

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED 1007
DISTRICT COURT
INDIANAPOLIS DIVISION
2006 NOV -2 PM 2:40

UNITED STATES OF AMERICA)
)
 v.)
)
 MA-RI-AL CORPORATION, d/b/a BEAVER)
 MATERIALS, CORP.;)
 CHRIS A. BEAVER;)
 RICKY J. BEAVER a/k/a RICK BEAVER; and)
 JOHN J. BLATZHEIM,)
 Defendants.)

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK
IP06-CR-0061 -01 M/F
-02 ✓
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-04

Hon. Larry J. McKinney

UNITED STATES' PROPOSED VOIR DIRE QUESTIONS

Pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, and Rule 47.1 of the Local Rules of the Southern District of Indiana, the Government submits the following questions to the Court and respectfully requests that they be asked of the prospective trial jurors in this case:

1. The attorneys for the Government are:

Frank J. Vondrak;
Jonathan A. Epstein; and
Eric L. Schleef

from the Chicago Office of the Antitrust Division of the Department of Justice. Do any of you know these individuals, or have you or any of your family or friends ever had any business, social or financial relationship with them? Have you or any of your family or friends had dealings of any kind with the United States Department of Justice or the United States Attorney's Office? If so, please explain.

2. Assisting the Government's attorneys are two paralegals:

Carly J. Blakeman; and
Janice L. Swallow.

Do any of you know these individuals, or have you or any of your family or friends ever had any business, social or financial relationship with them? If so, please explain.

3. Joining the prosecutors at counsel table is Special Agent Steven L. Schlobohm with the Federal Bureau of Investigation. Do any of you know Mr. Schlobohm, or have you or any of your family or friends ever had any business, social or financial relationship with him?

Have you or any of your family or friends had dealings of any kind with the Federal Bureau of Investigation? If so, please explain.

4. The defendants in the case are:

MA-RI-AL Corporation, d/b/a Beaver Materials, Corp.;
Chris A. Beaver; and
Ricky J. Beaver, a/k/a Rick Beaver.

The attorneys for the defendants are:

James Voyles of Symmes, Voyles, Zahn, Paul & Hogan and
Jeffrey Lockwood of Eisele, Lockwood & Williams.

Do any of you know the defendants or their lawyers or have you or any of your family or friends had any business, social, or financial dealings with the defendants, their lawyers, or any members of their respective law firms? If so, please explain.

5. The Government requests that the court read the following preliminary statement to the jury panel at the outset so the panel will know the nature of the charge against the defendants:

The defendants in this case sell ready mixed concrete in the Indianapolis area. Ready mixed concrete is made up of cement, aggregate (sand and gravel), water and other ingredients. It is made on demand and delivered by concrete mixer trucks. Count One of the indictment in this case charges that beginning at least as early as July, 2000 and continuing to May 25, 2004, the defendants and others engaged in a conspiracy to fix the price of ready mixed concrete sold in and around Indianapolis, in violation of Section One of the Sherman Antitrust Act.

Count Three charges Defendant Chris A. Beaver with making false statements to federal investigators on May 25, 2004. Count Four charges Defendant Ricky J. Beaver with making false statements to federal investigators on May 25, 2004.

6. Have you or a member of your family worked for or had business or financial dealings with defendant MA-RI-AL Corporation, d/b/a Beaver Materials, Corp., or with any of their agents or employees?
7. Have you or any member of your family ever been employed in the ready mix concrete industry? If so, please state the nature of the employment.
8. Have you ever been employed by a company or government agency in a position in which you had any responsibilities relating to the purchase of ready mix concrete?

9. Have you, any member of your family, or any of your close friends, been in any way associated with the following individuals or companies:

Individuals

Wayne Bartel
Allyn Beaver
Daniel C. Butler
Special Agent Neal Freeman of the FBI
Philip Haehl
Richard Haehl
Special Agent Gilbert Hirschy of the FBI
Scott Hughey
Price C. Irving
Jason Mann
Special Agent Karen Medernach of the FBI
Gus B. "Butch" Nuckols, III
John Ray
Special Agent Steven Schlobohm of the FBI
Charles R. Sheeks

Companies

American Concrete
Builder's Concrete and Supply Company
Hughey, Inc. d/b/a Carmel Concrete Products
Irving Materials, Inc.
Prairie Materials
Shelby Materials, Inc.

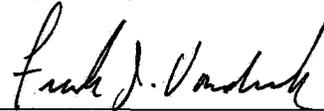
10. The Government requests that the Court ask each member of the jury panel to state the following information:
- a. Name
 - b. Address
 - c. Marital status
 - d. Employment
 - e. If married, Spouse's employment
 - f. Nature of formal education and last year of school completed
11. Have you or any member of your family ever been involved in litigation or controversy with an agency, bureau, department or representative of the United States Government? If so, what was the nature of that difficulty or dispute? Do you believe that despite this you can still judge the merits of this case objectively and impartially?

12. Have any of you ever served as a grand juror or trial juror before? If so, when? What type of case? If it was a criminal case, what was the nature of the case, and did the jury reach a unanimous verdict? Was there anything about your prior jury service that would influence you for or against either side in this case?
13. Have any of you ever been a witness in a trial or before a grand jury? If so, when? What type of case?
14. Have any of you ever been a party in a lawsuit? If so, when? What type of case? What was the outcome?
15. Have you or any member of your family ever attended a law school? Ever studied economics or business at the University level or higher?
16. Have any of you, or any member of your family ever been employed by a local, state or federal government agency (other than service in the military)? If so, what was the nature of that employment? Can you nonetheless judge the merits of this case objectively and impartially?
17. Have any of you or a member of your family ever been employed by any law enforcement agency? If so, what was the nature of that employment? Can you nonetheless judge the merits of this case objectively and impartially?
18. Have any of you or any member of your family ever been the subject of any investigation or involved in litigation, a dispute, or controversy with any agency, bureau, department or representative of the United States Government, including the Internal Revenue Service or the Immigration and Naturalization Service, now known as Immigration and Customs Enforcement? If so, what was the nature of that difficulty or dispute? How was it resolved? Do you believe that despite this you can judge the merits of this case objectively and impartially?
19. Have any of you, your spouse, or children ever owned or run a business? What was the nature of the business? Did you have authority to set prices in this business?
20. Have any of you heard anything on the radio or television or read anything in the newspapers or in other publications about this case? If so, as a result of what you have heard or read -without telling us what that opinion is - have you formed any opinion whatsoever regarding the guilt or innocence of the defendants? Would what you have heard or read make it difficult for you to render an objective and impartial verdict based solely upon the evidence presented at trial?
21. Have you or any member of your family ever been a victim of a crime? If yes, describe the crime and the nature and disposition of any charges.

22. Have you or any member of your family ever been involved in a civil or criminal case as a plaintiff, defendant, or witness? If yes, describe the nature of the case and your involvement and the outcome of the case. Do you have feelings against prosecutors which would make it difficult for you to listen to the Government's evidence in this case with an impartial and open mind and to render an impartial verdict?
23. As I mentioned, Count One of the indictment in this case involves alleged violations of the federal antitrust laws, in particular the Sherman Act. The Sherman Act, among other things, prohibits price fixing. The purpose of our antitrust laws is to preserve free enterprise and open competition in the marketplace. Have you or any member of your family had any experience with the antitrust laws or been connected with any company which was involved in any antitrust matter? Do any of you have strong feelings about the federal antitrust laws? Do any of you feel that businesses are subjected to too much regulation? Do any of you feel that it is okay for competitors to discuss and agree on prices to charge customers? If yes, will these feelings influence your ability to reach a fair and impartial verdict in this case?
24. If I instruct you that the price fixing the Defendants are charged with is unlawful per se, that is to say, if the agreement existed, it cannot be justified for any reason, and is unlawful without regard to whether the prices charged were reasonable or unreasonable, or whether any customer actually got charged higher prices, could you follow that instruction?
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25. This case also involves charges that the individual defendants made false statements to federal investigators. Do any of you believe that it should not be a crime for individuals to lie to FBI agents and other government investigators? If yes, will this belief influence your ability to reach a fair and impartial verdict in this case?
26. The Department of Justice's Antitrust Division has a policy, known as the Corporate Leniency Program, that allows companies involved in an illegal conspiracy to avoid criminal prosecution if they cooperate with the government's investigation and agree to pay restitution. Do you have any feelings for or against the use of such a program? Do you believe that such a program is unfair? Do any of you think that a witness who testifies pursuant to the Corporate Leniency Program will not tell the truth? Would you tend to disbelieve a witness solely because he is testifying pursuant to the Corporate Leniency Program?
27. Do you have any feelings for or against the use of a prosecutorial tool known as "plea bargaining" where a plea of guilty is entered into rather than face prosecution on other charges? Do any of you believe plea bargaining is unfair? Do any of you think that a witness who testifies pursuant to a plea bargaining arrangement will not tell the truth? Would any of you tend to disbelieve a witness solely because he is testifying pursuant to a plea bargaining arrangement?

28. Do any of you think or feel that because an individual is a businessman or occupies a position of prominence in social, civic, political or business organizations, he cannot be guilty of conspiring to fix prices, or if guilty, he should not be punished for fixing prices with his competitors?
29. Do you have any religious or moral scruples which would prevent you from judging the conduct of another person?
30. At the end of the case, when I instruct you on the law to be applied, you will be expected to follow my instructions, even if you personally disagree with the wisdom of the law or have a different view of what the law should be. In addition, you will be asked to judge this case without prejudice against or sympathy for any party. Will each of you be able to render a fair and impartial verdict in this case based solely on the evidence presented and the instructions I give you?
31. If at the end of this case, during your deliberations, you believe that the evidence warrants a verdict of not guilty, will you have any reluctance or hesitancy to acquit a defendant? On the other hand, if, at the end of this case you believe the evidence warrants a verdict of guilty, will you have any reluctance or hesitancy in convicting a defendant? If so as to either question, please explain why.
32. Do any of you know of any reason why, after you have heard the evidence in this case and received the instructions of the court, you will not be able to render a verdict which is fair and impartial and based solely on the evidence and the instructions of law as given to you by the court?
33. Does anyone have an illness in his or her family, a business problem, a physical impairment or similar personal concern that would make it difficult for him or her to be attentive to the evidence or to sit through a trial which may last for more than a week?
34. Can you think of anything concerning your background, your family or your occupation that I have not asked you that you think the parties should know about in deciding whether you should be selected to sit on this jury?

Respectfully submitted,



FRANK J. VONDRAK (IL Bar # 6202050)

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CERTIFICATE OF SERVICE

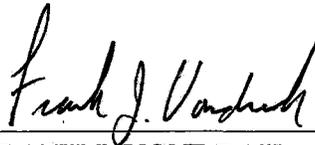
The undersigned hereby certifies that true and accurate copies of United States' Proposed Voir Dire Questions were served upon counsel for each defendant listed below by Federal Express, this 2nd day of November 2006:

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