covid dollars.

2 Q. Well, it's through specific things taken from other
3 entities within the AG's Office?

4 A. I guess I cannot answer to that.

5 Q. I mean, it specifically listed the exact dollar
6 amounts that were taken from other divisions to pay for the
7 building.

8 A. What I had understood it was Covid dollars that were
9 used to pay for it.

10 Q. Beside the I guess. But -- and you're not trying to
11 infer here by your testimony, Ms. O'Brien, that Mr. Dockter,
12 being the owner of the building and the construction company
13 and the recipient of the money, is somehow tangentially
14 involved in this. He's directly involved, basically.

15 A. I would say that it's not necessarily directly
16 involved. I would say that being a partner in it -- I would
17 -- it's not a 100 percent his.

18 Q. Well, he's the partner that goes to the OMB to get
19 them to sign. He's the one that works with Troy Seibel. He's
20 the one that's half owner in the construction company that
21 gets all the contracting. He's the one that everybody --
22 headed up the deal --

23 A. As I --

24 Q. I mean, you're trying to say that's not -- that's
25 somehow tangentially involved?

1 A. As I had mentioned previously, being a citizen-run
2 legislature, sometimes when we are involved as a citizen, our
3 day-to-day lives do play into what we do in the legislature.
4 When we are campaigning and running, the citizens in our
5 district know what they're electing when we -- you know, we
6 put everything out there, you know, these are experiences.
7 This is what we do for work. This is -- this is what we're,
8 you know, campaigning on and this is who we are as people and
9 we have -- it's our job when we are elected to go in and and
10 make those votes and decisions and how to move forward.

11 Q. There's a emphasis on this Rule 321, right, in there
12 and when you say putting everything out there, that's --
13 that's what the rule is kind of designed -- that's kind of
14 getting tangential to what the jury has to decide on these
15 rules. But the bottom line is you don't know what other
16 legislators might be involved in an appropriations bill. So
17 you guys developed this rule. Mr. Dockter knows that he's got
18 a Health Department lease that pays for a multi-billion
19 dollar building, AG lease, those things. You don't
20 necessarily know that, so he's supposed to declare his
21 emergency is what you, as all legislators decided; right? He
22 didn't do that here but, I mean, that's what the idea is?

23 A. I think it -- it definitely got convoluted because
24 when this had started, this was in regards to the Attorney
25 General's building and their lease and then it had pivoted

1 and turned into the Health Department, and I felt like as
2 the Chair for the Legislative Audit and Fiscal Review
3 Committee and our investigation, I was doing whatever I could
4 to understand all optics of this and how -- you know, were
5 there any wrongdoings. Did we follow the processes and
6 procedures from the OMB level to the Attorney General level?
7 And I felt like we did. And when I had to do my own open
8 records request to get information, I observed that the lease
9 agreement for the Health Department was already in place with
10 the previous owners.

11 Q. Okay. So let me just cut you off. When you're saying
12 -- when you say we, you're talking about your committee?

13 A. Yes.

14 Q. You think you've done your procedures as good as you
15 could and I'm not here to dispute that. You're trying to find
16 why did this thing happen the way it did?

17 A. Were there any wrongdoings.

18 Q. Right. As best as you could do?

19 A. Yes.

20 MR. ERICKSON: Thanks. That's all I have, Your Honor.

21 THE COURT: Mr. Suhr?

22 REDIRECT EXAMINATION

23 BY MR. SUHR:

24 Q. Were there any wrongdoings by Jason Dockter in the
25 course of your inquiry into this?

1 A. No. Because when I had looked into it with the Health
2 Department issue that is now being arose here, the Health
3 Department lease was already in place with the previous
4 owners of the building. When the new owners had purchased the
5 building, that lease transferred to the new ownership. There
6 is emails that show that it was inquired if a new lease
7 needed to be drafted with the new ownership and the answer
8 was no.

9 MR. SUHR: Okay. Nothing further, Judge. Thank you.

10 MR. ERICKSON: I have to redirect.

11 THE COURT: Okay.

12 RE-CROSS EXAMINATION

13 BY MR. ERICKSON:

14 Q. Well, that would be completely irrelevant, Ms.
15 O'Brien; right? In other words, it's when you -- if you look
16 at the statute here, when you acquire a pecuniary interest.
17 Whether somebody had leased that before, now he's acquired
18 the lease, so that's a problem?

19 A. Correct. But --

20 Q. That's my question. That's a problem? He acquired a
21 pecuniary interest in the -- in the building after there was
22 already an existing lease. That's where he gets the ethical
23 obligations under your rule.

24 A. But the way --

25 MR. ERICKSON: Thank you. That's all the questions,

1 but that's what I'm saying here. It's not a wiggle room
2 thing.

3 THE COURT: All right. Is this witness being released?

4 MR. SUHR: Yes, I would ask that she be released,
5 Judge.

6 MR. ERICKSON: Yes, Your Honor.

7 THE COURT: So that means you can stay and watch or
8 you can leave if you would like. Can I have the attorneys
9 approach?

10 (Sidebar held.)

11 THE COURT: Mr. Suhr, did you want to call another
12 witness.

13 MR. SUHR: Yep. Defense calls Jason Docker, Your
14 Honor.

15 THE COURT: All right. Mr. Dockter, if you want to
16 come forward and be sworn in.

17 (Witness sworn in.)

18 THE COURT: As soon as he's ready, Mr. Suhr, you can
19 start your examination.

20 MR. SUHR: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. SUHR:

23 Q. Good afternoon, Jason. Can you just state your name
24 for the record, please.

25 A. Jason Dockter.

1 Q. And if you want to make sure you get close enough to
2 the mic so we can pick you up here. You're legislator with
3 District 7 in Bismarck; is that correct?

4 A. That's correct.

5 Q. Where is District 7 located?

6 A. District 7 is Northeast Bismarck.

7 Q. Oka. Are you nervous?

8 A. Yes.

9 Q. Do you need a water?

10 A. If I could, yeah.

11 Q. I got it. When were you first elected, Jason?

12 A. I was elected in 2012.

13 Q. And what committees do you serve on?

14 A. I serve on Finance and Taxation and Energy and
15 Natural Resources.

16 Q. Okay. Do you serve on any appropriations committees?

17 A. No.

18 Q. Okay. Just to be clear, what I mean for the jury's
19 benefit, appropriations is the committees that hear are
20 testimony about budgets and then forward it on to the House
21 or the Senate?

22 A. No. I don't serve on any of those committees.

23 Q. Okay. When you are not in session as a legislator,
24 what in your private, professional capacity do you do for a
25 living?

1 A. Do for a living? I have several businesses. One's a
2 payroll business, I'm also a financial advisor and then I'm
3 also part of a property management company.

4 Q. And is that property management business, is that
5 called Parkway Management?

6 A. Yes.

7 Q. Okay. Do you own an interest in a company called
8 Stealth Properties?

9 A. Yes.

10 Q. Who else owns an interest in Stealth?

11 A. There are several partners, I believe. Eight of us.

12 Q. Okay. And what is your actual percentage interest in
13 Stealth Properties?

14 A. 12.5 percent.

15 Q. Okay. So you are not the owner of Stealth Properties?

16 A. No.

17 Q. Okay. Now, you understand you don't have to get on
18 the stand and testify today; correct?

19 A. Correct. And you understand that Mr. Erickson gets to
20 ask you questions and you have to answer those for him the
21 same as for me; correct?

22 A. Correct.

23 Q. Okay. So you own a 12.5 percent interest in Stealth
24 Properties and in 2020 Stealth Properties purchased the Sykes
25 building on Burlington Drive; correct?

1 A. Yes.

2 Q. Okay. Now, you've heard the testimony from Lonnie
3 Grabowska. Did he give an accurate recitation of that
4 conversation that you had that led, ultimately, to you
5 purchasing the building?

6 A. Yes. We both -- we both can't remember exactly where
7 we were at, but yes, the conversation was accurate.

8 Q. Okay. Are you familiar with how the costs to the
9 project increased as they -- as they went along?

10 A. Yes.

11 Q. And how did that happen, generally speaking? How --
12 why were the costs increasing?

13 A. Well, there were -- there were several factors. You
14 know, we talked about Covid and different issues with supply
15 chain. Also, the original -- the original project didn't have
16 one of the bays. They added that after the fact and I would
17 say that was pry 300-350,000 of the 1.3 million. That was
18 just -- just there was added because they decided -- the AG's
19 office saved money in another area that they could put that
20 garage for that extra bay. And then just to give you some
21 examples, ballistic panels, I think, they were like 60,000
22 dollars. They have to put them in there, bullet proof, so if
23 anyone comes in the AG's office. They have cyber security
24 where a -- BCI and them they do all the -- for the child
25 pronography, they do all -- they needed extra cat ware. They

1 needed two air conditioners. They needed all this extra
2 ventilation. The fire marshal had to have a special room with
3 ventilation. That costs quite a bit of money so they could
4 reenact if there was a fire to reenact and see how it
5 happened, if it was arson or whatever, they had to have
6 special ventilation for that. Almost everything -- the
7 lottery is also in there. The lottery only can have one
8 satellite that goes directly to the lottery to whatever the
9 mega lottery location. So they have to special -- they have
10 to have a door that's only for the lottery and special
11 security. BCI, like Lonnie mentioned, they have a vault.
12 There was just so many different things that it's not unique
13 and so when we came up with the lease, \$50.00 was for the
14 original and \$220.00 for the new. Those are based on what the
15 average commercial building would need. It's no different
16 than like if you're in a house, there's custom houses and
17 there's just regular houses and they come to you and say,
18 I'll have \$3,000 appliances. Well, I want ice cubes. I want
19 everything. Well, then it ends up costing you 5,000. Well,
20 this was no different. We came with the -- with the standard
21 baseline and anything above and beyond, it was the
22 responsibility of the AG's.

23 Q. Now, my understanding, Jason, is that when you
24 purchased this property in 2020, there was already a tenant
25 in there; is that correct?

1 A. Yes. There was actually -- there were actually two
2 tenants.

3 Q. Who were the tenants?

4 A. Department of Health and then ITD was in the other
5 side.

6 Q. And then ITD vacated and the Attorney General's
7 Office moved into their half?

8 A. That's correct.

9 Q. And then there were these additions and these
10 renovations that you've described some of which just a minute
11 ago. When the Attorney General, who oversees BCI, when the
12 Attorney General needed these additional things was there a
13 point of contact at the Attorney General's Office that you
14 were working with?

15 A. Yes. That was Deputy Director, Troy Seible.

16 Q. Okay. And in relation to the Attorney General, where
17 is he at in the, sort of, the hierarchy?

18 A. He is second in command just behind the Attorney
19 General.

20 Q. Okay. So were the need for these changes, those were
21 all communicated from him or through him?

22 A. That's correct. He was the lead and he was in charge
23 of the project.

24 Q. Okay. So when these increases in the cost of the
25 renovation and the construction when they occurred, were

1 these things you were ordering? Were these things that you
2 were encouraging them to do?

3 A. No. These are all requests by the tenant would be the
4 AG's office and because of their nature of their business,
5 it's specific and custom. So people ask, well, they put all
6 this extra money and, yes, and I said they were all requests
7 from them. If we would ever sell the building, you would
8 never get the money out of the -- who needs bullet proof
9 panels, who needs extra ventilation, who needs all that? It
10 was a specific, custom built for the Attorney General's
11 Office.

12 Q. And we heard in the Rob Port podcast that was played
13 and in some of the testimony that there's been some question
14 raised about the functionality of the space; that it's
15 actually less square footage than prior facilities that BCI
16 had. How do you respond to that?

17 A. Well, if you look at both buildings, so the Sykes
18 building used to be a software and they were just like a cube
19 farm. So it was just all open. It was just all open. Well,
20 BCI's previous building it was built, I think, in the early
21 70s, late 60s and had hallways that go, so if you take all
22 that space and you take it and the functionality and the
23 actual people they had because one of the conversations we
24 had, Troy goes the number one thing that I'm going to do is
25 go and count and make sure all the people we currently have

1 can get down into that space. That was his number one thing
2 and are we going to save money and at \$9.50 a square foot,
3 that is is competitive. I have another building. We're
4 renting it out for 14.50 a square foot and I would say it's
5 comparable on space.

6 Q. So were the per square foot dollar figures in the
7 lease, would you would you agree, I think we heard testimony
8 from Director Boyle, that those were market competitive, if
9 not even better than market?

10 A. Yes.

11 Q. So were any of the costs involved here, were they
12 attributable to the Health Department or was this all AG?

13 A. This was all AG for their custom build.

14 Q. Okay. So now let's fast forward. You, as a
15 legislator, one of your jobs is to vote on bills. Is that a
16 fair statement?

17 A. Yes.

18 Q. Okay. And we've seen evidence and heard testimony
19 that you voted on a number of bills in 2021 and 2023. Why
20 didn't you think you had a conflict on these votes. Okay.
21 I'm going to ask you specifically, Exhibit 5, the Health Bill
22 for the budget for the Health Department in 2021, Senate Bill
23 2004, the AG budget, you didn't vote on, I guess, in 2023.
24 But, Exhibit 5, the Health department budget bill in 2021.
25 Why didn't you think you had a conflict? I mean, because

1 here's what Mr. Erickson's going to come at you with just so
2 you know. Here's what the jury is going to ask in their
3 heads. You own an interest in Stealth Properties that is
4 buying this building and leasing it back to the State. You
5 own a 12.5 percent interest in Stealth. Why didn't you think
6 you had a conflict? Why didn't you think you had to abstain
7 from the vote?

8 A. The reason I -- I've always been, this House Rule
9 321, has to be direct, individually, unique and substantial.
10 There are so many things that go on in the legislature that
11 people would have conflicts and that what is why the rules
12 are where they're at. We, as a citizen -- we could never
13 function. We would be standing up constantly and I will tell
14 you, I have -- I've stood up one time for a conflict. I can
15 tell you it was my payroll business and the reason why I did
16 was that my business partner testified on the bill. It was --
17 it was pretty unique to about two or three businesses and I
18 felt it's in a gray area. I'm going to stand up because
19 that's the right thing to do. I stood up. I asked Mr.
20 Speaker, I have a conflict. The 14 people stood up and said,
21 sit down and vote and I ended up voting.

22 Q. Okay.

23 A. And so on these votes I went by the 321 Rule and then
24 you think in the back of your mind, okay, is there an
25 example? Well, in 2023 Rebecca Binstock, the Ethics

1 Commission, she came in to the caucus and people -- she gave
2 an example and then people said, well, no, no, no, we'll
3 never be able to finish -- you know, get the legislature and
4 function and she gave the example of Jane Smith --
5 -Representative Jane Smith is getting \$50,000 for a business
6 and its direct and she goes, this is the example that you
7 should look at when you decide if you have a direct,
8 individual, unique and substantial and once I did that, it it
9 reaffirmed the 321 Rule and what we go by as legislators.

10 Q. Was that the example Emily O'Brien testified to?

11 A. Yes.

12 Q. And you were there for that?

13 A. Yes. All the House Republican -- there was like 80
14 House Republicans at that meeting.

15 Q. So the example with the cotton candy store where the
16 legislator owns it and money is appropriated to them
17 directly?

18 A. Correct.

19 Q. And what was in your head and now that was in January
20 of 2023; right?

21 A. Right.

22 Q. That you -- that that training was provided, but this
23 was a vote, Jason, in 2021; right? So you didn't have that
24 example yet?

25 A. Right.

1 Q. Was that example consistent with how you've always
2 understood the rule and just ratified it or explain that?

3 A. Yes. Because there's -- and there's a reason why that
4 we rarely or seldom -- I think we had two in the House last
5 session. One was someone who was in the National Guard and
6 they -- it was something to do with pay. We told him he could
7 vote and someone was getting lease payments from like the
8 Game and Fish and so -- but, generally, what happens is
9 colleagues will come up, they will give and say, you know,
10 Representative -- you know, Jason, what do you think? Well,
11 is it direct and stuff? No. And that's why a lot of that gets
12 alleviated and that's why you don't have many people actually
13 get up because we talk among ourselves and say, am I not
14 looking at this correctly. Is this a conflict because I feel
15 that it is. And so I go -- anyone -- we go and talk to
16 several colleagues and then we get the feedback and we're
17 like, okay, there's no need because it doesn't fit the
18 criteria of the direct, individual, unique and substantial.

19 Q. So we've talked about Exhibit 5, which was the 2021
20 Health Department Bill. How about Exhibit 7, the House Bill
21 1003, the 2021 Attorney General's Budget Bill. You voted on
22 that on April 23, 2021. What was your reason for not thinking
23 you had a conflict. Was it the same one you've given or was
24 it a different reason?

25 A. I just felt that it -- it didn't, you know, we have

1 these House rules and we shall vote unless -- and we can
2 stand up and say we have a conflict, but it has to be very
3 specific and I just felt it wasn't direct, individual unique
4 and substantial. And that's why those House rules have been
5 in since the 1950s is because we only have 780,000 people in
6 whole State of North Dakota, and, you know, they come from
7 all walks of life. My friends, they farm. I mean, there's
8 every kind of walks of life and that's why I think North
9 Dakota government functions so well is because we're a
10 citizen legislature. They've talked about going full-time. I
11 don't agree with that. I think the citizen legislature, how
12 they set it up in the Constitution, I think it's a great
13 system and it should continue.

14 Q. And same thing with Exhibit 8, House Bill 1004, which
15 was the 2023 Health Department Bill, you voted on April 11th
16 of 2023. You voted in favor of it. Were you also looking at
17 that same question under Rule 321, whether you have that
18 direct, individual, unique and substantial interest?

19 A. Yes. And then that's why every session, our
20 organization session, they go over those rules to make sure
21 that we know because we always have incoming freshmen coming
22 in.

23 Q. If you'd had thought you had a conflict that
24 disqualified you, would you have voted on these bills or
25 would you have stood up and said, hey, I got a conflict, if

1 you'd have thought you had one?

2 A. If I thought I had one, I would have stood up just
3 like I did the one that I felt that -- for the payroll
4 example.

5 Q. And Rule 321, are you given the luxury of choosing
6 when or when not to follow the House rules?

7 A. No. Those are given to us and we're supposed to
8 abide, you know, we are the lawmakers but we follow rules too
9 and those are the rules that are given to us that are made up
10 by a rules committee and we're supposed to abide by them.

11 Q. Do you know where you were when the 2023 Attorney
12 General's budget was voted on because you didn't participate
13 in that vote. Do you know where you were?

14 A. I believe I was at home. I think I got Covid again,
15 but -- I think because I -- and I had a procedure, I think, 5
16 days, I had to quarantine.

17 Q. Okay. Do you typically vote in favor of budget bills
18 for agencies?

19 A. Yes.

20 Q. Why?

21 A. We need a function of government and it's my job. As
22 a District 7 rep is to vote for the citizens. We need roads.
23 We need Social Services. We need this to functions of
24 government, so it's my job to vote for all these bills. And
25 unless I've had Covid or I've been sick, I've been at -- and

1 I take every vote and I vote on everything.

2 Q. And did you honestly believe that when you voted on
3 these that you were following Rule 321, which you're required
4 to do?

5 A. Yes.

6 MR. SUHR: I don't have anything further, Judge.

7 THE COURT: Mr. Erickson?

8 MR. ERICKSON: Yeah. Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ERICKSON:

11 Q. Okay. Just to get clarified, Mr. Dockter, here.
12 There's three businesses and -- well four, actually, what's
13 the D? The one that starts with the D, the construction?

14 A. We have what's called D&S.

15 Q. Okay. What is that one? I don't see that listed in
16 front of me.

17 A. D&S, d/b/a, doing business as Parkway because Parkway
18 was an existing business.

19 Q. Okay.

20 A. So we had the form of a new LLC and it's my last name
21 and the last name of my partner.

22 Q. Okay.

23 A. Very original.

24 Q. Okay. So you got Stealth, which is multiple owners,
25 and you're one of them?

1 A. Yes.

2 Q. And then you have Parkway which is you and CJ?

3 A. That's D&S/Parkway. That's one.

4 Q. Okay. And then Frontier, which is you two?

5 A. Right. And that's our -- that's our maintenance
6 construction that we separated out. When we bought the
7 business Parkway, they had maintenance and repairs,
8 everything in one. We separated them out, get a new entity
9 so if we ever wanted to sell, we could do it and so that's
10 why we put it together. And when we do maintenance and
11 repairs in other construction projects, our owners like
12 apartment buildings, we have other commercial buildings that
13 we manage that we do those for the owners.

14 Q. What I was struggling with out of your -- in your
15 testimony is when there would be a conflict. In other words,
16 you, in your interview with Rob Port, and some of the
17 testimony here too, you needed to get -- you needed to get a
18 signed lease from the AG's office to get your bank to give
19 you a loan to buy the property?

20 A. Correct.

21 Q. And we're talking millions of dollars; right?

22 A. Right.

23 Q. And you made a statement on the Port podcast that the
24 Health Department lease alone would be worth buying this
25 building for?

1 A. Correct.

2 Q. And then when you got the AG's Office on, that was
3 going to get you the financing to build out the building?

4 A. Yes.

5 Q. And you were taking the lead on all that?

6 A. No. I was one of -- so typically --

7 Q. You and CJ both?

8 A. Yes. Right. Because we're property management, I
9 typically -- it doesn't matter for whatever project, I work
10 out and help out the leases and everything and CJ does the
11 every day, but I -- typically, that's what I do.

12 Q. So when you -- but you were the one dealing with John
13 Boyle in the beginning and you presented a lease that he
14 thought was out of line, you and Troy Seibel?

15 A. Well, part of it is -- so what happened with that was
16 I think we had it at like \$16.50, but we had what's called
17 all-in, so they'd pay 16.50.

18 Q. My point, though, he rejected a lease that was, he
19 felt, out of line that you guys presented to him. No, we're
20 not signing it; right?

21 A. Well, that's not true. There was an email that John
22 Boyle did send to Troy Seibel that said, here's the figure. I
23 don't agree with it, but if you go for a ten-year lease, I
24 will sign it anyway.

25 Q. Okay. So you end up signing off on something at 9.50?

1 A. Correct. Well, 9:50 plus \$5.70 a can.

2 Q. Okay.

3 A. So if you add that all together, the different -- you
4 know, it's like \$14 and --

5 Q. So you're involved in the negotiations on email,
6 basically, with this?

7 A. Yes.

8 Q. Okay. So then, certainly, anybody gets a defense and
9 I'll give it to you here. Covid cost problems and supply
10 chain. My concern is the fundamentals leading into Covid that
11 I'd like to talk to you about. You -- and this isn't your
12 fault but Troy Seibel sends an email to all the division
13 directors at the AG's office and he gets all this blowback
14 that this building is never going to work, and you're aware
15 of that; right? You saw the stuff from Parrell Grossman and
16 the fire marshal and this is way too small; right?

17 A. Right. That was their concern.

18 Q. This is before Covid though, that we're going to have
19 to have a massive -- maybe that's an unfair word. I mean,
20 there's going to be a large building project associated with
21 something that there hasn't been any type of appropriations
22 to cover if you guys go get a loan and buy this building and
23 the AG's Office signs this lease. That is just the start.
24 And that's what I wanted you to get a chance to answer this.
25 But when these overruns come, all this overage happened and

1 part of that was Covid, you know, after, but it was also how
2 you guys did this. Now, you try to incorporate those costs
3 back in that lease and now you're back to where Mr. Boyle was
4 is we should not be getting in the middle of something at
5 these costs; correct?

6 A. I -- can you rephrase that?

7 Q. Well, we're going to end up with a higher lease than
8 even you guys proposed initially because we have all these
9 overruns, all these costs blew up and part of that was Covid,
10 but you're trying to change order your way into a major
11 building project here?

12 A. No.

13 Q. Well, that's how you did it though. You bought the
14 building knowing that BCI add this, add that. Then they
15 would go to their different divisions and take money that
16 wasn't --

17 A. We never -- we had nothing to do with that. That was
18 the whole AG. They talked to all their people. They're the
19 ones that come with requests. We had nothing to do with the
20 funding. We had nothing -- all we did was purchase the
21 building and sign a lease and we did what we were asked --
22 what we were told by the AG's Office.

23 Q. But like you said, you were in the emails and
24 negotiations on all that stuff to get that lease done and get
25 the financing?

1 A. Right. After that, I didn't have any -- I had no
2 correspondence, so I had no idea what any of the costs. I had
3 -- all I -- once the lease was set, we had 9.50 a square
4 foot. The lease was \$50.00 a square foot.

5 Q. Right.

6 A. The costs were 220 and in the parameters that's --

7 Q. So the AG's Office then would come to you and say, we
8 need to add this garage. We need to add this bulletproof. We
9 need to add this?

10 A. That's correct.

11 Q. And that would -- they'd come to Frontier?

12 A. They'd come to CJ. And the reason why --

13 Q. Well, you and CJ are partners in this; right? You're
14 the co-owners. All the change orders -- I thought I saw in
15 here you billed the AG's Office \$100,000 dollars just in a
16 change order cost.

17 MR. SUHR: Your Honor, I'm going to object. He's
18 testifying. He's citing to documents not in the record. Lack
19 of foundation. There's no work orders or change orders in the
20 record and he's testifying to dollar amounts from -- that are
21 supposedly referenced in work orders.

22 MR. ERICKSON: I'll rephrase, Your Honor.

23 THE COURT: Okay. Thank you, Mr. Erickson.

24 Q. (Mr. Erickson continued questioning.) Did you bill --
25 every time the Attorney General's Office asked for more

1 stuff, did you bill them for change order costs?

2 A. No. We had no -- what we did as Frontier Contracting
3 -- the reason why we took the contract -- the reason why we
4 did the building permit was because our group of partners --
5 because Northwest Contracting did most of it. H.A. Thompson &
6 Sons, they did the four and a half million dollars. Frontier
7 Contracting did about \$80,000 worth of work and what we did
8 is demolition stuff that couldn't get done during Covid. The
9 reason why the partners had Frontier Contracting be in
10 charge, you typically have to pay a management fee of two to
11 five percent to like Northwest Contracting, which is a huge
12 company. If you're familiar with any construction in
13 Bismarck, they did the vast majority. Them, Northern Plains,
14 Plumbing and all those, so I don't know what the change was.
15 We never -- we never -- we never benefited from change
16 orders. We took the orders -- change orders and went to
17 Northwest Contracting and H.A. Thompson & Sons, Northern
18 Plains Plumbing and they did all the work. We never benefited
19 from any change orders.

20 Q. What -- I guess what I want to try and cut to the
21 point here is the one argument you're making is that I didn't
22 feel I had a personal, direct interest in this appropriation
23 -- or in these bills. That it's just tangential; right?
24 That's basically your defense.

25 A. My defense is --

1 Q. I don't think Rule 3 -- I don't think I was
2 conflicted; that I wasn't directly under the statute. I
3 didn't --

4 A. Yes.

5 Q. That's essentially it. I'm -- I'm just -- I guess,
6 I'm taking -- those two reporters that interviewed you had
7 the same -- how would you think in the world that you're not
8 directly involved when you negotiate a lease to pay for a
9 multi-million dollar building and you're going to have that
10 paid for by leases from the State that you own the companies
11 getting them and you're saying I'm just a tangential -- I'm
12 just a tangential person here that shouldn't be recused.

13 A. Well, that's why we have Rule 321, direct,
14 individually, unique and substantial.

15 Q. And how is it not that? I mean, that's my problem.

16 A. It -- I -- if we had the exhibit, where does it say
17 in the bill that we were given Rule 321 and we're also given
18 by Rebecca Binstock the example and she said if that's not
19 the example, you're not -- it's not a conflict of interest.

20 Q. What I'm saying is her example is exactly what you
21 did.

22 A. Where does it -- where does it have it in those
23 bills?

24 Q. She gave you some example about a cotton candy
25 business that she owns and she gets a state grant; right?

1 A. Yes.

2 Q. You own property. You get State leases to pay for the
3 property that you financed, so you're going to make a profit
4 above what you're financing and your cost of the building is.
5 You're going to profit from or you wouldn't be doing it and
6 you're saying, I'm just tangentially involved and that's what
7 I'm struggling with, Representative Dockter. It's like you
8 are the lead guy doing this.

9 A. I have 12 and a half percent in the business. I'm one
10 -- I do what I do every day with leases and other things. So
11 if we had that opportunity, do I just not do my job and just
12 -- I don't know what would you want --

13 Q. Or follow the Rule if there's any question. I mean --

14 MR. ERICKSON: Well, I'm not -- that's all the
15 questions I have.

16 THE COURT: Mr. Suhr?

17 MR. SUHR: Nothing further, Your Honor.

18 THE COURT: All right. Thank you. You can step down
19 and sit next to your attorney.

20 Any other witnesses, Mr. Suhr.

21 MR. SUHR: Defense rests, Your Honor.

22 THE COURT: Mr. Erickson, did you want to call any
23 rebuttal witnesses?

24 MR. ERICKSON: I do not, Your Honor.

25 THE COURT: Okay. We're going to take a few minute

1 break here and have the jury excused for a minute and I can
2 talk to the attorneys for a couple things.

3 (Admonishment given.)

4 THE COURT: I imagine it's going to take at least
5 about 10 minutes, so might be a little bit longer than that,
6 but we'll try to get you back as soon as possible. All right.
7 You can be seated. The record will reflect that the jury has
8 now left the courtroom.

9 Mr. Suhr, did you want to renew any motions?

10 MR. SUHR: I would renew my prior motion based on the
11 prior grounds stated and incorporate it by reference, Your
12 Honor.

13 THE COURT: Still object, Mr. Erickson?

14 MR. ERICKSON: Yes, Your Honor.

15 THE COURT: And the Court will deny the motion for the
16 same reason stated before.

17 We did have a couple jury instruction things that we had
18 to discuss. I did add the note taking. Essentially, I just
19 copied and pasted it from the jury instruction that is going
20 to be the first thing that I read. There was the limited
21 instruction that Mr. Suhr wanted me to add. Any further
22 arguments on that?

23 MR. SUHR: Well, Your Honor, again. I think that that
24 limiting instruction is definitely appropriate now that we've
25 heard the evidence. There was a lot of testimony in the -- in

1 in the trial about those prior 2021 bills. I think it's not
2 clear whether he's on trial for the votes that he placed on
3 those bills or whether those bills are simply being
4 considered for purposes of determining the intent that he had
5 in his mind when he voted on the Health and Human Services
6 Bill in 2023. I think the limiting instruction makes that
7 clear. It allows them to consider those prior votes for
8 purposes of the element of intent, but makes it clear at the
9 same time that that is not what he is on trial for and can't
10 be on trial for because they're beyond the statute of
11 limitations.

12 So I would renew my request for that limiting
13 instruction. It's consistent with the evidence. It's
14 consistent with the law.

15 THE COURT: And a limiting instruction normally is
16 only added when 404(b) evidence is added in. I didn't --

17 MR. SUHR: A limiting instruction can be provided any
18 time that testimony has been received where I think it could
19 confuse the jury as to what it is that they're actually being
20 asked to decide. It does not have to be in 404. It frequently
21 is, but it is not limited to 404.

22 Anytime that a particular issue could confuse the jury as
23 to what they're here to do, a limiting instruction to aid
24 them in the deliberative process is appropriate and I think
25 the 2021 votes having been referenced as many times as they

1 have, I think it's necessary to avoid that issue.

2 MR. ERICKSON: I disagree. If there was a limiting,
3 it'd have to be written different to make it logical and it
4 goes to intent and that, but the way he wrote would not, I
5 think, meet the law, but I'd ask the Court just to reject it.
6 Thank you.

7 THE COURT: Okay. I'm not going to allow in the
8 limited instruction as it is written. The parties could
9 stipulate if they wanted to that the element -- the first
10 element was December 21, 2021 through May 1, 2023. I don't
11 think it's confusing to a jury to begin with. I think I was
12 clear in my order that I filed earlier this week that I don't
13 think it's 404(b) evidence. I don't think that it's being
14 used for intent, those sort of things. I think in your
15 closing you can make it pretty clear, Mr. Suhr, regarding the
16 evidence and what's been presented, so I'm not going to allow
17 in the limited instruction.

18 The other instructions that Mr. Suhr had requested in his
19 proposed jury instructions were the execution of a public
20 duty and then also the non-existence of a defense. I'm not
21 going to add those two either. I think that's exactly what
22 this case is about. I'm not going to have a mini trial in the
23 middle of this trial.

24 MR. SUHR: Your Honor, the whole issue in this case is
25 his mindset and we've heard testimony that Rule 321 requires

1 legislators to vote, unless that direct, individual --

2 THE COURT: Mr. Suhr, I'm going to stop you there. I'm
3 not here for a rule. You two have made it about that today.
4 That is not what this trial is about. This trial is about the
5 statute. Does a rule that is made by legislators overrule a
6 statute that has been -- that we're here for today because
7 that's what you're making it sound out to be.

8 MR. SUHR: The application, the relevance of the rule,
9 Your Honor, is that when there's the House rule in place, it
10 goes -- if he's following that rule, it goes to his mindset
11 that is then determined for purposes of the intent element of
12 the criminal Statute. In other words, was he exercising a
13 willful, which is the requirement of 12.1-13-02, was he
14 acting willfully in light of the impact of that House Rule
15 321, which he was also required to find and follow. It goes
16 to intent.

17 THE COURT: I understand your argument there, but,
18 essentially, what you're asking the Court to do is to tell
19 them by this is that what he did was justified and that's the
20 whole decision that the jury has to make today was was it
21 authorized by law or not? Was it authorized by the statute or
22 not? That's what we're here for today. I'm not going to give
23 them an instruction that tells them that what he's doing was
24 correct because that's the decision for them to make. If I
25 put this in here, essentially, I'm telling them that what he

1 did is okay.

2 MR. SUHR: No, I think what you're doing, Judge, when
3 you add those instructions, is what you were saying is that
4 they can ask the question that it's two additional elements
5 that they have to disprove. Was he justified in his voting
6 because of the information that has been testified to by
7 multiple witnesses about the impact of 321 and what
8 legislators are trained when they must recuse from a vote.
9 And then the excuse instruction says even if he was wrong, as
10 long as he was reasonable in his belief, he can still be
11 found not guilty. That is -- that's what the excuse
12 instruction is.

13 THE COURT: I haven't gotten to that instruction yet.

14 MR. SUHR: Okay.

15 THE COURT: You want to add anything, Mr. Erickson?
16 We're just talking about the justification and then the
17 non-existence of defense.

18 MR. ERICKSON: I would agree with the Court.

19 THE COURT: The excuse instruction the Court was going
20 to include but I'll let you make arguments. Mr. Erickson.

21 MR. ERICKSON: What's the purpose of that?

22 MR. SUHR: Well, there's Rule 321 which guides
23 legislators on when they must recuse and even if the jury
24 believes that Rule 321 didn't excuse or if Rule 321 wasn't
25 giving him a defense of justification, if he reasonably

1 believed under Rule 321 that he could recuse him -- or not
2 recuse himself from the vote, even if he's mistaken.

3 MR. ERICKSON: I won't object to excuse. That's fine.

4 THE COURT: Okay. I've already added it in there
5 because I know we're running short on time, so I was going to
6 allow you to make your arguments, but I had it in there and I
7 could have deleted it. So I have -- do you -- essentially,
8 I'll print off the entire jury instructions for you, again,
9 because, essentially, all of the closing instructions have
10 been either moved or changed a little bit, so we will get a
11 copy to the parties, and then we also have to get it fixed
12 for the jurors as well, so we're going to have to take a
13 little break to get that done. And then the party -- then
14 we'll bring the jury in and we can start with -- do the
15 parties prefer me to read instructions and then closings? I
16 leave it up to the parties.

17 MR. ERICKSON: I don't have a preference.

18 MR. SUHR: I don't have a preference. Did you -- did
19 you reference the defendant not testifying instruction,
20 Judge?

21 THE COURT: I took it out.

22 MR. SUHR: Okay.

23 THE COURT: Yep. So I made all -- all of those
24 changes. I think I got them all.

25 MR. SUHR: Okay.

1 THE COURT: But we will get you a copy during the
2 break and you can read it. I think we're going to need at
3 least 15 minutes to get all that stuff done. Why don't we
4 take 15, so we'll come back at 4:25. I'm going to talk to the
5 sheriff and see if I can get permission to stay a little
6 late. We'll see.

7 (Recess taken.)

8 THE COURT: Yes, Mr. Suhr?

9 MR. SUHR: Sorry, I don't see the excuse language in
10 the elements or in the body.

11 THE COURT: Excuse is right on page 11. That's the
12 exact one you wanted in there. Worded exactly how you had it.

13 MR. SUHR: Okay. But excuse is also a defense, excuse
14 defense. It's an element that the State has to disprove
15 beyond a reasonable doubt.

16 THE COURT: Okay. Do you want me to put the whole
17 elements all in there again?

18 MR. SUHR: I think we have to have an element 7 that
19 says, "and the defendant's conduct was not excused."

20 THE COURT: Mr. Erickson?

21 MR. ERICKSON: Usually that has just a statement that
22 defendant was not excused.

23 THE COURT: Right. But that means I have to put all
24 the elements all again. I mean, I'm going to have to copy and
25 paste page six -- or page four which is -- or sorry, six and

1 just add that essential element in there.

2 MR. SUHR: Right. Yes. I would agree. And then that
3 addresses that.

4 MR. ERICKSON: You can just put a seven on page six;
5 that the defendant was not excused and define excuse.

6 THE COURT: Right. So I'm going to have to -- I'm
7 going to just copy and paste the essential elements from page
8 six and add it on to right before I have the excuse in there.
9 That would work for the parties?

10 MR. SUHR: Yes, Your Honor.

11 MR. ERICKSON: That's fine, Your Honor.

12 THE COURT: Okay. We can bring the jurors in then, was
13 that the only issue?

14 MR. SUHR: That was it.

15 THE COURT: Mr. Erickson?

16 MR. ERICKSON: Yes, Your Honor.

17 THE COURT: All right. We will put on the record that
18 the jury is now back in the courtroom. The Court is going to
19 read the final jury instructions to you and both parties are
20 going to give their closing statements. I'll read the final
21 instructions first and then both attorneys will be able to do
22 their closings.

23 (Closing jury instructions read.)

24 THE COURT: Mr. Erickson, you ready for your closing?

25 MR. ERICKSON: I am, Your Honor. Thank you.

1 Counsel, may it please the Court, ladies and gentlemen,
2 I'm going to focus my closing argument on a couple points.
3 One, you just heard an excuse instruction that's been put in
4 the jury instructions. It's really commonly when a prosecutor
5 tries a murder case or something, the way we explain what
6 that means in place is if I'm walking across a Walmart
7 parking lot at dark at night and somebody jumps out and looks
8 at me and has a -- what I believe is a pistol pointed at me
9 and threatening me and I pull out my HideAway gun and kill
10 them and it turns out that was a water pistol, it wasn't a
11 real gun, so although my conduct in using self-defense was
12 based on reasonable threat, I was mistaken that that was a
13 real gun. You get an excuse instruction for that. And if you
14 look at it in that context, I'm not sure how applicable it is
15 to this particular case, but that's part of your instruction.

16 Now, we heard a lot today about legislative rules. Maybe
17 too much. I want to explain what I'm going to say now in the
18 context is I don't want you to do anything based on what my
19 decision making was. This is your decision, not an attorneys.
20 To bring this case before you, I looked at some legislative
21 rules and you heard a lot about those today. There's nothing
22 in the jury instructions about legislative rules specifically
23 being violated or not. You don't have to decide that. What
24 you do have to decide is the word willful. Was willful
25 conduct. And that is defined as reckless or knowingly or

1 intentionally on the next page. Recklessly means a person
2 engaged in conduct and they did it in clearly unjustifiable
3 disregard for the substantial likelihood of existence of
4 relevant fact. You can read the definition once you get in
5 there. So when I was looking at willfully in deciding on
6 charging Mr. Dockter, well, if the legislative rules were
7 complied with, that probably would mean there wouldn't be a
8 charge filed. Because, you know, you're asking somebody to
9 comply with rules of your -- of the House of Representatives
10 and then have somebody come and file a charge for that. Well,
11 I looked at it as a mental state. The other thing I looked at
12 was when Rebecca Binstock at the beginning starts -- you
13 know, starts looking at this and does an advisory; that, hey,
14 be careful about voting on the AG bill, doesn't know about
15 the Health Department thing, but those kind of things go to
16 mental state. And that's the reason we got there. The
17 specifics of the rules are not. I can just give you my
18 reasoning. I don't want it to be your reasoning. I want you
19 to be the judgment of your community here in Burleigh County
20 today.

21 But the first sentence of those rules in State's Exhibit
22 4, the Legislative Assembly shall always -- always seeks to a
23 high reputation for a progressive accomplishment where its
24 members are public officers of integrity and dedication,
25 maintaining the highest standards of ethical conduct. That

1 leads these rules. And when we get to the specific one on
2 321, my judgment that I don't want to be your judgement was
3 when it says, however, any member who has a personal or
4 private interest in a manner or bill shall disclose that fact
5 to the House and may not vote without the consent of the
6 House. The personal or private interest is an interest that
7 affects the member directly, individually, uniquely and
8 substantially. My decision was based on -- I believe that was
9 satisfied in my mind that this is not some sort of tangential
10 benefit. This is a specific benefit to Mr. Dockter when he
11 decides to cast his vote, and I don't believe -- if the
12 legislature wants to interpret that differently, that's up to
13 them. But we can't rewrite those rules here and what they
14 don't put in here is if the -- if the bill passes 80 to 20 or
15 10 to 9 or whatever, that's not part of the rule. It's not
16 part of the statute. If they want to amend that then juries
17 wouldn't be in this position. States attorneys wouldn't be
18 obligated to put things before juries based on the law and
19 the discretion a prosecutor has, which would be easy to use
20 if the House -- if the -- if Mr. Dockter would have stood up
21 and said, look, guys, I got a conflict. This is a building I
22 just bought. I'm going to get all this money from this
23 whatever and then they could vote to let him do it. Then we
24 wouldn't have to be here, but I'm not going to change the
25 rules of the legislature for this case and I'm not going to

1 change the statute. You're being asked to decide on this
2 matter now. I'm going to ask that you review the testimony
3 that you heard and return with whatever verdict you find as a
4 representative of your community to be just in this case.
5 Thank you.

6 THE COURT: Mr. Suhr.

7 MR. SUHR: My closing is going to be a little bit
8 longer than Mr. Erickson's because I don't get to come back
9 up and talk to you again. He does. He can -- he can get up
10 and say Mr. Suhr, you're full of hot air. I don't get a
11 chance to address you again, so -- but I am going to cut to
12 the chase. It's been a long day and this probably wasn't the
13 most exciting of criminal trials for your first one, but
14 here's -- here's where we are.

15 A lot of these essential elements -- I always describe
16 them as a recipe. Okay. You've got to have every single one
17 of these elements before you can convict. If any one of them
18 is missing or if you think that any one of them is lacking
19 proof beyond a reasonable doubt, proof consistent with our
20 highest legal standard in the system, you must acquit.

21 Now, we got a date, May of 2023. That's not really an
22 issue. You heard about the health department bill that was
23 voted upon in April of 2023 after the business -- the
24 building had been purchased. We have the right individual in
25 court, Jason Dockter. He voted in Burleigh County. A lot of

1 these elements aren't in question. You've got a definition of
2 official action. A vote is an official action. There's
3 there's no question about it that Jason Dockter, as a public
4 servant, when he voted, that was an official action. That's
5 not really in dispute. Did he get a benefit -- was he likely
6 to get a benefit from that vote because of a personal
7 interest, his pecuniary interest and you've got a definition
8 of that too. Lawyers define everything, right? So pecuniary
9 interest is defined in your definitions as a direct interest
10 related to money in an action or case. Direct. Okay. Or was
11 there some speculation or wager? That's not even really
12 before you. That's a part of the statute. That's why it's in
13 there, but the allegation here is that he had a pecuniary
14 interest in the purchase and lease back of this building to
15 the Attorney General and then when he voted on it, he
16 benefited from it.

17 But you now have -- if you remember when the judge read
18 you your essential elements at the beginning of this case,
19 well, you're going to have them reproduced in your jury
20 instructions in your closing instructions, and it's got a new
21 requirement, this excuse instruction. And basically Mr.
22 Erickson's example of that is right. With excuse, if Mr.
23 Erickson comes up to me and I have my hand in the shape of a
24 gun in my pocket and I point it at him and he thinks I have a
25 gun and he pulls out his and he shoots me and I die and he's

1 charged with my murder and then it's found out, oh, wait,
2 Lloyd only actually had a finger in his pocket, as long as
3 his belief that I had a gun was reasonable, even if he's
4 mistaken, he's still not guilty. Okay. Now, that's a more
5 concrete example of excuse, but what we're dealing with here
6 is also an excuse.

7 I want you to think about this Rule 321. Okay. And why
8 does this matter? Why does this House Rule 321 matter so
9 much? Why are we -- why have I continued to bring it up?
10 Because they have to prove that Jason Dockter when he did
11 these votes, when he voted on budgets for the Attorney
12 General's Office, when he voted on budgets for the Health and
13 Human Services Department, he did so willfully.

14 Willfully is either, one, intentionally; two, knowingly,
15 or; three, recklessly. Any one of those equals willfully.
16 Intentional, that just means that it was his intent; that it
17 was his intent to get this pecuniary interest. Okay.

18 Knowingly, the best example of knowingly that I've ever
19 heard is from a former defense attorney. He once said, you
20 know, if you -- if you go to the beach and you don't put on
21 sunscreen, you know you're going to get a sunburn. It's not
22 your intent, but you know you're going to get a sunburn.
23 That's an example of knowingly.

24 And recklessly is simply when you don't care. When you
25 don't pay attention to anything and you just don't care, so

1 they have to show he either intentionally, knowingly or
2 recklessly took this official action and he wasn't excused in
3 his doing so. Now, here's where 321 plugs in. Okay. House
4 Rule 321, our legislators when they come in and they do their
5 job, they have rules to follow too, as Jason testified. And
6 you're going to get an instruction in your jury instructions
7 that say a person's conduct is excused if the person believes
8 the facts are such that the conduct is necessary and
9 appropriate, even if his belief is mistaken. Okay. So what
10 that means is even if you go back into that deliberation room
11 and you go, I don't think he should have voted, but I can
12 kind of see why he thought he could. You got this House Rule
13 321 that John Bjornson said is mandatory; that Emily O'Brien
14 said is mandatory; that Jason said is mandatory, and it says,
15 you must vote unless you have a direct, individual, unique
16 and substantial interest. And he told you, he said, I asked
17 myself do I have a direct, individual, unique and substantial
18 interest? He went through that analysis. Even if you think he
19 was wrong, maybe you disagree with him and you go, I don't
20 think he should have voted on this, but I can understand why
21 you did. Because, for example, when the chair of the Ethics
22 Commission, Rebecca Binstock, described it in the Republican
23 Caucus, she gave a very clear example, and she said think of
24 this when you're deciding whether you have a direct,
25 individual, unique or substantial interest. Think about the

1 cotton candy example. The legislator who owns a business and
2 the bill appropriates money to that legislator; to that
3 legislator's business. It's in the bill. It's obvious.

4 Jason Dockter was following the advice that he was given.
5 When I asked John Bjornson about what would have happened if
6 Jason would have stood up on the House floor and said, guys,
7 I might have a conflict here, he would have been allowed to
8 vote. When Emily O'Brien was asked if Jason Dockter had stood
9 up and said I think I might have a conflict here, guys. What
10 do I do? She would have voted to allow him to vote. That
11 means that even if you disagree with that, can you see why
12 his belief that he could vote was reasonable. And if you
13 believe that his decision to vote was reasonable, even if you
14 disagree with it, but you can say to yourself, I get it. I
15 understand because of that House Rule that's why he thought
16 he could vote. He didn't just ignore it. They don't have the
17 luxury of doing that. He looked at the rule. He thought of
18 the rule. He applied the rule.

19 So if you believe that when he did that, even if you
20 disagree with his ultimate conclusion, if you believe he
21 thought he was doing the right thing, he honestly believed he
22 thought he was doing the right thing, then you must find him
23 not guilty because the State has to prove that even if his
24 belief was mistaken, even if you disagree with his decision
25 to vote, the State must prove beyond a reasonable doubt that

1 he was unreasonable. And when the chair of the Ethics
2 Commissions and when another legislator and when the Director
3 of the Legislative Council all state that he either would
4 have been allowed to vote anyway or that the example that
5 they've been taught to think of when applying this rule
6 doesn't apply, when he's using the baseline that he was given
7 and he's saying that doesn't fit what I was told to be
8 thinking of, he's being reasonable. He may not be right. You
9 may not agree. But that doesn't make him unreasonable.

10 This case does not belong in a criminal courtroom. I want
11 you to think about what you're doing here. You're convicting
12 a legislator for casting a vote. Think about that. It's what
13 we elect them to do. If you disagree with how Jason Dockter
14 handled this, then the action you take is in the ballot box,
15 not the jury box.

16 You heard from Lonnie Grabowska. Did you notice it was
17 the defense that called him? In a criminal trial there was
18 one law enforcement officer that testified and the defense
19 called them. That's a rare thing. And I did that because I
20 wanted you to hear the conversation for yourself; that when
21 Jason Dockter approached him in the hallways of the Capitol
22 back in 2019, it was a casual conversation between two
23 friends of 35 plus years. At no point did Jason Dockter swing
24 his weight as a legislator or try to position himself in any
25 way involving this malicious intent that a crime infers. He

1 was doing a favor.

2 You look at the optics of it and you say should he have
3 done it the way he did it? Maybe you're right. I don't know.
4 That's not my call. That's why we have an Ethics Commission.
5 That's why we have voters, but jurors decide whether or not
6 there have been crimes. This is not a crime.

7 No one testified that he would have been precluded from
8 voting that day. Mr. Erickson presented no evidence to
9 suggest to the contrary. This is scary. This is scary when
10 you think about the chilling effect that this has. Are we
11 going to send our legislators up and have them worrying about
12 criminal prosecution now every time they cast a vote. You
13 leave this to the Ethics Commission and you leave this to the
14 voters. This belongs in the ballot box, not the jury box. His
15 actions were excused. He may not have been right, but he was
16 reasonable. Because he's been taught that he's to follow that
17 Rule 321 in doing his duties as a legislator and that's what
18 he did. And that was echoed by Emily O'Brien; that was echoed
19 by John Bjornson, and that was echoed by Jason Dockter. He
20 didn't have to get on the stand. He didn't have to speak to
21 Rob Port, but he did. He's not hiding anything.

22 So I'm asking you, you go back into that deliberation
23 room and tell the State that this isn't about Ladd Erickson's
24 decision-making process. This is about your decision-making
25 process. Our teachers and our legislature voting on bills to

1 provide better pay for our educators. Are they going to be
2 subject to prosecution because they, as teachers, could also
3 benefit from a bill that pays teachers better?

4 And the question that I had posed that Ms. Binstock
5 couldn't answer was what if he voted no? Did you notice her
6 pause? What if he had voted no? According to the State's
7 theory, he's still committing a crime. What if he voted
8 against these budgets? Still a crime because there was a
9 vote. The bottom line here is that this case is not a crime.
10 Rebecca Binstock and the Ethics Commission want to address
11 this, that's what they're there for. That's what they were
12 created for. If the voters don't like Jason Dockter, he's
13 gotten plenty of press on this, then they can go to the
14 ballot box in November and they can tell him. You, as 12
15 jurors, do not have a crime in front of you. And I'm
16 terrified at what happens next if you say you do. We said
17 that this is a government of the people, by the people and
18 for the --

19 MR. ERICKSON: Your Honor, just a second. That's the
20 second time a completely improper argument has been made --

21 THE COURT: It's sustained.

22 MR. ERICKSON: I let the first one go.

23 THE COURT: Yeah.

24 MR. ERICKSON: This is -- this is way out of bounds.

25 THE COURT: Mr. Suhr, you got one minute you can

1 finish up.

2 MR. SUHR: Thank you, Your Honor.

3 The beginning of my case I said this was about government
4 of the people, by the people, for the people. Citizens
5 legislature. You got a citizen sitting here being prosecuted
6 for what is not a crime. You may not like it, you may
7 disagree with it, but there was a reasonable belief system in
8 place and I ask you to come back with a verdict not guilty
9 because he is not guilty. Thank you.

10 THE COURT: Mr. Erickson, do you want a rebuttal?

11 MR. ERICKSON: Yes, Your Honor.

12 Our court system recognizes the difficulty it is for
13 jurors to sit on cases and what's totally improper is for an
14 attorney to stand before you and somehow make you like it's
15 your fault if he gets convicted or it's something that should
16 scare society if you file convictions. Those are way out of
17 bounds arguments that should never be brought up in court. I
18 should have objected the first time. It's manipulative and
19 it's not what lawyers are supposed to be doing.

20 Mr. Dockter is not a bad guy and I'm not here to assert
21 that. I do know when you bring out -- if you do follow those
22 rules, you are going to create a tension because you publicly
23 disclosed now you're involved in something and there was just
24 a lot of stuff with this building that was not worthy -- or
25 that was concerning the way it was happening. To bring the

1 public's attention by filing a recusal or standing up and
2 saying I'm conflicted here, so you've heard enough from us.
3 I'd ask that you deliberate and return the verdict you find
4 to be proper. Thank you.

5 THE COURT: You're going to be excused to go to the
6 jury room. I will have the bailiffs come forward. Raise your
7 right hand.

8 (Bailiffs sworn in.)

9 THE COURT: All right. Thank you. We'll let the jurors
10 be excused at this time to deliberate.

11 We're going to let the record reflect the jurors are not
12 in here. I wanted to make a comment, Mr. Suhr, if you
13 threaten my jury again, you, yourself, will have an ethics
14 issue. I don't appreciate you telling the jury that,
15 essentially, public safety is at risk if they find the
16 defendant guilty in this case.

17 MR. SUHR: And that wasn't my intention.

18 THE COURT: That's what you said though.

19 MR. SUHR: My intent was to illustrate -- I mean, just
20 for example, you know, when we heard the podcast, there was a
21 lot of banter in the podcast about the public perception.
22 That's what I was getting on. Maybe my choice of words could
23 have been more artfully stated and I -- it was not my intent,
24 but I want to illustrate -- I want them to understand the
25 full dynamic of what has been claimed here because of the

1 unique nature. There's a reason this this statute has never
2 been used in 49 years.

3 THE COURT: You made a comment earlier and then twice
4 during your closing, so you can argue it wasn't your intent,
5 but that's what come -- came across to me, I'm assuming to
6 the jury, and to Mr Erickson. So I don't want to hear it
7 again.

8 Anything else from the parties while we deliberate -- let
9 the jury deliberate?

10 MR. ERICKSON: No, Your Honor.

11 MR. SUHR: not from the defense, Judge.

12 THE COURT: All right. Thank you.

13 THE COURT: All right. We'll open 08-2023-CR-3618.
14 I've been told we have a verdict. We will bring in the jury.
15 The bailiff can hand me the verdict form.

16 The verdict form reads the following: State of North
17 Dakota versus Jason Dean Dockter. We, the jury, being duly
18 impaneled and sworn to try the above-entitled action, do make
19 the following finding regarding the defendant, Jason Dean
20 Dockter. On the charge of speculating or wagering on an
21 official action we find the defendant guilty.

22 Signed the jury leader, May 3, 2024.

23 Jury, was this verdict unanimous?

24 (All heads nodding.)

25 THE COURT: Mr. Suhr, do you want the jury polled?

1 MR. SUHR: We'd waive, Your Honor.

2 THE COURT: Mr. Erickson, do you want the jury polled?

3 MR. ERICKSON: I would waive, Your Honor.

4 THE COURT: All right. I want to thank the jurors for
5 taking the time. You were paying attention during trial. I
6 had nobody even trying to fall asleep. So I appreciate you
7 paying a lot of attention and taking your time in reaching
8 this verdict.

9 This is a misdemeanor now that trial is over. Mr.
10 Dockter's facing 360 days in jail, a \$3,000.00 fine and
11 \$300.00 in court fees. I am not going to sentence Mr. Dockter
12 today. It has been a long day and a very emotional day, so I
13 am going to set a change of plea at a different time and
14 we'll sentence him probably in the next week or two, so I'm
15 not going to handle the sentencing today.

16 Counsel, anything else from prosecution?

17 MR. ERICKSON: No, Your Honor.

18 MR. SUHR: No.

19 THE COURT: Well, I've told you you can't talk about
20 this case. You are now free to talk to anybody you want. You
21 do not have to talk to anybody. Sometimes the attorneys have
22 questions. Sometimes they don't. But it's completely up to
23 you if you want to talk to anybody about the verdict. I did
24 get pizza in right when we were notified, so if you want to
25 grab some food before you leave, feel free to do so. I will

1 be back there just to say hi and if you have any questions
2 for me, you definitely can ask me. That will conclude the
3 case then. We'll close the case. Thank you, again.

4 (Jurors released.)

5 THE COURT: I'm not going to do the sentencing today.
6 I -- it's been emotional for everybody. Been a long day. I
7 want to take time to think about the sentence and so we'll
8 set that trial (sic). Mr. Erickson, if you want to appear by
9 Zoom, feel free to do so.

10 MR. ERICKSON: Thank you.

11 THE COURT: And, Mr. Suhr, you can put in a request if
12 you and your client want to appear by Zoom as well.

13 I'm not sure when Court Administration will schedule
14 that. Sometime during my -- I'm guessing next week if some of
15 my trials go away, we'll get it scheduled then.

16 Anything else?

17 MR. ERICKSON: No, Your Honor. Thank you.

18 THE COURT: Mr. Suhr?

19 MR. SUHR: No, Your Honor.

20 THE COURT: All right. Mr. Dockter, you do have a
21 right to appeal the verdict today. That appeal process does
22 not start until I sign the judgment, so it'd be after
23 sentencing and then you'd have 30 days to appeal after the
24 Court signs that judgment. Okay. All right. Thank you.

25 (Jury Trial concluded.)

[illegible]

CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place indicated.

I FURTHER CERTIFY that the foregoing and attached 238
typewritten pages contain an accurate transcript of my
shorthand notes then and there taken.

Kayla Riemer

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO THE REPRODUCTION OF THE SAME BY ANY MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.

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