

Voir Dire: United States v. Whiteagle, *et al.*, 11-cr-65-wmc

Statement of the case: This is a criminal case, in which the defendants, Timothy Whiteagle and Deborah Atherton, are charged with unlawfully being members of a bribery conspiracy involving business contracts with the Ho-Chunk Nation.

More specifically, defendants Whiteagle and Atherton are charged with soliciting companies to give money and other things of value to an elected legislator of the Ho-Chunk Nation named Clarence Pettibone, so that Pettibone would be influenced in how he handled those companies' business with the Ho-Chunk Nation. The companies were seeking contracts to provide housing for the Nation, and to provide financial services to the Nation.

Defendant Whiteagle also is charged with unlawfully attempting to influence a witness's testimony about these matters. Defendant Whiteagle also is charged with making false statements on tax returns about money paid to him by a company hoping to influence business with the Ho-Chunk Nation.

Each defendant has entered a plea of not guilty to the charges against him or her.

Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

1. Scheduling: this case will begin today and is predicted to last at least two weeks, until Friday, August 3, and might possibly finish the following Monday or Tuesday, August 6 or 7. Are any of you actually unable to sit as jurors because of this schedule?

2. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

3. The court reads Pattern Jury Instructions of the Seventh Circuit:

Each defendant is presumed to be innocent of the charges against him or her. This presumption remains with each defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that a defendant is guilty.

The government has the burden of proving the guilt of each defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. A defendant is not required to prove his or her innocence or to produce any evidence.

Each defendant has an absolute right not to testify. The fact that a defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Even though the defendants are being tried together, you must give separate consideration to each defendant and must return a separate verdict as to each defendant that is based on the evidence relating to that defendant.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendant and the case agent. Ask whether jurors know them.

5. Defendant Timothy Whiteagle is a tribal member of the Ho-Chunk Nation. Would any of you find it difficult to serve as an impartial juror in a case in which a member of the Ho-Chunk Nation is charged with crimes relating to the Nation's business contracts with outside companies?

6. Defendants Deborah Atherton and Timothy Whiteagle have been involved in a long term romantic relationship. Do any of you have any feelings or opinions about interracial relationships that would affect your ability to be fair to either Ms. Atherton or Mr. Whiteagle in this case?

7. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material, including magazines and newspapers.

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Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you have any bumper stickers on your vehicles, and what they say.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

8. Do any of you in the jury box know each other from before today?
9. Have any of you ever held public office? Would this affect your ability to be impartial in this case?
10. Do any of you belong to any groups or organizations that promote or advocate legislation at any level of government? Have any of you ever held public office? Would this affect your ability to be impartial in this case?
11. Are any of you, your family or your close friends tribal members of the Ho-Chunk Nation or any other Native American Nation or Tribe? Would this affect your ability to be impartial in this case?
12. Have any of you or your family met or had close associations with Native Americans in Wisconsin or elsewhere? Would this affect your ability to be impartial in this case?
13. Have any of you or your family ever had any negative or bad experience with a Native American or a business owned by a Native American Tribe? [*Sidebar*] Would this affect your ability to be impartial in this case?
14. Have any of you, your family or close friends ever lived in housing built by or for the Ho-Chunk Nation or lived on property owned by the Nation? Would this affect your ability to be impartial in this case?
15. Have any of you or your family ever worked in a business involved in real estate development or the construction or financing of residential property? Would this affect your ability to be impartial in this case?

16. Have any of you, your family or close friends ever worked for, or otherwise had any business dealings, directly or through your employer, with the Ho-Chunk Nation or with any other Native American Tribe? Would this affect your ability to be impartial in this case?

17. Have any of you, your family or close friends ever worked in a business that was involved in banking, check cashing or cash access? Would this affect your ability to be impartial in this case?

18. Have any of you ever used an ATM machine or otherwise obtained cash in any facility owned or operated by the Ho-Chunk Nation or any other Native American nation or Tribe? Would this affect your ability to be impartial in this case?

19. Do any of you have strong feelings or opinions about gambling in general that might affect your ability to be impartial in this case?

20. Have any of you, your family or friends ever experienced any sort of gambling addiction or problem? [*Sidebar*] Would this affect your ability to be impartial in this case?

21. Do any of you have strong feelings or opinions about Indian gaming or the rights of Native American Tribes to operate casino games or gaming businesses? [*Sidebar if needed*] Would this affect your ability to be impartial in this case?

22. Have any of you, your family or close friends directly or through your employer, ever been involved in a business transaction in which you made or were asked to make any sort of off-the-record payment to assist the transaction? [*Sidebar*] Would this affect your ability to be impartial in this case?

23. Have any of you, your relatives or close friends ever been audited by the IRS or the Wisconsin Department of Revenue or had any other non-routine interaction with a government agency about taxes? Would this affect your ability to be impartial in this case?

24. Do any of you have feelings or opinions about the IRS, the Wisconsin Department of Revenue or about the tax system or taxation in general that would this affect your ability to be impartial in this case? [*Sidebar*]

25. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense, or any civil offense involving any drug? [*Sidebar if requested*]. Would this affect your ability to be impartial in this case?

26. Have any of you, your relatives, or close friends ever been interviewed or investigated by any law enforcement officer or agent for any reason? [*Sidebar if requested*]. Would this affect your ability to be impartial in this case?

27. Other than what you already have told us, have any of you, your relatives, or close friends ever been incarcerated in a jail or prison, or ever served a sentence of probation, parole or extended supervision? [*Sidebar if necessary*] Would this affect your ability to be impartial in this case?

28. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

29. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

30. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

31. Have any of you ever belonged to any organization or group that excluded people because of their race, gender, or religion?

32. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

33. Would any of you judge the credibility of a witness who had been convicted of a crime in the past differently from other witnesses solely because of this prior conviction?

34. Would any of you judge the testimony of a witness who was Native American, African American, Hispanic or Asian differently from other witnesses solely because of the witness's race?

35. If a defendant were to choose to testify, would any of you judge his or her credibility differently from other witnesses solely because it was a defendant who was testifying?

36. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

37. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

38. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

39. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

40. If at the conclusion of the trial you were to be convinced of a defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty as to that defendant?

41. If at the conclusion of the trial you were not to be convinced of a defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty as to that defendant?

42. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

43. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material, including magazines and newspapers

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you have any bumper stickers on your vehicles and what they say.

Whether you regularly use the Internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.