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COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

FEE 24.00

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 JOE HUNT, AKA JOSEPH HUNT, )  
 AKA JOSEPH HENRY GAMSKY, )  
 )  
 DEFENDANT-APPELLANT. )

SUPERIOR COURT  
NO. A-090435

OCT 08 1988

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE LAURENCE J. RITTENBAND, JUDGE PRESIDING  
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP  
STATE ATTORNEY GENERAL  
3580 WILSHIRE BOULEVARD  
ROOM 800  
LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 20 OF 101  
(PAGES 2628 TO 2813 , INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932  
SALLY YERGER, CSR NO. 2008  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

NO. A-090435 )

JOSEPH HUNT, )

DEFENDANT. )

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, DECEMBER 10, 1986

VOLUME 20

(PAGES 2628 TO 2813, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

IRA REINER, DISTRICT ATTORNEY  
BY: FREDERICK N. WAPNER, DEPUTY  
1725 MAIN STREET  
SANTA MONICA, CALIFORNIA 90401

FOR THE DEFENDANT:

ARTHUR H. BARENS, ESQ.  
10209 SANTA MONICA BOULEVARD  
LOS ANGELES, CALIFORNIA 90067

AND

RICHARD C. CHIER, ESQ.  
10920 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024

ROSEMARIE GOODBODY, CSR NO. 932  
SALLY YERGER, CSR NO. 2008  
OFFICIAL REPORTERS

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WEDNESDAY, DECEMBER 10, 1986 VOLUME 20 PAGES 2628 TO 2813

A.M. 2628

P.M. 2688



PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 2628

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, DECEMBER 10, 1986; 10:30 A.M.

2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE.)

4  
5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN CHAMBERS:)

7 THE COURT: ALL RIGHT, THE RECORD WILL INDICATE WE ARE  
8 PRESENT IN CHAMBERS.

9 MR. BARENS: YOUR HONOR, I HAVE HAD A VERY AGONIZING  
10 NIGHT LAST NIGHT AND IT IS WITH A VERY HEAVY COUNTENANCE  
11 THAT I MUST COME TO YOU THIS MORNING WITH SOME INFORMATION  
12 MR. CHIER HAS TO COMMUNICATE TO THE COURT.

13 I JUST WANT TO SAY FOR THE RECORD THAT IT IS  
14 VERY DIFFICULT FOR ME PERSONALLY AND WHICH YOU WILL UNDERSTAND  
15 DIRECTLY. HOWEVER, UNDER THE CIRCUMSTANCES THE DEFENSE HAS  
16 NO CHOICE IN THIS MATTER BUT I DID WANT TO EXPRESS MY PERSONAL  
17 REGRETS WITH HAVING TO BRING THIS TO YOUR HONOR'S ATTENTION.

18 THE COURT: WHAT IS IT?

19 MR. BARENS: I AM GOING TO DEFER TO MR. CHIER. I EVEN  
20 HAVE DIFFICULTY IN ADDRESSING THE SUBJECT, YOUR HONOR.

21 THE COURT: YES?

22 MR. CHIER: REGRETTABLY, YOUR HONOR, WE ARE GOING TO HAVE  
23 TO FILE AN AFFIDAVIT OF ACTUAL BIAS UNDER 170.1 OF THE PENAL  
24 CODE.

25 THE COURT: IT IS A LITTLE LATE FOR THAT.

26 MR. CHIER: WE ARE FILING IT TOMORROW. WE HAVE DRAFTED --

27 THE COURT: YOU CAN FILE IT ANYTIME YOU WANT. IT IS A  
28 LITTLE LATE AT THIS LATE STAGE OF THE PROCEEDINGS FOR YOU TO

1 FILE THAT AFFIDAVIT. I WON'T COUNTENANCE IT. I WON'T RESPECT  
2 IT. I WON'T LISTEN TO IT.

3 MR. CHIER: THE INSTANCES OF YOUR INTEMPERATE TREATMENT  
4 OF ME --

5 THE COURT: YES, I UNDERSTAND THAT PERFECTLY. YOU HAVE  
6 MADE A RECORD OF IT AND IF ANYTHING HAPPENS, IF HE IS CONVICTED,  
7 THEN YOU HAVE A POINT ON APPEAL.

8 MR. BARENS: YOUR HONOR --

9 THE COURT: LET'S GET ON WITH THIS TRIAL.

10 MR. BARENS: IF I MIGHT BE HEARD FOR ONE MORE MOMENT.

11 THE COURT: I WILL HEAR IT FROM YOU.

12 MR. BARENS: YOUR HONOR, THE REASON FOR HAVING TO BRING  
13 THIS TO THE COURT'S ATTENTION AT THIS POINT IN TIME, THERE WAS  
14 A CONFERENCE IN MY OFFICE LAST NIGHT INVOLVING MY CLIENT, AND  
15 THIS HAS BEEN A POINT THAT MY CLIENT HAS ASSERTED TO ME DURING  
16 THE PROCEEDINGS TO DATE, WHICH I HAVE DECLINED TO JOIN IN, AS  
17 MUCH AS I COULD, UP TO THIS MOMENT.

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2-1  
1                   HOWEVER, THERE COMES A TIME WHERE I CAN NO LONGER  
2 NOT PURSUE AN OVERTURE THE CLIENT INSISTS UPON, YOUR HONOR,  
3 THAT IS JOINED IN BY MY CO-COUNSEL.

4                   IT BECOMES INCUMBENT UPON ME, IRRESPECTIVE OF  
5 MY PERSONAL FEELINGS, THAT I BE RESPONSIVE TO QUESTIONS PUT  
6 UPON ME. THAT IS WHY THE MATTER ARISES AT THIS MOMENT IN  
7 TIME.

8                   THE COURT: ALL RIGHT. YOU CAN FILE THAT IF YOU WANT  
9 TO. I WON'T RECOGNIZE IT. I WON'T EVEN ACCEPT IT.

10                  MR. BARENS: THANK YOU, YOUR HONOR.

11                  THE COURT: LET'S GET STARTED ON THE TRIAL.

12                         IT IS A LITTLE TOO LATE TO DO THOSE THINGS.  
13 I WILL SAY FOR THE RECORD, THAT IT IS JUST A PLOY ON YOUR  
14 PART TO DELAY THIS THING INDEFINITELY. THIS COULD HAVE BEEN  
15 DONE A LONG TIME AGO.

16                         WHATEVER IT IS THAT YOU HAVE IN THERE, COULD HAVE  
17 BEEN DONE A LONG, LONG TIME AGO. ANY CHARGES OR CLAIMS THAT  
18 YOU MIGHT MAKE ABOUT MY IMPARTIALITY HAPPENED LONG, LONG  
19 BEFORE THIS. YOU SHOULD HAVE MADE THE MOTION, IF THERE WAS  
20 SUCH A MOTION, BEFORE THIS.

21                  MR. CHIER: THIS IS CONTINUING AND ESCALATING IN THIS  
22 MATTER, YOUR HONOR.

23                  THE COURT: I WON'T HEAR ANYTHING FURTHER FROM YOU.

24                         (THE FOLLOWING PROCEEDINGS WERE HELD

25                                 IN OPEN COURT IN THE PRESENCE AND

26                                 HEARING OF THE PROSPECTIVE JURORS:)

27                  THE COURT: MR. KAUZOR, YOU WILL BE EXCUSED.

28                  MR. KAUZOR: I THANK YOU, YOUR HONOR.

1 THE COURT: ARE THEY ALL HERE?

2 THE CLERK: THEY ARE ALL HERE.

3 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND  
4 GENTLEMEN.

5 THE PROCEDURE NOW IS TO HAVE 12 NAMES DRAWN FROM  
6 THE BOX AND YOU WILL TAKE THE SEATS IN THE JURY BOX IN THE  
7 ORDER IN WHICH YOU ARE CALLED.

8 THE CLERK: MRS. RUBY S. EWELL, E-W-E-L-L.

9 THE COURT: E WHAT?

10 THE CLERK: E-W-E-L-L.

11 THE COURT: IS THAT EWELL, IS THAT HOW IT IS PRONOUNCED?

12 MS. EWELL: EWELL.

13 THE CLERK: KURT HECK, H-E-C-K.

14 GLORIA D. SHELBY, S-H-E-L-B-Y.

15 THE COURT: WHICH IS IT, MISS OR MRS.?

16 THE CLERK: IS IT MRS., MA'AM?

17 MS. SHELBY: MISS.

18 THE COURT: MISS?

19 THE CLERK: YES.

20 KEITH L. CANADY, K-A-N-A-D-Y.

21 MR. CANADY: THAT IS C-A.

22 THE CLERK: I AM SORRY. C-A-N-A-D-Y

23 CHARLES C. DUNDORE, D-U-N-D-O-R-E.

24 DAVID J. PEIKERT, P-E-I-K-E-R-T.

25 AUSTIN R. GHIRARDI.

26 MR. GHIRARDI: IS IS GHIRARDI.

27 THE CLERK: G-H-I-R-A-R-D-I.

28 LORI E. KNUEDLER, K-N-U-E-D-E-L-E-R.

1 IS THAT MRS.?

2 MS. KNUEDELER: MISS.

3 THE CLERK: JOHANNA F. HOFER, H-O-F-E-R. IT IS  
4 J-O-H-A-N-N-A. THAT IS MISS.

5 LEONARD M. TAUB, T-A-U-B. OR IS IT TAUB?

6 THE COURT: TAUB.

7 MR. TAUB: TAUB.

8 THE CLERK: ROBERT E. ENGLE, E-N-G-L-E.

9 THE COURT: MR. ENGLE.

10 THE CLERK: MRS. EVELYN S. WALKER, W-A-L-K-E-R.

11 THE COURT: I AM ADDRESSING MYSELF TO ALL OF THE MEMBERS  
12 OF THE JURY PANEL, THOSE SEATED IN THE JURY BOX AS WELL AS  
13 THOSE SEATED BEHIND THE RAILING AND MY QUESTIONS WILL BE  
14 APPLICABLE TO ALL OF YOU, UNLESS I CALL ATTENTION TO A  
15 PARTICULAR JUROR AND ASK QUESTIONS OF THAT ONE JUROR WHICH  
16 ARE PERSONAL TO THAT ONE JUROR.

17 I HAVE ALREADY OUTLINED TO YOU THE NATURE OF THE  
18 CASE WE ARE ABOUT TO TRY SO THAT YOU HAVE A GENERAL IDEA OF  
19 THE NATURE OF THE CHARGE AGAINST THIS DEFENDANT.

20 AND NOW THE QUESTIONS WHICH ARE GOING TO BE ASKED  
21 OF YOU BOTH BY THE COURT AND BY OPPOSING COUNSEL WILL TOUCH  
22 UPON, OTHERWISE, YOUR QUALIFICATIONS TO ACT AS TRIAL JURORS  
23 IN THIS CASE.

24 I HAVE INDICATED TO YOU WHO THE ATTORNEYS ARE.  
25 I THINK WE WILL AGAIN INTRODUCE TO YOU THE ATTORNEYS WHO WILL  
26 BE REPRESENTING BOTH SIDES IN THIS CASE.

27 AND MR. FRED WAPNER, WHO WILL NOW RISE AND BE  
28 IDENTIFIED, WILL PRESENT THE CASE ON BEHALF OF THE PEOPLE.



1 (MR. WAPNER STANDS.)

2 THE COURT: MR. ARTHUR BARENS AND MR. CHIER WILL  
3 REPRESENT THE DEFENDANT.

4 MR. BARENS: GOOD MORNING.

5 (MR. CHIER AND MR. BARENS STAND.)

6 THE COURT: AND THE DEFENDANT HIMSELF, MR. JOE HUNT WILL  
7 RISE AND BE IDENTIFIED.

8 (DEFENDANT JOE HUNT STANDS.)

9 THE COURT: THANK YOU. YOU MAY BE SEATED.

10 YOU WILL RECALL THAT I ASKED EACH OF YOU WHETHER  
11 YOU HAVE HEARD OR READ OR KNOW ANYTHING ABOUT THIS CASE AND  
12 I ADMONISHED EACH OF YOU AT THE CONCLUSION OF THE QUESTIONING  
13 THAT YOU ARE NOT TO READ OR SPEAK OR LISTEN TO RADIO OR  
14 TELEVISION ON ANYTHING CONNECTED WITH THIS PARTICULAR CASE.

15 NOW, HAS ANY ONE OF YOU, SINCE I HAVE ADMONISHED  
16 YOU AS I DID, HAS ANY ONE OF YOU READ OR SPOKEN TO ANYBODY OR  
17 HEARD ANYTHING ON RADIO OR TELEVISION ABOUT THE CASE?

18 (MS. JONSSON RAISES HAND.)

19 THE COURT: WHAT IS YOUR NAME, PLEASE?

20 MS. JONSSON: DIANA JONSSON.

21 THE COURT: JONSSON?

22 MS. JONSSON: SIR, YOU DID NOT ADMONISH ME ABOUT THE  
23 CASE.

24 THE COURT: AT ANY RATE, IF YOU TAKE THE PLACE OF ANY  
25 JUROR PRESENTLY SEATED IN THE JURY BOX, I WILL HAVE YOUR NAME  
26 AND I WILL ASK YOU QUESTIONS OR COUNSEL WILL ASK YOU QUESTIONS  
27 ALSO ABOUT WHAT IT IS THAT YOU HEARD OR READ ABOUT THE CASE.

28 THAT IS MRS. JONSSON.

1 ANYBODY ELSE?

2 MR. RAGLE: HERE.

3 THE COURT: YES, SIR?

4 MR. RAGEL: IT DID COME ON TV AND I RECOGNIZED HIM AND  
5 TURNED IT OFF. I DIDN'T HEAR.

6 THE COURT: ALL RIGHT. YOUR NAME, PLEASE.

7 YOU RECOGNIZED HIM?

8 MR. RAGEL: YES, I RECOGNIZED HIM.

9 THE COURT: THAT IS THE DEPUTY D.A. YOU RECOGNIZED HIM.  
10 WHAT IS YOUR NAME AGAIN, PLEASE?

11 MR. RAGEL: LAWRENCE RAGLE, R-A-G-L-E.

12 THE COURT: I WILL ASK YOU QUESTIONS AND COUNSEL WILL  
13 ASK YOU SOME FURTHER QUESTIONS IF YOU TAKE THE PLACE OF ANYBODY  
14 PRESENTLY SEATED IN THE JURY BOX.

15 MR. WAPNER, WILL YOU PLEASE INDICATE TO THE  
16 PROSPECTIVE JURORS AND THE COURT AND COUNSEL THE NAMES OF ALL  
17 WITNESSES WHOM YOU PROPOSE TO CALL SO I CAN MAKE INQUIRY OF  
18 THE PROSPECTIVE JURORS WHETHER OR NOT THEY KNOW ANY OF THEM.

19 AND IN READING OFF THE NAMES, WILL YOU PLEASE  
20 INDICATE TO ME WHETHER ANY OF THEM, WHEN YOU DO READ THE NAMES,  
21 IS A MEMBER OF ANY LAW ENFORCEMENT AGENCY?

22 MR. WAPNER: THANK YOU, YOUR HONOR. IS IT ALL RIGHT IF  
23 I STAND OVER HERE?

24 THE COURT: YES.

25 MR. WAPNER: NABIL ABIFADEL.

26 JON ALLEN.

27 NEIL ANTIN.

28 PHYLLIS BALDUZZI.

1                   MICHAEL BRODER.  
2                   GENE BROWNING.  
3                   LEWIS BURATTI.  
4                   DR. CHOI.  
5                   SIMMIE COOPER.  
6                   ASHER DANN.  
7                   EVAN DICKER.  
8                   JERRY EISENBERG.  
9                   DEAN FACTOR.  
10                  MICHAEL FELDMAN.  
11                  ROBERT FERRARO.  
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1 JIM FOULK.  
2 JACK FRIEDMAN.  
3 SCOTT FURSTMAN.  
4 LAURA GELLER.  
5 MARK GELLER.  
6 LINDA GWINN.  
7 OLIVER HOLMES.  
8 DIANE JAMES.  
9 ROBERT JORDAN, HE AT THE TIME WAS A POLICE OFFICER  
10 WITH THE NEW YORK CITY POLICE DEPARTMENT.  
11 DEAN KARNY.  
12 LEONARD KAUFMAN.  
13 STELLA KEENER.  
14 HANNELORE LEIS.  
15 CAROL LEVIN.  
16 MARTIN LEVIN.  
17 RICHARD LIEBOWITZ.  
18 STEVE LOPEZ.  
19 LARRY MAIZE.  
20 LEN MARMOR.  
21 DAVID MAY.  
22 TOM MAY.  
23 JERRIANNE NEWMAN.  
24 DAVID OSTROVE.  
25 JAMES O'SULLIVAN.  
26 DR. JULIUS PASKAN.  
27 JEFFREY RAYMOND.  
28 JOHN REEVES.

A-2

1 MARY REINHART.  
2 DAVID REIS.  
3 BROOKE ROBERTS.  
4 JOHN ROBERTS.  
5 DOLORES ROBINSON.  
6 BART ROE.  
7 DON SCHLEGEL.  
8 MARVIN SPECTOR.  
9 JERRY STONE.  
10 BLANCHE STURKEY.  
11 CHRIS STURKEY.  
12 STEVE TAGLIANETTI.  
13 BOB TAYLOR.  
14 TERE TEREBA.  
15 PAUL TOBIN.  
16 GARY TOLFA.  
17 PAT TOWERS.  
18 GENE VACTOR.  
19 HAROLD VALVIK.  
20 EMIL VARMA.  
21 JOE VEGA.  
22 STEVE WEISS.

23 THE COURT: NOW, DO ANY OF YOU LADIES AND GENTLEMEN  
24 KNOW OR THINK THAT YOU KNOW ANY OF THE PROSPECTIVE WITNESSES  
25 WHO HAVE BEEN READ OUT TO YOU BY THE DISTRICT ATTORNEY?

26 (THERE WAS A SHOW OF HANDS.)

27 THE COURT: YOUR NAME, PLEASE?

28 MS. GOOLEY: MARJORIE GOOLEY.

A-3

1 THE COURT: GOOLEY? ALL RIGHT. IF YOU TAKE THE PLACE  
2 OF ANYBODY PRESENTLY SEATED IN THE JURY BOX, I HAVE YOUR NAME  
3 DOWN. I WILL ASK YOU HOW YOU KNOW, IF YOU DO KNOW ANY OF  
4 THESE PEOPLE. YOU WILL TELL US WHAT YOU KNOW.

5 (THERE WAS A SHOW OF HANDS.)

6 MS. CLEMENTS: I USED TO HAVE A FRIEND NAMED MARY  
7 REINHART. I AM NOT SURE WHETHER IT IS THE SAME ONE.

8 THE COURT: WHAT IS YOUR NAME?

9 MS. CLEMENTS: LOIS CLEMENTS.

10 THE COURT: ANYBODY BACK THERE? THIS IS ALL OF THE  
11 NAMES OF THOSE SEATED BEHIND THE RAILING.

12 NOW, ANYONE ELSE?

13 (THERE WAS A SHOW OF HANDS.)

14 THE COURT: ALL RIGHT. THAT IS MR. DUNDORE?

15 MR. DUNDORE: YES. I KNOW A BOB TAYLOR. THAT IS A  
16 COMMON NAME. SO IT MIGHT NOT BE THE ONE.

17 THE COURT: WHAT DOES THE BOB TAYLOR DO?

18 MR. DUNDORE: SALESMAN.

19 THE COURT: DO YOU HAVE ANY OTHER INFORMATION?

20 MR. WAPNER: HE WORKS AT SHEARSON AMERICAN EXPRESS IN  
21 BEVERLY HILLS.

22 MR. DUNDORE: NO.

23 THE COURT: NOT THE SAME ONE? ALL RIGHT. I SEE ANOTHER  
24 HAND.

25 MR. GHEBRIAL: I USED TO HAVE A BOSS CALLED JOHN REEVES,  
26 AN ENGINEER.

27 THE COURT: JUST GIVE ME YOUR NAME.

28 MR. GHEBRIAL: MY NAME IS GHEBRIAL, G-H-E-B-R-I-A-L.

4A-4  
1 THE COURT: ALL RIGHT. IS THERE ANYBODY ELSE?

2 MR. GHEBRIAL: THANK YOU.

3 (THERE WAS A SHOW OF HANDS.)

4 THE COURT: YOUR NAME, PLEASE?

5 MS. ROBLES: ROBLES, R-O-B-L-E-S.

6 THE COURT: YES? MISS ROBLES, I WILL SAY AGAIN, IF  
7 YOU TAKE THE PLACE OF ANYBODY SEATED IN THE JURY BOX, I WILL  
8 HAVE YOUR NAME. THEY WILL ASK YOU PERTINENT QUESTIONS ALONG  
9 THE LINE THAT I HAVE ASKED THE OTHERS.

10 ALL RIGHT. NOW, MR. WAPNER HAS INDICATED THAT  
11 SOME OF THE WITNESSES WHOSE NAMES HAVE BEEN CALLED OUT ARE  
12 LAW ENFORCEMENT OFFICERS AND --

13 MR. WAPNER: YOUR HONOR, I FORGOT TO MENTION THEM.  
14 I HAVE THE LAW ENFORCEMENT OFFICERS ON A SEPARATE LIST.  
15 I APOLOGIZE.

16 THE COURT: ALL RIGHT. READ THOSE OFF, PLEASE.  
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4A-5  
1 MR. WAPNER: WITH ONE EXCEPTION, UNDERWOOD WHO WORKS  
2 FOR THE FBI, ALL OF THESE PEOPLE WORK FOR THE BEVERLY HILLS  
3 POLICE DEPARTMENT.

4 OFFICER ALBANESE.

5 OFFICER CLASON.

6 OFFICER DECUIR.

7 OFFICER EDDINGTON.

8 OFFICER EDHOLM.

9 SERGEANT EDMONDS.

10 OFFICER FOGG.

11 OFFICER HENDERSON.

12 OFFICER KING.

13 OFFICER LINEHAN.

14 OFFICER MUNOZ-FLORES.

15 OFFICER REINER.

16 OFFICER SEEGER.

17 OFFICER WAGENBRENNER.

18 DETECTIVE ZOELLER.

19 THE COURT: NOW, ARE THERE ANY OF YOU LADIES AND  
20 GENTLEMEN WHO KNOW ANY OF THE POLICE OFFICERS OR THINK YOU  
21 KNOW ANY POLICE OFFICERS OR LAW ENFORCEMENT OFFICERS WHOSE  
22 NAMES HAVE BEEN READ OUT TO YOU?

23 (THERE WAS A SHOW OF HANDS.)

24 THE COURT: ALL RIGHT. MR. GHIRARDI?

25 MR. GHIRARDI: I WANT TO KNOW IF THE OFFICER COULD  
26 POSSIBLY HAVE EVER WORKED FOR LAPD BECAUSE FLORES IS A FAMILIAR  
27 NAME.

28 THE COURT: FLORES IS A RATHER COMMON NAME. DO YOU



4A-6  
1 KNOW IF HE EVER WORKED --

2 MR. WAPNER: I DON'T KNOW IF HE DID OR NOT.

3 THE COURT: DO YOU KNOW AN OFFICER FLORES?

4 MR. GHIRARDI: I HAVE BEEN IN THE HOTEL BUSINESS FOR  
5 15 YEARS. I HAVE MET AN AWFUL LOT OF POLICE OFFICERS.

6 THE COURT: YOU WILL TELL US OF COURSE, IF HE EVER COMES  
7 IN OR IS A WITNESS IN THIS CASE. YOU WILL INDICATE TO US  
8 AT THAT PARTICULAR TIME. WOULD YOU PLEASE?

9 MR. GHIRARDI: YES.

10 THE COURT: ALL RIGHT. THANK YOU.

11 YES, MA'AM?

12 MS. HOFER: WHAT IS OFFICER ALBANESE'S FIRST NAME, PLEASE?

13 THE COURT: HAVE YOU GOT THAT?

14 MR. WAPNER: I DON'T HAVE IT.

15 THE BAILIFF: I THINK I KNOW OFFICER ALBANESE'S FIRST  
16 NAME. I THINK IT IS MIKE. IS IT LAPD?

17 MR. WAPNER: NO, BEVERLY HILLS.

18 THE BAILIFF: THEN IT IS A DIFFERENT ONE.

19 MS. HOFER: ALL I KNOW IS THAT HE WAS A STUDENT BODY  
20 OFFICER AT MY SCHOOL.

4B  
21 THE COURT: I SEE. WELL, THE FACT THAT HE MIGHT BE  
22 A WITNESS IN THIS CASE, WOULD THAT IN ANY WAY CAUSE YOU TO  
23 FAVOR HIS TESTIMONY?

24 MS. HOFER: PROBABLY, SIR.

25 THE COURT: WOULDN'T YOU WEIGH HIS TESTIMONY IN THE  
26 SAME WAY THAT YOU WOULD ALL OF THE OTHER WITNESSES?

27 MS. HOFER: YES, SIR.

28 THE COURT: ALL RIGHT. THANK YOU, MS. HOFER. ANYBODY

4A-7  
1 ELSE? ALL RIGHT.

2 MR. WAPNER: YOUR HONOR, COULD WE ASK MS. HOFER -- I  
3 AM SURE THAT IT WILL COME OUT LATER. ASK HER WHAT THE NAME  
4 OF THE SCHOOL WAS. PERHAPS I CAN CONTACT THE OFFICER AND  
5 FIND OUT.

6 MS. HOFER: CLEVELAND HIGH SCHOOL.

7 THE COURT: CLEVELAND?

8 MS. HOFER: YES, SIR.

9 THE COURT: ALL RIGHT. YOU MAY CHECK IT IF YOU WILL,  
10 PLEASE.

11 NOW, ARE THERE ANY OF YOU OR MEMBERS OF YOUR FAMILY  
12 OR CLOSE PERSONAL FRIENDS WHO HAVE EVER BEEN IDENTIFIED WITH  
13 LAW ENFORCEMENT WORK OF ANY KIND? THAT IS, POLICE OFFICERS,  
14 SHERIFFS, FBI, CIA, SECRET SERVICE, OR ANY KIND OF LAW  
15 ENFORCEMENT AGENCY.

16 FIRST I WILL ASK THOSE WHO ARE SEATED IN THE JURY  
17 BOX.

18 MISS SHELBY?

19 MS. SHELBY: YES.

20 THE COURT: ALL RIGHT. LET'S SEE -- WHO ELSE? THANK  
21 YOU. I HAVE YOU, MS. EWELL. ANYBODY ELSE SEATED IN THE JURY  
22 BOX?

23 ALL RIGHT. I WILL TAKE THE NAMES OF THOSE SEATED  
24 BEHIND THE RAILING AS SOON AS I GET THROUGH INTERROGATING  
25 THESE OTHER JURORS FIRST.

26 ALL RIGHT. MISS EWELL, IF YOU WILL, TELL US ABOUT  
27 WHAT YOUR RELATIONSHIP IS.

28 MS. EWELL: I WORKED FOR THE DISTRICT ATTORNEY'S OFFICE

1 FOR FIVE YEARS.

2 THE COURT: WAS IT DOWNTOWN?

3 MS. EWELL: YES.

4 THE COURT: BECAUSE OF THAT, WOULD THAT IN ANY WAY  
5 INFLUENCE YOU IN DECIDING WITH OR FAVORING THE PROSECUTION'S  
6 SIDE OF THIS CASE?

7 MS. EWELL: NO.

8 THE COURT: YOU WILL BE GUIDED BY THE TESTIMONY IN THIS  
9 CASE THEN AND NOT BY WHO MIGHT BE TESTIFYING? IS THAT RIGHT?

10 MS. EWELL: YES.

11 THE COURT: AND DOES IT PREJUDICE YOU AGAINST THE  
12 DEFENDANT IN ANY WAY BECAUSE YOU HAVE BEEN IDENTIFIED WITH  
13 LAW ENFORCEMENT WORK?

14 MS. EWELL: NO.

15 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MISS EWELL.

16 MISS SHELBY?

17 MS. SHELBY: YES.

18 THE COURT: WHAT IS YOUR RELATIONSHIP OR ANY MEMBER  
19 OF YOUR FAMILY TO LAW ENFORCEMENT?

20 MS. SHELBY: I HAVE AN UNCLE WHO IS RETIRED FROM THE  
21 OAKLAND POLICE DEPARTMENT.

22 THE COURT: OAKLAND POLICE DEPARTMENT? AND AS A RESULT  
23 OF THAT, WOULD THAT IN ANY WAY, MAKE YOU FAVOR THE TESTIMONY  
24 OF POLICE OFFICERS IF THEY TESTIFY FOR THE PROSECUTION IN  
25 THIS CASE?

26 MS. SHELBY: NO.

27 THE COURT: AND IT WOULD NOT CAUSE YOU TO BE PREJUDICED  
28 AGAINST THE DEFENDANT?

1 MS. SHELBY: NO.

2 THE COURT: ALL RIGHT. NOW, I WILL TAKE THE NAMES OF  
3 THOSE JURORS WHO ARE SEATED BEHIND THE RAILING WHO WOULD  
4 ANSWER THAT. DON'T TELL ME YOUR AFFILIATION OR ANYTHING.  
5 I JUST WANT YOUR NAMES. I WILL ASK YOU THEN THE SAME QUESTIONS  
6 THAT I HAVE ASKED MISS EWELL AND MISS SHELBY.

7 I WILL TAKE THE FIRST ROW FIRST. WHO IS IT IN  
8 THE FIRST ROW? ALL I WANT IS YOUR NAME.

9 MR. RAGLE: RAGLE.

10 THE COURT: YES. I HAVE GOT YOUR NAME HERE BEFORE.  
11 MR. RAGLE IS IN THE FIRST ROW.

12 WHO ELSE?

13 MR. CLEWS: RONALD CLEWS.

14 THE COURT: THANK YOU, MR. CLEWS.

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1 THE COURT: ALL RIGHT, NOW I WILL GET THE SECOND ROW.  
2 YES, YOUR NAME?

3 MR. DIPAOLA: DIPAOLA.

4 THE COURT: YES, MR. DIPAOLA.

5 SECOND ROW. YES, SIR, YOUR NAME?

6 MR. WHITFIELD: WHITFIELD, ERVIN.

7 THE COURT: YES, MR. WHITFIELD.

8 YES, SIR?

9 MR. CAMPBELL: CAMPBELL.

10 THE COURT: CAMPBELL. THANK YOU.

11 YES, SIR?

12 MR. WIENS: WIENS.

13 THE COURT: W-I-E-N-S?

14 MR. WIENS: YES.

15 THE COURT: ALL RIGHT, I AM ON THE SECOND ROW FIRST.  
16 JUST A MINUTE.

17 THIRD ROW. YES, MA'AM?

18 MS. AGSAOAY: AGSAOAY, A-G.

19 MR. WAPNER: THE FIRST ONE ON THE LIST, YOUR HONOR.

20 THE COURT: YES, AGSAOAY, A-G-S-A-O-A-Y.

21 THIRD ROW.

22 FOURTH ROW. YES, SIR?

23 MR. NITZ: NITZ, SIR.

24 THE COURT: SORRY.

25 MR. NITZ: N-I-T-Z.

26 THE COURT: OH, YES.

27 MS. SIMON: SIMON.

28 THE COURT: PARDON ME?

1 MS. SIMON: SIMON, RUTH SIMON.

2 THE COURT: HOW DO YOU SPELL THAT AGAIN?

3 MS. SIMON: S-I-M-O-N.

4 THE COURT: OH, YES. SIMON. THANK YOU.

5 FOURTH ROW.

6 FIFTH ROW. YES, MA'AM.

7 MS. BLEVINS: BLEVINS.

8 THE COURT: THANK YOU.

9 FIFTH ROW. YES, SIR?

10 MR. KRAUSS: KRAUSS, K-R-A-U-S-S, JULIUS MICHAEL.

11 THE COURT: ALL RIGHT, NOW ANYBODY ELSE?

12 I THINK AT THIS TIME YOU KNOW THAT IN EVERY CRIMINAL  
13 CASE, WHATEVER KIND OF CASE IT MAY BE AND SOME OF YOU HAVE  
14 ALREADY BEEN TOLD ABOUT IT, EVERY DEFENDANT IN A CRIMINAL  
15 IS SURROUNDED BY CERTAIN SAFEGUARDS AND CERTAIN RIGHTS.

16 ONE OF WHICH IS THAT A DEFENDANT IN A CRIMINAL  
17 ACTION IS PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS PROVED,  
18 AND IN CASE OF A REASONABLE DOUBT WHETHER HIS GUILT IS  
19 SATISFACTORILY SHOWN, HE IS ENTITLED TO A VERDICT OF NOT  
20 GUILTY.

21 THE EFFECT OF THIS PRESUMPTION IS TO PLACE UPON  
22 THE STATE THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE  
23 DOUBT.

24 AND REASONABLE DOUBT IS DEFINED AS FOLLOWS: IT  
25 IS NOT A MERE POSSIBLE DOUBT, BECAUSE EVERYTHING RELATING TO  
26 HUMAN AFFAIRS AND DEPENDING UPON MORAL EVIDENCE, IS OPEN TO  
27 SOME POSSIBLE OR IMAGINARY DOUBT. IT IS THAT STATE OF A CASE  
28 WHICH, AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF ALL

1 THE EVIDENCE, LEAVES THE MINDS OF THE JURORS IN THAT  
2 CONDITION THAT THEY CANNOT SAY THEY FEEL AN ABIDING CONVICTION,  
3 TO A MORAL CERTAINTY, OF THE TRUTH OF THE CHARGE.

4 THIS RIGHT IS SOMETHING WHICH HAS BEEN GUARANTEED  
5 AND GOES WAY BACK TO ANGLO-SAXON TIMES. IT IS DEEPLY ROOTED  
6 IN OUR ANGLO-AMERICAN SYSTEM OF JURISPRUDENCE.

7 AND THIS PRESUMPTION OF INNOCENCE I SPEAK ABOUT  
8 STAYS WITH THE DEFENDANT ALL THROUGHOUT THE TRIAL AND ALL  
9 THROUGHOUT THE DELIBERATIONS OF THE JURY IN THE JURY ROOM.

10 DOES ANYBODY HAVE ANY QUARREL WITH THAT CONCEPT?  
11 AND YOU WILL FOLLOW THE INSTRUCTION, WHICH WILL BE GIVEN IN  
12 THE FORM OF INSTRUCTIONS THAT I GIVE YOU AT THE CONCLUSION OF  
13 THE CASE.

14 ALL RIGHT, AS I HAVE INDICATED OR COUNSEL HAVE  
15 INDICATED, THERE ARE POLICE OFFICERS WHO WILL TESTIFY IN THIS  
16 CASE. DO ANY OF YOU FEEL THAT A POLICE OFFICER OR ANY OTHER  
17 LAW ENFORCEMENT OFFICER'S TESTIMONY IS ENTITLED TO ANY GREATER  
18 WEIGHT OR ANY LESSER WEIGHT MERELY BECAUSE HE HAPPENS TO BE  
19 IDENTIFIED WITH LAW ENFORCEMENT WORK OF ANY KIND?

20 DO ANY OF YOU FEEL YOU CAN'T GIVE BOTH SIDES IN  
21 THIS CASE A FAIR AND IMPARTIAL TRIAL AND THAT YOU WILL FOLLOW  
22 THE LAW AS THE COURT GIVES IT TO YOU, DURING THE COURSE OF THE  
23 TRIAL OR AT THE CONCLUSION OF THE TRIAL IN THE FORM OF  
24 INSTRUCTIONS?

25 ALL RIGHT, MRS. EWELL, IS THERE A MR. EWELL?

26 MS. EWELL: YES.

27 THE COURT: WHAT DOES HE DO?

28 MS. EWELL: HE IS A TESTING ENGINEER.

1 THE COURT: BY WHOM IS HE EMPLOYED?

2 MS. EWELL: LOS ANGELES COUNTY.

3 THE COURT: YOU TOLD US YOU WERE IDENTIFIED WITH LAW  
4 ENFORCEMENT WORK AT SOME TIME.

5 WHAT DO YOU DO NOW?

6 MS. EWELL: I AM A BANKER.

7 THE COURT: BY WHOM ARE YOU EMPLOYED?

8 MS. EWELL: SECURITY PACIFIC BANK.

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1 THE COURT: DO YOU HAVE ANY CHILDREN?

2 MS. EWELL: YES.

3 THE COURT: HAVE YOU EVER BEEN MARRIED BEFORE?

4 MS. EWELL: JUST ONCE.

5 THE COURT: JUST ONCE.

6 WHERE DO YOU LIVE?

7 MS. EWELL: LOS ANGELES.

8 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR ON A  
9 CRIMINAL CASE BEFORE?

10 MS. EWELL: YES.

11 THE COURT: WHAT KIND OF A CASE WAS THAT?

12 MS. EWELL: ONE WAS NARCOTICS, NARCOTICS CASE.

13 THE COURT: AND DID THE JURY REACH A VERDICT IN THAT  
14 CASE?

15 MS. EWELL: YES.

16 THE COURT: WELL, WHATEVER YOU MIGHT HAVE HEARD IN THAT  
17 PARTICULAR CASE, WHATEVER INSTRUCTIONS YOU MIGHT HAVE GOTTEN  
18 FROM THE COURT, WHATEVER IMPRESSIONS OR REACTIONS YOU HAD, YOU  
19 JUST LAY THAT ALL ASIDE AND JUST BE GOVERNED BY THE EVIDENCE  
20 IN THIS PARTICULAR CASE, WOULD YOU NOT?

21 MS. EWELL: YES, OF COURSE.

22 THE COURT: ALL RIGHT. HAVE YOU ANY HEALTH PROBLEMS THAT  
23 WOULD INTERFERE IN ANY WAY WITH YOUR SERVING AS A TRIAL JUROR  
24 IN THIS CASE?

25 MS. EWELL: NO.

26 THE COURT: ALL RIGHT, WHAT SCHOOLING HAVE YOU HAD, MRS.  
27 EWELL?

28 MS. EWELL: I HAVE HAD THREE YEARS OF COLLEGE.

1 THE COURT: AT WHICH COLLEGE WAS THAT?

2 MS. EWELL: SEATTLE PACIFIC.

3 THE COURT: AND I THINK YOU TOLD US YOUR PREVIOUS  
4 OCCUPATION WAS IN THE DISTRICT ATTORNEY'S OFFICE; IS THAT  
5 RIGHT?

6 MS. EWELL: YES.

7 THE COURT: WAS THERE ANYTHING ELSE EVEN BEFORE THAT?

8 MS. EWELL: NO.

9 I WORKED FOR THE BANK BEFORE THAT.

10 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

11 MR. HECK, WHAT DO YOU DO, PLEASE?

12 MR. HECK: I AM RETIRED.

13 THE COURT: WHAT DID YOU RETIRE FROM?

14 MR. HECK: I WAS PRODUCTION MANAGER FOR OWENS-ILLINOIS  
15 GLASS COMPANY?

16 THE COURT: WHO?

17 MR. HECK: OWENS-ILLINOIS GLASS COMPANY.

18 THE COURT: OWENS-ILLINOIS GLASS COMPANY; HOW LONG HAVE  
19 YOU BEEN EMPLOYED BY THEM?

20 MR. HECK: 23 YEARS.

21 THE COURT: AND ARE YOU MARRIED?

22 MR. HECK: YES.

23 THE COURT: AND DOES YOUR WIFE HAVE ANY EMPLOYMENT  
24 OUTSIDE THE HOME?

25 MR. HECK: NO.

26 THE COURT: DID SHE EVER HAVE ANY?

27 MR. HECK: YES.

28 THE COURT: WHAT DID SHE DO?

1 MR. HECK: IBM OPERATOR AT EVEREST & JENNINGS.

2 THE COURT: DO YOU HAVE ANY CHILDREN?

3 MR. HECK: YES. ONE SON.

4 THE COURT: AND HOW OLD IS HE?

5 MR. HECK: 31.

6 THE COURT: WHAT IS HIS EMPLOYMENT OR OCCUPATION?

7 MR. HECK: HE IS SELF-EMPLOYED. HE HAS A MACHINE SHOP.

8 THE COURT: AND WHERE DO YOU LIVE, AGAIN?

9 MR. HECK: IN TARZANA.

10 THE COURT: HAVE YOU EVER SERVED AS A JUROR ON A CRIMINAL  
11 CASE BEFORE?

12 MR. HECK: NO.

13 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, MR. HECK.

14 HAS YOUR WIFE EVER BEEN EMPLOYED?

15 MR. HECK: PARDON?

16 THE COURT: HAS YOUR WIFE EVER BEEN EMPLOYED?

17 MR. HECK: YES.

18 THE COURT: WHAT EMPLOYMENT HAS SHE HAD?

19 MR. HECK: SHE WORKED AS AN IBM OPERATOR.

20 THE COURT: OH, THAT IS RIGHT, YOU TOLD US THAT.

21 ALL RIGHT, THANK YOU VERY MUCH, MR. HECK.

22 MS. SHELBY.

23 MS. SHELBY: UH-HUH.

24 THE COURT: WHAT DO YOU DO, PLEASE?

25 MS. SHELBY: I AM AN INTERVIEWER WITH THE EMPLOYMENT  
26 OFFICE.

27 THE COURT: WHICH EMPLOYMENT OFFICE IS THAT?

28 MS. SHELBY: SANTA MONICA.

1 THE COURT: AND WHERE DO YOU LIVE?

2 MS. SHELBY: LOS ANGELES.

3 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR ON A  
4 CRIMINAL CASE BEFORE?

5 MS. SHELBY: YES.

6 THE COURT: WHAT KIND OF CASE WAS THAT?

7 MS. SHELBY: CAR THEFT.

8 THE COURT: AND THE JURY REACHED A VERDICT IN THAT CASE?

9 MS. SHELBY: YES.

10 THE COURT: AGAIN, WHATEVER YOU MIGHT HAVE HEARD IN THAT  
11 CASE OR THE INSTRUCTIONS YOU GOT, WHATEVER IMPRESSIONS OR  
12 REACTIONS YOU GOT, YOU WILL BE GUIDED BY THE EVIDENCE IN THIS  
13 CASE AND MY INSTRUCTIONS, WOULD YOU NOT?

14 MS. SHELBY: THAT'S RIGHT.

15 THE COURT: WHAT EDUCATION HAVE YOU HAD?

16 MS. SHELBY: TWO YEARS OF COLLEGE.

17 THE COURT: WHICH COLLEGE WAS THAT?

18 MS. SHELBY: WEST L.A. JUNIOR COLLEGE.

19 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

20 MR. CANADY?

21 MR. CANADY: YES.

22 THE COURT: WHAT DO YOU DO, PLEASE?

23 MR. CANADY: I AM A COMPUTER CONSULTANT FOR ARCO.

24 THE COURT: BY WHOM ARE YOU EMPLOYED?

25 MR. CANADY: ARCO.

26 THE COURT: IS THERE A MRS. CANADY?

27 MR. CANADY: NO.

28 THE COURT: AND WHERE DO YOU LIVE?

1 MR. CANADY: SANTA MONICA.

2 THE COURT: HAVE YOU EVER SAT AS A JUROR IN A CRIMINAL  
3 CASE BEFORE?

4 MR. CANADY: NEVER.

5 THE COURT: TELL US YOUR EDUCATIONAL BACKGROUND IF YOU  
6 WILL, PLEASE.

7 MR. CANADY: ASSOCIATE OF ARTS DEGREE.

8 THE COURT: WHICH SCHOOL?

9 MR. CANADY: SANTA MONICA COLLEGE.

10 THE COURT: DO YOU HAVE ANY PREVIOUS EMPLOYMENT OTHER  
11 THAN THE ONE THAT YOU NOW HAVE?

12 MR. CANADY: YES.

13 WE HAD A CAR BUSINESS.

14 THE COURT: PARDON ME?

15 MR. CANADY: WE OWN A CAR BUSINESS.

16 THE COURT: YOU WERE IN THE RENTAL CAR BUSINESS?

17 MR. CANADY: NO. USED CAR BUSINESS.

18 THE COURT: USED CAR BUSINESS? WHEN YOU SAY "WE," WHO  
19 DO YOU MEAN BY WE?

20 MR. CANADY: FAMILY.

21 THE COURT: YOU WERE EMPLOYED IN THE FAMILY BUSINESS,  
22 I SEE.

23 AND YOU SAY YOU HAVE NEVER BEEN ON ANY JURY, HAVE  
24 YOU?

25 MR. CANADY: NO.

26 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

27 MR. DUNDORE?

28 MR. DUNDORE: DUNDORE.

1 THE COURT: MR. DUNDORE, WHAT DO YOU DO?

2 MR. DUNDORE: I AM RETIRED.

3 THE COURT: WHAT DID YOU RETIRE FROM?

4 MR. DUNDORE: I WAS AN AIRCRAFT DESIGN ENGINEER FOR  
5 DOUGLAS AIRCRAFT.

6 THE COURT: HOW LONG HAD YOU BEEN EMPLOYED THERE?

7 MR. DUNDORE: 40 YEARS.

8 THE COURT: 14?

9 MR. DUNDORE: 40.

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1 THE COURT: I WILL ASK YOU THESE QUESTIONS AGAIN. YOU  
2 WERE HERE ALL OF YOU WHEN I ASKED SOME OTHER QUESTIONS. THIS  
3 IS JUST REPETITION. BUT IT IS REPETITION BECAUSE I WANT TO  
4 BE SURE I HAVE GOT IT COVERED.

5 AND IS THERE A MRS. DUNDORE?

6 MR. DUNDORE: YES.

7 THE COURT: DOES SHE HAVE ANY EMPLOYMENT OUTSIDE THE  
8 HOME?

9 MR. DUNDORE: NO.

10 THE COURT: HAS SHE EVER BEEN EMPLOYED?

11 MR. DUNDORE: YES. SHE WAS A MEDICAL LAB TECHNOLOGIST  
12 FOR THE COUNTY.

13 THE COURT: DO YOU HAVE ANY CHILDREN?

14 MR. DUNDORE: YES.

15 THE COURT: HOW MANY?

16 MR. DUNDORE: TWO.

17 THE COURT: WHAT ARE THEIR AGES?

18 MR. DUNDORE: 28 AND 31.

19 THE COURT: AND WHAT DO THEY DO?

20 MR. DUNDORE: MY SON IS A COMPUTER PROGRAMMER AND AN  
21 ANALYST WHO WORKS FOR BULLOCKS DEPARTMENT STORES.

22 AND MY DAUGHTER IS CURRENTLY A WAITRESS.

23 THE COURT: AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

24 MR. DUNDORE: I HAVE A BACHELOR OF SCIENCE DEGREE IN  
25 MECHANICAL ENGINEERING FROM THE UNIVERSITY OF CALIFORNIA  
26 BERKELEY.

27 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

28 MR. PEIKERT, WHAT DO YOU DO?

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1 MR. PEIKERT: I AM A PARAMEDIC/FIRE FIGHTER. I AM SELF-  
2 EMPLOYED.

3 THE COURT: AND TELL US A LITTLE MORE ABOUT YOURSELF,  
4 IF YOU WILL.

5 MR. PEIKERT: WELL, I WORKED 21 YEARS IN THE GHETTO  
6 AS A FIREMAN FIRST AND THEN A PARAMEDIC SECOND.

7 THE COURT: YOU TOLD US THAT OF COURSE, WHEN YOU WERE  
8 HERE AND WE INTERROGATED YOU BEFORE. BUT I WANTED TO HAVE  
9 IT ON THE RECORD AGAIN. FINE.

10 IS THERE A MRS. PEIKERT?

11 MR. PEIKERT: YES THERE IS.

12 THE COURT: AND DOES SHE HAVE ANY EMPLOYMENT OUTSIDE  
13 THE HOME?

14 MR. PEIKERT: NOT ANY MORE.

15 THE COURT: WHAT DID SHE DO?

16 MR. PEIKERT: AN ANALYST FOR XEROX.

17 THE COURT: HOW LONG HAS SHE BEEN THERE?

18 MR. PEIKERT: TWELVE YEARS.

19 THE COURT: AND WHERE DO YOU LIVE, SIR?

20 MR. PEIKERT: I LIVE IN CALABASAS.

21 THE COURT: HOW LONG HAVE YOU LIVED THERE?

22 MR. PEIKERT: SIXTEEN YEARS.

23 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR IN A  
24 CRIMINAL CASE BEFORE?

25 MR. PEIKERT: NO, YOUR HONOR.

26 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, SIR.

27 MR. GHIRARDI, WHAT DO YOU DO?

28 MR. GHIRARDI: WHEN I AM WORKING, I WORK IN HOTEL



1 MANAGEMENT.

2 THE COURT: WHAT OTHER EMPLOYMENT HAVE YOU HAD?

3 MR. GHIRARDI: WELL, BEFORE I CAME TO CALIFORNIA, I  
4 HAD A LOT OF OTHER JOBS AS A CARPENTER, ELECTRICIAN, I WORKED  
5 WITH THE GOVERNMENT IN THE SOCIAL SECURITY ADMINISTRATION.

6 THE COURT: I SEE. AND IS THERE A MRS. GHIRARDI?

7 MR. GHIRARDI: A SECOND ONE, YES, SIR.

8 THE COURT: I WANT TO KNOW ABOUT THE PRESENT ONE FIRST.  
9 IS SHE PURSUING ANY EMPLOYMENT OUTSIDE THE HOME?

10 MR. GHIRARDI: NO.

11 THE COURT: DID SHE EVER WORK THAT YOU KNOW OF?

12 MR. GHIRARDI: VARIOUS JOBS SUCH AS WAITRESSES.

13 THE COURT: AND HOW LONG HAVE YOU BEEN MARRIED?

14 MR. GHIRARDI: FIVE YEARS.

15 THE COURT: HOW LONG HAVE YOU BEEN MARRIED -- WELL,  
16 HOW LONG HAD YOU BEEN MARRIED TO YOUR PREVIOUS WIFE?

17 MR. GHIRARDI: A YEAR AND A HALF.

18 THE COURT: AND WHAT DID SHE DO FOR A LIVING?

19 MR. GHIRARDI: WELL, SHE STARTED OUT WORKING FOR THE  
20 SOCIAL SECURITY AND SHE QUIT.

21 THE COURT: AND DO YOU HAVE ANY CHILDREN?

22 MR. GHIRARDI: TWO STEP CHILDREN AND ONE BY MY PREVIOUS  
23 MARRIAGE.

24 THE COURT: HOW OLD ARE THEY?

25 MR. GHIRARDI: THE STEP CHILDREN ARE 12 AND 9 AND THE  
26 OTHER ONE IS 19.

27 THE COURT: WHERE DID YOU SAY YOU LIVED?

28 MR. GHIRARDI: I USED TO LIVE IN BALTIMORE. I LIVE

1 IN LOS ANGELES NOW.

2 THE COURT: WHAT PART?

3 MR. GHIRARDI: DOWN BY MAC ARTHUR PARK.

4 THE COURT: HOW LONG HAVE YOU LIVED THERE?

5 MR. GHIRARDI: FIFTEEN YEARS.

6 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN A CRIMINAL  
7 CASE BEFORE?

8 MR. GHIRARDI: NO, SIR.

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1 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

2 IS THAT MISS KNUEDELER?

3 MS. KNUEDELER: YES.

4 THE COURT REPORTER: COULD YOU SPELL THAT?

5 MS. KNUEDELER: K-N-U-E-D-E-L-E-R.

6 THE COURT: ALL RIGHT, MISS KNUEDELER, WHAT DO YOU DO,  
7 PLEASE?

8 MS. KNUEDELER: I AM A WORD PROCESSER FOR ROCKETDYNE.

9 THE COURT: FOR WHOM?

10 MS. KNUEDELER: ROCKETDYNE.

11 THE COURT: AGAIN, WHERE DO YOU LIVE? I ASKED YOU THAT  
12 BEFORE.

13 MS. KNUEDELER: CANOGA PARK.

14 THE COURT: HAVE YOU EVER SERVED ON A JURY BEFORE IN  
15 A CRIMINAL CASE?

16 MS. KNUEDELER: NO.

17 THE COURT: AND WHAT WAS YOUR SCHOOLING?

18 MS. KNUEDELER: JUST HIGH SCHOOL.

19 THE COURT: JUST HIGH SCHOOL. HOW LONG HAVE YOU BEEN  
20 ON THE JOB YOU ARE ON NOW?

21 MS. KNUEDELER: FIVE YEARS.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

23 MISS HOFER?

24 MS. HOFER: YES, SIR.

25 THE COURT: MISS HOFER, ISN'T IT?

26 MS. HOFER: YES.

27 THE COURT: MISS HOFER, WHAT DO YOU DO, PLEASE?

28 MS. HOFER: I AM RETIRED.

1 THE COURT: WHAT DID YOU RETIRE FROM?

2 MS. HOFER: I RETIRED AS A SCHOOL ADMINISTRATOR.

3 THE COURT: WHICH SCHOOL SYSTEM?

4 MS. HOFER: LOS ANGELES UNIFIED.

5 THE COURT: HOW LONG HAVE YOU BEEN EMPLOYED THERE?

6 MS. HOFER: THIRTY-EIGHT YEARS.

7 THE COURT: THAT IS A RESPECTABLE TIME. AGAIN, WHERE  
8 DO YOU LIVE?

9 MS. HOFER: I LIVE IN WEST LOS ANGELES.

10 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR IN A  
11 CRIMINAL CASE BEFORE?

12 MS. HOFER: NO.

13 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MISS HOFER.

14 MR. TAUB, WHAT DO YOU DO?

15 MR. TAUB: RETIRED.

16 THE COURT: WHAT DID YOU RETIRE FROM?

17 MR. TAUB: I RETIRED FROM A PARTNERSHIP IN A DRYCLEANING  
18 STORE.

19 THE COURT: AND HOW LONG HAVE YOU HAD THAT BUSINESS?

20 MR. TAUB: HOW LONG HAVE I WHAT?

21 THE COURT: HOW LONG HAVE YOU HAD THAT BUSINESS?

22 MR. TAUB: THAT BUSINESS, FOUR AND A HALF YEARS.

23 THE COURT: ANY PREVIOUS BUSINESSES?

24 MR. TAUB: YES. BEFORE THAT, I HAD A BASKIN-ROBBINS  
25 ICE CREAM STORE FOR FIVE AND A HALF YEARS.

26 THE COURT: AND IS THERE A MRS. TAUB?

27 MR. TAUB: YES. SHE IS ALSO RETIRED.

28 THE COURT: WHAT DID SHE RETIRE FROM?

1 MR. TAUB: SHE RETIRED FROM A SALES POSITION AT SAKS  
2 FIFTH AVENUE.

3 THE COURT: HOW LONG HAD SHE BEEN THERE?

4 MR. TAUB: FIFTEEN YEARS.

5 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR IN A  
6 CRIMINAL CASE BEFORE?

7 MR. TAUB: NO, SIR.

8 THE COURT: I ASKED YOU THIS BEFORE. WHERE DO YOU LIVE?

9 MR. TAUB: I LIVE IN SANTA MONICA.

10 THE COURT: ALL RIGHT. THANK YOU.

11 MR. ENGLE?

12 MR. ENGLE: YES.

13 THE COURT: MR. ENGLE, WHAT DO YOU DO, PLEASE?

14 MR. ENGLE: I AM RETIRED.

15 THE COURT: WHAT DID YOU RETIRE FROM?

16 MR. ENGLE: THE LOS ANGELES CITY FIRE DEPARTMENT.

17 THE COURT: HOW LONG HAD YOU BEEN THERE?

18 MR. ENGLE: THIRTY-TWO YEARS.

19 THE COURT: IS THERE A MRS. ENGLE?

20 MR. ENGLE: YES THERE IS.

21 THE COURT: DOES SHE HAVE ANY EMPLOYMENT OUTSIDE THE  
22 HOME?

23 MR. ENGLE: NO.

24 THE COURT: HAD SHE EVER HAD?

25 MR. ENGLE: NOT SINCE ABOUT 1945.

26 THE COURT: WHAT DID SHE DO THEN?

27 MR. ENGLE: SHE WORKED FOR DOUGLAS AIRCRAFT DURING THE  
28 WAR.

1 THE COURT: AND WHERE DO YOU LIVE AGAIN?

2 MR. ENGLE: WESTCHESTER.

3 THE COURT: AND HAVE YOU EVER SERVED AS A JUROR IN A  
4 CRIMINAL CASE BEFORE?

5 MR. ENGLE: NOT IN A CRIMINAL CASE, NO, SIR.

6 THE COURT: ALL RIGHT. YOU UNDERSTAND THAT THE  
7 STANDARD IN A CIVIL CASE AS FAR AS THE BURDEN OF PROOF, IS  
8 ALTOGETHER DIFFERENT. I TOLD YOU THAT IN A CRIMINAL CASE,  
9 THE PROSECUTION MUST ESTABLISH GUILT BEYOND A REASONABLE DOUBT  
10 OF THE DEFENDANT. HE HAS THE PRESUMPTION OF INNOCENCE UNTIL  
11 THE CONTRARY IS PROVEN. AND IN A CIVIL CASE, ALL OF THE PROOF  
12 THAT IS REQUIRED FOR EXAMPLE, IS THAT THE PLAINTIFF IN A  
13 PERSONAL INJURY CASE MUST SATISFY THE BURDEN OF PROOF AND  
14 IF YOU TAKE THE SCALES WHICH ARE EVENLY BALANCED IN A CIVIL  
15 CASE, THE ONE WHO HAS THE BURDEN OF PROOF, THE PLAINTIFF AS  
16 I SAID, IF YOU TIP THE SCALE EVER SO SLIGHTLY IN HIS FAVOR,  
17 THAT CONSTITUTES SUFFICIENT TO SATISFY THE BURDEN OF PROOF  
18 IN A CIVIL CASE. THAT IS WHAT IS KNOWN AS THE PREPONDERANCE  
19 OF THE EVIDENCE, WHICH IS A LOT DIFFERENT THAN THE BURDEN  
20 OF PROOF IN A CRIMINAL CASE. DO YOU UNDERSTAND THAT?

21 MR. ENGLE: YES.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

23 THAT IS MISS WALKER?

24 MS. WALKER: YES.

25 THE COURT: MISS WALKER, WHAT DO YOU DO?

26 MS. WALKER: I AM A HOMEMAKER. I DON'T WORK NOW.

27 THE COURT: AND HAD YOU EVER HAD ANY EMPLOYMENT BEFORE?

28 MS. WALKER: YES. I WORKED AT THE VETERANS ADMINISTRATION

1 IN WEST LOS ANGELES.

2 THE COURT: AND WHAT WAS THE NATURE OF YOUR EMPLOYMENT  
3 THEN?

4 MS. WALKER: CLERK-TYPIST, I GUESS YOU WOULD CALL IT.

5 THE COURT: AND IS THERE A MR. WALKER?

6 MS. WALKER: YES.

7 THE COURT: WHAT DOES HE DO, PLEASE?

8 MS. WALKER: HE IS AN ATTORNEY FOR THE VETERANS  
9 ADMINISTRATION.

10 THE COURT: AND YOU UNDERSTAND OF COURSE, THAT IF YOU  
11 ARE ACCEPTED AS A JUROR, YOU ARE NOT TO TALK TO ANYBODY ABOUT  
12 THIS CASE, ABOUT ANY ASPECT CONNECTED WITH THIS CASE OR  
13 DISCUSS ANYTHING THAT YOU HAVE HEARD IN THIS CASE WITH YOUR  
14 HUSBAND OR ANYBODY ELSE AS A MATTER OF FACT.

15 MS. WALKER: YES, I DO.

16 THE COURT: AND TRY NOT TO BE TEMPTED TO DO SO BECAUSE  
17 THAT WILL BE AGAINST YOUR OATH.

18 MS. WALKER: YES.

19 THE COURT: WHERE DID YOU SAY YOU LIVED AGAIN?

20 MS. WALKER: WEST LOS ANGELES.

21 THE COURT: HAVE YOU EVER SAT AS A JUROR IN A CRIMINAL  
22 CASE BEFORE?

23 MS. WALKER: NO. I HAVE NEVER BEEN A JUROR ON ANY CASE.

24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

25 YOU MAY INQUIRE.

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1 MR. BARENS: THANK YOU, YOUR HONOR.

2 GOOD MORNING, LADIES AND GENTLEMEN.

3 (PROSPECTIVE JURORS IN BOX RESPONDED

4 "GOOD MORNING.")

5 THE COURT: I SUGGEST THAT ALL COUNSEL USE THE LECTERN.

6 MR. BARENS: THE LECTERN?

7 THE COURT: THE LECTERN, YES. I THINK IT WOULD BE BETTER.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 THE COURT: IF YOU WILL, PLEASE, MR. BARENS, KEEP YOUR  
10 VOICE UP SO I WANT TO MAKE SURE THAT ALL THE OTHER JURORS HEAR  
11 THE QUESTIONS.

12 AND WHEN YOU ANSWER, ANSWER AUDIBLY. THE REASON  
13 FOR THAT IS IF SOME JUROR TAKES YOUR PLACE, I WILL ASK THE  
14 GENERAL QUESTION, HAVE YOU HEARD ALL OF THE QUESTIONS AND  
15 ANSWERS WHICH HAVE BEEN GIVEN AND IF THEY CAN'T SAY YES, THAT  
16 MEANS THAT WE HAVE TO REPEAT ALL OF THE QUESTIONS AND  
17 ANSWERS AGAIN.

18 AND LADIES AND GENTLEMEN SEATED BEHIND THE RAILING,  
19 IF YOU DON'T HEAR ANY QUESTION OR ANY ANSWER, I WANT YOU TO  
20 RAISE YOUR HAND AND I WILL SEE THAT THE QUESTION AND ANSWER  
21 IS REPEATED FOR YOU.

22 ALL RIGHT, BE SURE OF THAT, IF YOU WILL, PLEASE.  
23 THAT WILL SAVE A LOT OF TIME.

24 MR. BARENS: LADIES AND GENTLEMEN, AS YOU ALL ARE WELL  
25 AWARE, I REPRESENT THE DEFENDANT, JOE HUNT, IN THIS MATTER.

26 AND OBVIOUSLY, NONE OF YOU AND I KNOW EACH OTHER  
27 AND I HAVE A LITTLE TIME HERE IN WHICH WE ARE TRYING TO GET  
28 TO KNOW EACH OTHER. I AM GOING TO TRY TO FIND OUT SOME THINGS



1 ABOUT YOU, NOT THAT I MEAN TO PRY BUT THIS IS THE ONLY SYSTEM  
2 WE HAVE AVAILABLE AFTER SEVERAL HUNDRED YEARS OF ANGLO-  
3 SAXON JURISPRUDENCE, WHEREBY WE TRY TO FIND OUT WHAT YOUR  
4 ATTITUDES ARE AND GO THROUGH THE FILTERING PROCESS HERE, AS  
5 WE DID DURING THE DEATH PENALTY VOIR DIRE TO DETERMINE WHO,  
6 AMONG YOU, ARE GOING TO JUDGE MY CLIENT AND MAKE DETERMINATIONS  
7 ABOUT GUILT AND INNOCENCE AND ABOUT THE REST OF HIS LIFE.

8           THERE ARE NO, AGAIN, WRONG OR RIGHT ANSWERS TO MY  
9 QUESTIONS AND, FRANKLY, YOU MAY BE NERVOUS AND I AM NERVOUS,  
10 TOO.

11           YOU DON'T KNOW WHAT I AM LOOKING FOR AND I DON'T  
12 KNOW WHAT I AM LOOKING FOR, SOMETIMES EITHER. WE ARE JUST  
13 GOING TO TRY TO EXPLORE SOME OF THESE QUESTIONS TOGETHER.

14           HIS HONOR INDICATED THIS MORNING THAT ONE OF THE  
15 FUNDAMENTAL PRINCIPLES OF OUR LEGAL SYSTEM IS, THE ABSOLUTE  
16 KEYSTONE TO THE WAY OUR SYSTEM OPERATES, IS THE PRESUMPTION  
17 OF INNOCENCE FOR ALL DEFENDANTS, NOT JUST MR. HUNT, BUT EACH  
18 ONE OF YOU IF YOU WERE A DEFENDANT OR FOR ANYONE YOU KNOW.

19           MR. PEIKERT, HOW DO YOU FEEL ABOUT THAT?

20           MR. PEIKERT: I AGREE.

21           MR. BARENS: YOU AGREE WITH THAT?

22           MR. PEIKERT: YES.

23           MR. BARENS: YOU FEEL THERE IS ANYTHING UNFAIR WITH THE  
24 RESULTING FACT THAT THE PEOPLE HAVE THE BURDEN OF PROOF, THAT  
25 THEY HAVE TO PROVE EVERYTHING AND THE DEFENDANT HAS TO PROVE  
26 NOTHING?

27           MR. PEIKERT: NO.

28           MR. BARENS: YOU DON'T FEEL THAT.

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1                   YOU FEEL, PERHAPS, THE DEFENDANT SHOULD HAVE TO  
2 PROVE SOMETHING ABOUT HIS OWN CASE, TOO?

3                   MR. PEIKERT: YES, IT SHOULD BE EQUAL.

4                   MR. BARENS: IT SHOULD BE EQUAL.

5                   WHAT ARE WE GOING TO DO, MR. PEIKERT? THE WAY THE  
6 SYSTEM IS SET UP, THE DEFENDANT CAN SIT THERE FOREVER AND NEVER  
7 SAY A WORD. HE COULD EVEN REFUSE AND DECLINE TO TESTIFY, WHICH  
8 IS A DECISION AND WE ARE GOING TO BE TALKING ABOUT THIS,  
9 WHETHER THIS DEFENDANT TESTIFIES, WHICH IS MADE BETWEEN THE  
10 DEFENDANT AND HIS COUNSEL. HE NEVER HAS TO SAY ANYTHING.  
11 HE NEVER HAS TO PUT ON A WITNESS. HE NEVER HAS TO PROVE  
12 ANYTHING. THE PEOPLE DO.

13                   YOU DON'T REALLY THINK THAT IS FAIR, IS IT?

14                   MR. PEIKERT: PERSONALLY, DO I THINK IT IS FAIR?

15                   MR. BARENS: ALL I WANT IS JUST YOUR PERSONAL ASSESSMENT.

16                   MR. PEIKERT: I DON'T THINK THAT IS FAIR.

17                   MR. BARENS: I APPRECIATE THAT.

18                   AND AGAIN, I AM NOT JUDGING YOU.

19                   MR. PEIKERT: NO. THAT IS OKAY.

20                   I AM GLAD YOU REPEATED THE QUESTION BECAUSE I WASN'T  
21 TOO SURE OF MY FIRST ANSWER.

22                   MR. BARENS: MRS. WALKER, I AM GOING TO ASK YOU THE SAME  
23 QUESTIONS ON THE PRESUMPTION OF INNOCENCE; HOW DO YOU FEEL  
24 ABOUT THAT AS A FUNDAMENTAL PRECEPT OF OUR LEGAL SYSTEM?

25                   MS. WALKER: WELL, I THINK IT SHOULD BE FAIR ON BOTH  
26 SIDES. I THINK THE DEFENDANT SHOULD HAVE TO SHOW EVIDENCE OF  
27 WHY HE IS NOT GUILTY.

28                   THE COURT: WELL, YOU UNDERSTAND THE LAW IS THAT HE IS

1 NOT REQUIRED TO DO SO.

2 THE DEFENDANT HAS THE RIGHT TO RELY UPON THE  
3 TESTIMONY PRESENTED BY THE PROSECUTION. HE DOESN'T HAVE TO TAKE  
4 THE STAND. HE DOESN'T HAVE TO SAY ANYTHING. DO YOU UNDERSTAND  
5 THAT?

6 MS. WALKER: YES, I UNDERSTAND.

7 THE COURT: THE FACT THAT HE MAY NOT IS HIS ABSOLUTE  
8 CONSTITUTIONAL RIGHT NOT TO TAKE THE WITNESS STAND IF HE  
9 DOESN'T WANT TO. HE MAY RELY ON THE STATE OF THE EVIDENCE  
10 AND BELIEVE IT IS SUFFICIENT AND FOR THAT REASON, HE DOESN'T  
11 WANT TO TAKE THE STAND; DO YOU UNDERSTAND THAT?

12 MS. WALKER: YES, I UNDERSTAND THAT.

13 THE COURT: THE FACT HE DOESN'T TAKE THE STAND, ARE YOU  
14 GOING TO HOLD THAT AGAINST HIM?

15 MS. WALKER: NO.

16 THE COURT: ALL RIGHT.

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7A

A-1  
1 MR. BARENS: YOU REALLY WOULDN'T HOLD IT AGAINST HIM?

2 MS. WALKER: NO, NO.

3 I DIDN'T UNDERSTAND IT THE WAY -- UNTIL THE JUDGE  
4 TALKED TO ME.

5 MR. BARENS: THE WAY THESE RULES OR LAWS EVOLVED OVER  
6 HUNDREDS OF YEARS, SOME OF THEM WERE POSITIVELY EVOLVED, SOME  
7 OF THEM WERE RESPONSES TO NEGATIVE INFLUENCES WHERE MAYBE  
8 OVER TIME POLICE AUTHORITIES INTIMIDATED PEOPLE AND THERE  
9 WERE DIFFERENT METHODS EMPLOYED YEARS AGO TO GET PEOPLE TO  
10 MAKE STATEMENTS OR CONFESSIONS THAT WEREN'T TRUE.

11 ONE OF THE RESPONSES TO THAT WAS THE GOVERNMENT  
12 OR THE PEOPLE HAVE TO PROVE THEIR CASE AND THE DEFENDANT NEED  
13 SAY NOTHING. THE BURDEN REMAINS WITH THE PEOPLE.

14 MRS. HOFER, HOW DO YOU FEEL ABOUT THAT IDEA THAT  
15 THE BURDEN OF PROOF RESTS SOLELY WITH THE PEOPLE?

16 MS. HOFER: WELL, I AM A LAW-ABIDING CITIZEN AND AS  
17 LONG AS THAT IS THE LAW, THAT IS WHAT I BELIEVE.

18 MR. BARENS: I UNDERSTAND THAT.

19 DO YOU BELIEVE IT IS FAIR THAT THE DEFENDANT NEED  
20 SAY NOTHING, NEED PROVE NOTHING?

21 MS. HOFER: YES.

22 MR. BARENS: DO YOU HAVE ANY REASON TO BELIEVE THAT  
23 MY CLIENT IS NOT A LAW-ABIDING CITIZEN?

24 MS. HOFER: NOT REALLY.

25 MR. BARENS: DOES IT HAVE ANY INFLUENCE ON YOUR POINT  
26 OF VIEW TOWARD MY CLIENT THAT HE IS SITTING IN THIS COURTROOM,  
27 REPRESENTED BY TWO CRIMINAL LAWYERS AND CHARGED WITH  
28 COMMITTING A MURDER, DOES THAT MAKE YOU HAVE ANY FEELING THAT

1 HE MIGHT HAVE DONE SOMETHING?

2 MS. HOFER: NO.

3 MR. BARENS: YOU UNDERSTAND, ALL OF YOU, THAT THE BEST  
4 WAY TO REGARD YOURSELVES AS JURORS, IN MY OPINION, IS TO  
5 CONSIDER, WOULD YOU FEEL YOU WERE A FAIR JUROR AND THAT YOUR  
6 RESPONSES TO THESE QUESTIONS--IF YOU WERE THE DEFENDANT AND  
7 I WAS REPRESENTING YOU.

8 MR. TAUB, HOW DO YOU FEEL ABOUT THE FACT THAT  
9 THE DEFENDANT NEED SAY NOTHING IN HIS OWN DEFENSE?

10 MR. TAUB: I THINK IT IS FINE, IF THAT IS THE WAY THE  
11 LAW IS AND I KNEW THAT BEFORE I CAME IN HERE, THE STATE HAS  
12 TO PROVE ITS CASE AND I THINK THAT IS A PRETTY SIMPLE  
13 PRECEPT.

14 MR. BARENS: MR. TAUB, THE FACT THAT THE DEFENDANT IS  
15 CHARGED WITH A FIRST DEGREE MURDER AND HE COULD GO TO THE  
16 GAS CHAMBER IF FOUND GUILTY, HOW WOULD YOU JUDGE HIS TESTIMONY  
17 IF HE DOES TESTIFY? DO YOU THINK HE WOULDN'T BE TELLING THE  
18 TRUTH OR DO YOU THINK THAT JUST MAYBE HE IS SAYING THINGS  
19 TO SAVE HIS LIFE WHETHER IT WAS TRUE OR NOT?

20 MR. TAUB: I REALLY CAN'T ANSWER THAT UNTIL I HAVE HEARD  
21 HIS TESTIMONY.

22 MR. BARENS: WOULD YOU GIVE A DIFFERENT STANDARD TO  
23 THE DEFENDANT IF HE WERE TO TESTIFY IN A CASE WHERE HE IS  
24 CHARGED, WITH HIS LIFE ON THE LINE, THAN YOU WOULD TO A  
25 POLICEMAN IF HE WERE TESTIFYING?

26 MR. TAUB: I WOULD TRY TO BE FAIR AS FAR AS I POSSIBLY  
27 COULD BE.

28 MR. BARENS: MR. ENGLE, DO YOU THINK THAT THE DEFENDANT

1 WOULD BE LYING WHEN HE TESTIFIED -- IF YOU HEARD HIM TESTIFY  
2 IN HIS OWN BEHALF OR DO YOU THINK HE WOULD BE AS LIKELY TO  
3 TELL THE TRUTH AS ANY OTHER WITNESS?

4 MR. ENGLE: I THINK UNDER THE CIRCUMSTANCES, HE PROBABLY  
5 WOULD BE MORE INCLINED TO PROTECT HIMSELF BY NOT TELLING THE  
6 TRUTH.

7 MR. BARENS: AND WOULD THAT MAKE YOU JUDGE HIS TESTIMONY  
8 ANY MORE STRENUOUSLY OR GIVE A CLOSER VIEW TO HIS TESTIMONY  
9 THAN YOU WOULD THAT OF ANY OTHER WITNESS?

10 MR. ENGLE: NO.

11 I THINK I WOULD GIVE THEM BOTH THE SAME WEIGHT.

12 MR. BARENS: YOU THINK YOU COULD REALLY DO THAT,  
13 MR. ENGLE?

14 MR. ENGLE: YES.

15 MR. BARENS: HOW ABOUT YOU, MR. GHIRARDI, WOULD YOU  
16 BELIEVE THAT THE DEFENDANT WOULD BE TELLING THE TRUTH OR WOULD  
17 THERE BE SOMETHING ABOUT HIS INHERENT POSITION IN THIS  
18 COURTROOM THAT WOULD MAKE YOU THINK THAT HE WOULD LIE?

19 MR. GHIRARDI: I THINK IT WOULD BE HIS PRESENCE ON THE  
20 WITNESS STAND THAT WOULD PROBABLY BE AN INDICATION OF WHETHER  
21 HE WAS BEING TRUTHFUL OR NOT.

22 MR. BARENS: MR. PEIKERT.

23 THE COURT: PEIKERT.

24 MR. BARENS: PEIKERT. I BEG YOUR PARDON, SIR.

25 IF THE JUDGE INSTRUCTS YOU THAT THE DEFENDANT  
26 HAS A PRESUMPTION OF INNOCENCE AND YOU TRULY BELIEVE THERE  
27 IS SOMETHING WRONG WITH HIM NOT HAVING ANY PROOF AT ALL, WOULD  
28 THAT MAKE YOU MORE SUSPICIOUS ABOUT HIS TESTIMONY IF HE DID

1 TESTIFY?

2 MR. PEIKERT: WELL, HE IS PRESUMED TO BE INNOCENT. IF  
3 HE IS PRESUMED TO BE INNOCENT, HE IS INNOCENT UNTIL HE IS  
4 FOUND GUILTY. THAT IS THE AMERICAN WAY.

5 YOU JUST ASKED, WOULD I FEEL ANY DIFFERENT IF  
6 HE DIDN'T SPEAK?

7 MR. BARENS: YES.

8 MR. PEIKERT: YES, I WOULD FEEL A LITTLE DIFFERENT.  
9 I WOULD LIKE TO HEAR HIM TALK. I WOULD LIKE TO HEAR HIM SAY  
10 WHY HE PLEADED NOT GUILTY AND THAT IS WHERE IT ENDS.

11 MR. BARENS: ALL RIGHT, OBVIOUSLY, THE DEFENSE POSITION  
12 IS, WHEN A PLEA OF NOT GUILTY IS ENTERED IN THIS OR ANY OTHER  
13 CASE, IT IS BECAUSE THE DEFENDANT IS IN FACT NOT GUILTY.

14 MR. PEIKERT: AT THIS POINT, YES.

15 MR. BARENS: AT THIS POINT.

16 MR. PEIKERT: IF WE ALL TOLD THE TRUTH UNDER OATH, WE  
17 WOULDN'T NEED COURTROOMS, WOULD WE?

18 MR. BARENS: WELL, MR. PEIKERT, WE MIGHT NEED COURTROOMS  
19 BECAUSE THE TRUTH, AS YOU ARE GOING TO SEE, GIVEN THIS SAME  
20 SET OF FACTS, THE TRUTH IS SUBJECT TO DIFFERENT  
21 INTERPRETATIONS.

22 MR. PEIKERT: TRUE.

23 MR. BARENS: AND OVER 200 YEARS, WE LAWYERS BY THE  
24 THOUSANDS HAVE BEEN ARGUING ABOUT WHAT THE TRUTH OF TWO WORDS  
25 MEAN, THE WORDS "DUE PROCESS", AND FOR 200 YEARS WE ALL ARGUED  
26 ABOUT THE MEANING OF THOSE TWO WORDS. THEY ARE BOTH TRUE,  
27 BUT THEIR MEANING IS WHAT IS IMPORTANT.

28

1           LET ME TALK TO YOU ABOUT SOMETHING ELSE THAT  
2 COMES UP. I AM GLAD YOU BROUGHT THIS UP. IN THIS CASE, WE  
3 ARE GOING TO HAVE CIRCUMSTANTIAL EVIDENCE.

4           IN OTHER WORDS, NOBODY IS GOING TO TELL YOU THAT  
5 THEY EVER SAW MR. HUNT WITH A SMOKING GUN AND A DEAD BODY.  
6 PEOPLE ARE GOING TO TRY TO TELL YOU THAT FROM A VARIOUS AMOUNT  
7 OF CIRCUMSTANTIAL EVIDENCE, CERTAIN FACTS THAT THEY ARE GOING  
8 TO ALLEGE THAT NUMBER ONE, ARE FACTS AND NUMBER TWO, THAT THEY  
9 MEAN SOMETHING, THAT FROM THAT, YOU WILL FROM THEIR POINT OF  
10 VIEW, DEDUCT THAT SOMETHING HAPPENED.

11           ONE OF THE THINGS THAT THE JUDGE WILL INSTRUCT YOU  
12 ABOUT, IS THAT IF YOU HAVE TWO HYPOTHETICAL INTERPRETATIONS  
13 OF THE SAME SET OF FACTS, IT IS YOUR DUTY TO FIND FOR THE  
14 DEFENDANT.

15           MR. WAPNER: WELL, YOUR HONOR, EXCUSE ME. I DON'T MEAN  
16 TO INTERRUPT COUNSEL. BUT I DON'T THINK THAT IS A CORRECT  
17 STATEMENT OF THE LAW.

18           THE COURT: LADIES AND GENTLEMEN, BOTH SIDES WILL INDICATE  
19 TO YOU WHAT THEY BELIEVE THE LAW TO BE EXCEPT THAT UNTIL I TELL  
20 YOU WHAT THE LAW REALLY IS AT THE CONCLUSION OF THE CASE, YOU  
21 WILL FORM NO OPINION.

22           THEY MAY OR MAY NOT BE RIGHT. THAT IS THEIR  
23 VERSION OF IT.

24           MR. BARENS: YOUR HONOR, PERHAPS IT WOULD BE HELPFUL IF  
25 AT THIS TIME, YOUR HONOR GAVE THE STATEMENT AS TO CIRCUMSTANTIAL  
26 EVIDENCE TO THE JURORS SO THERE IS NO DOUBT AS TO THE LAW.

27           THE COURT: YES.

28           MR. WAPNER: FOR THE RECORD, MY PRIOR OBJECTION WAS TO



1 THE USE OF THE WORDS "TWO HYPOTHETICAL INTERPRETATIONS."

2 I BELIEVE THAT IF YOU READ IT, IT IS GOING TO  
3 END UP BEING TWO REASONABLE INTERPRETATIONS.

4 THE COURT: THIS WILL BE ONE OF THE INSTRUCTIONS WHICH  
5 I WILL GIVE TO THE JURORS SELECTED TO TRY THIS CASE.

6 "HOWEVER, A FINDING OF GUILT AS TO  
7 ANY CRIME MAY NOT BE BASED ON CIRCUMSTANTIAL  
8 EVIDENCE UNLESS THE PROVED CIRCUMSTANCES ARE NOT  
9 ONLY ONE, CONSISTENT WITH THE THEORY THAT THE  
10 DEFENDENT IS GUILTY OF THE CRIME; BUT TWO,  
11 CANNOT BE RECONCILED WITH ANY OTHER RATIONAL  
12 CONCLUSION.

13 "FURTHER, EACH FACT WHICH IS  
14 ESSENTIAL TO COMPLETE A SET OF CIRCUMSTANCES  
15 NECESSARY TO ESTABLISH A DEFENDANT'S GUILT, MUST  
16 BE PROVED BEYOND A REASONABLE DOUBT. IN OTHER  
17 WORDS, BEFORE AN INFERENCE ESSENTIAL TO ESTABLISH  
18 GUILT MAY BE FOUND TO HAVE BEEN PROVED BEYOND A  
19 REASONABLE DOUBT, EACH FACT OR CIRCUMSTANCE UPON  
20 WHICH SUCH INFERENCE NECESSARILY RESTS MUST BE  
21 PROVED BEYOND A REASONABLE DOUBT.

22 "ALSO, IF THE CIRCUMSTANTIAL EVIDENCE  
23 IS SUSCEPTIBLE OF TWO REASONABLE INTERPRETATIONS,  
24 ONE OF WHICH POINTS TO THE DEFENDANT'S GUILT AND  
25 THE OTHER TO HIS INNOCENCE, IT IS YOUR DUTY TO  
26 ADOPT THAT INTERPRETATION THAT POINTS TO THE  
27 DEFENDANT'S INNOCENCE AND REJECT THE INTERPRETATION  
28 WHICH POINTS TO HIS GUILT.

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"IF ON THE OTHER HAND, ONE  
INTERPRETATION OF SUCH EVIDENCE APPEARS TO YOU  
TO BE REASONABLE AND THE OTHER INTERPRETATION TO  
BE UNREASONABLE, IT WILL BE YOUR DUTY TO ACCEPT  
THE REASONABLE INTERPRETATION AND TO REJECT THE  
UNREASONABLE."

B-1

1 MR. WAPNER: COULD I ASK THE COURT TO READ THE  
2 INSTRUCTIONS TO THE JURORS ALSO, WHICH IMMEDIATELY PRECEDES  
3 THAT, WHICH EXPLAINS DIRECT AND CIRCUMSTANTIAL EVIDENCE?

4 THE COURT: YES. I WILL DO THAT.

5 "EVIDENCE CONSISTS OF TESTIMONY OF  
6 WITNESSES, WRITINGS, MATERIAL OBJECTS OR ANYTHING  
7 PRESENTED TO THE SENSES AND OFFERED TO PROVE THE  
8 EXISTENCE OR NONEXISTENCE OF A FACT. EVIDENCE  
9 IS EITHER DIRECT OR CIRCUMSTANTIAL.

10 "DIRECT EVIDENCE IS EVIDENCE THAT  
11 DIRECTLY PROVES A FACT, WITHOUT THE NECESSITY  
12 OF AN INFERENCE AND WHICH BY ITSELF, IF FOUND TO  
13 BE TRUE, ESTABLISHES THAT FACT.

14 "CIRCUMSTANTIAL EVIDENCE IS EVIDENCE  
15 THAT IF FOUND TO BE TRUE, PROVES A FACT FROM WHICH  
16 AN INFERENCE OF THE EXISTENCE OF ANOTHER FACT MAY BE  
17 DRAWN. AN INFERENCE IS A DEDUCTION OF FACT THAT  
18 MAY LOGICALLY AND REASONABLY BE DRAWN FROM ANOTHER  
19 FACT OR GROUP OF FACTS ESTABLISHED BY THE EVIDENCE.

20 "IT IS NOT NECESSARY THAT FACTS BE  
21 PROVED BY DIRECT EVIDENCE. THEY MAY BE PROVED  
22 ALSO BY CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION  
23 OF DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.  
24 BOTH DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE  
25 ARE ACCEPTABLE AS A MEANS OF PROOF. NEITHER IS  
26 ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER."

27 MR. WAPNER: THANK YOU, YOUR HONOR.

28 THE COURT: YOU MAY CONTINUE.

1 MR. BARENS: THANK YOU, YOUR HONOR. ONE OF THE REASONS  
2 THAT WE HAVE THAT CIRCUMSTANTIAL EVIDENCE RULE THAT CONCLUDES  
3 WITH, GIVEN TWO REASONABLE INTERPRETATIONS POSSIBLE TO YOUR-  
4 SELF, THAT YOU FIND FOR THE DEFENDANT BECAUSE IN THAT INSTANCE,  
5 THE PEOPLE WOULD NOT HAVE MET THEIR BURDEN OF PROOF. DO YOU  
6 UNDERSTAND THAT, MR. GHIRARDI?

7 MR. GHIRARDI: YES.

8 MR. BARENS: DO YOU THINK THAT IS FAIR AND AN EQUITABLE  
9 WAY THAT WE SHOULD BE PROCEEDING ON THESE MATTERS?

10 MR. GHIRARDI: YES. WELL, THE WAY THE JUDGE EXPLAINED  
11 IT, IF THE SCALES ARE BALANCED, IT IS FOR THE DEFENDANT.

12 MR. BARENS: OR EVEN IF THERE ARE TWO EQUAL CHOICES, LET'S  
13 SAY.

14 MR. GHIRARDI: TWO EQUAL CHOICES. THAT IS WHAT I AM  
15 SAYING.

16 MR. BARENS: MR. ENGLE, HOW DO YOU FEEL ABOUT THAT?

17 MR. ENGLE: I FEEL IT IS FAIR.

18 MR. BARENS: MR. DUNDORE?

19 MR. DUNDORE: I FEEL THAT IS FAIR. IT CERTAINLY DOES  
20 NOT INDICATE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS  
21 GUILTY.

22 MR. BARENS: MR. CANADY, WHAT IS A REASONABLE DOUBT TO  
23 YOU? DO YOU HAVE AN IDEA ABOUT A REASONABLE DOUBT?

24 THE COURT: WELL, EVEN THE COURTS HAVE BEEN AT A GREAT  
25 LOSS TO EXPLAIN EVERYTHING IN CONNECTION WITH THAT. I DON'T  
26 THINK WE OUGHT TO START IT NOW.

27 IF THE HIGHEST COURT, THE SUPREME COURT CAN'T  
28 AGREE ON WHAT EXACTLY IT MEANS, I DON'T THINK MR. CANADY COULD

1 HELP US.

2 MR. BARENS: I DON'T KNOW HOW WE AGREE UPON ANYTHING  
3 BECAUSE WE ARE INVOLVD WITH LANGUAGE.

4 A LOT OF THE TIME, IT IS LANGUAGE AND WE ARE  
5 ALL SUBJECT TO OUR INDIVIDUAL INTERPRETATIONS.

6 THAT IS ONE OF THE REASONS THAT I AM TALKING WITH  
7 ALL OF YOU THIS MORNING, IS TO TRY TO ASSIST ME IN SEEING  
8 THESE THINGS IN THAT REGARD.

9 MS. SHELBY, WOULD THE FACT THAT YOUR UNCLE WAS ON  
10 THE POLICE DEPARTMENT HAVE ANY INFLUENCE ON YOU IN THE WAY YOU  
11 WOULD TRY THIS CASE?

12 MS. SHELBY: NO IT WOULD NOT.

13 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF  
14 INNOCENCE, THAT MY CLIENT COMES HERE WITH?

15 MS. SHELBY: I THINK THAT -- I THINK HE SHOULD BE  
16 CONSIDERED INNOCENT UNTIL THERE IS PROOF THAT HE IS NOT.

17 THE COURT: WAIT A MINUTE. PLEASE KEEP YOUR VOICE UP.  
18 WOULD YOU READ THAT ANSWER, PLEASE? SOMEBODY WAVED THEIR HAND.  
19 THEY CAN'T HEAR.

20 VOICE: I CAN'T HEAR THE LAWYER, EITHER.

21 THE COURT: PLEASE READ IT.

22 (THE RECORD WAS READ BY THE REPORTER.)

23 MR. BARENS: MISS SHELBY, THE PEOPLE ARE GOING TO TELL  
24 YOU THAT MY CLIENT KILLED A MAN. WE ARE GOING TO TELL YOU THAT  
25 THE PERSON LEFT.

26 THE COURT: WHAT?

27 MR. BARENS: LEFT.

28 THE COURT: YES.

1 VOICE: WHAT?

2 MR. BARENS: LEFT, ACTUALLY. LEFT.

3 MR. CHIER: SPLIT.

4 THE COURT: HE IS STILL ALIVE, YOU MEAN?

5 MR. BARENS: QUITE WELL ALIVE, ACTUALLY. BUT CERTAINLY  
6 NOT DEAD. HE LEFT.

7 DO YOU UNDERSTAND, MS. SHELBY, THAT THE JUDGE IS  
8 GOING TO EXPLAIN TO YOU THAT WHEN WE TALK ABOUT SOMEBODY BEING  
9 MURDERED IN THE FIRST DEGREE, THAT THE PEOPLE HAVE A BURDEN  
10 OF PROOF TO PROVE TO YOU ONE, THAT THE PERSON IS DEAD AND TWO,  
11 THAT THEY ARE DEAD AS A RESULT OF CRIMINAL MEANS.

12 NOW, IF THE JUDGE EXPLAINS THAT TO YOU, WILL YOU  
13 REMEMBER THAT THEY MUST PROVE BOTH OF THOSE THINGS BEYOND A  
14 REASONABLE DOUBT?

15 MS. SHELBY: YES.  
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1 MR. BARENS: AND THAT THE REASONABLE DOUBT STANDARD  
2 APPLIES TO BOTH ELEMENTS OF A FIRST DEGREE MURDER; DO YOU  
3 UNDERSTAND THAT?

4 MS. SHELBY: YES, I DO.

5 MR. BARENS: DOES THE FACT THAT THEY HAVE TO PROVE BOTH  
6 OF THOSE THINGS BOTHER YOU OR DO YOU FEEL IT IS UNFAIR IN  
7 A WAY?

8 MS. SHELBY: NO.

9 MR. BARENS: HOW ABOUT YOU, MR. DUNDORE?

10 MR. DUNDORE: NO.

11 I AGREE THAT THEY BOTH CAN BE PROVED.

12 MR. BARENS: DEATH AND DEATH BY CRIMINAL MEANS?

13 MR. DUNDORE: YES.

14 MR. BARENS: MR. PEIKERT?

15 MR. PEIKERT: YES.

16 MR. BARENS: DO YOU FEEL IT IS FAIR THAT THEY SHOULD  
17 HAVE BOTH OF THOSE BURDENS?

18 MR. PEIKERT: YES.

19 MR. BARENS: DO YOU THINK I SHOULD HAVE TO PROVE THAT  
20 THE ALLEGED VICTIM IN THIS MATTER IS STILL ALIVE AND FIND  
21 HIM SOMEHOW AND PRODUCE HIM IN THIS COURTROOM?

22 MR. PEIKERT: THE ALLEGED VICTIM?

23 MR. BARENS: THE ALLEGED VICTIM.

24 MR. PEIKERT: MAYBE I AM MISSING SOMETHING.

25 THE COURT: YOU SEE, HE IS ASKING YOU WHETHER OR NOT  
26 IT IS THE BURDEN OF THE DEFENDANT TO SHOW HE IS ALIVE AND  
27 PRODUCE HIM IN THIS COURTROOM; DO YOU THINK HE IS SUPPOSED  
28 TO DO THAT?

1 MR. PEIKERT: NO.

2 MR. BARENS: WHAT WE ARE ACTUALLY MISSING, MR. PEIKERT,  
3 IS A BODY.

4 MR. PEIKERT: YES. THAT IS WHAT I WONDERED, YOU ARE  
5 MISSING A BODY.

6 MR. BARENS: A DEAD PERSON IS WHAT WE ARE MISSING, A  
7 DEAD PERSON.

8 MR. PEIKERT: THAT IS WHAT I WAS ASSUMING IN MY HEAD  
9 TRYING TO ANSWER YOUR QUESTION.

10 THAT IS TOUGH.

11 MR. BARENS: WE ARE TALKING ABOUT A MURDER WITHOUT A  
12 BODY, THAT IS WHAT WE ARE TALKING ABOUT.

13 DO YOU THINK I SHOULD BE ABLE TO SHOW A LIVE PERSON?

14 MR. PEIKERT: NO.

15 MR. BARENS: MR. TAUB, HOW DO YOU FEEL ABOUT THAT?

16 MR. TAUB: NO.

17 I THINK THE PEOPLE HAVE TO PROVE ITS CASE, IT  
18 IS JUST AS SIMPLE AS THAT.

19 MR. BARENS: MRS. HOFER, DO I NEED TO BRING SOMEBODY  
20 IN TO CONVINCING YOU THAT MY CLIENT DIDN'T KILL SOMEBODY WHO  
21 ISN'T AROUND ANY MORE?

22 MS. HOFER: NO.

23 MR. BARENS: MRS. KNUEDLER, HOW DO YOU FEEL?

24 MS. KNUEDLER: I FEEL THAT THE STATE SHOULD HAVE TO  
25 PROVE IT.

26 MR. BARENS: IN ALL HONESTY, WOULD ANY OF YOU 12 GOOD  
27 PEOPLE RAISE YOUR HAND FOR ME IF YOU FEEL THAT THE DEFENSE  
28 WOULD HAVE ANY DUTY WHATSOEVER TO SHOW YOU A LIVE PERSON IN



1 THIS CASE? ANYBODY FEEL THAT IT WOULD BE INCOMPLETE, IF I  
2 DON'T BRING SOMEBODY IN HERE AND SAY THERE HE IS, THE ALLEGED  
3 VICTIM APPEARS; IS THERE ANYBODY GOING TO BE BOTHERED BY THAT?

4 I CAN'T DO IT, FOLKS, SO IF IT IS GOING TO BOTHER  
5 YOU, YOU TELL ME.

6 OKAY, YOU ARE GOING TO HEAR IN THIS CASE THAT  
7 YOUNG MR. HUNT MADE CERTAIN STATEMENTS THAT GOT HIM INTO  
8 TROUBLE, GOT HIM HERE TODAY.

9 MISS WALKER, DID YOU EVER TAKE CREDIT FOR SOMETHING  
10 YOU HADN'T REALLY DONE?

11 MS. WALKER: I SUPPOSE SOMETHING MINOR. I DON'T KNOW  
12 OF ANYTHING.

13 I AM NOT SAYING I AM PERFECT.

14 THE COURT: KEEP YOUR VOICE UP, PLEASE. PEOPLE CAN'T  
15 HEAR YOU.

16 MS. WALKER: I DON'T BELIEVE I HAVE.

17 MAYBE SOMETHING MINOR IN THE HOUSEHOLD OR SOMETHING  
18 BUT, NO, I DON'T BELIEVE I HAVE.

19 MR. BARENS: WOULD YOU CONCEDE THAT SOMETIMES WE HUMANS  
20 TAKE CREDIT FOR THINGS WE DON'T DO, BECAUSE MAYBE AT THE  
21 MOMENT IT MAKES US LOOK BETTER IN SOMEBODY ELSE'S EYES?

22 MS. WALKER: YES, YES.

23 MR. BARENS: CAN YOU RELATE TO THAT, MISS KNUEDELER?

24 MS. KNUEDELER: YES.

25 MR. BARENS: YOU UNDERSTAND THAT JUST BECAUSE SOMEONE  
26 TAKES CREDIT FOR SOMETHING, IT DOESN'T ABSOLUTELY MEAN THEY  
27 IN FACT DID WHAT THEY SAY?

28 MS. KNUEDELER: YES, I UNDERSTAND THAT.

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1 MR. BARENS: MR. HECK, YOU KNOW HOW PEOPLE SOMETIMES  
2 EXAGGERATE ABOUT THINGS THEY DO AND DON'T DO?

3 MR. HECK: UH-HUH.

4 MR. BARENS: WOULD YOU BE WILLING TO UNDERSTAND THAT  
5 THERE IS A BIG DIFFERENCE BETWEEN THINGS THAT PEOPLE SAY AND  
6 WHAT THEY IN FACT DO?

7 MR. HECK: OH, YES.

8 MR. BARENS: IN JUDGING MY CLIENT AND IN JUDGING WHAT  
9 YOU HEAR ABOUT HIM, COULD YOU REMEMBER THAT SOMETIMES PEOPLE  
10 TAKE CREDIT FOR THINGS THEY DON'T REALLY DO?

11 MR. HECK: YES, THEY DO.

12 MR. BARENS: GOOD AND BAD?

13 MR. HECK: YES, THEY DO.

14 MR. BARENS: HOW DO YOU FEEL ABOUT THAT, MR. DUNDORE?

15 MR. DUNDORE: I AGREE THAT PEOPLE OFTEN CLAIM TO HAVE  
16 DONE THINGS THEY DIDN'T DO -- MAYBE NOT OFTEN -- BUT TO  
17 PROTECT SOMEONE ELSE.

18 MR. BARENS: YES, INDEED, TO PROTECT SOMEONE ELSE COULD  
19 BE A POSSIBILITY.

20 COULD IT ALSO BE A POSSIBILITY THAT SOMETIMES,  
21 PERHAPS IF I WERE A MEMBER OF A CLUB, SAY I WAS A MEMBER OF  
22 A HUNTING CLUB AND I WANTED TO TALK ABOUT THIS BIG POLAR BEAR  
23 I SHOT, THAT THAT POLAR BEAR FELL BACK IN THE WATER AFTER  
24 I SHOT HIM AND I CAN'T BRING HIM IN BUT HE WAS THE BIGGEST  
25 POLAR BEAR I EVER SAW; DO YOU UNDERSTAND I MIGHT DO THAT IF  
26 I WAS A MEMBER OF THE CLUB?

27 MR. HECK: YES.

28 MR. BARENS: YOU ARE GOING TO HEAR ABOUT A CLUB IN THIS

1 CASE, THAT IS SOMETHING THE PEOPLE ARE GOING TO TELL YOU THAT  
2 IS CALLED THE BILLIONAIRE BOYS CLUB.

3 BILLIONAIRES, DON'T WE THINK OF ALL KINDS OF THINGS  
4 WHEN WE HEAR THAT WORD?

5 WE ARE NOT GOING TO HAVE ANY BILLIONAIRES HERE.  
6 WE ARE GOING TO HAVE A CLUB CALLED THAT.

7 MR. ENGLE, WHEN YOU HEAR BILLIONAIRE BOYS CLUB,  
8 DOES THAT MAKE YOU THINK THAT THE YOUNG MEN, LET'S SAY, THE  
9 YOUNG MEN THAT BELONG TO THAT CLUB WERE PRETENTIOUS YOUNG  
10 MEN OR MAYBE A LITTLE RACY OR A LITTLE PRESUMPTUOUS ABOUT  
11 THEMSELVES?

12 MR. ENGLE: YES, YOU MIGHT.

13 MR. BARENS: WOULD IT MAKE YOU THINK THAT THEY ARE BAD  
14 GUYS?

15 MR. ENGLE: NO.

16 MR. BARENS: WOULD IT MAKE YOU THINK THEY MIGHT COMMIT  
17 A MURDER?

18 MR. ENGLE: NO.

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1 MR. BARENS: HOW ABOUT YOU, MR. CANADY, HOW ABOUT A  
2 BUNCH OF YOUNG MEN ABOUT YOUR AGE WHO WERE IN A CLUB CALLED  
3 THE BILLIONAIRE BOYS CLUB, WOULD THAT CAUSE ANYTHING TO COME  
4 TO YOUR MIND THAT THEY MIGHT NOT BE THE RIGHT SORT OF GUYS?

5 MR. CANADY: NOT AT ALL.

6 MR. BARENS: WOULD IT INFLUENCE YOUR ABILITY TO BELIEVE  
7 WHETHER THEY WERE TELLING THE TRUTH OR NOT?

8 MR. CANADY: DOESN'T MAKE ANY DIFFERENCE.

9 MR. BARENS: MR. GHIRARDI, WHAT DO YOU THINK ABOUT GUYS  
10 THAT BELONG TO THE BILLIONAIRE BOYS CLUB?

11 MR. GHIRARDI: WELL, IT REMINDS ME OF THE BOYS CLUB OF  
12 AMERICA. ONE GROUP IS PROBABLY WELL TO DO. THE OTHERS LIVE  
13 DOWN IN CENTRAL L.A. ONE HAS MONEY AND THE OTHER DOESN'T.

14 MR. BARENS: DO YOU THINK THERE IS ANYTHING WRONG WITH  
15 PEOPLE WHO EITHER HAVE MONEY OR APPEAR TO HAVE MONEY?

16 MR. GHIRARDI: NO.

17 I WOULD LIKE TO HAVE SOME MYSELF.

18 (LAUGHTER IN THE COURTROOM.)

19 MR. BARENS: I JUDGE THAT YOU ARE NOT IN THE MINORITY  
20 HERE, MR. GHIRARDI.

21 YOU ARE GOING TO HEAR IN THIS CASE ABOUT CAPITALISM.  
22 YOU ARE GOING TO HEAR ABOUT YOUNG BOYS THAT ARE MOTIVATED TO  
23 BECOME SOMEBODY, TO MAKE A LOT OF MONEY, THE PEOPLE MIGHT TELL  
24 YOU "AT ANY PRICE." THE DEFENSE IS GOING TO TELL YOU,  
25 "ACCORDING TO CAPITALISTIC TRADITIONS, WORK HARD, BE PRUDENT,  
26 BE SMART, HORATIO ALGER."

27 HOW DO YOU FEEL ABOUT THAT, MR. CANADY? HOW DO  
28 YOU FEEL ABOUT CAPITALISM AND PEOPLE THAT ARE REAL MOTIVATED

1 TO MAKE A LOT OF MONEY, DO YOU THINK THERE IS ANYTHING SUSPECT  
2 ABOUT THOSE PEOPLE?

3 MR. CANADY: NO.

4 MR. BARENS: DO YOU THINK THERE IS ANYTHING WRONG WITH  
5 SPENDING YOUR WHOLE LIFE MOTIVATED TO MAKE MONEY?

6 MR. CANADY: EVERYONE HAS THEIR OWN THING. IF THEY WANT  
7 TO DO IT, IT IS NO BIG DEAL.

8 MR. BARENS: HOW DO YOU FEEL, MRS. HOFER?

9 MS. HOFER: WELL, IF THEY CAN, MORE POWER TO THEM.

10 MR. BARENS: YOU DON'T FEEL ANYTHING MAKES THEM SUSPECT --

11 MS. HOFER: NO.

12 MR. BARENS: -- ABOUT THE FACT THEY ARE OUT LOOKING TO  
13 MAKE A LOT OF MONEY?

14 MS. HOFER: NO.

15 MR. BARENS: MR. PEIKERT, WHAT DO YOU THINK?

16 MR. PEIKERT: SAME REASON YOU BECAME AN ATTORNEY, YOU  
17 DON'T WANT TO DO IT FOR PEANUTS.

18 MR. BARENS: NO, SIR. I DON'T EVEN LIKE PEANUTS.

19 (LAUGHTER IN COURTROOM.)

20 MR. BARENS: IT IS ABSOLUTELY PART OF THE AMERICAN  
21 TRADITION, WOULDN'T YOU SAY, TO BE INDUSTRIOUS AND GET AHEAD?

22 MR. PEIKERT: VERY DEFINITELY.

23 MR. BARENS: IT WOULDN'T HAVE ANY NEGATIVE IMPLICATIONS,  
24 A YOUNG MAN, MRS. WALKER, THAT WAS INVOLVED IN THE BILLIONAIRE  
25 BOYS CLUB JUST BECAUSE IT WAS A SOCIETY FOR MAKING MONEY?

26 MS. WALKER: NO. I THINK THAT IS GOOD IF YOU ARE ABLE  
27 TO DO IT AND SOMEONE HAD THE IDEAS.

28 MR. BARENS: MR. DUNDORE --

1 THE COURT: PARDON ME. DO YOU WANT TO TAKE A RECESS?

2 MR. BARENS: BY YOUR LEAVE, YOUR HONOR.

3 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A RECESS  
4 AT THIS TIME UNTIL 1:45 THIS AFTERNOON.

5 WHAT I WILL ASK YOU TO DO -- INCIDENTALLY, THE HOURS  
6 WILL BE FROM 10:30 IN THE MORNING TO 4:30 IN THE AFTERNOON SO  
7 YOU CAN MAKE YOUR PLANS ACCORDINGLY, MONDAY THROUGH THURSDAY.

8 WE WILL NOT SIT ON FRIDAY BECAUSE THERE IS A LOT  
9 OF WORK TO BE DONE BY THE REPORTERS AND TRANSCRIBING AND  
10 COUNSEL HAVE OTHER BUSINESS THEY MUST TAKE CARE OF SO WE ALWAYS  
11 WORK JUST THESE FOUR DAYS A WEEK, NOT THAT THE COURT DOESN'T.  
12 THE COURT HAS A FRIDAY CALENDAR ANYWAY. SO YOU CAN EXPECT TO  
13 HAVE FRIDAY OFF, EVERY FRIDAY UNTIL THE CONCLUSION OF THE CASE.

14 YOU WILL ALSO HAVE FROM DECEMBER 24TH; ISN'T THAT  
15 CORRECT?

16 THE CLERK: THAT INCLUDES IT.

17 THE COURT: I TOLD YOU ORIGINALLY THAT WE WILL NOT HOLD  
18 COURT DURING THE CHRISTMAS HOLIDAY, SO BEGINNING WITH  
19 DECEMBER 24TH THROUGH JANUARY -- WHAT DATE IS THAT?

20 THE CLERK: THE 5TH.

21 THE COURT: JANUARY 5TH, WE WILL NOT BE EXPECTED TO SIT  
22 ON THIS PARTICULAR CASE OR TO PROCEED WITH ANY TRIAL SO THAT  
23 WILL BE A HOLIDAY AND YOU CAN MAKE YOUR PLANS ACCORDINGLY.

24 WE WILL RESUME ON THE 5TH BUT NOTHING ON THE 24TH  
25 THROUGH JANUARY 4TH, YOU WILL HAVE A HOLIDAY AND THEN YOU WILL  
26 COME BACK ON JANUARY 5TH WHEN WE WILL RESUME.

27 I THOUGHT I WOULD GIVE YOU THAT SCHEDULE SO YOU  
28 CAN MAKE YOUR PLANS ACCORDINGLY.

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1 A VOICE: DO YOU MEAN WE WILL BE HERE ON THE 24TH?

2 THE COURT: NO. YOU WILL NOT BE HERE ON THE 24TH. IN  
3 OTHER WORDS, FROM THE 24TH TO JANUARY 4TH, INCLUSIVE, YOU  
4 WILL NOT BE HERE. YOU WILL BE ON HOLIDAY.

5 ALL RIGHT. THANK YOU. WE WILL SEE YOU ALL BACK  
6 HERE AT 1:45.

7 THE JURORS WILL PLEASE TAKE THE SAME SEATS THAT  
8 YOU NOW OCCUPY. THE REST OF YOU CAN SIT ANY PLACE THAT YOU  
9 WANT.

10 (AT 12:04 P.M. A RECESS WAS TAKEN UNTIL  
11 1:45 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, DECEMBER 10, 1986; 1:50 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS HERETOFORE NOTED.)  
4

5 THE COURT: STIPULATE THE DEFENDANT IS PRESENT. COUNSEL  
6 ARE PRESENT. THE PROSPECTIVE JURORS ARE PRESENT. YOU MAY  
7 CONTINUE.

8 MR. BARENS: GOOD AFTERNOON, YOUR HONOR. GOOD AFTERNOON,  
9 LADIES AND GENTLEMEN.

10 IT IS IMPORTANT TO ME AND I KNOW WE SPENT SOME  
11 TIME ON THIS THIS MORNING, THAT YOU ALL UNDERSTAND THE  
12 PRESUMPTION OF INNOCENCE. IT IS IMPORTANT TO ME THAT YOU  
13 UNDERSTAND THOSE ARE NOT JUST WORDS. THIS IS A REAL, LIVING,  
14 VIVID CONCEPT THAT IS APPLIED IN AMERICAN SOCIETY, A BULWARK  
15 OF OUR CONSTITUTIONAL GUARANTEES.

16 IT IS NOT JUST SOMETHING THAT I AM SAYING FOR  
17 MR. HUNT. IT IS A FUNDAMENTAL, LIVING RIGHT THAT WE HAVE.

18 BEFORE THE BREAK, MR. PEIKERT, I WAS CONCERNED --

19 MR. PEIKERT: PEIKERT, SIR.

20 MR. BARENS: AGAIN, I APOLOGIZE.

21 MR. PEIKERT: THAT'S OKAY.

22 MR. BARENS: MR. PEIKERT, I WAS CONCERNED THAT YOU ASKED  
23 ME OR YOU SAID TO ME THAT YOU WOULD LIKE TO HEAR THE DEFENDANT  
24 SAY WHY HE PLED NOT GUILTY. WHY DO YOU FEEL THAT WAY? WHAT  
25 DO YOU MEAN BY THAT, SIR?

26 MR. PEIKERT: WELL, ON ONE HAND, YOU ARE SAYING THAT  
27 THE DEFENDANT DOESN'T HAVE TO TAKE THE STAND. YET, HE IS  
28 TAKING THE STAND THAT HE IS NOT GUILTY.



1 I WOULD LIKE TO HEAR HIS SIDE OF THE STORY. I  
2 WILL HEAR THE DEFENSE SIDE OF THE STORY. HOW COME I CAN'T  
3 HEAR THE DEFENDANT'S SIDE OF THE STORY?

4 MR. BARENS: ACTUALLY, THE PROSECUTION.

5 MR. PEIKERT: I DON'T KNOW ANYTHING ABOUT THE JUDICIAL  
6 PROCESS. BUT THAT IS MY INSTINCT, MY ANSWER. THAT IS MY  
7 ANSWER, IF I LISTEN TO HIM EXPLAIN TO ME WHY HE IS INNOCENT,  
8 I WOULD LIKE TO HEAR HIM EXPLAIN WHY HE IS NOT GUILTY, BOTH  
9 OF THEM BEING REPRESENTED BY THE LEGAL SYSTEM THAT UNDERSTANDS  
10 WHAT THIS IS ALL ABOUT.

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1 MR. BARENS: DO YOU UNDERSTAND THAT THE PEOPLE, THE  
2 PROSECUTION, FROM WHAT THEY TOLD YOU ABOUT WHY HE IS GUILTY, WOULD  
3 HAVE THE SOLE BURDEN OF PROOF, THAT FROM JUST WHAT THEY TOLD  
4 YOU, YOU WOULD HAVE TO CONCLUDE OR BELIEVE BASED ON WHAT THEY  
5 TOLD YOU THAT HE WAS GUILTY OR INNOCENT? WOULD IT BE POSSIBLE  
6 IN YOUR MIND TO BELIEVE THAT, IF YOU JUST HEARD THEIR STORY,  
7 THAT YOU WOULD AUTOMATICALLY FIND HIM GUILTY IF YOU HEARD  
8 NOTHING FROM THE OTHER SIDE?

9 MR. PEIKERT: ABSOLUTELY NOT.

10 THAT IS WHY I WAS DUMFOUNDED WHEN WE STARTED TALKING  
11 ABOUT CIRCUMSTANTIAL EVIDENCE BEING WEIGHED THE SAME AS HARD  
12 EVIDENCE.

13 NOW, I DON'T KNOW ANYTHING ABOUT THE CASE OUTSIDE  
14 OF JUST WHAT WE HAVE TALKED ABOUT.

15 WE ARE TALKING ABOUT HEARSAY. YOU KNOW, WE DON'T  
16 HAVE A BODY. TO ME, AND LIKE I SAY, I DON'T KNOW ANYTHING  
17 ABOUT THE JUDICIAL PROCESS, THIS GUY IS GOING TO HAVE TO BE  
18 A HOUDINI TO PROVE TO ME THAT -- THAT MR. HUNT IS GUILTY.

19 I MEAN IT IS ALL -- IT IS ALL CONJECTURE AND,  
20 YET, THE LAW SAYS "YOU WILL WEIGH IT EVENLY."

21 NOW IN MY MIND, THAT IS AWFULLY HARD TO COMPREHEND.

22 I THOUGHT ABOUT THAT DURING MY LUNCH HOUR AND  
23 I WAS GOING TO BRING THAT UP VOLUNTARILY AND SAY THAT TO YOU.

24 MR. BARENS: I HAVE A LOT OF CONFIDENCE IN MR. WAPNER  
25 AND --

26 MR. WAPNER: THANK YOU, COUNSEL.

27 MR. BARENS: -- OR WE WOULDN'T BE HERE.

28 CIRCUMSTANTIAL EVIDENCE CERTAINLY, THERE IS A

1 LOT OF PRECEDENTS SIR, THAT CIRCUMSTANTIAL EVIDENCE CAN RESULT  
2 IN CONVICTIONS AND CIRCUMSTANTIAL EVIDENCE CAN RESULT IN  
3 ACQUITTALS.

4 WHAT WE ARE FOCUSED ON FOR THE MOMENT IS THE FIFTH  
5 AMENDMENT, THE RIGHT NOT TO TESTIFY BECAUSE THE BURDEN OF  
6 PROOF RESTS WITH THE PEOPLE.

7 DO YOU FEEL IN YOUR HEART OF HEARTS THAT THE FIFTH  
8 AMENDMENT IS SOMETHING REALLY ONLY USED BY GUILTY PEOPLE?

9 MR. PEIKERT: IN MY HEART OF HEARTS, YES.

10 MR. BARENS: WOULD THAT ALWAYS BE YOUR OPINION, NO MATTER  
11 WHAT HIS HONOR TELLS YOU AND NO MATTER WHAT I TELL YOU?

12 AND LISTEN, YOU ARE ENTITLED TO YOUR OPINION.

13 MR. PEIKERT: NO, THAT WOULDN'T ALWAYS BE MY OPINION.

14 I MEAN IF A MAN WON'T STAND UP AND EXPLAIN, THEN  
15 THAT IS THE OPINION I ASSUME --

16 MR. BARENS: AUTOMATICALLY?

17 MR. PEIKERT: IF HE WILL GET UP AND SAY, NO, I DIDN'T  
18 DO IT, AT LEAST HE HAD GUMPTION ENOUGH TO STAND UP AND SAY,  
19 "HEY."

20 MR. BARENS: UNDER THE SYSTEM I HAVE DONE THAT FOR  
21 MR. HUNT. I HAVE SAID NOT GUILTY FOR HIM.

22 MR. PEIKERT: OKAY, YOU ARE THE SPOKESMAN.

23 MR. BARENS: WELL, IN THIS SENSE YES, AND I HAVE SPOKEN,  
24 THE DEFENSE HAS SPOKEN, "NOT GUILTY," ABSOLUTELY NOT. NOT  
25 MAYBE. BUT NOT GUILTY.

26 NOW, IF YOU HEAR SOMETHING ELSE THAN THAT AND  
27 IF WE WERE TO EXERCISE THE FIFTH AMENDMENT RIGHT, WHICH THOSE  
28 GUYS THAT FRAMED THE CONSTITUTION SAY ALL OF US HAVE, HOW

1 WOULD YOU FEEL? WOULD YOU STILL FEEL THAT HE IS HIDING  
2 SOMETHING; THAT IF HE WAS REALLY INNOCENT, HE WOULD HAVE TALKED  
3 TO YOU ABOUT IT?

4 MR. PEIKERT: IT WOULD DEPEND UPON WHAT DEFENSE --  
5 I MEAN WHAT THE PROSECUTOR HAD TO SAY ABOUT THAT.

6 MR. BARENS: WOULDN'T IT REALLY DEPEND ON WHAT EVIDENCE  
7 OR PROOF THEY SHOWED YOU?

8 MR. PEIKERT: YES, VERY MUCH SO.

9 BUT BECAUSE HE IS SITTING HERE AND IT IS THAT  
10 WAY, IT WOULD OBVIOUSLY BE DIFFERENT IF HE WAS COMPLETELY  
11 REMOVED FROM YOUR VISION OF SIGHT AND YOU TAKE THE ELEMENT  
12 OF A LIVE HUMAN BEING OUT, YOU COULD LITERALLY DECAPITATE  
13 FOR THE REST OF HIS LIFE, I MEAN MAKE HIM QUIT BREATHING,  
14 OKAY, AND THEN JUST YOU TWO TALKED IT OUT, THEN IT WOULD BE  
15 A DIFFERENT STORY. BUT YOU HAVE A PERSON ACTUALLY SITTING  
16 HERE THAT POSSIBLY WILL NOT TALK BECAUSE HE HAS HIRED SOMEBODY  
17 ELSE TO BE A SPOKESMAN.

18 I AM NOT SAYING HE HAS TO BE A PUBLIC SPEAKER  
19 BECAUSE HE WON'T TALK.

20 THEN I FEEL A LITTLE BIT PREJUDICED TOWARD HIM.

21 I AM JUST BEING HONEST WITH YOU, THAT IS ALL.

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1 MR. BARENS: NOW, YOU UNDERSTAND OF COURSE I AM NOT  
2 TELLING YOU GOOD PEOPLE THAT MY CLIENT IS NOT GOING TO TESTIFY.

3 MR. PEIKERT: I DON'T KNOW THAT. YOU JUST ASKED ME A  
4 QUESTION. I AM TRYING TO ANSWER IT.

5 MR. BARENS: SUPPOSE ONE WERE FALSELY ACCUSED? WHAT  
6 COULD YOU POSSIBLY SAY, SIR? SOMEONE SAID YOU DID SOMETHING  
7 THAT YOU DIDN'T DO.

8 WHAT HAVE YOU ACCOMPLISHED IF SOMEBODY SAYS YOU  
9 DID IT? ARE YOU GOING TO GET UP THERE AND SAY THAT YOU DIDN'T  
10 DO IT? NOW, WITH NOTHING ELSE, WHAT HAVE THEY ACCOMPLISHED  
11 BY THE TESTIMONY? HAVE THEY ACCOMPLISHED ANYTHING?

12 MR. PEIKERT: ONE PERSON'S WORD AGAINST THE OTHER. BUT  
13 AT LEAST, HE SAID THAT HE DIDN'T DO IT RATHER THAN HAVING  
14 SOMEBODY ELSE SAY IT FOR HIM.

15 IT IS REALLY IMMATERIAL. BUT I FEEL THAT WAY.

16 THE COURT: WELL, THE PLEA OF NOT GUILTY IN THIS CASE  
17 HAS INDICATED THAT. HE PLEADED NOT GUILTY. HE IS SAYING THAT  
18 HE IS NOT GUILTY. THAT INDICATES THAT HE HAS NOT DONE IT.

19 MR. BARENS: YOU SEE, I WOULDN'T SAY THAT TO ANY OF  
20 YOU PEOPLE UNLESS THIS YOUNG MAN SAID IT. I DON'T JUST COME  
21 IN HERE AND SAY THAT FOR HIM.

22 HE TALKS TO ME FOR YEARS. WE HAVE TALKED ABOUT  
23 THIS. AND HE SAID THAT TO ME.

24 I COME HERE AND SAY IT TO YOU, NOT GUILTY. I DIDN'T  
25 MAKE THAT UP.

26 THE FIFTH AMENDMENT -- WELL, I STILL WANT TO TRY  
27 TO GET AN ANSWER.

28 MR. PEIKERT: WELL, FIRST OF ALL, YOU MAY HAVE TO EXPLAIN

1 IT TO ME.

2 MR. BARENS: THE FIFTH AMENDMENT OF OUR CONSTITUTION  
3 SAYS A DEFENDANT CANNOT BE COMPELLED TO GIVE TESTIMONY AND  
4 THROUGHOUT THE HISTORY OF THIS COUNTRY AND OUR LEGAL SYSTEM,  
5 DEFENDANTS AND WITNESSES HAVE REFUSED TO TESTIFY ON THE BASIS  
6 THAT IT COULD TEND TO INCRIMINATE THEM OR ON THE BASIS THAT  
7 THEY JUST DON'T HAVE TO TESTIFY.

8 WHAT DO YOU THINK --

9 MR. PEIKERT: WHY WOULD I HAVE THIS FEELING? BECAUSE  
10 YOU SEE IT ON THE NEWS WHICH WE ARE NOT WATCHING BECAUSE WE  
11 ARE NOT SUPPOSED TO.

12 YOU KNOW, JOE PUTZ, KNOWN COCAINE DEALER OR WHAT-  
13 EVER, IS STANDING BEFORE SOME SUBCOMMITTEE WITH THIS BATTERY  
14 OF LAWYERS TAKING THE FIFTH ON EVERY QUESTION EVER ASKED OF  
15 HIM.

16 WELL, JUST BECAUSE HE IS SITTING THERE, HE LOOKS  
17 DIRTY. JUST BECAUSE HE WON'T TALK, AUTOMATICALLY MAKES HIM  
18 GUILTY.

19 I CAN'T HELP IT IF THAT IS THE WAY I FEEL.

20 MR. BARENS: HOW ABOUT THAT? DOES HE LOOK GUILTY BECAUSE  
21 HE IS CHARGED WITH FIRST DEGREE MURDER?

22 MR. PEIKERT: IF THERE IS ANYBODY THAT COULD SIT ON AN  
23 UNBIASED OPINION, IT WOULD BE ME. UNFORTUNATELY, YOU ARE  
24 ASKING ME QUESTIONS THAT I CAN'T DIRECTLY ANSWER YOU OR I AM  
25 NOT GIVING YOU THE RIGHT ANSWERS.

26 MR. BARENS: NO, SIR. YOU ARE ABSOLUTELY GIVING ME --  
27 THERE ARE NO RIGHT OR WRONG ANSWERS FOR YOU OR ANY OTHER  
28 PERSON.

1 I AM NOT JUDGING THESE ANSWERS. I AM SIMPLY  
2 INVOLVED IN A PROCESS WHERE I HAVE A REAL RESPONSIBILITY.

3 THE LAW SET UP THIS SYSTEM HUNDREDS OF YEARS AGO  
4 WHERE I AM, THROUGH SOME MAGIC AND WHAT WE CALL LAWYER'S  
5 TECHNIQUES, GOING TO TRY TO DECIDE 12 PEOPLE THAT ARE GOING  
6 TO DECIDE WHETHER THIS YOUNG MAN LIVES OR DIES AND I HAVE THAT  
7 RESPONSIBILITY.

8 MR. PEIKERT: I UNDERSTAND THAT, SIR.

9 MR. BARENS: THERE ARE NO RIGHT OR WRONG ANSWERS.

10 NOW, IF HE DID TESTIFY, TAKE THE OTHER SIDE OF  
11 THAT, ARE YOU GOING TO FIGURE OUT NOW WE HAVE GOT HIM TO  
12 TESTIFY, TO TELL YOU HIS STORY BECAUSE HE IS ON TRIAL FOR HIS  
13 LIFE. ARE YOU GOING TO THINK THAT HE IS NOW LYING?

14 MR. PEIKERT: NO.

15 MR. BARENS: ARE YOU GOING TO LISTEN TO HIM THE SAME WAY  
16 YOU WOULD APPROACH THIS OFFICER?

17 MR. PEIKERT: PROBABLY MORE SO.

18 MR. BARENS: NOW -- SURPRISE, SURPRISE. NOW, YOU UNDER-  
19 STAND THAT WHEN I SAY "YOU UNDERSTAND" ALTHOUGH I AM TALKING  
20 JUST TO THIS GENTLEMAN, I WANT YOU TO ALL THINK ABOUT THIS  
21 BECAUSE WE ARE GOING TO --

22 MR. PEIKERT: GO AHEAD. USE ME AS A GUINEA PIG. THAT'S  
23 FINE.

24 MR. BARENS: YOU ARE THE CLOSEST TO ME.

25 MR. PEIKERT: I WAS GOING TO ASK FOR HIS BOOK ON THE  
26 LAW.

27 MR. BARENS: I TOO, WOULD LIKE TO HAVE HIS BOOK ON THE  
28 LAW. I WILL GET IT EVENTUALLY.

1 IF HE TESTIFIES, YOU WOULD LISTEN TO HIM  
2 DISPASSIONATELY AS MUCH AS A POLICE OFFICER?

3 MR. PEIKERT: YES, SIR. I WILL.

4 MR. BARENS: AND YOU UNDERSTAND, ALL OF YOU, THAT AN  
5 ACCUSATION OF A CRIME, BECAUSE YOU ARE ACCUSED OF A CRIME, IS  
6 NOT EVIDENCE AND CERTAINLY NOT PROOF. DO YOU FEEL COMFORTABLE  
7 WITH THAT?

8 MR. PEIKERT: YES.

9 MR. BARENS: YOU HAVE HEARD THAT THERE COULD BE A WRONG  
10 ACCUSATION. YOU HAVE HEARD OF MC MARTIN?

11 MR. PEIKERT: HEY --

12 MR. BARENS: IT COULD HAPPEN?

13 MR. PEIKERT: YES.

14 MR. BARENS: THE D.A.'S OFFICE IS NOT ALWAYS RIGHT.  
15 SOMETIMES YOU FIND OUT ABOUT IT SOONER AND SOMETIMES YOU FIND  
16 OUT ABOUT IT LATER.

17 MR. PEIKERT: AND SOMETIMES IT IS TOO LATE.

18 MR. BARENS: AND SOMETIMES IT IS TOO LATE. WE DON'T WANT  
19 THAT TO HAPPEN. WE CERTAINLY DON'T WANT THAT TO HAPPEN, MR.  
20 TAUB, DO WE?

21 MR. TAUB: NO, SIR.

22 MR. BARENS: WE WANT TO MAKE SURE THAT IF THERE WAS A  
23 MISTAKE, WE FIND OUT ABOUT IT, MR. HECK?

24 MR. HECK: YES, SIR.

25 MR. BARENS: ACCUSATIONS DON'T MAKE YOU FEEL ANY  
26 DIFFERENTLY TOWARD MY CLIENT THAN YOU DID THE DAY YOU WALKED  
27 IN HERE?

28 MR. HECK: NO, SIR.



1 MR. BARENS: LET'S GO BACK FOR JUST A MOMENT ON THE  
2 PRESUMPTION OF INNOCENCE. WHEN I SAY TO YOU THAT THIS IS A  
3 LIVING DIMENSION OF OUR SOCIETY, I WOULD LIKE YOU TO TRY TO  
4 PICTURE IN YOUR MIND THAT THE DEFENDANT IS WRAPPED IN A COCOON  
5 CALLED THE PRESUMPTION OF INNOCENCE.

6 HE IS WRAPPED IN THAT AS HE SITS THERE IN THIS  
7 COURTROOM. I WANT YOU TO TRY TO VISUALIZE THAT COCOON.  
8 AND IT STAYS ON HIM WHEN THEY PUT A WITNESS ON THE STAND THAT  
9 SAYS SOMETHING. HE STILL HAS GOT IT.

10 WHEN THEY PUT A POLICEMAN ON THE STAND, HE STILL  
11 HAS GOT IT. WHEN THEY PUT AN INFORMANT ON THE STAND, HE STILL  
12 HAS GOT IT.

13 WHEN THEY PUT AN IMMUNIZED WITNESS ON THE STAND,  
14 HE STILL HAS GOT IT. HE STILL HAS IT THE LAST DAY THAT WE TALK  
15 TO YOU PEOPLE.

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1                   AND WHEN YOU GO INTO THE JURY ROOM BEFORE YOU  
2 START TO MAKE YOUR DECISION, HE IS WRAPPED IN THAT COCOON  
3 CALLED THE PRESUMPTION OF INNOCENCE.

4                   SIR, COULD YOU SEE THAT?

5                   MR. PEIKERT: DEFINITELY. AND SO I THINK IF HE FELT THAT  
6 IF HE DIDN'T HAVE A FIGHTING CHANCE, HE WOULD PLEA-BARGAIN  
7 THIS THING.

8                   MR. BARENS: DIFFICULT TO PLEA-BARGAIN FIRST DEGREE  
9 MURDER, SIR.

10                  MR. PEIKERT: I SEE. WHAT I KNOW ABOUT THE LAW IS  
11 NOTHING.

12                  MR. BARENS: THEY WON'T GIVE YOU A MOVING VIOLATION OR  
13 ANYTHING LIKE THAT. NO, WE ARE NOT EVEN TALKING ABOUT THAT.  
14 THAT IS WHY WE ARE NOT EVEN TALKING ABOUT THAT. WE ARE NOT  
15 EVEN TALKING ABOUT THAT BECAUSE --

16                  MR. PEIKERT: BECAUSE HE IS INNOCENT.

17                  MR. BARENS: BECAUSE HE PLEADED NOT GUILTY. THAT IS WHY  
18 WE ARE HERE. THAT IS WHY WE ARE GATHERED.

19                  WHEN HE PLED NOT GUILTY, WE SAID THAT THEY MADE  
20 A MISTAKE. AS WE GO ALONG MS. SHELBY, CAN YOU SEE MY CLIENT  
21 IN A COCOON?

22                  MS. SHELBY: YES.

23                  MR. BARENS: WILL YOU CONTINUE THAT FEELING AND KEEP THAT  
24 PRESENCE OF MIND AND REMEMBER THAT ADMONITION BY HIS HONOR AND  
25 OUR FOREFATHERS IN THIS COUNTRY AND HAVE THAT SEE YOU THROUGH  
26 THE PROCEDURE?

27                  MS. SHELBY: YES.

28                  MR. BARENS: MISS HOFER, DO YOU SEE THE COCOON?

1 MS. HOFER: I SEE THE COCOON.

2 MR. BARENS: DO YOU KNOW THAT IT IS IMPORTANT? IF YOU  
3 DON'T REALLY --

4 MS. HOFER: NO. I DO.

5 MR. BARENS: DO YOU THINK THAT YOU WILL CONTINUE TO  
6 VISUALIZE THAT?

7 MS. HOFER: YES.

8 MR. BARENS: DO YOU THINK THAT IT IS APPROPRIATE THAT  
9 OUR FOREFATHERS COVERED EVERY DEFENDANT AND THIS YOUNG MAN  
10 WITH THAT COCOON?

11 MS. HOFER: YES.

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13- 1 MR. BARENS: HOW DO YOU FEEL, MR. ENGLE?

2 MR. ENGLE: I FEEL YOU ARE RIGHT. YOU ARE GOING TO HAVE TO  
3 WEIGH THE EVIDENCE AS IT DEVELOPS AND YOU ARE GOING TO HAVE TO  
4 MAKE AN OPINION OF THE EVIDENCE AS IT DEVELOPS AND MAYBE BY  
5 THE END OF THE TRIAL, YOU WILL HAVE A DIFFERENT OPINION THAN  
6 WHEN YOU START.

7 BUT WHEN YOU START, I AGREE WITH YOU, HE IS  
8 INNOCENT.

9 MR. BARENS: MISS WALKER?

10 MS. WALKER: YES.

11 I FEEL THAT I AM LEARNING A LOT MORE THAN I DO  
12 ABOUT THE LAW AND I DO SEE THAT NOW, YES.

13 MR. BARENS: HOW DO YOU FEEL, MR. DUNDORE, ON THE SAME  
14 ISSUE OF VISUALIZING THAT COCOON EVERY MOMENT OF THIS TRIAL,  
15 EVERY WITNESS, EVERY WORD, UNTIL YOU GOOD PEOPLE RETIRE TO  
16 MAKE THAT BIG DECISION ON GUILT OR INNOCENCE?

17 MR. DUNDORE: I SEE IT.

18 MR. BARENS: WILL YOU STAY WITH THAT?

19 MR. DUNDORE: YES.

20 MR. BARENS: UNTIL ALL OF THE EVIDENCE HAS BEEN  
21 PRESENTED?

22 MR. DUNDORE: YES.

23 MR. BARENS: DO YOU THINK THAT THE FOUNDING FATHERS  
24 WERE CORRECT IN CONSTRUCTING THAT COCOON AROUND DEFENDANTS  
25 IN THIS COUNTRY?

26 MR. DUNDORE: ABSOLUTELY. IT IS A BASIC HUMAN RIGHT  
27 IN THIS COUNTRY.

28 MR. BARENS: HOW DO YOU FEEL ABOUT THE FIFTH AMENDMENT?

13-2

1 MR. DUNDORE: THAT IT IS ANOTHER RIGHT.

2 MR. BARENS: DO YOU FEEL IT IS AN APPROPRIATE RIGHT  
3 OR DO YOU THINK IT IS A RIGHT THAT ONLY HELPS BAD GUYS?

4 MR. DUNDORE: I THINK IT IS AN APPROPRIATE RIGHT.

5 MR. BARENS: DO YOU REMEMBER THE TRIALS IN THE EARLY  
6 '50'S OF THE PEOPLE ON THE MC CARTHY COMMISSION THAT SAID  
7 THEY WERE A BUNCH OF COMMUNISTS; DO YOU REMEMBER THOSE PEOPLE  
8 TOOK THE FIFTH AMENDMENT?

9 MR. DUNDORE: YES.

10 MR. BARENS: YOU REMEMBER THEY DIDN'T TAKE THE FIFTH  
11 AMENDMENT BECAUSE THEY WERE BAD GUYS BUT THEY WANTED TO  
12 CONTINUE WORKING?

13 MR. DUNDORE: YES.

14 MR. BARENS: THEY WANTED TO PROTECT THEIR FAMILIES.

15 MISS KNUEDLER, HOW DO YOU FEEL ABOUT THE FIFTH  
16 AMENDMENT?

17 MS. KNUEDLER: I THINK IT IS FAIR. I THINK IT IS THE  
18 THING THAT SHOULD BE.

19 MR. BARENS: MR. GHIRARDI, BEFORE THE BREAK YOU TOLD  
20 ME THAT YOU WOULD JUDGE THE DEFENDANT'S TESTIMONY BASED ON  
21 HIS PRESENCE ON THE STAND, HOW HE LOOKED ON THE STAND. I  
22 AM NOT SURE I UNDERSTOOD; WHAT DID YOU MEAN BY THAT, SIR?

23 MR. GHIRARDI: WELL, I HAVE BEEN IN THE HOTEL BUSINESS  
24 FOR A LONG TIME AND IT SEEMS TO ME THAT WHEN SOMEONE WALKS  
25 UP AND YOU FIRST SEE THEM, YOU CAN'T JUDGE THEM. THEIR  
26 ACTIONS AND THEIR DEMEANOR USUALLY TELL YOU WHAT KIND OF PERSON  
27 THEY ARE, WHETHER THEY ARE -- WELL, FOR INSTANCE, IF THEY  
28 COME AND TELL YOU THEY ARE GOING TO BE LATE WITH THEIR RENT

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1 AND THEY, SAY, THEY GIVE YOU A REASON, NINE TIMES OUT TEN,  
2 I CAN TELL WHETHER THEY ARE LYING OR NOT. THAT IS A DIFFERENT  
3 KIND OF CASE.

4 BUT WHAT I MEAN IS, USUALLY THE DemeanOR OF THE  
5 PERSON HAS AN AWFUL LOT OF WEIGHT THE WAY I THINK OF A PERSON.

6 MR. BARENS: WOULD YOU BE WILLING TO -- YOU KNOW, ONE  
7 TIME I REPRESENTED A DEFENDANT WHO LOOKED LIKE SONNY LISTON --  
8 YOU MAY OR MAY NOT REMEMBER SONNY LISTON, WHO WAS A FIGHTER --  
9 THIS WAS THE MOST GUILTY-LOOKING GUY I HAVE EVER SEEN, LET  
10 ALONE A JURY. I HAD A LOT OF PROBLEMS WITH THAT GUY. WE  
11 CAME OUT WITH THAT GUY BECAUSE THE JURY JUDGED HIM ON THE  
12 EVIDENCE, NOT THE FACT THAT HE WAS THE MOST BALEFUL, GUILTY-  
13 LOOKING MAN I HAVE EVER SEEN.

14 MR. GHIRARDI, WITH YOUR BACKGROUND, WOULD YOU  
15 BE ABLE TO JUDGE THE DEFENDANT ON THE EVIDENCE, ON THE PROOF  
16 YOU HEARD IN THE CASE RATHER THAN SOME SUBJECTIVE VIEW YOU  
17 HAD ABOUT MAYBE THE WAY HE LOOKED OR THE WAY HE CARRIED HIMSELF  
18 WHEN HE WALKED FROM THAT TABLE TO THAT STAND? COULD YOU MAKE  
19 A DECISION ON THAT OR WOULD YOU BE MORE INFLUENCED BY HIS  
20 DemeanOR?

21 MR. GHIRARDI: MORE BY THE EVIDENCE, OF COURSE.

22 MR. BARENS: BY THE EVIDENCE, BY THE PROOF THAT THE  
23 PEOPLE HAVE TO PRESENT?

24 MR. GHIRARDI: YES.

25 MR. BARENS: ARE YOU OKAY WITH THE CONCEPT THAT I DON'T  
26 HAVE TO INTRODUCE ANY PROOF?

27 MR. GHIRARDI: MY IMPRESSION WAS THAT YOU COULD PUT  
28 A DEFENSE ON, EVEN WITHOUT THE DEFENDANT HIMSELF TAKING THE

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1 STAND.

2 MR. BARENS: RIGHT, THAT IF I JUST SAT THERE AND NEVER  
3 SAID A WORD, JUST SAT THERE, DIDN'T MAKE AN OBJECTION --  
4 WHICH IS HIGHLY UNLIKELY -- BUT JUST SAT THERE AND LISTENED  
5 TO THE EVIDENCE COME IN AND I SAID TO YOU GOOD PEOPLE "OKAY,  
6 DID THE GOVERNMENT, DID THE PEOPLE OF THE STATE OF CALIFORNIA,  
7 ALL 25 MILLION OF THEM AGAINST OUR YOUNG MAN, DID THEY  
8 PROVE SOMETHING OR NOT;" DO YOU THINK YOU WOULD BE COMFORTABLE  
9 WITH THAT, COULD YOU ACCEPT THAT IF HE SAID NOTHING?

10 MR. GHIRARDI: I COULD BE COMFORTABLE WITH IT.

11 MR. BARENS: WOULD YOU HAVE TO BE CONVINCED ON YOUR  
12 OWN THAT SOMETHING HAD BEEN PROVEN TO YOU BEYOND A REASONABLE  
13 DOUBT?

14 MR. GHIRARDI: DEFINITELY.

15 MR. BARENS: HOW DO YOU FEEL, MRS. HOFER, IF I DON'T  
16 SAY ANYTHING TO YOU AGAIN?

17 MS. HOFER: I WOULD BE DISAPPOINTED.

18 (LAUGHTER IN COURTROOM.)

19 MR. BARENS: I WANT TO ASSURE YOU THAT YOU WON'T BE  
20 DISAPPOINTED. AND I THANK YOU FOR THAT.

21 (LAUGHTER IN COURTROOM.)

22 MR. BARENS: WHAT DO YOU THINK, THOUGH, OF THE  
23 FAIRNESS OF THE IDEA THAT MY ESTEEMED COLLEAGUE, MR. WAPNER,  
24 WILL HAVE THE SOLE RESPONSIBILITY TO PROVE SOMETHING TO YOU.  
25 THE CONSTITUTION SET UP THAT, THOSE GUYS BACK 200 YEARS AGO  
26 IN WASHINGTON HAD SOME WISDOM ABOUT THIS SORT OF STUFF AND  
27 SAID "LISTEN, WE ARE GOING TO SAY THAT CRIMINAL DEFENDANTS  
28 ARE PRESUMED INNOCENT AND THE GOVERNMENT IS GOING TO HAVE

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1 TO PROVE SOMETHING TO THEIR PEERS." PEERS, YOU ARE THE PEOPLE  
2 OF THE STATE OF CALIFORNIA.

3 HOW WOULD YOU FEEL IF THE DEFENDANT HAS TO SAY  
4 NOTHING?

5 MS. HOFER: THAT IS THE WAY, IF YOU MAKE THAT DECISION,  
6 THAT IS FINE.

7 MR. BARENS: HARRY TRUMAN WAS A BRIGHT GUY AND HE SAID  
8 "SHOW ME." DO YOU THINK THAT YOU COULD FEEL THAT WAY TOWARDS  
9 THE PEOPLE IN THIS CASE OR WOULD THE DEFENDANT HAVE TO DO  
10 THE SAME THING?

11 MS. HOFER: NO.

12 I THINK IT IS UP TO THE PROSECUTION TO MAKE THE  
13 CASE.

14 MR. BARENS: AND HOW DO YOU FEEL, MR. CANADY, ABOUT  
15 THE SAME QUESTION OF WHO HAS GOT TO SHOW YOU SOMETHING HERE?

16 MR. CANADY: WOULD YOU LIKE TO REPEAT THE QUESTION?

17 MR. BARENS: HOW DO YOU FEEL ABOUT THE FACT WE COULD  
18 JUST SIT THERE AND NOT PROVE ANYTHING, NOT SAY ANYTHING, NOT  
19 DO ANYTHING AND MR. WAPNER AND THE PEOPLE WOULD HAVE TO DO  
20 EVERYTHING?

21 MR. CANADY: THAT IS RIGHT. I THINK THAT IS THE WAY  
22 IT SHOULD BE.

23 A JUROR IN COURTROOM: I COULDN'T HEAR.

24 MR. BARENS: WOULD THAT BE FAIR?

25 MR. CANADY: YES.

26 THE COURT: KEEP YOUR VOICE UP, PLEASE, MR. CANADY.  
27 THEY CAN'T HEAR YOU OUT THERE.

28 MR. CANADY: THAT IS FAIR.



1 MR. BARENS: WE HAVE BEEN TALKING FOR A WHILE ABOUT  
2 THE IMPRESSIONS THAT PEOPLE ARE GOING TO MAKE ON US AND HIS  
3 HONOR TALKED TO YOU ABOUT POLICEMEN AND THEIR TESTIMONY AND  
4 I TALKED TO YOU ABOUT THE DEFENDANT AND HIS TESTIMONY AND  
5 WHAT I THINK WE ARE REALLY TALKING ABOUT IS THE WORD "MOTIVE,  
6 PEOPLE'S MOTIVES" WHEN THEY TESTIFY AND THE LIKELIHOOD THAT  
7 THEY HAVE A MOTIVE OTHER THAN TRUTH, A MOTIVE, SAY TO SAVE  
8 HIS LIFE.

9 MR. CANADY, DO YOU THINK THAT A POLICEMAN TESTIFYING  
10 TO YOU COULD HAVE SOME HIDDEN AGENDA OR MOTIVE OTHER THAN  
11 THE TRUTH OR WOULD YOU ALWAYS THINK A POLICEMAN WOULD ONLY  
12 BE MOTIVATED TO TELL THE TRUTH?

13 MR. CANADY: I WOULD HOPE HE WOULD BE TELLING THE TRUTH.  
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1 MR. BARENS: WE ALL HOPE THAT, SIR.

2 BUT I AM ASKING YOU, COULD YOU BELIEVE THAT A  
3 POLICEMAN COULD HAVE A MOTIVE OTHER THAN TELLING THE TRUTH?

4 MR. CANADY: WELL, SURE.

5 ANYBODY COULD.

6 MR. BARENS: COULD YOU THINK OF WHAT A POLICEMAN'S MOTIVE  
7 MIGHT BE, OTHER THAN TELLING THE TRUTH?

8 MR. CANADY: YOUR GUESS IS AS GOOD AS MINE.

9 MR. BARENS: COULD IT BE TO GET A CONVICTION IN THE  
10 CASES THEY WORK ON?

11 MR. CANADY: SURE.

12 MR. BARENS: BECAUSE THEY WOULD LIKE TO WIN?

13 MR. CANADY: EVERYONE WANTS TO WIN.

14 MR. BARENS: WOULD YOU BELIEVE THAT SOMETIMES WINNING  
15 IS AN END IN ITSELF, IRRESPECTIVE OF TRUTH?

16 MR. CANADY: SURE.

17 MR. BARENS: MISS SHELBY, COULD YOU BELIEVE THAT WINNING,  
18 IF A POLICEMAN WAS TESTIFYING, COULD BE AN END IN ITSELF?

19 MS. SHELBY: YES.

20 MR. BARENS: DO YOU BELIEVE A POLICEMAN MAYBE WOULDN'T  
21 TELL THE TRUTH?

22 MS. SHELBY: DO I BELIEVE HE WOULD NOT?

23 MR. BARENS: YES.

24 MS. SHELBY: YEAH, A POLICEMAN IS PROBABLY JUST AS HUMAN  
25 AS ANYONE. EVERYBODY --

26 MR. BARENS: PEOPLE CAN HAVE MOTIVES --

27 MS. SHELBY: YES.

28 MR. BARENS: WHEN THEY TESTIFY.

1                   NOW, PROBABLY IN THIS TRIAL WE WILL HAVE THE  
2 MISSING RON LEVIN'S PARENTS COME IN AND TELL US THAT THEY  
3 HAVEN'T HEARD FROM HIM AND THAT BECAUSE THEY HAVEN'T HEARD  
4 FROM HIM, THEY THINK MR. HUNT DID SOMETHING.

5                   MR. ENGLE, COULD YOU BELIEVE THAT A PERSON WHO  
6 HAS DISAPPEARED, THAT THEIR PARENTS COULD HAVE SOME MOTIVE  
7 IN SAYING THAT THEY THOUGHT SOMEBODY HAD DONE SOMETHING TO  
8 THEIR SON, EVEN THOUGH THEY HAVEN'T SEEN THEIR SON, ALIVE  
9 OR DEAD, DO YOU THINK THEY MIGHT HAVE A MOTIVE IN SAYING THAT?

10                  MR. ENGLE: POSSIBLY, YES.

11                  MR. BARENS: COULD THEY HAVE A MOTIVE TO HAVE SOME  
12 SATISFACTION OR REVENGE?

13                  MR. ENGLE: YES.

14                  MR. BARENS: WOULD YOU GIVE GREATER CREDIBILITY TO AN  
15 ALLEGED DEAD PERSON'S MOTHER'S TESTIMONY THAN YOU WOULD TO  
16 MY CLIENT'S TESTIMONY?

17                  MR. WAPNER: YOUR HONOR, THAT IS AN IMPROPER QUESTION.  
18 IT IS NOT WHAT CREDIBILITY HE WOULD GIVE BUT WHETHER HE WOULD  
19 USE THE SAME STANDARD.

20                  THE COURT: YOU ARE ASKING HIM TO PREJUDGE THE TESTIMONY.  
21 I WILL SUSTAIN THE OBJECTION IN THAT FORM.

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4A-1

1 MR. BARENS: THANK YOU, YOUR HONOR. RELATIVES OF  
2 PARTIES -- SUPPOSING MR. HUNT'S FATHER CAME INTO THIS COURTROOM.  
3 DO YOU THINK HIS FATHER WOULD BE LIKELY TO LIE FOR MR. HUNT  
4 OR DO YOU THINK THAT HE WOULD BE LIKELY TO TELL THE TRUTH?

5 MR. ENGLE: IT IS A DIFFICULT QUESTION TO ANSWER.

6 MR. BARENS: TOUGH. IT IS A TOUGH QUESTION. WOULD YOU  
7 TRY TO LOOK AT ALL OF THE EVIDENCE IN DETERMINING WHETHER HE  
8 TOLD THE TRUTH OR LIED OR WOULD YOU AUTOMATICALLY FEEL THAT  
9 ANYONE RELATED TO THE DEFENDANT WOULD LIE?

10 MR. ENGLE: NO. THE EVIDENCE WOULD BE YOUR DETERMINING  
11 FACTOR.

12 MR. BARENS: NOT JUST THE FACT THAT THERE IS A RELATION-  
13 SHIP?

14 MR. ENGLE: NO.

15 MR. BARENS: NO. NOW, I DON'T MEAN TO PRY. BUT IT IS  
16 NECESSARY FOR ME TO GET SOME BIOGRAPHICAL DATA. THESE ARE  
17 THINGS IN YOUR BACKGROUND OR YOUR OCCUPATION AND YOUR MARITAL  
18 STATUS THAT TENDS TO HAVE SOME BEARING ON OUR ORIENTATION.  
19 IT CERTAINLY HAPPENS WITH ME.

20 WE ARE A PRODUCT OF THAT TYPE OF ENVIRONMENTAL  
21 FACTOR. MS. EWELL, WHAT DID YOU DO AT THE DISTRICT ATTORNEY'S  
22 OFFICE? YOU THOUGHT I WOULD NEVER ASK.

23 MS. EWELL: I WORKED IN THE EXTRADITION UNIT.

24 MR. BARENS: AND HOW LONG DID YOU DO THAT?

25 MS. EWELL: FIVE YEARS.

26 MR. BARENS: DID YOU WORK IN DIRECT CONTACT ON A DAILY  
27 BASIS WITH THE D.A.'S OR WAS THERE SOME INTERMEDIARY BETWEEN  
28 THAT PERSON AND YOURSELF?

1 MS. EWELL: DIRECT CONTACT, MOST OF THE TIME.

2 MR. BARENS: HOW DID THAT HAPPEN?

3 MS. EWELL: IT IS KIND OF COMPLICATED. BUT I DISPATCHED  
4 LAW ENFORCEMENT OFFICERS TO RETURN FUGITIVES TO THE STATE.

5 AND BEFORE I COULD DO THAT, I HAD TO PROVE BY  
6 AFFIDAVIT --

7 THE COURT: KEEP YOUR VOICE UP.

8 MS. EWELL: TO PROVE BY AFFIDAVIT BEYOND A REASONABLE  
9 DOUBT THAT THE PARTY WAS IN FACT, GUILTY, IN ORDER THAT HE BE  
10 BROUGHT BACK TO TRIAL.

11 MR. BARENS: PROVED BY AFFIDAVIT SOMEONE IS GUILTY BEYOND  
12 A REASONABLE DOUBT? I'M SORRY. I DON'T QUITE UNDERSTAND  
13 THAT.

14 MS. EWELL: USUALLY THE FUGITIVE HAS BEEN TRIED AR  
15 ARRAIGNED BEFORE HE FLED THE STATE.

16 MR. BARENS: OH, I SEE. IN OTHER WORDS, THIS WAS SOMEONE  
17 THAT WAS -- THAT HAD EITHER ESCAPED OR DISAPPEARED PENDING  
18 APPEAL?

19 MS. EWELL: RIGHT.

20 MR. BARENS: THIS WAS AFTER A JUDGE AND A JURY HAD  
21 ALREADY SAID THE PERSON WAS GUILTY?

22 MS. EWELL: RIGHT OR HE HAD BEEN IN SOME PROCESS IN  
23 TRIAL.

24 MR. BARENS: SO BEYOND A REASONABLE DOUBT IN THAT CONTEXT  
25 MEANT THAT THERE HAD ALREADY BEEN AN ESTABLISHED FINDING OR  
26 VERDICT BY SOMEONE IN THE JUDICIAL SYSTEM?

27 MS. EWELL: RIGHT.

28 MR. BARENS: DID YOU EVER HAVE TO MAKE THAT DETERMINATION

1 ON SOMEONE OTHER THAN THAT, SOME PERSON THAT HAD NOT BEEN  
2 TRIED YET?

3 MS. EWELL: WE USED WITNESSES AND POLICE OFFICERS.

4 MR. BARENS: HOW WOULD YOU MAKE THAT DECISION, IF YOU  
5 WERE JUST LISTENING TO WITNESSES AND POLICE OFFICERS?  
6 DID YOU HAVE SOME MENTAL PROCESS THAT YOU WENT THROUGH IN  
7 MAKING THAT CONCLUSION?

8 MS. EWELL: WELL, WE INTERVIEWED THEM AND THEY USUALLY  
9 BROUGHT US A PICTURE TO SAY THAT THIS IS THE PERSON AND HE WAS  
10 CHARGED WITH WHATEVER CRIME. HE WAS HERE ON A CERTAIN DATE  
11 AT A CERTAIN CITY STREET OR HOUSE OR WHATEVER.

12 AND AFTER THAT DATE OR THAT TIME, HE COULD NOT BE  
13 FOUND IN THE STATE OF CALIFORNIA.

14 MR. BARENS: DID YOU HAVE PEOPLE THAT WERE BAIL JUMPS?

15 MS. EWELL: NOT VERY OFTEN.

16 MR. BARENS: DID YOU HAVE IT AT ALL?

17 MS. EWELL: YES.

18 MR. BARENS: IN OTHER WORDS --

19 MR. WAPNER: WAS THAT YES?

20 MS. EWELL: YES.

21 MR. BARENS: THE PEOPLE THAT WERE ON BAIL THAT FLED TO  
22 AVOID PROSECUTION?

23 MS. EWELL: YES.

24 MR. BARENS: NOW, YOU MAY HEAR ABOUT THAT, ABOUT MR.  
25 LEVIN, THAT HE WAS ON BAIL AT THE TIME --

26 MR. WAPNER: WELL, YOUR HONOR, I THINK THAT PUTTING  
27 THESE --

28 MR. BARENS: I HAVE NOT YET --

4A-4

1 MR. WAPNER: WELL, ALL RIGHT. GO AHEAD.

2 THE COURT: ASK THE QUESTION.

3 MR. BARENS: YOU MAY HEAR THAT MR. LEVIN WAS ON BAIL AT  
4 THE TIME THAT HE LEFT. I AM SAYING HE LEFT, DISAPPEARED,  
5 IS NOT HERE, NOT KNOWN.

6 WOULD YOUR PRIOR EXPERIENCE WITH PEOPLE THAT WERE  
7 BAIL SKIPS OR BAIL JUMPERS, WOULD THAT HAVE ANY BEARING ON HOW  
8 YOU WOULD EVALUATE WHETHER OR NOT HE WAS KILLED OR DISAPPEARED?

9 MS. EWELL: IT HAD TO BE PROVED.

10 MR. BARENS: IT STILL WOULD HAVE TO BE ESTABLISHED?

11 MS. EWELL: STILL HAVE TO BE ESTABLISHED.

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1 MR. BARENS: THE FACT THAT YOU WERE DOING YOUR JOB AND  
2 YOU DEALT WITH A BAIL SKIP, DID YOU ASSUME BAIL SKIPS WERE  
3 GUILTY OR DID YOU JUST EXTRADITE THEM SOLELY BECAUSE THEY WERE  
4 BAIL SKIPS?

5 MS. EWELL: BECAUSE THEY FLED THE STATE. WE HAD NOTHING  
6 TO DO WITH WHETHER OR NOT THEY WERE GUILTY OF THE ACTUAL CASE  
7 BEING TRIED.

8 MR. BARENS: SO, NO DETERMINATION WAS MADE ABOUT  
9 GUILT OR INNOCENCE, JUST ON A BAIL SKIP?

10 MS. EWELL: NO.

11 MR. BARENS: SO YOU WOULD RETURN THEM AND THEN THEY  
12 WOULD STAND TRIAL?

13 MS. EWELL: RIGHT.

14 MR. BARENS: DID YOU WORK WITH ANY MURDER CASES?

15 MS. EWELL: YES.

16 MR. BARENS: A LOT OF THOSE OR ONE OR TWO?

17 MS. EWELL: A FEW.

18 MR. BARENS: WOULD YOU READ POLICE REPORTS ABOUT MURDER  
19 CASES?

20 MS. EWELL: YES.

21 MR. BARENS: HOW DID YOU FEEL, TRUTHFULLY, AFTER YOU  
22 READ THE REPORT THAT WAS PREPARED? WHO TYPICALLY WOULD HAVE  
23 PREPARED A REPORT THAT YOU WOULD READ, A POLICEMAN OR A D.A.?

24 MS. EWELL: A POLICE OFFICER.

25 MR. BARENS: A POLICE OFFICER?

26 MS. EWELL: YES.

27 MR. BARENS: IN YOUR OWN MIND AT THE TIME MS. EWELL,  
28 AFTER YOU READ ONE OF THESE REPORTS, IF YOU WERE TO COME ALONG--



1 LET'S SAY YOU READ A REPORT OF MR. SMITH. AND I CAME TO YOU  
2 AND I SAW YOU ONE DAY AT WORK.

3 AND THROUGH SOME UNLIKELY PROCESS, I WAS A D.A.  
4 AND I SAID TO YOU, "WHAT DO YOU THINK ABOUT MR. SMITH? DO YOU  
5 THINK HE IS GUILTY?"

6 WHAT WOULD YOU REALLY HAVE SAID TO ME, JUST HAVING  
7 READ THE POLICE REPORT?

8 MS. EWELL: WELL, SOME OF THE REPORTS LEFT A LOT TO BE  
9 QUESTIONED AS FAR AS I WAS CONCERNED.

10 MR. BARENS: DID YOU EVER QUESTION IN YOUR OWN MIND --  
11 I KNOW YOU DID YOUR JOB. YOU DID YOUR JOB THE WAY YOU WERE  
12 SUPPOSED TO.

13 DID YOU HAVE QUESTIONS IN YOUR MIND AFTER YOU READ  
14 SOME OF THE POLICE REPORTS AS TO WHETHER OR NOT THE GUY REALLY  
15 COMMITTED A MURDER?

16 MS. EWELL: YES.

17 MR. BARENS: SOMETIMES YOU THOUGHT MAYBE HE WAS BEING  
18 PREJUDGED WITHOUT -- HERE WE ARE, LOOKING TO ARREST THIS GUY  
19 FOR MURDER AND YOU HAD DOUBTS IN YOUR MIND?

20 MS. EWELL: SOME OF THE EVIDENCE WAS NOT AS CLEAR AS I  
21 THOUGHT IT SHOULD BE.

22 MR. BARENS: DID YOU EVER MENTION THAT TO ANYBODY OR WAS  
23 THAT NOT A PART OF YOUR JOB?

24 MS. EWELL: IT WAS NOT MY JOB.

25 MR. BARENS: DID YOU MAKE ANY KIND OF RECOMMENDATIONS  
26 IN YOUR JOB ABOUT WHETHER SOMEONE SHOULD BE PICKED UP OR  
27 EXTRADITED OR WAS YOUR JOB MERELY TO EXECUTE THAT?

28 MS. EWELL: TO EXECUTE THAT.

1 MR. BARENS: NOW, DURING YOUR TENURE IN THE DISTRICT  
2 ATTORNEY'S OFFICE, IS THAT THE ONLY TYPE OF ACTIVITY YOU  
3 ENGAGED IN?

4 MS. EWELL: YES.

5 MR. BARENS: WAS THERE A REASON CONCERNING THE DISTRICT  
6 ATTORNEY'S OFFICE ALONE, THAT CAUSED YOU TO LEAVE YOUR  
7 EMPLOYMENT?

8 MS. EWELL: NO.

9 MR. BARENS: IT WAS SOME OTHER REASON, OPPORTUNITY OR  
10 REASON?

11 MS. EWELL: YES.

12 MR. BARENS: COULD YOU HONESTLY TELL ME THAT AFTER YOUR  
13 EXPERIENCE WORKING IN THE D.A.'S OFFICE, THAT YOU WOULD NOT  
14 HAVE ANY FAVORITISM TOWARD THE D.A. IN THIS CASE?

15 MS. EWELL: NO. I WOULDN'T.

16 MR. BARENS: THAT YOU WOULD TRULY BE NEUTRAL ON JUDGING  
17 THE FACTS ABOUT MY CLIENT'S GUILT OR INNOCENCE, IRRESPECTIVE  
18 OF THE FACT THAT I DO BATTLE WITH THE D.A. MY WHOLE LIFE?

19 MS. EWELL: NO. I WON'T HAVE A PREJUDICE AGAINST OR FOR  
20 THE D.A.

21 MR. BARENS: WHAT SORT OF TESTING DOES YOUR HUSBAND DO  
22 ON HIS JOB?

23 MS. EWELL: SOILS AND CONCRETE.

24 MR. BARENS: AND NOW YOU WORK AT PACIFIC BANK?

25 MS. EWELL: UH-HUH.

26 THE COURT: DOES THAT MEAN YES?

27 MS. EWELL: YES.

28 MR. WAPNER: THANK YOU, YOUR HONOR.

1 MR. BARENS: DID YOU RECEIVE SOME SORT OF TRAINING  
2 PRIOR TO OBTAINING THAT JOB?

3 MS. EWELL: YES, MY EDUCATION.

4 MR. BARENS: YOUR GENERAL EDUCATION? YOUR EDUCATION  
5 CONSISTS OF?

6 MS. EWELL: I AM AN ACCOUNTING MAJOR.

7 MR. BARENS: DID YOU TAKE THAT IN COLLEGE?

8 MS. EWELL: YES.

9 MR. BARENS: AND WHAT DID YOU DO AT THE BANK, INCIDENTALLY?

10 MS. EWELL: IT IS FUNDS MOVEMENT. I MOVE QUITE LARGE  
11 SUMS OF MONEY BACK AND FORTH ON ACCOUNTS AND STOCKS AND  
12 INVESTMENTS AND THAT SORT OF THING.

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1 MR. BARENS: IN THIS CASE, YOU MAY HEAR ABOUT THE  
2 MOVEMENT OF SOME MONEY, BIG MONEY AND SWISS BANK ACCOUNTS.  
3 DO YOU EVER DEAL WITH SWISS BANK ACCOUNTS IN YOUR JOB?

4 MS. EWELL: NO.

5 MR. BARENS: DO YOU FEEL I MEAN TRUTHFULLY, IN YOUR  
6 HEART, YOU SEE THESE GUYS MOVING MILLIONS BACK AND FORTH.  
7 DO YOU THINK THERE IS ANYTHING SUSPICIOUS ABOUT SOME OF THESE  
8 DEPOSITORS?

9 MS. EWELL: I DO IT EVERY DAY.

10 MR. BARENS: IT DOESN'T SUGGEST ANYTHING ILLICIT OR WRONG  
11 ABOUT THE GUYS THAT ARE DEALING WITH LARGE SUMS OF MONEY?

12 MS. EWELL: NO.

13 MR. BARENS: MR. HECK, I BELIEVE YOU ARE RETIRED?

14 MR. HECK: YES.

15 MR. BARENS: AND WHAT DID YOU DO AT OWENS-ILLINOIS GLASS  
16 COMPANY?

17 MR. HECK: I WAS PRODUCTION MANAGER IN THE PLASTICS.

18 MR. BARENS: AND HOW LONG WERE YOU THERE?

19 MR. HECK: 23 YEARS.

20 MR. BARENS: THAT IS COMMENDABLE. AND YOUR WIFE HAD  
21 PREVIOUSLY BEEN AN IBM OPERATOR?

22 MR. HECK: YES.

23 MR. BARENS: ANY PARTICULAR TYPE OF SYSTEM?

24 MR. HECK: NO, JUST GENERAL ACCOUNTING AND WHATEVER THE  
25 COMPANY NEEDS.

26 MR. BARENS: YOU HAVE NEVER BEEN ON A JURY BEFORE?

27 MR. HECK: NO. I HAVE BEEN AS A JUROR BEFORE BUT NOT  
28 ON A JURY.

1 MR. BARENS: I SEE.

2 MR. HECK: I HAVE NOT BEEN CALLED.

3 MR. BARENS: YOU HAVE NOT BEEN CALLED. SO YOU HAVE NEVER  
4 SAT ON A JURY?

5 MR. HECK: NO. I WAS HERE IN THIS BUILDING BEFORE BUT  
6 I NEVER SAT ON A JURY.

7 MR. BARENS: MS. EWELL, YOU HAVE BEEN ON A JURY BEFORE,  
8 A NARCOTICS CASE?

9 MS. EWELL: YES.

10 MR. BARENS: DID THAT EXPERIENCE ON THAT JURY HAVE  
11 ANYTHING -- ANY PARTICULAR AFFECT ON YOUR VIEW OF THE CRIMINAL  
12 JUSTICE SYSTEM?

13 MS. EWELL: NO.

14 MR. BARENS: DID YOU FIND THAT THE SYSTEM WORKED IN YOUR  
15 OPINION DURING THAT PROCEDURE?

16 MS. EWELL: YES.

17 MR. BARENS: DID YOU FEEL -- WAS IT YOUR EXPERIENCE THAT  
18 THROUGHOUT THAT TRIAL THAT THE DEFENDANT TO YOU, APPEARED TO  
19 BE IN THAT COCOON, THE PRESUMPTION OF INNOCENCE UNTIL YOU AND  
20 YOUR FELLOW JURORS RETIRED TO DELIBERATE?

21 MS. EWELL: YES.

22 MR. BARENS: AND YOU FELT GOOD ABOUT THE SYSTEM AFTERWARDS,  
23 THAT THE AMERICAN LEGAL SYSTEM ACTUALLY WORKS IN REALITY AND  
24 NOT JUST SOME CONCEPT THAT WE TALK ABOUT? THE REALITY OF  
25 IT WORKS?

26 MS. EWELL: YES, I DID.

27 MR. BARENS: MISS SHELBY, WHAT DO YOU DO DURING YOUR  
28 INTERVIEW PROCESS? WHAT ARE YOU INTERVIEWING PEOPLE FOR?

1 MS. SHELBY: TO SEE IF THEY ARE ELIGIBLE FOR UNEMPLOYMENT  
2 INSURANCE.

3 MR. BARENS: IS THAT BASICALLY SOLELY ON A LACK OF  
4 INCOME OR --

5 MS. SHELBY: WHY THEY ARE UNEMPLOYED.

6 MR. BARENS: JUST WHY THEY ARE UNEMPLOYED?

7 MS. SHELBY: YES.

8 MR. BARENS: AND WHEN YOU GET THAT TYPICAL DATA, DO YOU  
9 MAKE THE DECISION AS TO WHETHER OR NOT THEY QUALIFY OR  
10 DOES SOMEONE ELSE?

11 MS. SHELBY: I DO.

12 MR. BARENS: AND WHAT ASSISTS YOU IN MAKING THAT DECISION?  
13 IS THERE SOME SET CRITERIA THAT YOUR OFFICE HAS?

14 MS. SHELBY: INFORMATION FROM THE EMPLOYER AS TO WHY THE  
15 PERSON EITHER QUIT OR WAS FIRED AND INFORMATION FROM THE  
16 CLAIMANT, AS WE CALL THEM, AS TO WHY THEY ARE NO LONGER  
17 WORKING.

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15-1  
1 MR. BARENS: DOES PART OF YOUR JOB INVOLVE BELIEVING  
2 THE TRUTHFULNESS OF PEOPLE WHEN THEY TELL YOU STORIES --

3 MS. SHELBY: YES.

4 MR. BARENS: -- ABOUT THEIR LACK OF EMPLOYMENT?

5 MS. SHELBY: YES.

6 MR. BARENS: WELL, WE ARE GOING -- PART OF YOUR JOB  
7 HERE IS GOING TO INVOLVE HOW YOU DECIDE THE TRUTHFULNESS OF  
8 PEOPLE.

9 TELL ME, MISS SHELBY, HOW DO YOU MAKE THOSE  
10 DECISIONS WHEN THERE ARE PEOPLE TALKING TO YOU, WHEN THOSE  
11 PEOPLE ARE TALKING TO YOU, HOW DO YOU DECIDE WHETHER THEY  
12 ARE TELLING THE TRUTH?

13 MS. SHELBY: WELL, THERE ARE JUST CERTAIN QUESTIONS  
14 YOU WOULD ASK BASICALLY. IF A PERSON HAS QUIT THEIR JOB WITHOUT  
15 GOOD CAUSE, THEN THEY ARE NORMALLY NOT GOING TO COLLECT  
16 BENEFITS.

17 IF THEY ARE FIRED, INNOCENT UNTIL PROVEN GUILTY,  
18 THE EMPLOYER HAS TO PROVE THAT THERE WAS MISCONDUCT INVOLVED.

19 MR. BARENS: I LIKE THAT.

20 DO YOU THINK THAT IS FAIR? DO YOU THINK IT IS  
21 FAIR THAT THE EMPLOYER HAS THE BURDEN OF PROOF?

22 MS. SHELBY: YES.

23 MR. BARENS: GUESS WHO EMPLOYS YOU IN THIS CASE, THE  
24 STATE?

25 MS. SHELBY: THE STATE, I WORK FOR THE STATE OF CALIFORNIA.

26 MR. BARENS: THE SAME BURDEN FOR THOSE GUYS HERE, HUH?

27 MS. SHELBY: SAME ONE.

28 MR. BARENS: IT SEEMS TO PERMEATE OUR SOCIETY --

5-2  
1 MS. SHELBY: UH-HUH.

2 MR. BARENS: -- THE GOVERNMENT HAS TO PROVE THEIR  
3 POSITION.

4 MS. SHELBY: YES.

5 MR. BARENS: DO YOU THINK IT IS FAIR?

6 MS. SHELBY: YES.

7 MR. BARENS: DO YOU BELONG TO ANY ORGANIZATIONS OR  
8 CIVIC CLUBS OR FRATERNAL SOCIETIES?

9 MS. SHELBY: NO.

10 MR. BARENS: VOLUNTEER ACTIVITY?

11 MS. SHELBY: NO.

12 MR. BARENS: DO YOU, MR. HECK, BELONG TO ANY OF THOSE  
13 TYPES OF GROUPS?

14 MR. HECK: NO.

15 MR. BARENS: HOW ABOUT YOU, MISS EWELL?

16 MS. EWELL: NO.

17 MR. BARENS: NO CLUBS OR ORGANIZATIONS?

18 MS. EWELL: NO.

19 MR. BARENS: AND MR. CANADY?

20 MR. CANADY: NO.

21 MR. BARENS: WHAT DO YOU DO AGAIN, MR. CANADY?

22 MR. CANADY: COMPUTER CONSULTANT.

23 MR. BARENS: WHAT DO YOU MEAN BY THAT?

24 THE COURT: YOU HAVE A TENDENCY TO DROP YOUR VOICE,  
25 MR. CANADY. PLEASE KEEP IT UP, WILL YOU?

26 MR. CANADY: OKAY.

27 MR. BARENS: COULD YOU HELP ME UNDERSTAND WHAT YOU DO  
28 MORE SPECIFICALLY AS A COMPUTER CONSULTANT?



15-3  
1 MR. CANADY: INSTALL SUPPORT AND MAINTAIN COMPUTER  
2 SYSTEMS THROUGHOUT THE ARCO TOWER.

3 MR. BARENS: ANY KIND OF COMPUTERS THAT THEY HAVE THERE?

4 MR. CANADY: YES.

5 MR. BARENS: DO YOU HAVE SOME SPECIALIZED TRAINING FOR  
6 THAT?

7 MR. CANADY: YES.

8 MR. BARENS: I BELIEVE YOU USED TO WORK IN YOUR FAMILY  
9 CAR BUSINESS?

10 MR. CANADY: RIGHT.

11 MR. BARENS: HAVE YOU HAD ANY OTHER EMPLOYMENT BESIDES  
12 THAT?

13 MR. CANADY: NO.

14 MR. BARENS: DO YOU HAVE ANY FORMAL EDUCATION OTHER  
15 THAN HIGH SCHOOL?

16 MR. CANADY: I HAVE AN AA AT SANTA MONICA COLLEGE. I  
17 HAVE ATTENDED A TECHNICAL COLLEGE.

18 MR. BARENS: WHAT SCHOOLS DID YOU ATTEND?

19 MR. CANADY: SANTA MONICA COLLEGE AND COMPUTER LEARNING  
20 CENTER.

21 MR. BARENS: AND I BELIEVE YOU ARE SINGLE AT PRESENT?

22 MR. CANADY: YEAH. CAN'T YOU TELL?

23 (LAUGHTER IN COURTROOM.)

24 MR. BARENS: I AM SORRY, SIR?

25 MR. CANADY: I SAID, CAN'T YOU TELL?

26 MR. BARENS: I DON'T KNOW. I AM STILL SMILING AFTER  
27 21 YEARS. IT IS POSSIBLE THAT AS A YOUNG MAN, YOU SHOULD  
28 REMEMBER THAT.

15-4

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(LAUGHTER IN COURTROOM.)

MR. BARENS: MR. DUNDORE, YOU RETIRED AS AN AIRCRAFT ENGINEER, I BELIEVE?

MR. DUNDORE: YES.

MR. BARENS: AND WHAT DID YOU DO AS AN AIRCRAFT ENGINEER?

MR. DUNDORE: WELL, I WAS ALWAYS ASSOCIATED WITH DESIGN.

MY LAST JOB BEFORE RETIREMENT, I WAS CHIEF DESIGN ENGINEER ON THE C-17 PROGRAM. IT IS A MILITARY TRANSPORT.

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15A-1  
1 MR. BARENS: NOW, IN DESIGNING, I PRESUME THAT YOU WOULD  
2 BE GIVEN AN ASSIGNMENT WHERE YOU HAD A PROBLEM TO SOLVE.

3 MR. DUNDORE: NOT EXACTLY.

4 I WAS RESPONSIBLE FOR COORDINATING A LARGE NUMBER  
5 OF SPECIAL DESIGN GROUPS BY MEANS OF DESIGN MEETINGS AND  
6 REVIEWS AND THAT SORT OF THING.

7 MR. BARENS: WHAT I MEANT, MR. DUNDORE, WERE THOSE GROUPS  
8 YOU WERE WORKING WITH IN ARRIVING AT A DESIGN CONFIGURATION  
9 HAD CERTAIN PROBLEMS THAT THEY WERE AWARE OF THAT THEY DIDN'T  
10 HAVE ANSWERS TO?

11 MR. DUNDORE: YES.

12 MR. BARENS: AND THEY HAD TO DESIGN SOMETHING THAT WOULD  
13 ACCOMMODATE A CERTAIN AMOUNT OF STRESS AT A CERTAIN SPEED  
14 UNDER CERTAIN WEATHER CONDITIONS AND TO CREATE CERTAIN  
15 PREDICTABLE RESULTS, IS THAT WHAT IT WAS ABOUT?

16 MR. DUNDORE: YES.

17 MR. BARENS: NOW, DID YOU PARTICIPATE IN THOSE TYPES  
18 OF DECISIONS AS WELL?

19 MR. DUNDORE: YES.

20 MR. BARENS: NOW, DID YOU GET SITUATIONS SOMETIMES WHERE  
21 THOSE GROUPS THAT CAME TO YOU, DIFFERENT EMPLOYEES HAD  
22 COMPETING PHILOSOPHIES ON WHAT TYPE OF WING DESIGN OR  
23 FUSELAGE DESIGN IS GOING TO RETURN THE MAXIMUM FLIGHT PATTERN  
24 FOR THE MOST ECONOMICAL INVESTMENT FOR YOUR COMPANY; DID YOU  
25 HAVE THAT HAPPEN?

26 MR. DUNDORE: FREQUENTLY.

27 MR. BARENS: OKAY. HOW DID YOU MAKE DECISIONS ON WHICH  
28 WAY YOU WENT?

5A-2  
1 REMEMBER EARLIER WE TALKED ABOUT CIRCUMSTANTIAL  
2 EVIDENCE.

3 (MR. DUNDORE NODDED HIS HEAD UP AND DOWN.)

4 MR. BARENS: WE TALKED ABOUT REASONABLE EXPLANATIONS  
5 GOING BOTH WAYS.

6 NOW IN THIS INSTANCE, HIS HONOR HAS TOLD YOU THE  
7 LAW SAYS THAT IF YOU GET ONE OF THOSE DESIGN DECISIONS, YOU  
8 VOTE WITH THE DEFENDANT BECAUSE THEY DIDN'T PROVE THEIR CASE.

9 HOW DID YOU MAKE THOSE DECISIONS AS AN ENGINEER?

10 MR. DUNDORE: WELL, IF A DECISION WAS VERY CLOSE, WE  
11 SIMPLY WENT BACK AND RESEARCHED THE PROBLEM AND MADE SURE  
12 THAT EVERYBODY THAT HAS SOMETHING TO CONTRIBUTE HAD AN  
13 OPPORTUNITY TO, UNTIL THERE WAS A PREPONDERANCE OF EVIDENCE  
14 THAT POINTED THE DIRECTION TO GO.

15 MR. BARENS: THAT IS REALLY IMPORTANT, WHAT YOU JUST  
16 SAID: PREPONDERANCE OF EVIDENCE.

17 A LOT OF TIMES IN OUR LIFE DECISIONS ON THAT GO -  
18 NO GO DECISIONS, WE GO WITH THE PREPONDERANCE OF EVIDENCE,  
19 DON'T WE? IT IS KIND OF SOMETHING WE ALL DO EVERY DAY.

20 DO YOU UNDERSTAND, SIR, THIS IS NOT ONE OF THOSE  
21 DECISIONS?

22 MR. DUNDORE: YES.

23 MR. BARENS: THIS IS ONE OF THOSE BEYOND A REASONABLE  
24 DOUBT DECISIONS.

25 WE MAY NOT BE SURE, AS HIS HONOR SAID, AS A  
26 COLLEAGUE OF MINE, TOO, WHAT THAT SPECIFICALLY MEANS BUT WE  
27 ARE SURE IT DOES NOT MEAN A PREPONDERANCE OF THE EVIDENCE;  
28 DO YOU UNDERSTAND THAT?

15A-3  
1 MR. DUNDORE: YES.

2 MR. BARENS: IT IS A MUCH HIGHER STANDARD THAN THAT.

3 MR. DUNDORE: RIGHT.

4 MR. BARENS: YOU MENTIONED THAT YOU WOULD GO BACK AND  
5 RESEARCH THOSE DECISIONS.

6 WOULD YOU SOMETIMES MAKE A NO GO DECISION, YOU  
7 JUST COULDN'T ACCOMPLISH THE RESULT?

8 MR. DUNDORE: WE HAD TO PROCEED WITH THE DESIGN, SO  
9 WE SIMPLY HAD TO MAKE A CHOICE FINALLY. SCHEDULES AND COSTS  
10 AND OTHER THINGS DICTATED GOING AHEAD, EVEN THOUGH THERE MIGHT  
11 BE SOME RISK.

12 MR. BARENS: YES.

13 DO YOU UNDERSTAND THAT THIS IS ONE OF THOSE  
14 SITUATIONS WHERE YOU CAN'T TAKE ANY RISK. THIS IS A NO RISK,  
15 THIS IS A FAIL SAFE SYSTEM THAT WE ARE TRYING TO DESIGN WITH  
16 YOU JURORS HERE ABOUT WHAT HAPPENS TO THIS YOUNG MAN.

17 FAIL SAFE IN THE LEGAL SYSTEM IS CALLED BEYOND  
18 A REASONABLE DOUBT.

19 MR. DUNDORE: YES.

20 MR. BARENS: DO YOU UNDERSTAND THAT?

21 MR. DUNDORE: YES.

22 MR. BARENS: NOW, MR. PEIKERT, WHAT DID YOU MEAN EARLIER  
23 TODAY WHEN YOU TOLD THE JUDGE THAT YOU WERE BOTH A PARAMEDIC  
24 AND SELF-EMPLOYED?

25 I AM NOT SURE I QUITE FOLLOWED WHAT YOU SAID.

26 MR. PEIKERT: WELL, I WORK TEN DAYS A MONTH ON THE  
27 FIRE DEPARTMENT, THEY ARE 24-HOUR SHIFTS, ALLOWING 20 DAYS  
28 A MONTH TO DO WHATEVER.

1 UNFORTUNATELY, ON THE FIRE DEPARTMENT YOU DON'T  
2 MAKE ENOUGH MONEY TO DO WHATEVER ON THE 20 DAYS A MONTH YOU  
3 ARE OFF.

4 (LAUGHTER IN COURTROOM.)

5 MR. BARENS: THAT MAKES SENSE TO ME.

6 MR. PEIKERT: SO ON MY WHATEVER DAYS, I DEVELOP PROPERTY  
7 IN THE SANTA MONICA MOUNTAINS. I HAVE HEAVY EQUIPMENT AND  
8 I MOVE MOUNTAINS FOR SUBDIVISIONS, THAT IS THE SELF-EMPLOYMENT  
9 SIDE.

10 MR. BARENS: I UNDERSTAND, SIR.

11 COULD YOU TALK TO US ABOUT WHAT YOU ACTUALLY DO  
12 AS IN A HANDS-ON SENSE AS A PARAMEDIC, WHAT DO YOU DO?

13 MR. PEIKERT: I ROLL ON PEOPLE IN DISTRESS, MEDICAL,  
14 MAJOR MEDICAL EMERGENCIES, LIFE AND PROPERTY.

15 MR. BARENS: DO YOU EVER HAVE TO MAKE THOSE LIFE AND  
16 DEATH DECISIONS ON PEOPLE?

17 MR. PEIKERT: EVERY DAY OR EVERY OTHER DAY.

18 MR. BARENS: DO YOU EVER HAVE TO MAKE A DECISION THAT  
19 THIS GUY, THIS PERSON IS IRRETRIEVABLE, THAT THEY MAY BE ALIVE  
20 BUT WE JUST CAN'T DO ANYTHING?

21 MR. PEIKERT: YES. THEY ARE CLINICALLY DEAD.

22 WE ALSO HAVE INSTRUCTIONS TO WHERE IT IS CALLED  
23 CODE BLUE, CANCER OF THE BRAIN OR THEY HAVE SOME IRREVERSIBLE  
24 PROBLEM, WE TERMINATE THEM.

25 MR. BARENS: HOW LONG HAVE YOU BEEN IN THIS LINE OF  
26 WORK, SIR?

27 MR. PEIKERT: I HAVE BEEN A FIREMAN FOR 21 YEARS.

28 I PIONEERED THE PARAMEDIC PROGRAM IN 1969, AUGUST.

1 MR. BARENS: DO YOU FEEL ANY DIFFERENT TODAY, SOME 17  
2 YEARS LATER, WHEN YOU HAVE TO TERMINATE AN INDIVIDUAL, EVER  
3 SO REGRETABLY, THAN YOU DID IN 1969?

4 MR. PEIKERT: NO.

5 MR. BARENS: IS THE EXPERIENCE STILL THE SAME FOR YOU?

6 MR. PEIKERT: DEFINITELY, BECAUSE THE FIRE DEPARTMENT  
7 DOESN'T PAY MY TAXES.

8 MR. BARENS: I AM NOT QUITE SURE I UNDERSTOOD WHAT YOU  
9 MEANT BY THAT, SIR.

10 MR. PEIKERT: WELL, I AM JUST SAYING THAT THE MONEY  
11 IS IN THE DIRT, NOT AT THE FIRE STATION.

12 MR. BARENS: SURE. I UNDERSTAND THAT.

13 WHAT I AM REALLY SEEKING IS, YOU KNOW, IN 1969,  
14 THE FIRST TIME YOU HAD TO TERMINATE A LIFE, I AM CONVINCED  
15 THAT THAT HAD A REAL IMPACT ON YOU AS A PERSON.

16 WHEN YOU HAVE TO DO THAT TODAY, IS THAT THE SAME  
17 IMPACT OR IS IT ANY DIFFERENT THAN IT WAS IN 1969?

18 MR. PEIKERT: WELL, FIRST OF ALL, THAT IS NOT OUR  
19 DECISION.

20 MR. BARENS: I SEE.

21 MR. PEIKERT: THAT COMES DOWN FROM THE EMERGENCY ROOM  
22 WHOM WE ARE IN CONTACT WITH. WE DON'T ARBITRARILY MAKE THAT  
23 DECISION OUT IN THE FIELD.

24 OUR SOLE PURPOSE OUT IN THE FIELD, IS TO TRY TO  
25 GIVE THIS PERSON A NEW LEASE ON LIFE, TO SAVE IT.

26 NOW, IF THE E.R. ROOM DESIGNATES SOMETHING OTHER  
27 THAN THAT POLICY, WE ARE TOLD "CODE BLUE."

28 THEN WE JUST SIMPLY LET THEM ARREST. NOW, THAT

1 IS A PRIOR DECISION THAT HAS BEEN MADE BY THE FAMILY OR  
2 SOMEBODY.

3 MR. BARENS: YOU HAVE TO EXECUTE THAT DECISION?

4 MR. PEIKERT: NO. WE DON'T.

5 MR. BARENS: EXCUSE THE EXPRESSION.

6 MR. PEIKERT: WELL, IT IS NOT NECESSARILY EXECUTE IT.  
7 WE WORK IT 90 PERCENT INSTEAD OF MAYBE 110 PERCENT.

8 MR. BARENS: HAS THE IMPACT OF WORKING AT 90 PERCENT  
9 CHANGED FOR YOU OVER THE YEARS, AS FAR AS HOW IT AFFECTS YOU  
10 OR HAS IT STAYED PRETTY MUCH THE SAME FROM 1969 TO THE PRESENT?

11 MR. PEIKERT: NO. IT STAYED THE SAME OR I WOULDN'T  
12 BE THERE.

13 MR. BARENS: I APPRECIATE THAT. DO YOU UNDERSTAND THAT  
14 ABOUT MR. HUNT HERE, THIS IS NOT JUST A LIFE AND DEATH  
15 DECISION? CAN YOU THINK OF WHAT I MEAN BY THAT?

16 MR. PEIKERT: NO, NOT AT ALL.

17 MR. BARENS: THIS IS A GUILT OR INNOCENCE DECISION.

18 MR. PEIKERT: WELL, THAT IS PRETTY CLOSE TO LIFE AND  
19 DEATH, ISN'T IT?

20 MR. BARENS: WELL, THE CONSEQUENCES MAY BE. BUT THE  
21 DIFFERENCE IS MILES AND MILES APART.

22 REMEMBER, HIS HONOR TALKED TO YOU ABOUT THAT  
23 DURING THE PERIOD OF QUESTIONING WE HAD BEFORE, THAT THAT  
24 LIFE AND DEATH DECISION ONLY ARISES AFTER YOU MAKE A GUILT  
25 AND INNOCENCE DECISION.

26 RIGHT NOW, WE ARE TALKING ABOUT --

27 MR. PEIKERT: NO, NO, ONLY THE GUILT DECISION.

28 MR. BARENS: WELL, WE HAVE GOT TO MAKE THE OTHER, IT



1 OCCURS TO ME. YOU MAKE THE OTHER AT THE SAME TIME. WELL,  
2 INDEED.

3 TO APPROACH THIS, ONE WOULD HAVE HAD TO HAVE MADE  
4 A GUILT DECISION OR THE WHOLE THING HAS GONE AWRY. DO YOU  
5 UNDERSTAND THAT IS WHAT I AM TALKING ABOUT WITH ALL OF YOU  
6 NOW, THAT GUILT DECISION?

7 MR. PEIKERT: YES. THE NEXT THING YOU WILL DO IS ASK  
8 ME IF IT BOTHERS ME. AND THE ANSWER IS NO.

9 THE COURT: I THINK THAT YOU MADE IT PLAIN DURING THE  
10 TIME YOU WERE ON THE STAND, HERE.

11 MR. BARENS: I AM CONVINCED OF THAT, ACTUALLY. THE  
12 GUILT DECISION DOESN'T BOTHER ME, EITHER. ALL I AM LOOKING  
13 FOR IS THAT I HAVE GOT AN EVEN CHANCE WITH YOU, WHEN YOU  
14 LISTEN TO THE EVIDENCE, TO MAKE THAT DECISION.

15 AND IT IS NOT JUST A GUILT DECISION. IT IS ALSO  
16 AN INNOCENT DECISION. I WANT AN EVEN CHANCE GOING IN, TO  
17 GET EITHER ONE FROM YOU, SIR. DO YOU THINK I DO?

18 THE COURT: YOU HAVE GOT BETTER THAN EVEN. YOU HAVE  
19 GOT THE PRESUMPTION OF INNOCENCE AND THE GUILT BEYOND A  
20 REASONABLE DOUBT.

21 MR. BARENS: YOUR HONOR, YOUR COUNSEL IS NOT CONVINCED  
22 THAT HE HAD A BETTER THAN EVEN CHANCE WITH THE RESOURCES OF  
23 THE STATE OF CALIFORNIA --

24 THE COURT: WELL --

25 MR. BARENS: OF THE GOVERNMENT SIDE --

26 MR. WAPNER: WHAT IS THIS "YOUR COUNSEL"? IS HE  
27 REPRESENTING YOU, JUDGE?

28 THE COURT: WHEN YOU ARE TALKING ABOUT THE GUILT PHASE,

1 YOU SAY "EVEN" CHANCE. IT ISN'T AN EVEN CHANCE. IT IS  
2 PREDOMINANTLY IN FAVOR OF THE DEFENDANT BECAUSE HE HAS THE  
3 ADVANTAGE OF A PRESUMPTION OF INNOCENCE AND THE BURDEN OF  
4 PROOF UPON THE PEOPLE TO PROVE HIM GUILTY BEYOND A REASONABLE  
5 DOUBT.

6 MR. BARENS: I UNDERSTAND THAT YOUR HONOR HAS SAID THAT  
7 TO YOU FOLKS. THE DEFENSE OF COURSE, IS ENTITLED TO A  
8 DIFFERENT POINT OF VIEW. THE DEFENSE DOESN'T HAVE THAT POINT  
9 OF VIEW.

10 THE COURT: YOU MEAN, IT IS NOT THE LAW ABOUT THE  
11 PRESUMPTION OF INNOCENCE --

12 MR. BARENS: ABSOLUTELY. IT IS THE LAW AT ALL TIMES.

13 THE COURT: THAT IS ALL I AM SAYING.

14 MR. BARENS: WELL, YOUR HONOR, IT SEEMS TO ME AND I  
15 SAY IT RESPECTFULLY YOUR HONOR, THAT GIVES THE DEFENDANT AN  
16 ADVANTAGE. IT IS AN ADVANTAGE. WHETHER IT OUTWEIGHS THE  
17 INHERENT ADVANTAGE OF THE RESOURCES OF THE STATE, THAT THE  
18 STATE HAS WHEN THEY DESCEND ON AN INDIVIDUAL DEFENDANT OR  
19 NOT, IS AN ISSUE.

20 THE COURT: ALL RIGHT.

21 MR. BARENS: THANK YOU, YOUR HONOR.

22 YOUR WIFE IS A XEROX ANALYST? DOES SHE --

23 MR. PEIKERT: EX.

24 MR. BARENS: FORMERLY?

25 MR. PEIKERT: WE HAVE A CHILD. SHE DECIDED TO BE A  
26 MOM.

27 THE COURT: DECIDED TO BE A WHAT?

28 MR. PEIKERT: SHE HAD AN OPTION TO GO BACK TO WORK.

1 SHE EXERCISED HER OPTION TO STAY HOME AND BE A MOM.

2 SHE DIDN'T KNOW WHAT SHE WANTED TO DO UNTIL AFTER  
3 SHE HAD A CHILD.

4 MR. BARENS: DO YOU BELONG TO ANY ORGANIZATIONS, CIVIL  
5 CLUBS OR FRATERNAL SOCIETIES OR DO VOLUNTEER ACTIVITIES, SIR?

6 MR. PEIKERT: I DO A LITTLE.

7 MR. BARENS: COULD YOU TELL ME WHAT GROUPS YOU MIGHT  
8 BE ACTIVE IN, SIR?

9 MR. PEIKERT: WELL, I PUT ON SOME DEMONSTRATIONS FOR  
10 THE GIRL SCOUTS OF AMERICA, THE HOME FIRE SAFETY PLAN FOR  
11 THE SAN FERNANDO VALLEY CHAPTER.

12 I HAVE ALSO DONE A FEW CARDIO-PULMONARY  
13 RESUSCITATION CLASSES, JUST YOUR BASIC, DO-GOODER TYPE OF  
14 THING. I MAKE A BASEBALL DIAMOND NOW AND THEN FOR THE  
15 CATHOLIC SCHOOL AND DON'T CHARGE THEM.

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1 MR. BARENS: HOW DO YOU FEEL --

2 MR. PEIKERT: BUT AS FAR AS BELONGING TO ANY PARTICULAR  
3 ORGANIZATION, I BELONG TO THE CALIFORNIA STATE FIREMAN'S  
4 ASSOCIATION. THAT GETS ME A LITTLE STICKER ON THE BACK OF  
5 MY WINDOW. MAYBE THE HIGHWAY PATROL WON'T GIVE ME A TICKET.  
6 MAYBE THEY WILL. THAT IS ALL I BELONG TO.

7 MR. BARENS: AS A MEMBER OF THE FIRE DEPARTMENT  
8 ASSOCIATION, DO YOU LOOK AT OR PERCEIVE YOURSELF IN ANY WAY  
9 AS ASSOCIATED WITH LAW ENFORCEMENT?

10 MR. PEIKERT: NOT AT ALL. YOU KNOW, PEOPLE USED TO  
11 THINK THAT WE WERE MEMBERS OF THE POWER STRUCTURE. THAT WAS  
12 RIGHT AFTER THE RIOTS.

13 AND THEY HAVE SINCE COME TO REALIZE THAT IF THERE  
14 IS ONE PERSON THAT CAN RELY ON, OBVIOUSLY THAT IS GOING TO  
15 BE THERE WITHIN THREE TO FIVE MINUTES, IT IS THE FIRE  
16 DEPARTMENT. THAT STILL HOLDS TRUE TODAY.

17 MR. BARENS: AND EVEN THOUGH I AM SURE YOU DEAL WITH  
18 A LOT OF POLICE PERSONNEL DURING YOUR --

19 MR. PEIKERT: NOT REALLY.

20 MR. BARENS: YOU DON'T?

21 MR. PEIKERT: WE REALLY DON'T.

22 MR. BARENS: I SEE. WHATEVER --

23 MR. PEIKERT: THE GOOD GUY-BAD GUY TYPE OF THING LYING  
24 IN THE STREET, LIKE WHEN WE RUN 60 HOMICIDES A YEAR, IT ISN'T  
25 BROUGHT INTO PLAY. IF HE IS A VICTIM OR A PATIENT, HE IS  
26 TREATED THE SAME.

27 MR. BARENS: YOU VIEW MY CLIENT THE SAME WAY, WITH  
28 DISPASSION AND THAT OLD PRESUMPTION OF INNOCENCE?

1 MR. PEIKERT: YES. I KIND OF DO.

2 MR. BARENS: KIND OF?

3 MR. PEIKERT: WELL, YOU KNOW, HE IS INTO THAT COCOON  
4 THAT YOU TALKED ABOUT. WHAT DO YOU DO WITH HIM?

5 MR. BARENS: I FEEL BETTER WHEN YOU TELL ME THAT,  
6 ACTUALLY. I THINK EVERYBODY HERE FEELS BETTER WHEN WE HEAR  
7 YOU SAY THAT, SIR.

8 AND I APPRECIATE THAT.

9 MR. GHIRARDI, WHAT DID YOU DO BEFORE YOU WERE  
10 IN HOTEL MANAGEMENT?

11 MR. GHIRARDI: WELL, I WAS NOT IN THE STATE OF CALIFORNIA,  
12 FOR ONE THING. I WAS BACK EAST IN BALTIMORE, MARYLAND. I  
13 WAS A CARPENTER JUST BEFORE I CAME OUT HERE.

14 MR. BARENS: AND HAVE YOU, SINCE YOU HAVE BEEN IN  
15 CALIFORNIA, ALWAYS WORKED IN HOTEL MANAGEMENT?

16 MR. GHIRARDI: APARTMENTS, TOO.

17 MR. BARENS: APARTMENT MANAGEMENT, TOO? AND ARE YOU  
18 NOT WORKING, SIR?

19 MR. GHIRARDI: NO.

20 MR. BARENS: IS THERE A PARTICULAR REASON WHY?

21 MR. GHIRARDI: WELL, MANAGEMENT IS KIND OF HARD TO GO  
22 INTO IN A HOTEL AND TELL THE MANAGEMENT THERE THAT YOU ARE  
23 TRYING TO GET THEIR JOB. YOU HAVE TO DO IT BY TALKING TO  
24 THE OWNERS. AND I GET MY CONTACTS THROUGH PEOPLE I HAVE WORKED  
25 WITH IN THE PAST AND THEY GIVE ME LEADS.

26 MR. BARENS: AND YOU HAVE NEVER WORKED AS A JUROR BEFORE?

27 MR. GHIRARDI: NO.

28 MR. BARENS: MISS KNUEDELER, YOU WORK AS A WORD PROCESSER?

1 MS. KNUEDELER: YES.

2 MR. BARENS: AND WHERE IS THAT?

3 MS. KNUEDELER: ROCKETDYNE.

4 MR. BARENS: WHAT PART OF THEIR ACTIVITIES ARE YOU DOING  
5 WORD PROCESSING ON? IS THERE A PARTICULAR AREA OF THEIR  
6 VARIOUS ACTIVITIES THAT YOU ARE INVOLVED WITH?

7 MS. KNUEDELER: JUST THE MANUFACTURING DEPARTMENT. JUST  
8 KEEPING RECORDS OF PARTS.

9 MR. BARENS: AND WHAT DID YOU DO PRIOR TO THAT?

10 MS. KNUEDELER: I WORKED AT AN INSURANCE COMPANY,  
11 TWENTIETH CENTURY.

12 MR. BARENS: AND WHAT DID YOU DO FOR TWENTIETH CENTURY?

13 MS. KNUEDELER: I DISPATCHED ADJUSTERS.

14 MR. BARENS: YOU MEAN TO ACCIDENT SCENES OR TO VIEW  
15 PROPERTY DAMAGE OR SOMETHING?

16 MS. KNUEDELER: NOT TO ACCIDENT SCENES, TO LOOK AT THE  
17 DAMAGES AFTERWARDS.

18 MR. BARENS: AND HOW LONG DID YOU DO THAT?

19 MS. KNUEDELER: I WORKED THERE FOR ABOUT A YEAR AND  
20 AT ANOTHER INSURANCE COMPANY BEFORE THAT FOR ABOUT TWO YEARS.

21 MR. BARENS: DID YOU DO THE SAME ACTIVITY AT THE PRIOR  
22 INSURANCE COMPANY?

23 MS. KNUEDELER: NO. THERE, I KEPT TRACK OF INSURANCE  
24 COVERAGES.

25 MR. BARENS: HAVE YOU HAD MUCH CONTACT WITH PERSONAL  
26 INJURY LAWYERS DURING YOUR EMPLOYMENT?

27 MS. KNUEDELER: NO.

28 MR. BARENS: SOMEBODY ELSE DID THAT?

1 MS. KNUEDER: YES.

2 MR. BARENS: DID YOU EVER DISCUSS PLAINTIFFS' PERSONAL  
3 INJURY LAWYERS WITH YOUR CO-EMPLOYEES?

4 MS. KNUEDER: NO.

5 MR. BARENS: DID YOU FORM SOME OPINION ABOUT ATTORNEYS,  
6 GOOD OR BAD, AS A RESULT OF YOUR ACTIVITIES WORKING IN THE  
7 INSURANCE COMPANY?

8 MS. KNUEDER: NO.

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1 MR. BARENS: YOU MIGHT HAVE BEEN THE ONLY PERSON.

2 NOW YOU HAVE HAD NO PRIOR JURY EXPERIENCE?

3 MS. KNUEDELER: NO.

4 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

5 MS. KNUEDELER: NO.

6 MR. BARENS: THIS IS MR. CANADY HERE (COUNSEL INDICATING).

7 (LAUGHTER IN COURTROOM.)

8 THE COURT: THAT IS WHAT THEY SAY ABOUT BACHELORS, THE  
9 DEFINITION OF A BACHELOR IS HE HAS NEVER MADE THE SAME MISTAKE  
10 ONCE.

11 (LAUGHTER IN COURTROOM.)

12 MR. BARENS: INDEED, YOUR HONOR.

13 MRS. HOFER, HAVE YOU EVER SERVED ON A JURY BEFORE?

14 MS. HOFER: YES, I HAVE.

15 MR. BARENS: ON MORE THAN ONE OCCASION?

16 MS. HOFER: JUST ONCE. MUNICIPAL CASE.

17 MR. BARENS: WAS IT A CRIMINAL OR CIVIL MATTER, MA'AM?

18 MS. HOFER: CIVIL.

19 MR. BARENS: AND DID YOU ACTUALLY SERVE THROUGH THE  
20 CASE WHERE IT WENT TO THE JURY FOR A DECISION?

21 MS. HOFER: YES, SIR.

22 MR. BARENS: HOW DO YOU FEEL ABOUT THAT EXPERIENCE?

23 MS. HOFER: I WOULDN'T LIKE TO DO IT EVERY DAY.

24 MR. BARENS: COULD YOU TELL ME WHY, OTHER THAN I KNOW  
25 IT TOOK YOU AWAY FROM YOUR ACTIVITIES IN THE EDUCATION  
26 SYSTEM, BUT WAS THERE ANYTHING ABOUT IT OTHER THAN THAT?

27 MS. HOFER: IT IS JUST VERY DIFFICULT, I THINK, TO FIGURE  
28 OUT WHO IS TELLING THE TRUTH, WHO IS TELLING MORE TRUTH AND



17-2

1 WHO IS TELLING LESS TRUTH, YOU KNOW.

2 MR. BARENS: IT IS DIFFICULT INDEED.

3 WERE YOU ABLE TO DO IT IN THAT INSTANCE?

4 MS. HOFER: I THOUGHT SO.

5 MR. BARENS: NOW AGAIN, ALTHOUGH I HAVE SAID THIS  
6 BEFORE, BUT I WANT TO ADDRESS YOU INDIVIDUALLY.

7 YOU UNDERSTAND THAT THE BURDEN AND STANDARD OF PROOF  
8 THAT YOU DEALT WITH IN THAT CASE IS ALTOGETHER DIFFERENT THAN  
9 WHAT WE HAVE GOT HERE?

10 MS. HOFER: I UNDERSTAND.

11 MR. BARENS: BEYOND A REASONABLE DOUBT.

12 MS. HOFER: RIGHT.

13 MR. BARENS: NOT A PREPONDERANCE.

14 YOU WERE LISTENING WHEN I TALKED TO MR. DUNDORE  
15 ABOUT HOW WE MAKE THOSE DECISIONS, NOT BY A PREPONDERANCE OF  
16 EVIDENCE OR IT SEEMS-MORE-LIKELY TYPE OF DECISION.

17 IT IS A MORE SERIOUS STANDARD.

18 MS. HOFER: YES, SIR.

19 MR. BARENS: A MORE SERIOUS SETTING.

20 YOU WOULD LOOK AT IT THAT WAY?

21 MS. HOFER: THAT'S RIGHT.

22 MR. BARENS: YOU WOULDN'T BE DOING JUST A BALANCING ACT  
23 BECAUSE OF YOUR PRIOR JURY EXPERIENCE, WHERE YOU WERE BALANCING  
24 THE PROSECUTION AND THE DEFENSE IF YOU WERE TO LISTEN TO THE  
25 EVIDENCE IN THIS CASE BUT, RATHER, YOU WOULD HAVE TO BE  
26 CONVINCED BEYOND A REASONABLE DOUBT?

27 MS. HOFER: YES, SIR.

28 MR. BARENS: WHAT DID YOU DO IN THE EDUCATION SYSTEM,

17-3

1 MRS. HOFER?

2 MS. HOFER: WELL, I STARTED OUT AS A TEACHER, BECAME  
3 A SCHOOL PRINCIPAL AT JUNIOR HIGH, THEN SENIOR HIGH AND  
4 THEN AN AREA ADMINISTRATOR.

5 MR. BARENS: WHAT DID YOU TEACH AT THAT LEVEL?

6 MS. HOFER: WHEN I WAS YOUNG, I TAUGHT PHYSICAL EDUCATION  
7 AND HEALTH.

8 MR. BARENS: AND AT WHAT GRADE LEVEL?

9 MS. HOFER: HIGH SCHOOL.

10 MR. BARENS: THROUGHOUT YOUR TEACHING EXPERIENCE, WERE  
11 YOU DEALING WITH HIGH SCHOOL STUDENTS?

12 MS. HOFER: JUNIOR HIGH AND HIGH SCHOOL.

13 MR. BARENS: AND YOU TAUGHT IN, I BELIEVE, YOU SAID THE  
14 CLEVELAND SCHOOL DISTRICT.

15 MS. HOFER: NOT -- IT IS CLEVELAND HIGH SCHOOL IS THE  
16 SCHOOL.

17 MR. BARENS: I AM SORRY. CLEVELAND HIGH SCHOOL, IS THAT  
18 A PUBLIC OR PRIVATE SCHOOL?

19 MS. HOFER: IT IS PUBLIC.

20 MR. BARENS: YOU WERE INVOLVED AFTERWARD IN THE  
21 ADMINISTRATION OF THE SCHOOL SYSTEM?

22 MS. HOFER: YES, SIR.

23 MR. BARENS: DID YOU HAVE ANY OPINION ABOUT THE  
24 EDUCATION RECEIVED IN SOME OF THE EXCLUSIVE PRIVATE SCHOOLS,  
25 AND HOW DO YOU FEEL ABOUT THE EDUCATION THAT PEOPLE RECEIVED  
26 IN -- FOR INSTANCE, HAVE YOU HEARD OF THE HARVARD SCHOOL IN  
27 THE VALLEY?

28 MS. HOFER: YES.

7-4

1 MR. BARENS: WHAT DID YOU THINK ABOUT, IF YOU COULD  
2 FOR ME, THE STUDENT BODY MAKEUP IN THAT SCHOOL AS COMPARED  
3 TO THE STUDENT BODY IN THE SCHOOL YOU WORKED IN?

4 MS. HOFER: WELL, I JUST THINK IT IS A MATTER OF CHOICE,  
5 COUNSELOR.

6 I PERSONALLY PREFER PUBLIC SCHOOL EDUCATION BUT  
7 IT IS UP TO THE PARENTS TO DETERMINE WHAT THEY WANT FOR THEIR  
8 CHILD.

9 MR. BARENS: DID YOU HAVE ANY IMPRESSION THAT PEOPLE THAT  
10 WENT TO THOSE EXCLUSIVE PRIVATE SCHOOLS MIGHT BE SPOILED KIDS?

11 MS. HOFER: NOT NECESSARILY.

12 MR. BARENS: IF I WERE TO TELL YOU THAT MR. HUNT -- IT  
13 IS SOMETHING YOU ARE GOING TO HEAR A LOT ABOUT -- IS GOING TO  
14 SAY HE WENT TO THE HARVARD SCHOOL, HE WENT TO THAT EXCLUSIVE,  
15 RICH KIDS SCHOOL, DOES THAT GIVE YOU ANY IMPRESSION ABOUT  
16 MR. HUNT?

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1 MS. HOFER: I DIDN'T THINK IT WAS THAT EXCLUSIVE.

2 (LAUGHTER IN COURTROOM.)

3 MR. BARENS: YOU WILL BE CONVINCED OF THAT AFTER THIS  
4 TRIAL.

5 SO THAT WOULDN'T CREATE ANY IMPRESSION IN YOUR  
6 MIND ONE WAY OR THE OTHER ABOUT HIS CHARACTER?

7 MS. HOFER: NO, SIR.

8 MR. BARENS: MRS. HOFER, WHAT DOES YOUR HUSBAND DO?

9 MS. HOFER: I AM NOT MARRIED.

10 YOU KEEP SAYING MRS. AND I THINK IT IS LOVELY.  
11 GO AHEAD.

12 (LAUGHTER IN COURTROOM.)

13 MR. BARENS: I BEG YOUR PARDON, MA'AM.

14 MS. HOFER: THAT IS QUITE ALL RIGHT.

15 THE COURT: THAT IS WHY I DIDN'T ASK HER ANYTHING ABOUT  
16 HER HUSBAND. I KNOW SHE WAS A MISS.

17 MR. BARENS: I WAS JUST LOOKING AROUND FOR ANYBODY ELSE  
18 ELIGIBLE HERE, YOUR HONOR.

19 NOW, HAVE YOU ENGAGED IN A CHARITABLE ACTIVITY SINCE  
20 YOU HAVE RETIRED --

21 MS. HOFER: YES.

22 MR. BARENS: -- OR A MEMBER OF ANY CLUBS?

23 WHAT?

24 MS. HOFER: I WORK VERY EXTENSIVELY IN MY CHURCH WHERE  
25 WE DO A LOT OF WORK HELPING THOSE WHO NEED ASSISTANCE.

26 MR. BARENS: THAT IS COMMENDABLE.

27 AND YOU ACTUALLY DEAL WITH THOSE PEOPLE?

28 MS. HOFER: YES.

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7-6

1 MR. BARENS: ARE YOU A MEMBER, OTHER THAN YOUR CHURCH  
2 ORGANIZATION, ARE YOU A MEMBER OF ANY OTHER PHILANTHROPIC  
3 OR CHARITABLE ORGANIZATIONS?

4 MS. HOFER: I BELONG TO THE UCLA ALUMNI ASSOCIATION.

5 MR. BARENS: THAT DOESN'T BOTHER ME AT ALL.

6 MS. HOFER: SOMETIMES THAT IS CHARITABLE.

7 MR. BARENS: I WOULD AGREE WITH THAT.

8 AND WHAT DO YOU DO WITH THE BRUIN PEOPLE?

9 MS. HOFER: I AM JUST A BRUIN BOOSTER.

10 MR. BARENS: I SEE.

11 MS. HOFER: GIVE THEM MONEY.

12 MR. BARENS: IF YOU HEARD I WENT TO USC, WOULD YOU HOLD  
13 IT AGAINST ME?

14 MS. HOFER: YES.

15 (LAUGHTER IN COURTROOM.)

16 MR. BARENS: EVEN IF I HAD GONE TO UCLA AS AN UNDER-  
17 GRADUATE?

18 THE COURT: YOU ASKED FOR IT AND YOU GOT IT.

19 (LAUGHTER IN COURTROOM.)

20 MR. BARENS: THIS IS MY FIRST CHALLENGE FOR CAUSE,  
21 YOUR HONOR -- I AM JUST KIDDING ON THAT.

22 NOW MR. TAUB.

23 MR. TAUB: YES, SIR.

24 MR. BARENS: DID YOU HAVE A PARTICULAR REASON WHY YOU  
25 STOPPED AS A FRANCHISEE, WHICH I ASSUME YOU WERE WITH BASKIN-  
26 ROBBINS?

27 MR. TAUB: YES, I HAD SEVERAL PARTICULAR REASONS.

28 ONE REASON IS THAT THE KIDS GAVE AWAY TOO MUCH

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1 OF MY PROFIT AND I WAS ANXIOUS TO GET OUT OF IT AND I WAS  
2 OFFERED A CHANCE OF A PARTNERSHIP IN A DRY CLEANING BUSINESS  
3 AND I TOOK IT.

4 MR. BARENS: WERE YOU EVER ROBBED WHILE YOU WERE IN  
5 BUSINESS?

6 MR. TAUB: YES. FIVE TIMES.

7 MR. BARENS: DID YOU HAVE TO GO TO COURT AND TESTIFY?

8 MR. TAUB: NO.

9 WE NEVER CAUGHT ANYBODY.

10 MR. BARENS: WERE YOU PERSONALLY THE VICTIM --

11 MR. TAUB: NO.

12 MR. BARENS: -- OF ANY OF THESE ROBBERIES?

13 MR. TAUB: NO.

14 MR. BARENS: YOU HEARD ABOUT THEM FROM SOME EMPLOYEES?

15 MR. TAUB: OH, SURE. AS SOON AS IT HAPPENED, I WOULD  
16 GET A CALL AND GO DOWN.

17 MR. BARENS: DID YOU TALK TO POLICE PEOPLE ON THOSE  
18 OCCASIONS?

19 MR. TAUB: ONLY BY PHONE.

20 MR. BARENS: AS A RESULT OF THOSE FIVE ROBBERIES, NONE  
21 OF THE PEOPLE WERE CAUGHT THAT PERPETRATED THOSE CRIMES?

22 MR. TAUB: NO.

23 MR. BARENS: TRUTHFULLY, DID THAT HAVE ANY INFLUENCE ON  
24 YOUR VIEW ABOUT THE CRIMINAL JUSTICE SYSTEM?

25 MR. TAUB: NONE WHATSOEVER.

26 MR. BARENS: THOSE EXPERIENCES, THOUGH REGRETTABLE,  
27 WOULDN'T AFFECT HOW YOU FEEL AS YOU SIT HERE AS A PROSPECTIVE  
28 JUROR?

1 MR. TAUB: ABSOLUTELY NOT.  
2 I WOULDN'T EVEN THINK ABOUT THEM.

3 MR. BARENS: HAVE YOU EVER WORKED AS A JUROR BEFORE?

4 MR. TAUB: NO.

5 MR. BARENS: HOW DO YOU FEEL ABOUT BEING A JUROR IN THIS  
6 CASE, SIR, IS IT SOMETHING YOU WOULD LIKE TO DO?

7 MR. TAUB: I FEEL THAT IF I AM SELECTED, IT IS SOMETHING  
8 THAT I WILL DO.

9 I REALLY DON'T HAVE ANY CHOICE IN THE MATTER.

10 MR. BARENS: ASSUMING HYPOTHETICALLY, SIR, THAT YOU HAD  
11 A CHOICE IN THIS MATTER, WOULD YOU LIKE TO SERVE AS A JUROR?

12 MR. TAUB: I AM INTERESTED IN THE CASE NOW.

13 MR. BARENS: INTERESTED IN SEEING WHAT IT IS ALL  
14 ABOUT?

15 MR. TAUB: YES.

16 MR. BARENS: AND YOU ARE COMFORTABLE WITH THE PRESUMPTION  
17 OF INNOCENCE?

18 MR. TAUB: YES.

19 MR. BARENS: HOW DO YOU FEEL ABOUT THE FIFTH AMENDMENT  
20 AS A GENERAL PROPOSITION?

21 MR. TAUB: I THINK THAT IT IS A NECESSARY THING THAT WE  
22 HAVE IN ORDER TO PROTECT PEOPLE AND I THINK THAT PERHAPS IT  
23 IS OVER-WORKED ON THE FEDERAL LEVEL.  
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BA-1

1 MR. BARENS: DO YOU HAVE IN MIND WHAT WE ARE GOING  
2 THROUGH AT THE PRESENT TIME, YOU MEAN?

3 MR. TAUB: YES.

4 MR. BARENS: DO YOU UNDERSTAND THAT MOST POLITICAL-TYPE  
5 SITUATIONS, WHATEVER THOSE ARE ALL ABOUT -- AND I CERTAINLY  
6 DON'T UNDERSTAND THEM ANY MORE THAN YOU DO OR ANYBODY ELSE  
7 HERE DOES, ARE TOTALLY DIFFERENT KINDS OF SITUATIONS THAN  
8 WE HAVE HERE? BECAUSE HERE, THE GOVERNMENT, THE PEOPLE OF  
9 THE STATE, THEY THINK THEY KNOW THE ANSWER. THEY HAVE  
10 SOMETHING IN MIND, HERE.

11 HERE, WE COULD HAVE THE FIFTH AMENDMENT  
12 EXERCISED BY A DEFENDANT WHO IS SAYING THAT HE DIDN'T DO  
13 ANYTHING. YOU PROVE I DID IT.

14 WOULD YOU BE COMFORTABLE WITH THAT?

15 MR. TAUB: I FEEL THAT WHAT YOU SAID ORIGINALLY IS THE  
16 THING WE HAVE TO GO BY. THE STATE HAS TO PROVE ITS CASE.  
17 THAT IS ALL I WOULD GO BY.

18 MR. BARENS: YOU SEE THE COCOON?

19 MR. TAUB: ABSOLUTELY.

20 MR. BARENS: DO YOU BELONG TO ANY CHARITABLE OR  
21 FRATERNAL ORGANIZATIONS?

22 MR. TAUB: I DO VOLUNTEER WORK FOR A SUPPORT SYSTEM  
23 FOR CANCER PATIENTS.

24 MR. BARENS: AND DO YOU WORK AT HOSPITAL CENTERS IN  
25 THAT REGARD OR WITH PATIENTS INDIVIDUALLY?

26 MR. TAUB: NO. THIS IS STRICTLY AN IN-HOUSE THING THAT  
27 WE DO RIGHT HERE IN SANTA MONICA. IT IS A PRIVATE ORGANIZATION.

28 MR. BARENS: AND ARE YOU INVOLVED IN ANY OTHER CLUBS



18A-2

1 OR ORGANIZATIONS OR GROUPS?

2 MR. TAUB: NO. JUST THE YMCA.

3 MR. BARENS: MR. ENGLE, DO YOU HAVE A LOT OF CONTACT  
4 WITH POLICEMEN IN YOUR WORK AT THE FIRE DEPARTMENT?

5 MR. ENGLE: YES.

6 MR. BARENS: IN YOUR HEART OF HEARTS, AS HONESTLY AS  
7 YOU CAN TELL ME, WITH 32 YEARS WORKING WITH POLICEMEN, DOES  
8 IT MAKE YOU MORE LIKELY TO BELIEVE THEIR TESTIMONY THAN  
9 ANYBODY ELSE'S TESTIMONY?

10 MR. ENGLE: NO. I DON'T THINK SO. I GOT TO KNOW SOME  
11 OF THEM PRETTY WELL.

12 MR. BARENS: YOU DIDN'T FIND THAT THEY ALWAYS TOLD THE  
13 TRUTH?

14 MR. ENGLE: NO.

15 MR. BARENS: YOU FOUND THAT SOMETIMES THEY WOULD WRITE  
16 REPORTS AND TESTIFY IN COURT, JUST BECAUSE THEY WANTED TO  
17 GET CONVICTIONS?

18 MR. ENGLE: NOT TO MY KNOWLEDGE.

19 MR. BARENS: YOU DIDN'T FIND THAT?

20 MR. ENGLE: NO.

21 MR. BARENS: DID YOU EVER SUSPECT THAT?

22 MR. ENGLE: I DIDN'T GET INTO THAT CLOSE CONTACT WITH  
23 THEM.

24 OUR CONTACT WAS WHEN THEY WOULD COME TO THE STATION  
25 TO HAVE COFFEE AND --

26 MR. BARENS: DID YOU IN ANY WAY, CONSIDER YOURSELF A  
27 MEMBER OF OR AN ADJUNCT WITH LAW ENFORCEMENT IN YOUR JOB AS  
28 A FIREMAN?

8A-3

1 MR. ENGLE: NO. I WORKED FOR A SHORT TIME IN THE ARSON  
2 BUREAU.

3 AT THAT TIME, I WAS CLOSER THAN I WOULD HAVE BEEN  
4 OTHERWISE. BUT OTHER THAN THAT, I NEVER FELT THAT I WAS  
5 ASSOCIATED WITH THE POLICE DEPARTMENT.

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1 MR. BARENS: AND WHAT DID YOU DO IN THE ARSON BUREAU,  
2 SIR? DID YOU DO INVESTIGATIONS?

3 MR. ENGLE: I WAS A TRAINEE. WHEN I FIRST GOT A  
4 PROMOTION, THEY PUT ME IN THERE FOR ABOUT TWO WEEKS JUST FOR  
5 FAMILIARIZATION.

6 MR. BARENS: JUST A TWO-WEEK ENCOUNTER?

7 MR. ENGLE: RIGHT.

8 MR. BARENS: NOW, YOU HAVE PREVIOUSLY WORKED ON A JURY?

9 MR. ENGLE: YES.

10 MR. BARENS: ON MORE THAN ONE OCCASION, SIR?

11 MR. ENGLE: TWO.

12 MR. BARENS: WERE BOTH OF THOSE CIVIL CASES?

13 MR. ENGLE: YES.

14 MR. BARENS: YOU HEARD EVERYTHING I SAID TO YOUR FELLOW-  
15 JURORS CONCERNING THE BURDEN OF PROOF?

16 MR. ENGLE: YES.

17 MR. BARENS: DID THAT SURPRISE YOU WHEN YOU FIRST HEARD  
18 THE JUDGE TELL YOU THAT WE WERE GOING TO WORK WITH A DIFFERENT  
19 BURDEN OF PROOF HERE?

20 MR. ENGLE: NO.

21 MR. BARENS: HAVE YOU HEARD THE EXPRESSION "REASONABLE  
22 DOUBT" BEFORE?

23 MR. ENGLE: YES. IT WAS EXPLAINED TO US BEFORE.

24 MR. BARENS: AT YOUR OTHER JURY EXPERIENCE?

25 MR. ENGLE: YES.

26 MR. BARENS: DO YOU THINK THAT YOU COULD PUT THAT JURY  
27 EXPERIENCE OUT OF YOUR MIND IF YOU WERE SELECTED TO WORK IN  
28 THIS CASE WITH US?

1 MR. ENGLE: DEFINITELY.

2 MR. BARENS: AND WOULD YOU DECIDE THIS CASE SOLELY ON  
3 WHAT HIS HONOR TOLD YOU AND WHAT THE EVIDENCE SHOWED YOU?

4 MR. ENGLE: YES.

5 MR. BARENS: HOW DID YOU FEEL ABOUT THE JUDICIAL SYSTEM  
6 AS A RESULT OF HAVING WORKED ON THOSE TWO CASES?

7 MR. ENGLE: IT SEEMED TO WORK.

8 MR. BARENS: YOU FELT THE SYSTEM WORKED WELL?

9 MR. ENGLE: UH-HUH.

10 MR. BARENS: AND NOTHING THAT OCCURRED ON THOSE TWO  
11 OCCASIONS WOULD INFLUENCE HOW YOU FELT ABOUT WORKING ON A  
12 JURY HERE?

13 MR. ENGLE: NO.

14 MR. BARENS: ARE YOU A MEMBER OF ANY CHARITABLE OR  
15 CIVIC ORGANIZATIONS?

16 MR. ENGLE: I AM A MEMBER OF CERTOMA.

17 MR. BARENS: EXCUSE MY NOT KNOWING THAT. BUT COULD YOU  
18 TELL US WHAT THAT IS?

19 MR. ENGLE: IT IS A SERVICE ORGANIZATION. IT IS THE  
20 SECOND OLDEST SERVICE ORGANIZATION IN THE WORLD. IT HAS ABOUT  
21 90,000 MEMBERS.

22 WE ARE PRIMARILY INVOLVED IN HEARING AND SPEECH  
23 THERAPY FOR CHILDREN.

24 THE GROUP I BELONG TO IS THE FIREMAN/PARAMEDICS  
25 GROUP HERE IN LOS ANGELES. WE ARE INVOLVED IN THE CLOTHES FOR  
26 NEEDY CHILDREN RIGHT NOW. THAT IS A BIG DRIVE GETTING UNDER  
27 WAY.

28 MR. BARENS: THAT IS COMMENDABLE, INDEED.

1 MS. WALKER, WHAT DO YOU DO AT THE VETERANS  
2 ADMINISTRATION?

3 MS. WALKER: I AM NO LONGER WORKING THERE. I DID WORK  
4 THERE. SINCE THEN, I WORKED AS A HOSTESS IN A RESTAURANT.

5 BUT I HAVE NOT WORKED FOR MANY YEARS. MY HUSBAND  
6 STILL WORKS THERE.

7 MR. BARENS: WHERE DOES YOUR HUSBAND WORK?

8 MS. WALKER: VETERANS ADMINISTRATION. HE IS AN ATTORNEY.

9 MR. BARENS: HE IS AN ATTORNEY THERE?

10 MS. WALKER: YES.

11 MR. BARENS: WHAT SORT OF LAW DOES HE HANDLE THERE?

12 MS. WALKER: IT ALL HAS TO DO WITH THE HOSPITAL, THE  
13 VETERANS ADMINISTRATION HOSPITALS AND THOSE HAPPENINGS.

14 IT IS THE DISTRICT COUNSEL'S OFFICE. IT HAS TO  
15 DO WITH ALL OF THE HAPPENINGS AT THE HOSPITAL AND ALSO SOME-  
16 TIMES THEY HAVE PROBLEMS WITH THE UNION AND ALSO WORKING AT  
17 THE EEO AT ONE TIME.

18 HE WAS DOWNTOWN FOR THAT.

19 THE COURT: BETTER KEEP YOUR VOICE UP. PEOPLE CAN'T HEAR  
20 YOU.

21 MS. WALKER: HE WAS WORKING WITH THE EEO. THAT IS THE  
22 EQUAL EMPLOYMENT OPPORTUNITY. HE WORKED AT THE VETERANS  
23 ADMINISTRATION FOR THEM FOR THE EMPLOYEES.

24 MR. BARENS: PRIOR TO WORKING FOR THESE AGENCIES, WAS  
25 YOUR HUSBAND IN ANY SORT OF PRIVATE PRACTICE?

26 MS. WALKER: NO. HE HAS NEVER BEEN IN PRIVATE PRACTICE.  
27 HE WAS IN THE SERVICE. HE WENT INTO THE SERVICE RIGHT AFTER  
28 LAW SCHOOL.

1 MR. BARENS: AND AFTER THAT HE IMMEDIATELY WENT INTO  
2 WHICH IN GENERALLY SPEAKING IS CALLED ADMINISTRATIVE LAW?

3 MS. WALKER: THE VETERANS ADMINISTRATION, YES.

4 MR. BARENS: AND WHAT DO YOU DO WITH YOUR TIME NOW THAT  
5 YOU ARE NOT WORKING?

6 MS. WALKER: WELL, I HAVE DONE SOME THINGS WITH MY  
7 CHURCH. AND I WAS WORKING AS A HOSTESS FOR ABOUT TWO AND A  
8 HALF YEARS IN A RESTAURANT.

9 SOMETIMES I HAVE WORKED OCCASIONALLY, JUST VOLUNTEER  
10 THINGS, YOU KNOW.

11 MR. BARENS: DO YOU BELONG TO ANY ORGANIZATIONS?

12 MS. WALKER: NO, JUST MY CHURCH.

13 MR. BARENS: DO YOU HAVE ANY CHILDREN?

14 MS. WALKER: YES, TWO.

15 MR. BARENS: WHAT DO YOUR CHILDREN DO?

16 MS. WALKER: THEY ARE BOTH MARRIED. ONE WORKS FOR HUGHES  
17 AIRCRAFT AND THE OTHER ONE IS A DENTAL ASSISTANT.

18 MR. BARENS: DO YOU THINK THAT OUR CRIMINAL JUSTICE  
19 SYSTEM WORKS IN THIS COUNTRY?

20 MS. WALKER: YES, I DO. I THINK THAT -- WELL, I AM NOT  
21 WELL EDUCATED ON IT, BUT I TRY TO LEARN ABOUT IT.

22 AND I FEEL THAT IT IS BETTER IN THIS COUNTRY THAN  
23 IN ANY OTHER COUNTRY, I AM SURE.

24 MR. BARENS: DO YOU THINK THAT IT IS THE FAIREST SYSTEM  
25 FOR THE DEFENSE AND THE PROSECUTION?

26 MS. WALKER: YES. YES, I DO.

27 MR. BARENS: EQUALLY FAIR TO BOTH SIDES?

28 MS. WALKER: YES.

1                   YOUR HONOR, THIS MIGHT BE AN APPROPRIATE BREAKING  
2 POINT SO THAT WE CAN REVIEW AMONGST OURSELVES FOR A MOMENT,  
3 BEFORE I WOULD PASS ON THE PANEL.

4                   THE COURT: YES. LADIES AND GENTLEMEN, WE'LL TAKE A  
5 15-MINUTE RECESS AT THIS TIME. PLEASE SIT WHERE YOU ARE  
6 SITTING NOW WHEN YOU COME BACK.

7                   (RECESS.)

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1 THE COURT: STIPULATED THE DEFENDANT IS PRESENT, COUNSEL  
2 ARE PRESENT AND THE PROSPECTIVE JURORS ARE PRESENT.

3 MR. SIMS.

4 A JUROR: I CAN'T HEAR YOU SIR.

5 THE COURT: WHEN I WANT YOU TO HEAR ME, YOU WILL HEAR  
6 ME.

7 (LAUGHTER IN COURTROOM.)

8 THE COURT: MR. SIMS, ALL RIGHT, THANK YOU, YOU ARE  
9 EXCUSED, SIR. THAT IS BY THE CONSENT OF BOTH SIDES.

10 MR. BARENS: YES.

11 THE COURT: ANY FURTHER QUESTIONS?

12 MR. BARENS: A BIT, A FEW FURTHER QUESTIONS, YOUR HONOR.

13 THE COURT: GO AHEAD.

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 GOOD AFTERNOON ONCE AGAIN.

16 MRS. EWELL, WHAT IS THE LAST BOOK YOU READ?

17 MS. EWELL: I AM TRYING TO THINK OF THE NAME OF IT.  
18 THE TITLE IS SOMETHING LIKE "THINGS YOUR MOTHER DIDN'T TELL  
19 YOU," SOMETHING LIKE THAT.

20 MR. BARENS: "THINGS YOUR MOTHER DIDN'T TELL YOU"?

21 MS. EWELL: IT IS ABOUT THE CORPORATE WORLD, THE  
22 CORPORATE, BUSINESS WORLD.

23 MR. BARENS: I AM SORRY. I DIDN'T CATCH IT.

24 MS. EWELL: IT IS ABOUT THE CORPORATE BUSINESS WORLD.

25 IT IS NOT WHAT YOU THINK.

26 (LAUGHTER IN COURTROOM.)

27 MR. BARENS: BY THE WAY, I AM NOT GOING TO JUDGE ANYBODY'S  
28 READING MATERIAL.



9-2

1 BUT YOU KNOW, OBVIOUSLY I AM INTERESTED IN WHAT  
2 YOU FOLKS DO IN YOUR ELECTIVE TIME.

3 WAS THAT A FICTIONAL BOOK OR WAS IT REPRESENTED  
4 AS A FACTUAL BOOK?

5 MS. EWELL: IT IS SUPPOSED TO BE FACTUAL. IT IS A  
6 SYNOPSIS SORT OF BOOK ABOUT DIFFERENT WOMEN IN THE BUSINESS  
7 WORLD AND HOW THEY EITHER SUCCEEDED OR FAILED.

8 MR. BARENS: AND WHAT WAS THE LAST MOVIE YOU SAW?

9 MS. EWELL: TELEVISION?

10 I DON'T GO TO MOVIES.

11 MR. BARENS: NO.

12 GOING TO THE MOTION PICTURES.

13 MS. EWELL: OH, "COLOR PURPLE."

14 MR. BARENS: "COLOR PURPLE"?

15 MS. EWELL: YES.

16 MR. BARENS: THANK YOU.

17 MR. HECK, WHAT IS THE LAST BOOK YOU READ?

18 MR. HECK: "CHESAPEAK BAY."

19 MR. BARENS: WHAT WAS THAT ABOUT?

20 MR. HECK: ABOUT THE EARLY TIMES OF THE COLONIZATION  
21 OF THE UNITED STATES, SHIPBUILDING AND WHAT HAVE YOU.

22 MR. BARENS: WAS THERE ANY PARTICULAR REASON YOU  
23 SELECTED THAT BOOK TO READ?

24 MR. HECK: NO.

25 THE COURT: WELL, HE IS A FAMOUS AUTHOR. AS A MATTER  
26 OF FACT, HE HAS WRITTEN A LOT OF BOOKS, HASN'T HE?

27 MR. HECK: MICHENER.

28 MR. BARENS: YES, INDEED, THAT WAS A LENGTHY BOOK TO

9-7  
1 READ, WASN'T IT?

2 MR. HECK: IT WAS.

3 MR. BARENS: YEAR BY YEAR.

4 THE COURT: WILL YOU RAISE YOUR VOICE UP PLEASE.

5 MR. HECK: OH, YES, SURE.

6 THE COURT: BE SURE EVERYBODY HEARS YOU. THAT GOES  
7 FOR THE JUDGE, TOO.

8 (LAUGHTER IN COURTROOM.)

9 MR. BARENS: DID YOU READ OTHER MICHENER BOOKS AS WELL?

10 MR. HECK: NO, I DON'T THINK SO.

11 MR. BARENS: AND WHAT WAS THE LAST MOVIE YOU SAW, SIR?

12 MR. HECK: IT WAS A LONG TIME AGO. "TURNING POINT."

13 MR. BARENS: "TURNING POINT"?

14 MR. HECK: UH-HUH.

15 THE COURT: THAT MEANS YES?

16 MR. HECK: YES.

17 MR. BARENS: AND WHAT WAS "TURNING POINT" ABOUT, IN  
18 YOUR OPINION, WHAT DID YOU GET OUT OF THAT MOVIE?

19 MR. HECK: I DON'T KNOW.

20 IT WAS NOT REALLY A MOVIE I WANTED TO SEE. I  
21 JUST TOOK MY WIFE TO THE MOVIES.

22 MR. BARENS: SOUNDS LIKE THE KIND OF MOVIE I GO TO.

23 MR. HECK: THERE WAS A COUPLE OF DANCERS, BALLERINAS.

24 THE COURT: YOU GO TO THE MOVIES FOR ENTERTAINMENT,  
25 TO LEARN ANYTHING?

26 MR. HECK: NOT REALLY.

27 MR. BARENS: IF YOU LEARN ANYTHING IN A MOVIE, YOU WILL  
28 BE THE FIRST TO TELL US. YOU WILL BE A FIRST INDEED.

19-4

1 MS. SHELBY, WHAT WAS THE LAST BOOK YOU READ?

2 MS. SHELBY: I AM READING A SHERLOCK HOLMES BOOK.

3 MR. BARENS: A MURDER MYSTERY.

4 MS. SHELBY: AH, UH-HUH.

5 MR. BARENS: INDEED.

6 MS. SHELBY: INDEED, I LOVE SHERLOCK HOLMES.

7 MR. BARENS: AND YOU WON'T KNOW THE ANSWER TO THE MURDER

8 UNTIL YOU HAVE READ THE WHOLE BOOK, WILL YOU?

9 MS. HOFER: UNLESS YOU READ THE LAST TWO PAGES.

10 MS. SHELBY: WELL, RIGHT.

11 MR. BARENS: I BEG YOUR PARDON?

12 MS. SHELBY: THAT'S RIGHT.

13 MR. BARENS: MISS HOFER, I MISSED YOUR COMMENT. MAY

14 I HAVE THE BENEFIT OF THAT?

15 MS. HOFER: UNLESS YOU READ THE LAST TWO PAGES.

16 MR. BARENS: WELL, I SUPPOSE OF SORTS HERE, THE PEOPLE

17 ARE GOING TO WANT YOU TO THINK WE HAVE A MURDER MYSTERY AND

18 THE DEFENSE WANTS YOU TO UNDERSTAND THAT WE MAY JUST HAVE

19 A MYSTERY.

20 YOU DON'T NECESSARILY BELIEVE BECAUSE MY CLIENT

21 IS CHARGED WITH A MURDER THAT A MURDER TOOK PLACE, DO YOU?

22 MS. SHELBY: AT THIS POINT, NO.

23 MR. BARENS: YOU WON'T EVER BELIEVE THAT UNLESS IT IS

24 PROVEN TO YOU?

25 MS. SHELBY: UNLESS IT WAS PROVEN.

26 MR. BARENS: BEYOND A REASONABLE DOUBT/

27 MS. SHELBY: THAT IS RIGHT.

28 MR. BARENS: AND IN SHERLOCK HOLMES, THE MURDERER IS

1 ALWAYS ESTABLISHED PRETTY EARLY ON.

2 MS. SHELBY: OH, RIGHT.

3 MR. BARENS: THEY GO OUT THERE AND HE COMES OUT AND  
4 THEY TAKE THE BODY AND THEY LOOK AT ALL THE EVIDENCE OF THE  
5 CRIME, DON'T THEY?

6 MS. SHELBY: YES.

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1 MR. BARENS: DO YOU EVER GET A SHERLOCK HOLMES MURDER  
2 MYSTERY -- HAVE YOU READ MORE THAN ONE?

3 MS. SHELBY: YES. THE BOOK I AM READING NOW, IT IS  
4 THE COMPLETE WORKS OF. SO THERE ARE A LOT OF DIFFERENT  
5 STORIES IN THE BOOK.

6 MR. BARENS: I WILL BET YOU DON'T REMEMBER CONAN DOYLE  
7 GIVING YOU ANY STORIES WITH NO BODY, NO WEAPON, NO WITNESSES?  
8 DO YOU REMEMBER ANY STORIES LIKE THAT?

9 MS. SHELBY: NO WITNESSES. THERE IS ALWAYS A BODY.

10 MR. BARENS: ON ALL OF THOSE MURDERS, YES. WHAT WAS  
11 THE LAST MOVIE YOU SAW?

12 MS. SHELBY: I DON'T REMEMBER THE NAME OF IT. IT WAS  
13 CALLED COOL SOMETHING. I DON'T REMEMBER THE NAME.

14 MR. CHIER: "COOL HAND LUKE"?

15 MS. SHELBY: NO, NO.

16 MR. CHIER: "COOL MONEY"?

17 MS. SHELBY: WELL, MAYBE IT WAS THE "COLOR OF MONEY."  
18 THAT MIGHT HAVE BEEN THE LAST ONE. I GO TO THE MOVIES A LOT,  
19 SO --

20 MR. BARENS: YOU GO TO THE MOVIES A LOT?

21 MS. SHELBY: I DO.

22 MR. BARENS: ANY PARTICULAR TYPE OF MOVIES THAT YOU  
23 LIKE TO GO TO?

24 MS. SHELBY: NO. I LIKE A LOT OF DIFFERENT MOVIES.

25 MR. BARENS: IS THERE SOMETHING THAT YOU WOULD RATHER  
26 DO THAN GO TO THE MOVIES OR READ A BOOK? IS THERE ANY OTHER  
27 HOBBY YOU MIGHT LIKE TO DO?

28 MS. SHELBY: YES.

1 MR. BARENS: WHAT IS THAT?

2 MS. SHELBY: WATCH FOOTBALL.

3 MR. BARENS: WATCH FOOTBALL?

4 MS. SHELBY: I WATCH FOOTBALL AND BASKETBALL. BUT I  
5 LIKE TO DO THAT BETTER THAN GOING TO THE MOVIES.

6 MR. BARENS: HOW ABOUT YOU, MR. CANADY. WHAT DO YOU  
7 DO IN YOUR ELECTIVE TIME WHEN YOU HAVE FREE TIME?

8 MR. CANADY: RIGHT NOW I GO TO KARATE FOUR TIMES A WEEK.  
9 I PLAY SOFTBALL. MOTORCYCLES.

10 MR. BARENS: DO YOU LIKE TO WATCH SPORTS ON TV?

11 MR. CANADY: YEP.

12 MR. BARENS: WHAT WAS THE LAST MOVIE YOU WENT TO?

13 MR. CANADY: "CROCODILE DUNDEE."

14 MR. BARENS: DO YOU LIKE ADVENTURE MOVIES?

15 MR. CANADY: YES, ADVENTURE.

16 MR. BARENS: DO YOU LIKE MYSTERY MOVIES?

17 MR. CANADY: YES. I MOSTLY LIKE ADVENTURES AND COMEDIES.

18 MR. BARENS: WHEN YOU WATCH MYSTERY MOVIES, DO YOU TRY  
19 TO FIGURE OUT WHO DONE IT BEFORE THE END OF THE MOVIE?

20 MR. CANADY: I DON'T THINK YOU CAN HELP BUT DO THAT.

21 MR. BARENS: PARDON ME?

22 MR. CANADY: I DON'T THINK YOU CAN HELP BUT DO THAT.

23 MR. BARENS: DO YOU UNDERSTAND THAT IN THIS SETTING,  
24 IN THIS CASE, THIS IS NOT ONE OF THOSE SITUATIONS WHERE WE  
25 TRY TO FIGURE OUT WHO DONE IT BEFORE ALL OF THE EVIDENCE IS  
26 IN?

27 MR. CANADY: THIS ISN'T SOME MOVIE.

28 MR. BARENS: THIS IS NOT THE MOVIES?

1 MR. CANADY: RIGHT.

2 MR. BARENS: DO YOU UNDERSTAND THAT NOT ONLY IN THIS  
3 CASE DO WE HAVE A WHODUNIT, BUT AN IF ANYONE DONE IT TYPE  
4 OF CASE? DO YOU UNDERSTAND THAT YOU CAN HAVE THAT, TOO?

5 MR. CANADY: SURE.

6 MR. BARENS: DO YOU UNDERSTAND THAT WHAT WE ARE TELLING  
7 YOU IS THAT WE DIDN'T DO ANYTHING? DO YOU UNDERSTAND THAT?

8 MR. CANADY: YES.

9 MR. BARENS: WHAT IS THE LAST BOOK YOU READ?

10 MR. CANADY: I THINK IT WAS "MICROCOMPUTERS."

11 MR. BARENS: "MICROCOMPUTERS"?

12 MR. CANADY: DO YOU WANT TO BORROW IT?

13 MR. BARENS: I DON'T THINK EITHER THE JUDGE OR I READ  
14 THAT BOOK. WELL, I DON'T KNOW.

15 THE COURT: NO.

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1 MR. BARENS: WE ARE SAFE. ALL RIGHT.

2 AND MR. DUNDORE, WHAT DO YOU LIKE TO DO IN YOUR  
3 FREE TIME?

4 MR. DUNDORE: WELL, I HAVE A LOT OF HOBBIES. I RIDE  
5 A BICYCLE AND I RIDE MOTORCYCLES. I BUILD THINGS IN MY  
6 WORKSHOP. I TRAVEL. I READ.

7 MR. BARENS: WHAT DO YOU LIKE TO READ?

8 MR. DUNDORE: WELL, A LOT OF THINGS. I ENJOY GOOD  
9 FICTION. I AM CURRENTLY READING A BOOK CALLED "THE KGB,"  
10 WHICH IS ABOUT THE RUSSIAN SECRET SERVICE. I AM INTERESTED  
11 IN THE RUSSIANS.

12 MR. BARENS: THEY DO THINGS A LOT DIFFERENTLY THAN WE  
13 DO?

14 MR. DUNDORE: YES.

15 MR. BARENS: THE KGB IS DIFFERENT I SUPPOSE, THAN OUR  
16 PROSECUTING AGENCY?

17 MR. DUNDORE: CONSIDERABLY.

18 MR. BARENS: DO YOU THINK THEY ARE ALL OF THE TIME?

19 MR. DUNDORE: YES. I THINK SO.

20 MR. BARENS: DO YOU THINK IT IS POSSIBLE THAT OUR  
21 POLICE PEOPLE COULD EVER ACT LIKE THEY DO?

22 MR. DUNDORE: I THINK THAT IT IS UNLIKELY.

23 MR. BARENS: INDEED. DO YOU THINK -- IS IT BELIEVABLE  
24 TO YOU THAT A POLICEMAN COULD COME IN HERE AND POSSIBLY NOT  
25 TELL THE TRUTH?

26 MR. DUNDORE: YES.

27 MR. BARENS: YOU WOULDN'T BELIEVE, BECAUSE A GUY  
28 IDENTIFIED HIMSELF AS A POLICEMAN, THAT HIS SOLE MOTIVE WOULD



1 BE TO TELL THE TRUTH?

2 MR. DUNDORE: NOT NECESSARILY.

3 MR. BARENS: COULD YOU BELIEVE THAT HE COULD HAVE A  
4 MOTIVE TO WIN THE CASE FOR THE PROSECUTION?

5 MR. DUNDORE: HE MIGHT, YES.

6 MR. BARENS: HE MIGHT? DO YOU READ MURDER MYSTERIES?

7 MR. DUNDORE: I HAVE, YES.

8 MR. BARENS: DO YOU ENJOY THOSE?

9 MR. DUNDORE: YES.

10 MR. BARENS: ANY PARTICULAR AUTHORS THAT YOU MIGHT READ  
11 IN MURDER MYSTERIES?

12 MR. DUNDORE: CONAN DOYLE WAS MENTIONED. THAT IS ONE  
13 OF MY FAVORITES.

14 MR. BARENS: MINE TOO, SIR. DO YOU UNDERSTAND THAT  
15 ALTHOUGH IN THE CASES THAT CONAN DOYLE DID, ALL OF THOSE WERE  
16 WHODIDIT CASES, WEREN'T THEY?

17 MR. DUNDORE: YES.

18 MR. BARENS: SHERLOCK HOLMES ALWAYS HAD SOMEBODY THAT  
19 DID SOMETHING, IS THAT TRUE?

20 MR. DUNDORE: AS I REMEMBER, YES.

21 MR. BARENS: DO YOU UNDERSTAND THAT IN THIS CASE, IN  
22 THIS MYSTERY FOR YOUR ATTENTION, THAT THE DEFENDANT SAYS THAT  
23 NO ONE DID ANYTHING TO ANYBODY? DO YOU UNDERSTAND THAT WE  
24 COULD HAVE A MYSTERY WITH NOBODY? DO YOU UNDERSTAND THAT  
25 THAT IS A POSSIBLE TYPE OF MYSTERY?

26 MR. DUNDORE: YES.

27 MR. BARENS: EVEN THOUGH THIS IS A TYPE OF MYSTERY,  
28 IT IS DIFFERENT THAN YOU MIGHT NORMALLY READ ABOUT. THE

1 COMMON DENOMINATOR IN ALL THOSE CONAN DOYLE MYSTERIES WAS  
2 THAT WE ALWAYS START OUT AT THE SCENE OF THE CRIME. AND WE  
3 KNOW FOR SURE, THROUGHOUT THOSE BOOKS THAT A CRIME TOOK PLACE.

4 MR. DUNDORE: YES.

5 MR. BARENS: A MURDER CRIME?

6 MR. DUNDORE: YES.

7 MR. BARENS: WHAT IS THE LAST MOVIE THAT YOU SAW?

8 MR. DUNDORE: I THINK IT WAS "CROCODILE DUNDEE."

9 MR. WAPNER: THAT IS WHY IT IS MAKING SO MUCH MONEY.  
10 HE WATCHES IT AND HE WATCHES IT.

11 MR. BARENS: AND THAT IS AN AUSTRALIAN ADVENTURE STORY?

12 MR. DUNDORE: YES.

13 MR. BARENS: MR. PEIKERT?

14 MR. PEIKERT: YES.

15 MR. BARENS: PEIKERT, AGAIN, MY APOLOGIES. I DON'T  
16 KNOW WHY --

17 MR. WAPNER: YOU WONDER WHY HE DOESN'T LIKE YOU.

18 MR. BARENS: NO. SIR, I WANT YOU TO TELL THE DISTRICT  
19 ATTORNEY THAT THAT IS NOT A TRUE STATEMENT.

20 MR. PEIKERT: IT IS NOT A TRUE STATEMENT.

21 MR. BARENS: I DON'T THINK YOU DON'T LIKE ME. I THINK  
22 WE HAVE ALL HAD FUN TOGETHER HERE IN A LAWYERISH WAY.

23 MR. PEIKERT: I THINK YOU ARE MAKING A LOT OF MONEY.

24 MR. BARENS: NOW, LET ME ASK YOU SOMETHING. AFTER 18  
25 YEARS OF DOING THIS SUCCESSFULLY FOR PEOPLE, FOR INNOCENT  
26 PEOPLE --

27 MR. PEIKERT: IT IS AMAZING I HAVE NEVER SEEN YOUR  
28 PICTURE.

1 MR. BARENS: BUT, LET ME ASK YOU SOMETHING. DO YOU  
2 THINK THERE IS ANYTHING WRONG IF I WERE MAKING A LOT OF MONEY?

3 MR. PEIKERT: NO. IF YOU WEREN'T, YOU WOULD BE DOING  
4 SOMETHING WRONG.

5 MR. BARENS: ISN'T THERE SOMETHING ABOUT OUR SYSTEM  
6 THAT IS CONSISTENT, THAT IF YOU WORK HARD AND DO A GOOD JOB,  
7 YOU ARE SUPPOSED TO MAKE MONEY?

8 MR. PEIKERT: YOU AND OLD MELVIN WOULD BE A HELL OF  
9 A PAIR.

10 MR. BARENS: I DON'T WANT TO TOUCH THAT WITH A BARGE  
11 POLE RIGHT NOW. WE KIND OF DO DIFFERENT STUFF.

12 BUT, I DON'T -- YOU DON'T FEEL THERE IS ANYTHING  
13 NEGATIVE ABOUT THE FACT THAT A GUY GETS PAID TO REPRESENT  
14 A DEFENDANT?

15 MR. PEIKERT: HEY, IF YOU CAN SURROUND YOURSELF BY  
16 PEOPLE THAT ARE SMARTER THAN YOU ARE, YOU ARE BOUND TO BE  
17 A SUCCESS.

18 MR. BARENS: DO YOU UNDERSTAND THAT MR. WAPNER GETS  
19 PAID TOO?

20 MR. PEIKERT: THIS GUY IS TAKING A HELL OF A BEATING  
21 TODAY.

22 MR. BARENS: DO YOU UNDERSTAND THAT IT IS A LIFE CHOICE  
23 THAT WE AS ATTORNEYS ELECT TO MAKE AS TO WHAT WE DO WITH OUR  
24 CAREERS? IT IS GOOD OR BAD, BUT JUST THAT WE GO DIFFERENT  
25 WAYS IN WHAT WE DO?

26 MR. PEIKERT: DEFINITELY.

27 MR. BARENS: AND CAN YOU UNDERSTAND AND BELIEVE IN YOUR  
28 MIND THAT I MIGHT NOT JUST BE HERE FOR THE MONEY? THAT I

1 MIGHT HAVE SOMETHING TO DO HERE WITH MY BELIEF IN OUR  
2 CONSTITUTION AND OUR CRIMINAL JUSTICE SYSTEM THAT MIGHT HAVE --

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1 THE COURT: THIS COLLOQUY IS VERY INTERESTING BUT IT IS  
2 GETTING US NOWHERE. LET'S GET ON WITH THE QUESTIONING FOR  
3 CAUSE, PLEASE.

4 MR. BARENS: I JUST WANTED TO ASSURE THE JURORS THAT  
5 THERE ARE OTHER MOTIVATIONS TO MY BEING HERE OTHER THAN BEING  
6 PAID, YOUR HONOR.

7 THE COURT: OF COURSE.

8 MR. BARENS: NOW WHAT IS THE LAST MOVIE YOU SAW?

9 MR. PEIKERT: "COBRA."

10 MR. BARENS: COBRA, THAT IS SIMILAR IN SOME RESPECTS TO  
11 "RAMBO" AND THAT GENRE FILM.

12 MR. PEIKERT: YES, THAT WAS A SYLVESTER STALLONE MOVIE.  
13 THAT WAS THE FINAL SOLUTION, THE 13-CENT BULLET THAT TOOK CARE  
14 OF EVERYTHING.

15 MR. BARENS: DID YOU THINK THE POLICE PEOPLE OVER-  
16 REACHED IN THAT MOVIE?

17 MR. PEIKERT: IT WAS OVER-DRAMATIZED IN THAT MOVIE.

18 MR. BARENS: DID YOU THINK THE POLICE DID SOME BAD THINGS  
19 THAT YOU WOULDN'T LIKE TO HAVE HAPPEN TO YOU IN THAT CASE?

20 MR. PEIKERT: I HAVE BEEN ON THE STREETS FOR 21 YEARS.

21 IT IS A TOTAL FANTASY.

22 MR. BARENS: WHAT IS THE LAST BOOK YOU READ?

23 MR. PEIKERT: SHERMAN'S MARCH THROUGH ATLANTA WHEN HE  
24 WAS IN DEADLOCK WITH GENERAL GRANT AND SHERMAN WAS CUT OFF.

25 I AM FASCINATED BY THE CIVIL WAR BETWEEN THE STATES.

26 I STILL BELIEVE IN STATES RIGHTS, TOO, BY THE WAY.

27 MR. BARENS: ALTHOUGH YOU BELIEVE IN STATES RIGHTS, DO  
28 YOU SUBSCRIBE TO BELIEVE THAT THE STATES MUST FOLLOW THE

1 CONSTITUTION OF THE UNITED STATES?

2 MR. PEIKERT: CERTAINLY.

3 MR. BARENS: AND IN THE APPLICATION OF THEIR LEGAL  
4 SYSTEMS IN THE INDIVIDUAL STATES, THAT THE BILL OF RIGHTS  
5 ARE GUARANTEED BY THE UNITED STATES CONSTITUTION MUST PREVAIL  
6 IN ALL INSTANCES?

7 MR. PEIKERT: THAT IS PART OF THE REASON WHY THE CIVIL  
8 WAR CAME DOWN.

9 YES, I BELIEVE IN IT.

10 MR. BARENS: I THANK YOU, SIR.

11 MR. GHIRARDI, WHAT DO YOU LIKE TO DO IN YOUR SPARE  
12 TIME OR FREE TIME?

13 MR. GHIRARDI: READ, WATCH TV, MOVIES, SPORTS ON  
14 TELEVISIONS.

15 MR. BARENS: SPORTS?

16 MR. GHIRARDI: COMEDY SHOWS.

17 MR. BARENS: AND WHAT DO YOU LIKE TO READ, SIR?

18 MR. GHIRARDI: PRACTICALLY ANYTHING PRINTED.

19 A JUROR: I CAN'T HEAR.

20 THE COURT: THEY CAN'T HEAR YOU. WILL YOU KEEP YOUR  
21 VOICE UP?

22 MR. GHIRARDI: I AM SORRY.

23 MR. BARENS: ANYTHING PRINTED, YOU SAID, SIR?

24 MR. GHIRARDI: PRACTICALLY.

25 MR. BARENS: ANY PREFERENCES AMONG THAT, IF YOU GOT YOUR  
26 CHOICE WHEN YOU GO TO THE LIBRARY OR YOU GO TO THE BOOK STAND?

27 MR. GHIRARDI: WELL, I LIKE HISTORICAL NOVELS AND  
28 SCIENCE FICTION.

1 MR. BARENS: DO YOU RECALL THE LAST MOVIE YOU SAW?

2 MR. GHIRARDI: I HAVEN'T BEEN TO A MOVIE IN MORE THAN  
3 25 YEARS.

4 MR. BARENS: MS. KNUEDELER, WHAT DO YOU LIKE TO DO IN  
5 YOUR FREE TIME?

6 MS. KNUEDELER: I GO SAILING, WIND SURFING, SKIING, SCUBA  
7 DIVING.

8 A JUROR: I CAN'T HEAR.

9 THE COURT: NOBODY CAN HEAR YOU.

10 MS. KNUEDELER: I READ AND GO TO MOVIES.

11 THE COURT: WILL YOU KEEP YOUR VOICE UP, PLEASE.

12 MS. KNUEDELER: I AM SORRY ABOUT THAT.

13 MR. BARNES: SKIING, SCUBA DIVING, SAILING?

14 MS. KNUEDELER: ALL OUTDOOR SPORTS.

15 MR. BARENS: YOU SAID YOU ALSO LIKE TO READ?

16 MS. KNUEDELER: UH-HUH.

17 MR. BARENS: WHAT DO YOU LIKE TO READ?

18 MS. KNUEDELER: ROMANCE NOVELS, ADVENTURE.

19 MR. BARENS: AND DO YOU RECALL THE LAST MOVIE YOU WENT  
20 TO?

21 MS. KNUEDELER: "CROCODILE DUNDEE."

22 MR. BARENS: MISS HOFER, WHAT DO YOU LIKE TO DO IN YOUR  
23 FREE TIME?

24 MS. HOFER: I LIKE TO PLAY BRIDGE. I LIKE TO GO TO  
25 SPORTING EVENTS. I LIKE TO READ.

26 MR. BARENS: YOU LIKE TO GO TO SPORTING EVENTS LIKE  
27 FOOTBALL GAMES?

28 MS. HOFER: AND BASKETBALL GAMES AND BASEBALL GAMES.

1 THE COURT: PARTICULARLY UCLA?

2 MR. BARENS: YOU LIKE TO WATCH UCLA BEATING UP USC EVERY  
3 TIME?

4 DO YOU REMEMBER THE LAST BOOK YOU READ?

5 MS. HOFER: YES. "WOMAN OF SUBSTANCE."

6 MR. BARENS: "WOMAN OF SUBSTANCE"? I FORGET THE AUTHOR  
7 OFFHAND BUT I KNOW IT IS A SUBSTANTIAL AUTHOR THAT WROTE THAT.

8 MS. HOFER: THAT IS AND I CAN'T REMEMBER IT OFFHAND  
9 EITHER BUT IT IS EXTREMELY WELL DONE.

10 MR. BARENS: THAT PARTICULAR AUTHOR HAS A WHOLE SERIES  
11 OF MAJOR NOVELS.

12 HAVE YOU READ THAT AUTHOR'S SERIES OF NOVELS?  
13 CAN YOU RECALL ANOTHER TITLE FOR ME?

14 MS. HOFER: AH --

15 MR. BARENS: DID THAT AUTHOR WRITE "THE CHOICE"?

16 A JUROR: NO.

17 MS. HOFER: I WILL TAKE ALL OF THE HELP I CAN GET.

18 MR. BARENS: CAN YOU REMEMBER THE LAST MOVIE YOU SAW?

19 MS. HOFER: I DON'T GO TO MOVIES SO I DIDN'T SEE  
20 CROCODILE.

21 (LAUGHTER IN COURTROOM.)

22 MS. HOFER: "KARATE KID," I GUESS, "KARATE KID, I."

23 MR. BARENS: "KARATE KID, I."

24 WELL, MR. TAUB?

25 MR. TAUB: YES.

26 MR. BARENS: WHAT DO YOU LIKE TO DO IN YOUR FREE TIME?

27 MR. TAUB: WE LIKE TO READ AND GO TO THE MOVIES. WE  
28 LIKE TO GO BABY SIT WITH OUT TWO-YEAR-OLD GRANDSON, WHOM WE



1 ARE WILD ABOUT, AND I LIKE TO INDIVIDUALLY GO OVER TO MY  
2 COMMUNITY THAT I TOLD YOU ABOUT, MY CANCER GROUP.

3 MR. BARENS: CAN YOU TELL ME WHAT YOU LIKE TO READ, IF  
4 THERE IS ANY PARTICULAR TYPE?

5 MR. TAUB: I LIKE FICTION AND I DON'T GO IN FOR HEAVY  
6 FICTION. I AM NOT VERY DISCRIMINATING ABOUT BOOKS. I GO TO  
7 THE LIBRARY, I READ A FEW PAGES AND IF I LIKE THE STYLE, I TAKE  
8 OUT THE BOOK.

9 MR. BARENS: CAN YOU REMEMBER THE LAST BOOK YOU READ?

10 MR. TAUB: YES, I JUST FINISHED IT YESTERDAY.

11 MR. BARENS: AND THAT WAS?

12 MR. TAUB: CALLED "MAN ON FIRE" BY A MAN NAMED -- BY THE  
13 NAME OF QUINELL. IT IS A MERCENARY SOLDIER AND ALL OF THE  
14 TRIALS THAT HE WENT THROUGH WHEN HE QUIT BEING A MERCENARY.

15 MR. BARENS: CAN YOU RECALL THE LAST MOVIE YOU SAW?

16 MR. TAUB: NO, I CAN'T RECALL WHICH ONE. I GET MIXED  
17 UP BETWEEN BRINGING THEM HOME ON THE VCR AND GOING.

18 BUT I CAN TELL YOU WHAT WE AVOID.

19 MR. BARENS: YES, SIR.

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1 MR. TAUB: WE AVOID VIOLENT MOVIES 100 PERCENT.

2 WE CAN'T STAND "RAMBO."

3 MR. BARENS: THANK YOU.

4 WELL, MR. ENGLE, WHAT DO YOU LIKE TO DO IN YOUR  
5 ELECTIVE TIME?

6 MR. ENGLE: OH, WE DO GARDENING AND TRAVEL. WE HAVE A  
7 MOTOR HOME AND WORK WITH THE GROUP THAT I BELONG TO.

8 MR. BARENS: DO YOU GO TO THE MOVIES AT ALL?

9 MR. ENGLE: VERY SELDOM.

10 MR. BARENS: CAN YOU REMEMBER THE LAST ONE YOU WENT TO?

11 MR. ENGLE: I THINK IT IS ONE OF THE INDIANA JONES  
12 MOVIES, I DON'T KNOW FOR SURE WHICH ONE.

13 MY DAUGHTER BRINGS IN MOVIES ON VCR AND THINGS  
14 LIKE THAT SO IT IS PRETTY HARD FOR ME TO REMEMBER WHICH ONE  
15 WE SAW.

16 MR. BARENS: WHAT IS THE LAST BOOK YOU READ?

17 MR. ENGLE: I BELIEVE IT WAS "GLITTER DOME."

18 MR. BARENS: SORRY, SIR?

19 MR. ENGLE: "GLITTER DOME."

20 MR. BARENS: COULD YOU TELL ME WHAT THAT WAS ABOUT?

21 MR. ENGLE: L.A. POLICE.

22 REMEMBER THE FORMER L.A. POLICE SERGEANT WHO WROTE  
23 A WHOLE SERIES OF BOOKS, "THIN BLUE LINE", "GLITTER DOME" AND  
24 "ONION FIELD."

25 A JUROR: WAMBAUGH.

26 MR. BARENS: INDEED.

27 DID YOU READ ALL OF THOSE BOOKS?

28 MR. ENGLE: NO.

1 MR. BARENS: DID YOU READ "ONION FIELDS"?

2 MR. ENGLE: PART OF IT.

3 I VERY SELDOM GET ALL THE WAY THROUGH A BOOK.  
4 BY THE TIME I READ ALL OF THE DAILY PAPERS AND MAGAZINES THAT  
5 COME IN, I DON'T REALLY HAVE TIME TO READ VERY MUCH.

6 MR. BARENS: TRUTHFULLY, DID "THE ONION FIELD" GIVE YOU  
7 ANY IMPRESSION ABOUT THE CRIMINAL JUSTICE SYSTEM?

8 MR. ENGLE: NO, NO.

9 MR. BARENS: WHAT DO YOU THINK SHOULD HAVE HAPPENED TO  
10 THOSE DEFENDANTS IN THAT CASE?

11 MR. ENGLE: I BELIEVE OUR JUDICIAL SYSTEM PROBABLY  
12 SLIPPED IN THAT PARTICULAR CASE.

13 MR. BARENS: DO YOU THINK THEY SHOULD HAVE GOTTEN  
14 A DEATH SENTENCE?

15 MR. ENGLE: I THINK THEY DID.

16 MR. BARENS: THEY DIDN'T REALLY DO IT TO THEM, DID THEY?

17 MR. ENGLE: NO.

18 THE SUPREME COURT LET THEM OFF.

19 MR. BARENS: THEY LET THEM GO?

20 MR. ENGLE: YES.

21 MR. BARENS: YOU WILL RECALL NOW THAT HIS HONOR TOLD YOU  
22 IN THIS INSTANCE, IN THIS CASE, IF WE EVER GET TO THE PENALTY  
23 PHASE IN THIS CASE THAT LIFE WITHOUT POSSIBILITY OF PAROLE  
24 MEANS THAT TODAY.

25 MR. ENGLE: YES.

26 MR. BARENS: THE SUPREME COURT SAYS THAT, THE JUDGE SAYS  
27 THAT; DO YOU BELIEVE THAT?

28 MR. ENGLE: YES.

1 MR. BARENS: DO YOU THINK THAT THERE IS ANYTHING ABOUT  
2 WHAT YOU HAVE READ IN "THE ONION FIELD" OR ANY OF THESE OTHER  
3 BOOKS THAT YOU HAVE READ BY THAT FORMER OFFICER THAT IN ANY  
4 WAY -- AND I MEAN THIS HONESTLY FROM YOUR HEART, SIR -- MAKES  
5 MY JOB ANY MORE DIFFICULT WITH YOU TO CONVINCING YOU THAT MY  
6 CLIENT IS INNOCENT OF ANY CRIME?

7 MR. ENGLE: NO.

8 I HAVE NO PROBLEM WITH SEPARATING REAL LIFE FROM  
9 FICTION.

10 MR. BARENS: AND THE FACT THAT YOU HAVE READ THOSE BOOKS  
11 DOESN'T BIAS YOU IN ANY WAY TO BELIEVE A POLICEMAN'S TESTIMONY  
12 OR TO THINK THAT POLICEMEN ARE GOOD GUYS AND DEFENSE WITNESSES  
13 ARE MAYBE NOT AS TRUTHFUL AS POLICEMEN?

14 MR. ENGLE: NO.

15 MR. BARENS: ALL RIGHT, THANK YOU.

16 MRS. WALKER?

17 MS. WALKER: YES.

18 MR. BARENS: DO YOU EVER GO TO MOVIES?

19 MS. WALKER: SOME, YES.

20 I THINK I AM PROBABLY THE MOST UNINTERESTING ONE  
21 AFTER LISTENING TO THE --

22 THE COURT REPORTER: WOULD YOU REPEAT THAT?

23 MS. WALKER: I SAY I AM PROBABLY THE MOST UNINTERESTED --  
24 UNINTERESTING JUROR, PROSPECTIVE JUROR, BUT I JUST HAVE A  
25 CLOSE FAMILY AND DO THINGS WITH MY FAMILY.

26 WE BUILT OUR OWN HOME SO I HAVE HELPED WITH THAT.  
27 I PUT THE WIRES IN AND PAINT AND WE HAVE REMODELED SEVERAL  
28 TIMES.

1                   AND I LIKE TO DO WITH MY CHURCH. AND I DO ALL OF  
2 MY OWN WORK AND I LIKE GARDENING AND I READ SOME BUT I DON'T  
3 READ LARGE, LONG NOVELS.

4                   I LIKE TO READ "READER'S DIGEST" AND "U.S. NEWS"  
5 AND KEEP UP WITH CURRENT EVENTS.

6                   WHAT I MOST LIKE IS ENTERTAINING MOVIES. THE LAST  
7 ONE I SAW WAS "ROOM WITH A VIEW."

8                   MR. BARENS: GIVEN YOUR CHOICE OF THINGS TO READ IN  
9 "READER'S DIGEST" OR THOSE TYPES OF MAGAZINES, IS THERE ANY  
10 PARTICULAR TYPE OF STORY YOU WOULD BE MORE LIKELY TO READ?

11                   MS. WALKER: NOT REALLY. I LIKE TO READ THE WHOLE THING  
12 AND I LIKE THE BOOK SELECTION BECAUSE I DON'T LIKE READING  
13 LONG NOVELS, SO I FIND THE BOOK SELECTION VERY INTERESTING AND  
14 SOMETIMES IT IS ON TRAVEL OR SOME SPECIFIC PERSON.

15                   THERE WAS ONE ON MACARTHUR AT ONE TIME AND I  
16 LIKE THAT TYPE OF NOVEL TO READ IT.

17                   MR. BARENS: ALL RIGHT, THANK YOU, MRS. WALKER AND THANK  
18 YOU ALL.

19                   WE WILL PASS THE PANEL AT THIS TIME, YOUR HONOR.

20                   THE COURT: PASS FOR CAUSE?

21                   MR. BARENS: PASS FOR CAUSE.

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1 MR. WAPNER: GOOD AFTERNOON, LADIES AND GENTLEMEN. LET  
2 ME JUST PICK UP FOR A SECOND WHERE MR. BARENS LEFT OFF BECAUSE  
3 I THINK BEFORE HE GOT INTO HIS ROUTINE, HE FORGOT TO ASK  
4 COMPLETELY OF MRS. EWELL AND MR. HECK ABOUT YOUR HOBBIES AND  
5 ACTIVITIES.

6 HE STARTED ASKING YOU ABOUT BOOKS AND MOVIES.  
7 BUT I WANTED TO JUST ELABORATE FOR A LITTLE BIT ON THAT,  
8 MRS. EWELL, ON YOUR HOBBIES AND INTERESTS THAT YOU HAVE.

9 MS. EWELL: COMPUTERS AND COMPUTER PROGRAMMING.

10 MR. WAPNER: DO YOU DEAL WITH COMPUTERS IN YOUR WORK?

11 MS. EWELL: YES.

12 MR. WAPNER: ARE YOU TRYING TO LEARN MORE ABOUT  
13 COMPUTERS IN YOUR SPARE TIME FOR PURPOSES OF ADVANCEMENT,  
14 BASICALLY?

15 MS. EWELL: NO.

16 MR. WAPNER: JUST BECAUSE IT IS INTERESTING?

17 MS. EWELL: IT IS INTERESTING.

18 MR. WAPNER: ANYTHING ELSE BESIDES COMPUTERS?

19 MS. EWELL: SPORTS.

20 MR. WAPNER: OKAY. PARTICIPATING, WATCHING OR BOTH?

21 MS. EWELL: BOTH.

22 MR. WAPNER: WHAT KIND OF SPORTS DO YOU LIKE?

23 MS. EWELL: TRACK.

24 MR. WAPNER: DID YOU RUN TRACK OR DO YOU?

25 MS. EWELL: I DID.

26 MR. WAPNER: WHAT? IN HIGH SCHOOL OR COLLEGE?

27 MS. EWELL: COLLEGE.

28 MR. WAPNER: WHAT WAS YOUR EVENT?

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1 MS. EWELL: THE 100.

2 MR. WAPNER: AND ON WHAT LEVEL DID YOU COMPETE?  
3 I MEAN, DID YOU GO TO THE OLYMPIC TRIALS OR ANYTHING LIKE  
4 THAT?

5 MS. EWELL: NO, JUST TEAM.

6 MR. WAPNER: OKAY. AND I TAKE IT THAT YOU HAVE NOT  
7 DONE THAT SINCE COLLEGE?

8 MS. EWELL: NO. BUT I RAN DAILY.

9 MR. WAPNER: OKAY.

10 THE COURT: CAN YOU PLEASE STAY BEHIND THE PODIUM SO  
11 THAT THE OTHER PEOPLE CAN HEAR YOU?

12 MR. WAPNER: THE 100 YARD DASH IS NOT SOMETHING YOU  
13 CAN REALLY DO UNLESS YOU ARE DOING IT IN COMPETITION.

14 MS. EWELL: THAT'S TRUE.

15 MR. WAPNER: MR. HECK, DO YOU HAVE HOBBIES OR INTERESTS?

16 MR. HECK: WELL, I DO A LOT OF WOODWORKING. I DO  
17 JEWELRY.

18 MR. WAPNER: MAKING JEWELRY?

19 MR. HECK: YES AND MUSIC. I PLAY THE GUITAR.

20 MR. WAPNER: PLAYING THE GUITAR?

21 MR. HECK: UH-HUH. AND I GO TARGET SHOOTING.

22 MR. WAPNER: WHERE DO YOU GO TARGET SHOOTING?

23 MR. HECK: MOSTLY IN THE LOS ANGELES RANGE UP IN THE  
24 LOS ANGELES FOREST.

25 MR. WAPNER: WHERE?

26 MR. HECK: IT IS LITTLE TUJUNGA.

27 MR. WAPNER: HAVE YOU EVER GONE TARGET SHOOTING IN A  
28 PLACE CALLED SOLEDAD CANYON?

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1 MR. HECK: SOLEDAD CANYON?

2 MR. WAPNER: WHICH IS ALSO IN THE ANGELES NATIONAL  
3 FOREST?

4 MR. HECK: NO. I DON'T BELIEVE THAT I DID.

5 MR. WAPNER: OKAY. AND WHAT KIND OF GUN DO YOU USE  
6 WHEN YOU GO TARGET SHOOTING?

7 MR. HECK: WELL, I HAVE SEVERAL. I USE A .45 AND A  
8 9 MILLIMETER.

9 MR. WAPNER: FORGIVE ME FOR THE BREAKS, BUT I DON'T  
10 HAVE ANYBODY MAKING NOTES FOR ME. I HAVE SOME QUESTIONS THAT  
11 I WANT TO ASK ALL OF YOU AS A GROUP AND THEN I AM GOING TO  
12 FOLLOW UP WITH SOME QUESTIONS OF YOU INDIVIDUALLY. I DON'T  
13 KNOW IF I WILL QUESTION EVERYONE.

14 BUT SINCE WE HAVE BEEN HERE FOR THREE OR FOUR  
15 HOURS ASKING QUESTIONS, I ALREADY KNOW A LOT MORE THAN  
16 MR. BARENS DID WHEN HE STARTED.

17 ARE THERE ANY OF YOU SITTING ON THE JURY WHO HAVE  
18 EVER PREVIOUSLY SAT ON A JURY THAT WENT IN TO DELIBERATE BUT  
19 COULD NOT REACH A VERDICT?

20 (THERE WAS NO AFFIRMATIVE RESPONSE.)

21 MR. WAPNER: DO ANY OF YOU HAVE ANY CLOSE FRIENDS OR  
22 RELATIVES WHO ARE ATTORNEYS WHO PRACTICE PRIMARILY CRIMINAL  
23 LAW?

24 MS. EWELL: YES. I HAVE A FRIEND ATTORNEY.

25 MR. WAPNER: AND IS THAT SOMEONE IN THE DISTRICT  
26 ATTORNEY'S OFFICE OR IS THAT SOMEONE IN THE PRIVATE PRACTICE  
27 OF CRIMINAL LAW?

28 MS. EWELL: WELL, SHE WAS IN PRIVATE PRACTICE AND



22-4  
1 RECENTLY SHE WENT TO THE DISTRICT ATTORNEY'S OFFICE.

2 MR. WAPNER: WHAT IS THAT PERSON'S NAME?

3 MS. EWELL: MARSHA HALL.

4 MR. WAPNER: AND DID YOU TALK TO HER OR DO YOU ON A  
5 REGULAR BASIS?

6 MS. EWELL: ABOUT ONCE A MONTH.

7 MR. WAPNER: IF YOU ARE CHOSEN AS A JUROR IN THIS CASE,  
8 THE JUDGE IS GOING TO TELL YOU THAT YOU CAN'T TALK TO ANYONE  
9 ABOUT THE CASE. BUT, CAN YOU SPECIFICALLY AVOID TALKING TO  
10 HER OR GETTING ANY LEGAL ADVICE?

11 MS. EWELL: YES.

12 MR. WAPNER: OKAY. THE ONLY REASON THAT I ASK A LOT  
13 OF THESE QUESTIONS IS UNFORTUNATELY, THAT THEY ARE BORN OUT  
14 OF BAD EXPERIENCES WHERE WE GET PEOPLE ON SOME JURY AND WE  
15 FIND OUT LATER THAT THEY THINK THEY KNOW MORE LAW THAN THE  
16 JUDGE. THEY EITHER HAVE BEEN TO LAW SCHOOL OR THEY HAVE  
17 CONSULTED THEIR LAWYER FRIENDS OR THEY TAKE COPIES OF THE  
18 PENAL CODE INTO THE JURY ROOM.

19 SO, JUST OUT OF AN ABUNDANCE OF CAUTION, I ASK  
20 THAT QUESTION. TO FOLLOW THAT UP, IS THERE ANYONE ON THE  
21 JURY WHO HAS EVER BEEN TO LAW SCHOOL OR TAKEN ANY LEGAL  
22 COURSES?

23 (THERE WAS A SHOW OF HANDS.)

24 MR. WAPNER: WELL, THE CAT IS OUT OF THE BAG. CAN YOU  
25 TELL ME ABOUT IT?

26 MS. EWELL: WELL, WHEN I WAS WITH THE DISTRICT  
27 ATTORNEY'S OFFICE, I SERIOUSLY CONSIDERED GOING INTO LAW.

28 SO, I TOOK TWO LAW CLASSES.

1 MR. WAPNER: WHERE DID YOU TAKE THEM?

2 MS. EWELL: AT WEST L.A.

3 MR. WAPNER: AND WHAT CLASSES DID YOU TAKE?

4 MS. EWELL: ONE WAS BUSINESS LAW. AND I THINK TORTS.

5 MR. WAPNER: YOU DIDN'T TAKE ANY CRIMINAL LAW?

6 MS. EWELL: NO.

7 MR. WAPNER: ALL RIGHT. SO, YOU ARE NOT GOING TO HAVE  
8 THE PROBLEM THAT I ALLUDED TO THAT WHEN THE JUDGE GIVES YOU  
9 THE LAW IN THE CASE, YOU ARE NOT GOING TO SAY THAT YOU KNOW  
10 MORE LAW THAN HE DOES?

11 MS. EWELL: NO.

12 MR. WAPNER: OKAY. HAVE ANY OF YOU HAD ANY EXPERIENCES  
13 WITH LAW ENFORCEMENT AGENCIES SUCH AS THE POLICE DEPARTMENT  
14 THAT LEFT SUCH A BAD TASTE IN YOUR MOUTH, THAT YOU WOULD HOLD  
15 IT AGAINST A POLICE OFFICER IF HE TESTIFIED IN THIS CASE?  
16 A TRAFFIC TICKET WHERE YOU ARE STILL ANGRY ABOUT IT TEN YEARS  
17 LATER OR SOMETHING LIKE THAT?

18 (THERE WAS NO AFFIRMATIVE RESPONSE.)

19 MR. WAPNER: OKAY. ONE OF THE OTHER THINGS THAT THE  
20 JUDGE IS GOING TO TELL YOU IS THAT YOU HAVE TO DECIDE THIS  
21 CASE ON THE FACTS IN THIS CASE AND THE LAW THAT YOU RECEIVE  
22 FROM THE JUDGE. CAN I GET A PROMISE FROM ALL OF YOU THAT  
23 YOU WOULD NOT DO ANY INVESTIGATION ON YOUR OWN? THAT SOUNDS  
24 PRETTY FUNNY. BUT AGAIN, IT IS BORN OUT OF SOME BAD  
25 EXPERIENCES WHERE THE JUDGE TELLS PEOPLE THAT AND THEN WE  
26 TRY A WHOLE, LONG CASE AND THEN A JUROR GOES INTO THE  
27 DELIBERATION ROOM. AND THEN, WE GET A NOTE OR THE BAILIFF  
28 GETS A NOTE THAT SAYS THAT JUROR NUMBER 6 WENT OUT TO LOOK

1 AT THE SCENE OF THE CRIME AND SAID THAT IT DIDN'T LOOK THE  
2 WAY THE WITNESSES SAID IT DID. THE REASON THAT WE HAVE THE  
3 TRIAL AND WE TELL YOU NOT TO GO OUT THERE IS THAT THE  
4 INCIDENTS THAT ARE BEING DISCUSSED IN THE TRIAL MIGHT HAVE  
5 HAPPENED TWO YEARS AGO.

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1           A PERSON GOES OUT TO THE SCENE AND HE DOESN'T  
2 KNOW THAT THE BUSINESS WHERE IT HAPPENED HAS BEEN SOLD THREE  
3 TIMES AND PAINTED TWICE AND THINGS HAVE BEEN MOVED AROUND.  
4 SO, CAN YOU ALL APPRECIATE THE NEED FOR LISTENING TO THE  
5 EVIDENCE IN COURT, NOT DOING YOUR OWN INVESTIGATION?

6           (THE PROSPECTIVE JURORS ANSWERED IN THE  
7 AFFIRMATIVE.)

8           MR. WAPNER: ONE OTHER THING THAT I JUST WANT TO TOUCH  
9 UPON BRIEFLY IS THAT AS MR. BARENS WAS ASKING YOU QUESTIONS,  
10 A LOT OF TIMES THERE WILL BE A LOT OF HUMOR INJECTED INTO THE  
11 CASE, PROBABLY ON BOTH SIDES. DO YOU ALL APPRECIATE THAT THAT  
12 DOESN'T MEAN NOBODY TAKES THIS CASE SERIOUSLY? IT IS JUST  
13 BECAUSE IT IS GOING TO BE A LONG CASE AND THAT THIS IS KIND  
14 OF OUR WORKING ENVIRONMENT THAT IT IS JUST KIND OF ONE OF THE  
15 THINGS THAT HAPPENS. DO YOU ALL UNDERSTAND THAT?

16           (THE PROSPECTIVE JURORS ANSWERED IN THE  
17 AFFIRMATIVE.)

18           MR. WAPNER: YOU ARE GOING TO HEAR EVIDENCE IN THIS CASE  
19 THAT THE CRIME CHARGED OCCURRED IN JUNE OF 1984. THAT FACT  
20 ALONE, THE FACT THAT SOME TWO AND A HALF YEARS HAVE GONE BY,  
21 IS THAT GOING TO CAUSE ANYONE, WITHOUT KNOWING ANYTHING MORE  
22 ABOUT IT, JUST THE FACT THAT THE CASE IS TWO AND A HALF YEARS  
23 OLD, IS IT GOING TO CAUSE ANYONE TO THINK WELL, IT IS NOT  
24 POSSIBLE TO PROVE ANYTHING TWO AND A HALF YEARS OLD BEYOND A  
25 REASONABLE DOUBT? DOES ANYONE FEEL THAT WAY?

26           (NO AFFIRMATIVE RESPONSE.)

27           MR. WAPNER: DOES ANYONE HAVE ANY FEELINGS ABOUT THE  
28 CRIMINAL JUSTICE SYSTEM THAT IT MOVES SLOWLY? FOR EXAMPLE,

2B-2

1 YOU MIGHT BLAME THE DISTRICT ATTORNEY'S OFFICE FOR NOT GETTING  
2 THIS CASE TO TRIAL ANY SOONER THAN TWO AND A HALF YEARS?

3 (THERE WAS NO AFFIRMATIVE RESPONSE.)

4 MR. CHIER: WHO DOES THAT LEAVE?

5 MR. WAPNER: HOW MANY OF YOU WHEN YOU CAME IN HERE  
6 TO SIT ON THIS CASE, THOUGHT THAT YOU COULDN'T PROVE A CASE  
7 BY CIRCUMSTANTIAL EVIDENCE?

8 (THERE WAS A SHOW OF HANDS.)

9 MS. SHELBY: A CASE?

10 MR. WAPNER: A CASE. ANY CASE, NOT JUST THIS CASE, THAT  
11 CIRCUMSTANTIAL EVIDENCE FOR WHATEVER REASON, WAS NO GOOD?

12 (THERE WAS A SHOW OF HANDS.)

13 MR. WAPNER: MR. PEIKERT, HAVE YOU BEEN SATISFIED BY  
14 WHAT THE JUDGE SAID EARLIER THIS MORNING, THAT THAT IS NOT THE  
15 CASE?

16 MR. PEIKERT: I HAVE BEEN CONVINCED.

17 MR. WAPNER: OKAY. HOW MANY OF YOU IF ANY, THOUGHT THAT  
18 CIRCUMSTANTIAL EVIDENCE WASN'T AS GOOD AS ANY OTHER KIND OF  
19 EVIDENCE?

20 (THERE WAS A SHOW OF HANDS.)

21 MR. WAPNER: BEFORE YOU HEARD WHAT WAS SAID WHEN YOU CAME  
22 IN HERE?

23 (THERE WAS A SHOW OF HANDS.)

24 MR. WAPNER: HOW MANY OF YOU THOUGHT YOU UNDERSTOOD WHAT  
25 CIRCUMSTANTIAL EVIDENCE WAS?

26 (THERE WAS A SHOW OF HANDS.)

27 MR. WAPNER: OKAY. NOW, YOU ARE THE MYSTERY PERSON.  
28 ALL RIGHT. AND MS. SHELBY, AFTER THE JUDGE EXPLAINED IT TO

1 YOU, THAT CIRCUMSTANTIAL EVIDENCE IS JUST AS GOOD AS ANY OTHER  
2 KIND OF EVIDENCE, DO YOU BELIEVE THAT?

3 MS. SHELBY: YES.

4 MR. WAPNER: OKAY. IF I ASK YOU NOW, WHERE IS MY  
5 PEN, WHAT WOULD YOU SAY?

6 MS. SHELBY: ON THE FLOOR.

7 MR. WAPNER: CAN YOU SEE IT?

8 MS. SHELBY: I CAN'T SEE IT.

9 MR. WAPNER: DID YOU HAVE A WITNESS WHO CAME IN AND  
10 SAID, "I SEE THE PEN THAT IS ON THE FLOOR"?

11 MS. SHELBY: NO.

12 MR. WAPNER: ALL RIGHT. HOW DO YOU KNOW THE PEN IS ON  
13 THE FLOOR?

14 MS. SHELBY: I HEARD IT DROP ON THE FLOOR.

15 MR. WAPNER: DID YOU SEE THE FLOOR EARLIER?

16 MS. SHELBY: YES.

17 MR. WAPNER: ALL RIGHT. YOU KNOW THAT THERE IS A FLOOR  
18 THERE?

19 MS. SHELBY: I KNOW THERE IS A FLOOR.

20 MR. WAPNER: DID YOU SEE ME DROP IT? RIGHT?

21 MS. SHELBY: RIGHT.

22 MR. WAPNER: OKAY. DO YOU UNDERSTAND THAT THAT IS  
23 CIRCUMSTANTIAL EVIDENCE?

24 MS. SHELBY: SURELY.

25 MR. WAPNER: OKAY. WAS THERE ANY DOUBT IN YOUR MIND,  
26 REASONABLE OR OTHERWISE, THAT THE PEN WAS ON THE FLOOR?

27 MS. SHELBY: NONE.

28 MR. WAPNER: OKAY. MR. ENGLE, ANOTHER EXAMPLE THAT WE

1 SOMETIMES USE IS MOTHER BAKES A CHERRY PIE. SHE TAKES IT OUT  
2 OF THE OVEN. SHE PUTS IT ON THE TABLE IN THE KITCHEN.

3 THEN SHE GOES INTO THE OTHER ROOM TO DO SOMETHING.  
4 AND SHE COMES BACK ABOUT HALF AN HOUR LATER AND THERE IS A  
5 PIECE MISSING FROM THE PIE. AND SHE CALLS HER SON, JOHNNY.  
6 JOHNNY COMES IN. HE HAS GOT CHERRY PIE ALL OVER HIS SHIRT.  
7 HE HAS CHERRY PIE ALL OVER HIS MOUTH.

8 SHE SAYS, "DID YOU EAT THE PIE?" HE SAYS, "NO."

9 NOW, IF SOMEONE WERE ASKING YOU, JUST BASED ON  
10 THAT SCENARIO, TO ANSWER THE QUESTION, DID JOHNNY EAT ANY  
11 PIE, WHAT WOULD YOU SAY?

12 MR. ENGLE: I WOULD SAY DEFINITELY.

13 MR. WAPNER: ALL RIGHT. IS THERE ANY DOUBT IN YOUR MIND  
14 WHATSOEVER?

15 MR. ENGLE: NO. I THINK IT GOES BEYOND A REASONABLE  
16 DOUBT. I THINK IT GOES BEYOND CIRCUMSTANTIAL. I THINK THE  
17 FACT THAT JOHNNY WAS IN THE HOUSE AND THE PIE IS GONE, WOULD  
18 BE CIRCUMSTANTIAL EVIDENCE.

19 THE FACT THAT HE HAS GOT CHERRY PIE ALL OVER HIS  
20 FACE I THINK, GOES BEYOND CIRCUMSTANTIAL.

21 MR. PEIKERT: WHAT IF SOMEBODY THREW THE PIE AT HIM?

22 MR. WAPNER: THAT IS AN INTERESTING QUESTION. ONE OF  
23 THE THINGS THAT YOU ARE GOING TO HAVE TO DISCUSS WHEN YOU  
24 EVALUATE CIRCUMSTANTIAL EVIDENCE, AS THE JUDGE TOLD YOU IS,  
25 WHAT ARE THE REASONABLE INTERPRETATIONS FROM THE EVIDENCE.

26 AND AS THE JUDGE TOLD YOU, IF YOU GET TWO  
27 INTERPRETATIONS AND THEY ARE BOTH REASONABLE, THEN YOU HAVE  
28 TO TAKE THE ONE THAT FAVORS THE DEFENDANT. BECAUSE IN THE EXAMPLE

1 THAT I GAVE YOU, YOU DON'T HAVE ENOUGH FACTS TO KNOW WHETHER  
2 OR NOT SOMEBODY THREW THE PIE AT HIM. OKAY?

3 BUT, IF YOU KNOW THAT NOBODY ELSE WAS IN THE HOUSE  
4 AND JOHNNY WAS THERE THE WHOLE TIME AND THERE IS NOBODY ELSE  
5 BESIDES THE MOTHER AND JOHNNY, AND THE MOTHER WAS DOING HER  
6 SEWING OR WHATEVER SHE WAS DOING, WOULD THERE BE ANY MORE  
7 THAN ONE REASONABLE INTERPRETATION IN YOUR MIND?

8 MR. PEIKERT: NO.

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1 MR. WAPNER: SO IN THAT CASE IT WOULDN'T BE REASONABLE  
2 TO THINK THAT SOMEBODY THREW THE PIE AT HIM?

3 MR. PEIKERT: YES.

4 MR. WAPNER: AND ANOTHER WAY IS -- WELL, I DON'T WANT  
5 TO GET IT MORE COMPLICATED THAN IT IS ALREADY.

6 MR. PEIKERT: THAT'S RIGHT.

7 MR. WAPNER: I AM GOING TO GO BACK TO MR. ENGLE.

8 WHEN YOU SAY THAT THAT IS NOT JUST CIRCUMSTANTIAL  
9 EVIDENCE, LET ME SEE IF I CAN EXPLAIN IT TO YOU A LITTLE  
10 MORE.

11 THE FACT THAT THERE WAS A PIE ON THE TABLE IS  
12 DIRECT EVIDENCE BECAUSE THE MOTHER SAYS THERE WAS A PIE ON  
13 THE TABLE.

14 THE FACT THAT THE MOTHER SAYS WHEN SHE LEFT THAT  
15 THE PIE WAS WHOLE IS DIRECT EVIDENCE BECAUSE SHE SAW THE PIE  
16 AND IT WAS WHOLE.

17 THE FACT THAT WHEN SHE CAME BACK AND SHE SAW THE  
18 PIE, IT HAD A PIECE MISSING, WOULD YOU SAY THAT IS DIRECT  
19 EVIDENCE?

20 MR. ENGLE: YES.

21 MR. WAPNER: SHE CAME BACK AND SHE SAW THERE WAS A PIECE  
22 OF PIE MISSING, SHE COULD TESTIFY DIRECTLY THERE WAS A PIECE  
23 OF PIE MISSING.

24 MR. ENGLE: YES.

25 MR. WAPNER: AND WHEN SHE SEES HER SON AND HE HAS CHERRY  
26 PIE ALL OVER HIS SHIRT AND ALL OVER HIS FACE, THAT IS DIRECT  
27 EVIDENCE.

28 MR. ENGLE: I THINK IT IS. I THINK IT IS THE SMOKING

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1 GUN.

2 MR. WAPNER: SURE, BECAUSE SHE CAN SEE HIM, RIGHT?

3 MR. ENGLE: RIGHT.

4 MR. WAPNER: THE FACT THAT HE ATE THE PIE, IS THAT  
5 DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE?

6 MR. ENGLE: THAT WOULD BE CIRCUMSTANTIAL EVIDENCE.

7 MR. WAPNER: SURE. BECAUSE NO ONE SAW HIM EAT THE PIE.

8 SO WHAT THE JUDGE WAS EXPLAINING TO YOU IN THOSE  
9 INSTRUCTIONS IS YOU HAVE TO TAKE ALL, EACH INDIVIDUAL FACT  
10 WHICH MAY BE DIRECT EVIDENCE, AND FROM ALL OF THOSE FACTS  
11 INFER ANOTHER FACT, THAT IS, THAT JOHNNY ATE THE PIE.

12 MR. ENGLE: RIGHT.

13 MR. WAPNER: YOU UNDERSTAND THAT?

14 MR. ENGLE: RIGHT.

15 MR. WAPNER: ARE YOU ANY MORE OR LESS CONVINCED THAT  
16 HE ATE THE PIE THAN YOU WOULD BE, FOR EXAMPLE, THAT HE HAD  
17 THE PIE ON HIS SHIRT OR THAT A PIECE WAS MISSING?

18 DO YOU FOLLOW THAT QUESTION?

19 MR. ENGLE: NO, I DON'T.

20 MR. WAPNER: AS I WAS SAYING IT, I WAS LOSING MYSELF.

21 MR. PEIKERT: DON'T FEEL BAD.

22 (LAUGHTER IN COURTROOM.)

23 MR. WAPNER: AT LEAST I SHOULD KNOW WHAT I AM TALKING  
24 ABOUT.

25 YOU HAD NO TROUBLE BEING CONVINCED THAT THERE  
26 WAS A PIECE MISSING, RIGHT?

27 MR. ENGLE: RIGHT.

28 MR. WAPNER: BECAUSE THE MOTHER CAME IN AND SAID "I

3-3  
1 SAW THE PIECE MISSING"?

2 MR. ENGLE: RIGHT.

3 MR. WAPNER: ARE YOU EQUALLY CONVINCED THAT HE ATE THE  
4 PIE?

5 MR. ENGLE: RIGHT.

6 MR. WAPNER: SO BOTH THE DIRECT EVIDENCE AND THE  
7 CIRCUMSTANTIAL EVIDENCE IN THAT HYPOTHETICAL HAVE THE SAME  
8 WEIGHT?

9 MR. ENGLE: RIGHT.

10 MR. WAPNER: OKAY, DOES ANYONE ELSE HAVE A PROBLEM WITH  
11 THAT?

12 MR. GHIRARDI, IS ELECTRICITY CURRENTLY IN THIS  
13 COURTROOM, IS THERE A POWER SOURCE IN THIS ROOM?

14 MR. GHIRARDI: THERE HAS TO BE.

15 MR. WAPNER: HOW DO YOU KNOW?

16 MR. GHIRARDI: THE LIGHTS ARE ON, FOR ONE THING.

17 MR. WAPNER: OKAY. CAN YOU SEE THE POWER SOURCE?

18 MR. GHIRARDI: NO ONE CAN.

19 MR. WAPNER: CAN YOU TOUCH IT? CAN YOU FEEL IT?

20 MR. GHIRARDI: YOU BETTER NOT.

21 MR. WAPNER: OKAY, BUT YOU DON'T HAVE ANY QUESTION IN  
22 YOUR MIND THAT THERE IS IN FACT ELECTRICITY BECAUSE THE LIGHTS  
23 ARE ON, RIGHT?

24 MR. GHIRARDI: THAT'S RIGHT.

25 MR. WAPNER: CAN YOU APPRECIATE THAT THAT ALSO IS A  
26 CIRCUMSTANTIAL EVIDENCE, REASONING PROCESS?

27 MR. ENGLE: WELL, BEING A FORMER ELECTRICIAN, THAT IS  
28 DIRECT EVIDENCE.

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1 MR. WAPNER: MAYBE I PICKED THE WRONG GUY.

2 BUT YOU EXPLAIN IT TO ME AND LET'S SEE IF WE CAN  
3 ANALYZE IT.

4 MR. GHIRARDI: WELL, NUMBER ONE, THE LIGHTS WOULDN'T  
5 BE ON UNLESS THERE WAS CURRENT THERE.

6 THERE IS SEVERAL WAYS TO GENERATE CURRENT.

7 MR. WAPNER: OKAY, BUT THE FACT THAT YOU --

8 THE DIRECT EVIDENCE IS THAT THE LIGHTS ARE ON,  
9 RIGHT?

10 MR. GHIRARDI: THAT'S RIGHT.

11 MR. WAPNER: AND FROM THAT DIRECT EVIDENCE, YOU CAN  
12 INFER THAT THERE IS CURRENT?

13 MR. GHIRARDI: THAT'S RIGHT.

14 MR. WAPNER: OKAY, THAT IS BASICALLY --

15 AND YOU ARE NO MORE OR LESS CONVINCED ABOUT THE  
16 FACT THERE IS CURRENT THAN YOU ARE ABOUT THE FACT THAT THE  
17 LIGHTS ARE ON, RIGHT?

18 MR. GHIRARDI: WELL, THAT IS ALL I NEED TO KNOW IS THAT  
19 THE LIGHTS ARE ON.

20 MR. WAPNER: OKAY, BUT CAN YOU APPRECIATE THAT THAT  
21 IS BASICALLY A WAY OF EVALUATING, USING CIRCUMSTANTIAL  
22 EVIDENCE TO PROVE SOMETHING?

23 MR. GHIRARDI: DOESN'T SOUND RIGHT, BUT I GUESS IT IS  
24 RIGHT.

25 MR. WAPNER: IN THE SAME SENSE, MR. TAUB, THAT WE ARE  
26 USING THESE EXAMPLES TO TALK ABOUT THE CIRCUMSTANTIAL EVIDENCE,  
27 DO YOU THINK THAT IT IS POSSIBLE TO PROVE A CRIME, ANY CRIME  
28 BY CIRCUMSTANTIAL EVIDENCE?

1 MR. TAUB: YES.

2 MR. WAPNER: OKAY. HAVE YOU LIVED IN LOS ANGELES A  
3 LONG TIME, MR. TAUB?

4 MR. TAUB: 16 YEARS.

5 MR. WAPNER: AND BEFORE THAT, WHERE DID YOU LIVE?

6 MR. TAUB: DO YOU WANT ALL OF THEM?

7 MR. WAPNER: NO. JUST BRIEFLY, BEFORE.

8 MR. TAUB: IMMEDIATELY BEFORE, NEW YORK.

9 MR. WAPNER: AND THERE WAS A CASE IN LOS ANGELES SEVERAL  
10 YEARS AGO BEFORE YOU WERE LIVING HERE INVOLVING A MAN NAMED  
11 L. EWING SCOTT; DID YOU EVER HEAR ABOUT THAT?

12 MR. TAUB: I DON'T RECALL.

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1 MR. WAPNER: DID ANYBODY ON THE JURY HEAR ABOUT THAT?  
2 IF YOU WILL RAISE YOUR HAND.

3 (A SHOWING OF HANDS BY THE PROSPECTIVE  
4 JURORS.)

5 MR. WAPNER: MR. DUNDORE, WERE YOU LIVING IN LOS  
6 ANGELES AT THAT TIME?

7 MR. DUNDORE: YES.

8 MR. WAPNER: DID YOU HEAR ABOUT THE CASE AS IT WAS GOING  
9 ON?

10 MR. DUNDORE: YES.

11 I READ ABOUT IT IN THE PAPER.

12 MR. WAPNER: HAVE YOU READ ANY BOOKS ABOUT IT SINCE THEN?

13 MR. DUNDORE: NO.

14 MR. WAPNER: DO YOU EXPECT YOU ARE GOING TO SEE EVELYN  
15 SCOTT WHEN YOU WALK DOWN THE STREET TOMORROW?

16 MR. DUNDORE: NO.

17 MR. BARENS: I AM GOING TO OBJECT TO THAT, YOUR HONOR.  
18 THAT IS A MARKEDLY DIFFERENT FACT SITUATION THAN THE JURY IS  
19 EVER GOING TO HAVE HERE.

20 THE COURT: YOU AREN'T TRYING TO SAY THAT THE CASES ARE  
21 ALIKE?

22 MR. WAPNER: NO, I AM NOT TRYING TO SAY THE CASES ARE  
23 ALIKE.

24 THE COURT: ALL YOU ARE SAYING IS THAT THE BODY HASN'T  
25 BEEN FOUND.

26 MR. WAPNER: THAT IS THE GENERAL IDEA.

27 MR. BARENS: I BEG TO DIFFER. IN THAT CASE --

28 THE COURT: WE ARE NOT TRYING THAT CASE IN THIS CASE.

1 ALL HE IS TRYING TO DO IS ILLUSTRATE A POINT HE  
2 IS GOING TO MAKE THAT YOU DON'T HAVE TO HAVE THE BODY IN ORDER  
3 TO HAVE THERE POSSIBLY BE A MURDER.

4 MR. BARENS: NO, BUT THEY HAD MRS. SCOTT'S --

5 MR. WAPNER: YOUR HONOR, IF WE ARE GOING TO HAVE A  
6 SPEAKING OBJECTION, CAN WE DO IT AT THE BENCH NOW PLEASE?

7 MR. BARENS: I WOULD LIKE TO DO THAT.

8 THE COURT: THAT IS ALL RIGHT. I WILL OVERRULE THE  
9 OBJECTION.

10 LET'S GO ON. I THINK THAT IS SUFFICIENT ON THAT.  
11 YOU DON'T HAVE TO GO ANY FURTHER ON THAT.

12 MR. BARENS: THANK YOU, YOUR HONOR.

13 MR. WAPNER: MR. DUNDORE, WHAT I AM GETTING AT IS: ARE  
14 YOU GOING TO REQUIRE THAT THE PROSECUTION PRODUCE A BODY IN  
15 ORDER FOR YOU TO CONVICT SOMEONE OF MURDER?

16 MR. DUNDORE: NOT IF THE CIRCUMSTANTIAL EVIDENCE  
17 CONVINCES ME BEYOND A REASONABLE DOUBT THAT THERE HAS BEEN A  
18 CRIME COMMITTED.

19 MR. WAPNER: OKAY. SO IF, FOR EXAMPLE, THE CIRCUMSTANTIAL  
20 EVIDENCE CONVINCES YOU BEYOND A REASONABLE DOUBT THAT A MURDER  
21 OCCURRED AND, YET, SOMEONE HAS SUCCESSFULLY DISPOSED OF THE  
22 BODY, YOU ARE NOT GOING TO REWARD THAT PERSON BY SAYING, WELL,  
23 THEY COULDN'T FIND THE BODY SO EVEN THOUGH I AM CONVINCED THAT  
24 YOU MURDERED SOMEONE, I AM GOING TO LET YOU OFF?

25 MR. DUNDORE: NO.

26 MR. WAPNER: IS THERE ANYONE ELSE ON THE JURY WHO THINKS  
27 THAT IF THEY ARE CONVINCED THAT A MURDER OCCURRED THAT,  
28 NEVERTHELESS, A PERSON SHOULD BE REWARDED FOR SUCCESSFULLY

1 DISPOSING OF THE BODY?

2 IS THERE ANYONE WHO FEELS THAT WAY?

3 MS. SHELBY, ARE YOU STARTING TO GET THE IMPRESSION  
4 THAT ARTHUR CONAN DOYLE DEALT WITH ONLY EASY CASES?

5 MS. SHELBY: AH.

6 (PROSPECTIVE JUROR SHELBY NODS HER HEAD  
7 UP AND DOWN.)

8 MR. WAPNER: OKAY, LET ME SEE IF I CAN CONJURE UP AN  
9 EXAMPLE.

10 MS. EWELL: UH-HUH.

11 MR. WAPNER: TWO PEOPLE ARE ON A BOAT AND THEY ARE IN  
12 THE MIDDLE OF THE OCEAN AND THE NEXT MORNING ONE OF THEM  
13 WAKES UP AND THE OTHER PERSON IS NOT AROUND. SHE LOOKS ON THE  
14 BOAT AND THE OTHER PERSON IS NOT THERE. THEY DO A SEARCH OF  
15 THE OCEAN. THEY DON'T FIND ANYONE. THEY DO A SEARCH OF ALL  
16 OF THE TOWNS CLOSE TO THE SHORE WHERE THE PERSON WAS. THE  
17 PERSON IS NEVER FOUND. THE PERSON IS NEVER HEARD OF AGAIN.

18 DO YOU HAVE ANY DIFFICULTY IN -- AND THAT  
19 PERSON WAS JUST NEVER SEEN AGAIN -- BELIEVING THAT THAT PERSON  
20 WHO DISAPPEARED WOULD BE CONSIDERED DEAD, IN YOUR MIND?

21 MS. EWELL: IF THERE IS ONLY TWO PEOPLE ON THE ENTIRE  
22 BOAT?

23 MR. WAPNER: I AM NOT TALKING ABOUT CRIME NOW.

24 MS. EWELL: NO, NOT CRIME.

25 MR. WAPNER: I AM JUST TALKING --

26 MS. EWELL: THERE IS ONLY TWO PEOPLE ON THE BOAT SO THERE  
27 IS NO OTHER WITNESSES TO SAY WHETHER THE OTHER PERSON FELL OR  
28 SWAM AWAY OR WHATEVER?



1 MR. WAPNER: WE DON'T KNOW WHAT HAPPENED.

2 MS. EWELL: YOU CAN'T SAY THAT HE IS DEAD OR ALIVE OR  
3 ANYTHING ELSE, YOU DON'T KNOW.

4 MR. WAPNER: WOULD YOU IN EVALUATING WHETHER OR NOT THAT  
5 PERSON WAS DEAD OR ALIVE TAKE INTO CONSIDERATION ALL OF THE  
6 THINGS SURROUNDING THAT PERSON AND THE HABITS AND LIFE STYLE  
7 OF THAT PERSON?

8 MS. EWELL: YES.

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1 MR. WAPNER: MISS HOFER, MR. BARENS SUGGESTED BEFORE  
2 YOU GOT A LITTLE MORE INFORMATION ABOUT THE CASE, THAT THE  
3 VICTIM LEFT. THAT WAS HIS WORD. IF YOU WERE JUST GOING TO  
4 TAKE OFF AND FLEE THE JURISDICTION, FOR LACK OF A BETTER WORD,  
5 CAN YOU THINK OF THINGS THAT YOU MIGHT WANT TO TAKE WITH YOU?

6 MS. HOFER: SURE. I WOULD WANT TO TAKE MY I.D. AND  
7 MONEY.

8 MR. WAPNER: HOW MUCH MONEY WOULD YOU TAKE?

9 MS. HOFER: IT DEPENDS UPON WHERE I AM GOING.

10 MR. WAPNER: SUPPOSE YOU WANTED TO GO AWAY FOR AS LONG  
11 AS YOU COULD AND NOT HAVE ANY CONTACT WITH ANYBODY?

12 MS. HOFER: I DON'T HAVE THAT MUCH MONEY.

13 MR. WAPNER: WOULD YOU TRY TO TAKE EVERYTHING THAT YOU  
14 HAD?

15 MS. HOFER: YES.

16 MR. WAPNER: OKAY. MR. CANADY, HOW ABOUT YOU? WHAT  
17 KINDS OF THINGS WOULD YOU TAKE WITH YOU?

18 MR. CANADY: A PILE OF MONEY AND CREDIT CARDS AND  
19 WHATEVER.

20 MR. WAPNER: WHAT ABOUT CLOTHES?

21 MR. CANADY: CLOTHES? CERTAIN CLOTHES LIKE SMALL BAGS.

22 MR. WAPNER: SOMETHING TO WEAR?

23 MR. CANADY: RIGHT.

24 MR. WAPNER: ANYTHING ELSE YOU COULD THINK OF?

25 MR. CANADY: NO.

26 MR. WAPNER: A TOOTHBRUSH?

27 MR. CANADY: I PROBABLY WOULD TAKE ONE OF THOSE.

28 MR. WAPNER: OKAY. MR. PEIKERT, DID THEY LEAVE ANYTHING

24A-2  
1 OFF THE LIST THAT YOU WOULD TAKE?

2 MR. PEIKERT: IT DEPENDS ON HOW FAST YOU HAD TO GET  
3 OUT OF TOWN.

4 MR. WAPNER: OKAY. WELL, YOU MAKE THE TIMETABLE.  
5 FOR PURPOSES OF THIS, I AM NOT REALLY CONCERNED.

6 MR. PEIKERT: YOU ARE NOT REALLY CONCERNED? I WOULD  
7 JUST TAKE ALL THE MONEY AND THAT IS IT AND GO.

8 MR. WAPNER: TAKE AS MUCH MONEY AS YOU COULD?

9 MR. PEIKERT: THAT'S RIGHT.

10 MR. WAPNER: MISS SHELBY?

11 MS. SHELBY: YOU CAN BUY YOUR TOOTHBRUSH AND CLOTHES  
12 IF YOU HAVE GOT THE MONEY. TAKE THE MONEY AND RUN.

13 MR. WAPNER: MR. GHIRARDI, THE DEFENDANT IN THIS CASE  
14 DOESN'T LOOK MUCH LIKE SONNY LISTON, DOES HE?

15 MR. GHIRARDI: NO.

16 MR. WAPNER: WOULD YOU FEEL MORE COMFORTABLE SITTING  
17 HERE AS A JUROR, KNOWING THAT THIS IS A MURDER CASE THAT  
18 POSSIBLY INVOLVES THE DEATH PENALTY, IF THE DEFENDANT LOOKED  
19 LIKE SONNY LISTON?

20 MR. GHIRARDI: NOT AT ALL.

21 MR. WAPNER: OKAY. THE FACT THAT THE DEFENDANT IS YOUNG  
22 AND NICE LOOKING AND WELL DRESSED, HOW IS THAT GOING TO  
23 AFFECT YOU IN DECIDING THIS CASE?

24 MR. GHIRARDI: IT SHOULDN'T AFFECT ANYBODY.

25 MR. WAPNER: MR. HECK, HOW DO YOU FEEL ABOUT THAT?

26 MR. HECK: I FEEL THE SAME WAY. NO INFLUENCE ON THE  
27 CASE.

28 MR. WAPNER: OKAY. MISS WALKER, HAVE YOU NOTICED

24A-3  
1 OCCASIONALLY DURING BREAKS THAT YOU HAVE SEEN THE DEFENDANT  
2 IN THE HALLWAY?

3 MS. WALKER: I THINK I DID THE FIRST DAY WHEN I WAS HERE.  
4 THAT WAS BEFORE I WAS CHOSEN. I SAW HIM BUT I DIDN'T KNOW  
5 WHO HE WAS.

6 I JUST HAPPENED TO SEE HIM. OTHERWISE, I HAVE  
7 NOT SEEN HIM.

8 MR. WAPNER: I ASSUME THAT IT HAS OCCURRED TO YOU  
9 THEREFORE, THAT HE IS NOT IN CUSTODY?

10 MS. WALKER: YES. I DO KNOW THAT. I DIDN'T THINK THAT  
11 AT THE TIME.

12 MR. WAPNER: WHAT DIFFERENCE DOES THAT MAKE TO YOU,  
13 KNOWING THAT THIS IS A MURDER CHARGE THAT POSSIBLY INVOLVES  
14 THE DEATH PENALTY? HOW DO YOU -- DO YOU DRAW ANY INFERENCES  
15 FROM THAT?

16 MS. WALKER: I THINK IT IS STRANGE. I MEAN, IT IS  
17 STRANGE. BUT THEN, AFTER HEARING MORE ABOUT THE LAW, I CAN  
18 UNDERSTAND THAT HE IS INNOCENT NOW OR PRESUMED INNOCENT. HE  
19 HAS NOT BEEN CHARGED WITH ACTUAL MURDER.

20 THE COURT: WHAT DO YOU MEAN?

21 MR. WAPNER: HE HAS BEEN.

22 MR. WALKER: I MEAN HE IS CHARGED. BUT HE HAS NOT  
23 STARTED A TRIAL. SO THEN, HE DOES NOT HAVE TO BE IN CUSTODY.

24 BECAUSE, YOU HAVE NEVER PROVED ANYTHING, THAT  
25 ANYTHING REALLY HAPPENED.

26 MR. WAPNER: DO YOU THINK THAT IT MEANS THAT HE IS  
27 PRESUMED INNOCENT OR LESS PRESUMED INNOCENT THAN A DEFENDANT  
28 WHO WOULD BE IN CUSTODY?

4A4  
1 MS. WALKER: NO.

2 MR. WAPNER: MR. PEIKERT, WHAT EFFECT, IF ANY, DOES  
3 IT HAVE ON YOU?

4 MR. PEIKERT: OH, THAT MAKES A BIG EFFECT.

5 MR. WAPNER: TELL ME ABOUT IT.

6 MR. PEIKERT: I MEAN, FOR HIM TO STAND UP AND MAKE BAIL,  
7 EITHER HE HAS GOT A LOT OF MONEY -- HE WOULD HAVE TO HAVE  
8 A LOT OF MONEY IF HE IS UP FOR MURDER AND HE CAN MAKE BAIL.

9 IF I COMMITTED A MURDER AND I HAD THE GUMPTION,  
10 COLOR ME GONE. I WOULDN'T BE AROUND.

11 OKAY, BECAUSE HE IS HERE, THAT WAS YOUR QUESTION.  
12 THAT TELLS ME THAT THE GUY IS PROBABLY INNOCENT.

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24B-1  
1 THE COURT: IS THAT WHAT IT TELLS YOU?

2 MR. PEIKERT: IN THEORY, JUDGE. IN THEORY, ONLY.

3 I WAS JUST APPLYING IT TO MYSELF. IF I WAS DIRTY,  
4 I SURE WOULDN'T BE HERE. I WOULD BE GONE.

5 THEY WOULD HAVE TO CATCH ME.

6 MR. WAPNER: DOES ANYBODY ELSE FEEL THAT WAY?

7 (THERE WAS NO AFFIRMATIVE RESPONSE.)

8 MR. WAPNER: ONE THING THAT YOU HIT ON MR. PEIKERT,  
9 IS THAT THERE CAN BE ALL KINDS OF REASONS WHY SOMEONE IS OUT  
10 OF CUSTODY, ONE WHICH MAY OR MAY NOT BE WHAT THE BAIL IS AND  
11 A PERSON'S ABILITY TO MAKE IT. DO YOU UNDERSTAND THAT?

12 MR. PEIKERT: YES. I UNDERSTAND. I PROBABLY JUST GONGED  
13 MYSELF RIGHT OUT OF THIS SEAT.

14 MR. WAPNER: WELL, THAT MAY HAVE HAPPENED A LONG TIME  
15 AGO.

16 MR. PEIKERT: NO. I AGREE.

17 MR. WAPNER: OKAY.

18 MR. PEIKERT: IT DOES MAKE A DIFFERENCE TO ME. IT WOULD.

19 MR. WAPNER: DOES ANYBODY ELSE FEEL THAT A PERSON'S  
20 STATUS, WHETHER THEY ARE IN JAIL OR NOT IN JAIL SHOULD MAKE  
21 A DIFFERENCE?

22 (THERE WAS NO AFFIRMATIVE RESPONSE.)

23 MR. WAPNER: DOES IT MAKE A DIFFERENCE TO ANYBODY?  
24 WOULD ANYBODY FEEL MORE COMFORTABLE IF THE DEFENDANT WERE  
25 SHUFFLING IN HERE EVERY DAY IN JAIL CLOTHING AND LEG CHAINS,  
26 FOR EXAMPLE?

27 (THERE WAS NO AFFIRMATIVE RESPONSE.)

28 MR. WAPNER: IS THERE ANYBODY WHO FEELS THAT PEOPLE

1 WHO ARE WEALTHY GET BETTER TREATMENT IN THE CRIMINAL JUSTICE  
2 SYSTEM THAN PEOPLE WHO AREN'T?

3 MR. PEIKERT: YES.

4 MR. WAPNER: OKAY. ANYBODY ELSE?

5 MR. GHIRARDI: YES.

6 MS. SHELBY: WHAT DO YOU MEAN BY "TREATMENT"?

7 MR. WAPNER: WELL, I LEFT IT UP TO YOU. BECAUSE I DON'T  
8 WANT TO TRY TO PUT WORDS INTO YOUR MOUTH. BUT, ARE THEY  
9 FAVORED IN ANY WAY? DOES A WEALTHY PERSON STAND A BETTER  
10 CHANCE OF GETTING ACQUITTED IN THE CRIMINAL JUSTICE SYSTEM?  
11 I AM GOING BACK TO THE WORD "FAVOR".

12 DOES THAT HELP YOU ANY?

13 MS. SHELBY: RIGHT. I THINK IT HELPS GET A BETTER  
14 ATTORNEY. BUT AS FAR AS MORE FAVOR FROM THE COURT, I DON'T  
15 THINK SO.

16 MR. WAPNER: HOW DOES IT AFFECT YOU IF YOU ARE SITTING  
17 IN THE CASE AS A JUROR?

18 MR. TAUB: I THINK THAT THE STATISTICS HAVE PROVEN THAT  
19 WITH MORE --

20 MR. BARENS: OBJECTION. COULD WE APPROACH THE BENCH?

21 THE COURT: YES.

22 (THE FOLLOWING PROCEEDINGS WERE HELD

23 AT THE BENCH:)

24 MR. BARENS: YOUR HONOR, THERE IS ABSOLUTELY NO EVIDENCE  
25 THAT MR. HUNT IS RICH. TO THE CONTRARY, HE IS HERE WITH  
26 APPOINTED COUNSEL.

27 THE COURT: YOU ARE NOT APPOINTED COUNSEL.

28 MR. BARENS: NO.

1 THE COURT: HE IS.

2 MR. BARENS: BUT I WILL REPRESENT TO YOUR HONOR AT THIS  
3 TIME THAT I AM NOT BEING PAID. I AM JUST HERE DOING THIS.

4 THE COURT: WHAT IS YOUR PURPOSE IN ASKING THIS QUESTION?  
5 THERE IS NO EVIDENCE HERE THAT HE IS A RICH BOY, IS HE?

6 MR. WAPNER: MAY I BE HEARD, PLEASE? AS MR. CHIER HAS  
7 CONTINUALLY POINTED OUT DURING THE DEATH PENALTY EXAMINATION,  
8 THIS IS A QUESTION THAT IS DESIGNED TO GET INTO THE MINDS  
9 OF THE JURORS. WHETHER HE IS RICH OR POOR IS NOT THE ISSUE.

10 THE FACT THAT THEY PERCEIVE SOMEBODY WHO IS YOUNG,  
11 WELL DRESSED -- WHETHER THEY PERCEIVE THAT HE IS WELL OFF,  
12 WHETHER HE IS OR IS NOT, IS NOT THE ISSUE.

13 THE QUESTION IS HOW THEY MIGHT SEE HIM.

14 MR. BARENS: COULD YOUR HONOR MAKE SOME COMMENT OR  
15 MR. WAPNER MAKE SOME COMMENT THAT THERE IS NO SUGGESTION BY  
16 THIS QUESTION THAT HE IS SUGGESTING THAT MR. HUNT IS A RICH  
17 PERSON, FOR THE REASON THAT A LOT OF PEOPLE HAVE DEEP-SEATED  
18 PREJUDICES ABOUT RICH PEOPLE?

19 THE COURT: I WOULD SUGGEST THAT YOU INTRODUCE YOUR  
20 QUESTIONS WITH THE SUGGESTION THAT IT IS UNIMPORTANT WHETHER  
21 HE HAS OR HAS NOT GOT MONEY. YOU DON'T WANT TO KNOW WHETHER  
22 HE DOES OR DOES NOT.

23 MR. WAPNER: WELL, WHAT I WAS TRYING TO FIND OUT, IS  
24 WHETHER IT IS IMPORTANT TO THEM.

25 THE COURT: YOUR VOIR DIRE QUESTIONS THAT YOU ASKED,  
26 PARTICULARLY ASKED ABOUT WEALTH, TOO. DON'T YOU REMEMBER  
27 THAT?

28 MR. BARENS: WE ARE NOT PERMITTED -- YOU MEAN, ABOUT



1 THE JUROR'S WEALTH?

2 THE COURT: NO, NOT THE JURORS. I AM TALKING ABOUT  
3 THE QUESTION OF THE FACT OF WHETHER HE IS WEALTHY OR NOT  
4 WEALTHY. THERE WERE SOME QUESTIONS YOU ASKED.

5 MR. BARENS: I THOUGHT YOUR HONOR WOULD MAKE SOME  
6 STATEMENT THAT THERE IS NO IMPLICATION THAT IT IS A GOOD OR  
7 BAD THING, WHETHER YOU HAVE MONEY OR NOT IN THIS STATE.

8 THE COURT: YES, I WILL SUGGEST TO THE JURY OR YOU  
9 SUGGEST TO THE JURY THAT YOUR QUESTIONS DON'T INDICATE THAT  
10 HE HAS OR HAS NOT GOT ANY MONEY. THAT IS NOT THE PURPOSE  
11 OF THE QUESTIONS.

12 YOU JUST WANT TO FIND OUT FROM THEM WHETHER THEIR  
13 STATE OF MIND IS SUCH THAT THEY FAVOR OR DISFAVOR PEOPLE WHO  
14 HAPPEN TO HAVE MONEY.

15 MR. WAPNER: I WILL DO THAT, YOUR HONOR. THANK YOU.

16 MR. BARENS: I THINK THE OTHER THING WHERE THEY HAVE  
17 GOTTEN AN ERRONEOUS MESSAGE, THE JURY, IS THAT NOW THEY THINK  
18 HE HAS AN AWFUL LOT OF MONEY AND HE PUT UP BAIL. HE DIDN'T  
19 PUT UP A DIME.

20 THE COURT: I KNOW.

21 MR. BARENS: BUT, I THINK IT WOULD BE FAIR TO LET THEM  
22 KNOW THAT WE ARE NOT MAKING A SUGGESTION THAT MR. HUNT PUT  
23 UP A TON OF MONEY TO BAIL.

24 MR. CHIER: NO.

25 THE COURT: NO.

26 MR. CHIER: COULD THE COURT SIMPLY INDICATE THAT BAIL  
27 CAN BE PUT UP ON DIFFERENT BASES? IT DOESN'T NECESSARILY  
28 REQUIRE MONEY.

1 MR. BARENS: IF THE COURT COULD STATE THAT BAIL CAN  
2 BE PUT UP IN A NUMBER OF WAYS.

3 MR. WAPNER: I DIDN'T SUGGEST BY THE QUESTIONS THAT  
4 HE DID HAVE A LOT OF BAIL. THERE WAS A JUROR THAT ANSWERED  
5 THE QUESTION THAT IF HE IS OUT ON A MURDER CASE, HE PROBABLY  
6 HAS A LOT OF MONEY.

7 I THINK THE RECORD WILL BEAR OUT THE FACT THAT  
8 I SUGGESTED --

9 THE COURT: WELL, IT IS AGREEABLE. I WILL TELL THE  
10 JURORS THAT IT MAKES NO DIFFERENCE. IT MAKES NO DIFFERENCE  
11 UNDER OUR AMERICAN SYSTEM OF CRIMINAL JURISPRUDENCE WHETHER  
12 A DEFENDANT IS RICH OR POOR. IT HAS NOTHING TO DO WITH THE  
13 QUESTION OF WHETHER OR NOT HE COMMITTED THE CRIME OR DIDN'T  
14 COMMIT THE CRIME.

15 MR. WAPNER: FINE.

16 MR. BARENS: I APPRECIATE THAT.

17 MR. WAPNER: AFTER YOU DO, CONSIDERING THE HOUR, SHOULD  
18 WE BREAK FOR THE AFTERNOON?

19 THE COURT: YES.

20 MR. BARENS: I WOULD LIKE TO NOTIFY YOUR HONOR OF  
21 SOMETHING AFTER YOU DISMISS THE JURORS. WE JUST NEED 30 SECONDS  
22 OF YOUR TIME.

23 THE COURT: YES.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
2 OPEN COURT:)

3 THE COURT: LADIES AND GENTLEMEN, UNDER OUR AMERICAN  
4 SYSTEM OF JURISPRUDENCE, CRIMINAL LAW OR OTHERWISE, IT MAKES  
5 NO DIFFERENCE WHETHER A MAN WHO HAS BEEN ACCUSED OF A CRIME  
6 IS RICH OR HE IS POOR AND IT SHOULD NOT IN ANY WAY ENTER INTO  
7 YOUR CALCULATIONS OR YOUR CONSIDERATIONS OR ENTER INTO YOUR  
8 MIND IN THE SLIGHTEST WAY. IT MAKES NO DIFFERENCE AT ALL,  
9 RICH OR POOR. THERE IS NO DISTINCTION IN THE LAW.

10 MR. WAPNER: THANK YOU, YOUR HONOR.

11 THE COURT: I THINK WE JUST ABOUT REACHED THE  
12 ADJOURNMENT HOUR.

13 YOU KNOW, OF COURSE, AS I TOLD YOU, IN ORDER TO  
14 GIVE COUNSEL AND THE REPORTERS AND EVERYBODY ELSE AND THE COURT  
15 AND THE CLERK AN OPPORTUNITY TO CATCH UP WITH EVERYTHING THAT  
16 HAS HAPPENED DURING THE WEEK, THAT WE DO NOT SIT IN -- WELL,  
17 WE WILL NOT SIT IN THIS CASE ON FRIDAYS SO YOU WILL HAVE  
18 FRIDAY OFF TO TEND TO ALL OF THE BUSINESS THAT YOU MIGHT BE  
19 NEGLECTING IN THE MEANTIME, SO WE WILL TAKE AN ADJOURNMENT NOW  
20 UNTIL -- TOMORROW IS THURSDAY -- THAT IS RIGHT, TOMORROW IS  
21 THURSDAY, SO WE WILL ASK YOU TO COME BACK TOMORROW. BUT AFTER  
22 TOMORROW, YOU WON'T COME BACK TILL THE FOLLOWING MONDAY.

23 SO WE WILL TAKE AN ADJOURNMENT NOW UNTIL 10:30  
24 TOMORROW MORNING.

25 WE DON'T KNOW HOW LONG IT WILL TAKE US TO FINSH  
26 OUR MORNING BUSINESS SO WE WILL ASK YOU ALL TO GO TO THE JURY  
27 ASSEMBLY ROOM AND BE THERE, LET US SAY, AT 25 AFTER AND THEN  
28 WHEN WE ARE READY FOR YOU IN THIS COURT, WE WILL ASK YOU ALL

1 TO COME IN.

2 AND REMEMBER MY ADMONITION: DO NOT TALK ABOUT THIS  
3 CASE WITH ANYBODY, DO NOT READ ANYTHING ABOUT IT OR LISTEN TO  
4 ANY RADIO OR TELEVISION. THANK YOU VERY MUCH AND GOOD NIGHT.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 OUTSIDE THE PRESENCE AND HEARING OF  
3 THE PROSPECTIVE JURORS:)

4 THE COURT: ONE THING I HAVE FORGOTTEN TO DO -- I AM  
5 SORRY -- I DO IT IN EVERY CASE -- IS TO FIND OUT FROM THE  
6 JURORS SEATED IN THE JURY BOX WHETHER OR NOT THEY OR MEMBERS  
7 OF THEIR FAMILY HAVE EVER BEEN THE VICTIM OF ANY SERIOUS CRIME.  
8 THAT HAD NOT BEEN ASKED BY ME AND I APOLOGIZE.

9 SO WHAT I WILL DO AFTER YOU CONCLUDE, I WILL THEN  
10 REOPEN AND ASK THOSE QUESTIONS OF THE PROSPECTIVE JURORS AND  
11 GIVE YOU ALL AN OPPORTUNITY AGAIN TO QUESTION FURTHER ON THE  
12 SUBJECT.

13 AND I WILL ALSO ASK THEM WHETHER ANY OF THEM OR  
14 MEMBERS OF THEIR FAMILY HAVE EVER BEEN ACCUSED OF A SERIOUS  
15 CRIME. I DON'T MEAN SPITTING ON THE SIDEWALK OR GOING THROUGH  
16 A RED LIGHT BUT ANY SERIOUS CRIME AND I WILL ASK THEM  
17 QUESTIONS ABOUT THAT.

18 MR. BARENS: THANK YOU VERY MUCH.

19 THE COURT: IS THAT AGREEABLE?

20 MR. WAPNER: YES, YOUR HONOR.

21 AND WHATEVER OTHER QUESTIONS THAT ARE IN THAT  
22 QUESTIONNAIRE THAT WE HAVE AGREED THE COURT WOULD ASK. THERE  
23 WERE SOME WE MARKED THAT THE COURT WAS GOING TO ASK, PRIMARILY  
24 THE ONES YOU HAVE JUST TALKED ABOUT, BUT THERE MAY HAVE BEEN  
25 A COUPLE OF OTHERS.

26 THE COURT: YES, I WILL TAKE A LOOK THROUGH THAT AND SEE  
27 WHETHER OR NOT THERE IS ANYTHING ELSE I WANT TO ASK THEM.

28 ALL RIGHT, ANYTHING FURTHER?

1 MR. BARENS: YES.

2 THE COURT: I AM SORRY?

3 MR. BARENS: YES. AT THIS POINT, YOUR HONOR, THE  
4 DEFENSE WILL OFF-CALENDAR THE DISCOVERY MOTION ON THE ALLEGED  
5 KARNY HOMICIDE.

6 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

7 FOR THE RECORD, SHOULDN'T WE HAVE SOME DISPOSITION  
8 OF THE WAY THE JURY WAS CONSTITUTED, IN OTHER WORDS, THE  
9 ARCE MOTION?

10 MR. BARENS: YOUR HONOR, MY UNDERSTANDING WAS THAT  
11 SOMETIME PRIOR TO THE ACTUAL COMMENCEMENT OF TESTIMONY, BEFORE  
12 THEY WERE SWORN IN, THE DEFENSE WOULD HAVE AN OPPORTUNITY TO  
13 ARGUE THAT.

14 THE COURT: VERY GOOD.

15 MR. BARENS: I, RESPECTFULLY, HAVE NOT PREPARED ARGUMENT  
16 AT THIS JUNCTURE.

17 THE COURT: ALL RIGHT, FINE. ANY TIME YOU ARE READY,  
18 LET ME KNOW.

19 MR. BARENS: I APPRECIATE THAT, YOUR HONOR.

20 THE COURT: AND I WILL SET ASIDE SOME TIME FOR THAT.

21 MR. BARENS: YOUR HONOR, I HAVE ONE MORE MATTER OF  
22 INQUIRY FOR THE PEOPLE. WE HAD BEEN TOLD BY MR. WAPNER THAT  
23 WE WOULD BE ABLE TO ACCESS THE CONSERVATOR'S COUNSEL'S RECORDS  
24 ON MR. LEVIN, A FELLOW BY THE NAME OF MR. OSTROVE. WE HAVE  
25 NOT BEEN GIVEN ACCESS AT THE PRESENT AND WOULD LIKE TO KNOW  
26 WHY.

27 THE COURT: GIVEN ACCESS TO WHAT AGAIN?

28 MR. BARENS: THERE WERE SOME RECORDS IN THE HANDS OF

5A-3

1 THE PEOPLE, I BELIEVE, CONCERNING THE CONSERVATORSHIP REGARDING  
2 MR. LEVIN'S ESTATE AND THE CONSERVATOR HAS POSSESSION OF ALL  
3 OF THIS AND WE WANT TO INSPECT THIS AND WE WERE ASKING THE  
4 PEOPLE'S ASSISTANCE AND COOPERATION IN ACCESSING THOSE  
5 MATERIALS TO THE DEFENSE.

6 MR. WAPNER: I TOLD COUNSEL --

7 THE COURT: I HAVE NO OBJECTION TO YOUR SEEING THAT.

8 MR. WAPNER: NO, I HAVE NO OBJECTION.

9 THE COURT: CAN YOU EXPEDITE IT FOR THEM?

10 MR. WAPNER: YES.

11 I TOLD THEM BEFORE THAT I WOULD MAKE ARRANGEMENTS  
12 TO HAVE SOMEONE PRESENT TO OBSERVE WHEN THEY GO THROUGH THE  
13 RECORDS AND SO --

14 THE COURT: WHICH RECORDS ARE YOU TALKING ABOUT?

15 MR. WAPNER: MR. OSTROVE IS A CONSERVATOR FOR MR. LEVIN'S  
16 ESTATE.

17 THE COURT: YES.

18 MR. WAPNER: AND WE ARE TALKING ABOUT HIS FILE, MR.  
19 OSTROVE'S FILE.

20 THE COURT: YES.

21 MR. WAPNER: I TOLD COUNSEL BEFORE THAT I WOULD BE HAPPY  
22 TO MAKE THOSE ARRANGEMENTS.

23 THE COURT: HAVE YOU INSPECTED THAT FILE?

24 MR. WAPNER: I HAVEN'T LOOKED AT IT IN A LONG TIME AND  
25 I WILL LOOK AT IT.

26 THE COURT: I THINK COUNSEL IS ENTITLED TO LOOK AT IT.

27 MR. WAPNER: I AGREE. I HAVE NO QUARREL WITH THAT AND  
28 WHERE I THOUGHT WE HAD LEFT IT WAS JUST AS A PROCEDURAL THING,

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1 WE WERE GOING TO GET TOGETHER AND PICK A DATE.

2 MR. BARENS: ALL RIGHT, WE WILL PROCEED ON THAT BASIS.

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5B-1 1 THE COURT: ALL RIGHT. WHY DON'T YOU PICK SOME FRIDAY  
2 MAYBE?

3 MR. BARENS: YOUR HONOR, I DON'T KNOW WHETHER -- I DON'T  
4 KNOW WHETHER YOUR HONOR HAS COME TO A CONCLUSION AS TO THE  
5 STATE BAR MATERIALS OF MR. KARNY.

6 THE COURT: OH, CERTAIN OF THE FILES ARE NOT CONFIDENTIAL  
7 OR PRIVILEGED, THOSE FILES YOU ARE ENTITLED TO SEE AND I THINK  
8 THAT THE LETTER -- WHERE IS THE LETTER? COPIES OF THEM WERE  
9 SENT TO YOU, WEREN'T THEY?

10 MR. BARENS: YOUR HONOR, I DON'T NEED TO TROUBLE YOUR  
11 HONOR AND THE CLERK WITH THIS NOW. IF YOU WOULD LIKE TO  
12 REVIEW IT AND GIVE IT TO US IN THE MORNING.

13 THE COURT: ALL RIGHT. WELL, YOU READ THIS LETTER,  
14 HAVEN'T YOU?

15 MR. BARENS: WHEN IT WAS ORIGINALLY --

16 THE COURT: IT HAS THE THINGS THE STATE BAR OF  
17 CALIFORNIA THINKS ARE PRIVILEGED AND WHAT ARE NOT PRIVILEGED.

18 MR. BARENS: YES, WE SAW -- WHAT WAS HIS NAME,  
19 MR. SWEET THAT WAS IN HERE.

20 THE COURT: I HAVE GONE THROUGH ALL OF THEM SO I WILL  
21 BE IN A POSITION TO TELL YOU WHETHER OR NOT I WILL RESPECT  
22 THE WISHES OF THE STATE BAR WITH RESPECT TO THE PRIVILEGED  
23 NATURE OF THESE VARIOUS FILES.

24 MR. BARENS: THANK YOU, YOUR HONOR.

25 AND YOUR HONOR MIGHT CONSIDER THE CASE WE BROUGHT  
26 UP YESTERDAY OF DAVIS V. ALASKA.

27 THE COURT: YES, I HAVE READ THAT CASE.

28 AS I RECALL, WHAT HAPPENED THERE IS SIMPLY THE HIGHEST

25B-2

1 COURT IN THE STATE OF ALASKA SAID THAT UNDER ALASKA LAW, ANY  
2 CONVICTIONS OF ANY JUVENILE CANNOT BE USED AGAINST THE  
3 JUVENILE AND THAT WENT UP TO THE SUPREME COURT AND CHIEF  
4 JUSTICE BERGER WROTE AN OPINION IN WHICH HE SAID THAT HE DID  
5 NOT AGREE WITH THE ALASKA SUPREME COURT AND THAT THAT SHOULD  
6 BE MADE AVAILABLE TO THE DEFENSE.

7 AND THE THEORY WAS THAT ALTHOUGH IT WAS NOT  
8 TECHNICALLY A CONVICTION, THAT JUVENILES ARE NEVER  
9 TECHNICALLY CONVICTED, THAT CONSTITUTES, NEVERTHELESS, A  
10 CONVICTION AND THE FACT THAT IT MAY HAVE INFLUENCED THE  
11 JUVENILE -- HE WAS 17, I THINK -- IT MIGHT HAVE INFLUENCED  
12 THE JUVENILE AS TO WHAT HE WAS GOING TO TESTIFY TO AND THEN  
13 THEY HAD THE RIGHT TO INQUIRE.

14 I CAN UNDERSTAND THAT DECISION AND I AGREE WITH  
15 THAT.

16 BUT I DON'T THINK THAT IN ANY WAY IS PERSUASIVE  
17 ON ANY SUBJECT CONNECTED WITH WHAT WE HAVE TODAY.

18 MR. BARENS: YOUR HONOR, THE DEFENSE SUBMITS TWO  
19 RESPONSES TO THAT.

20 WE BELIEVE THAT JUVENILE RECORDS ARE SOMEWHAT  
21 ANALOGOUS TO STATE BAR RECORDS IN TERMS OF THE TYPE OF PRIVILEGE  
22 AND PRIVACY INVOLVED THERE.

23 THE COURT: OH, NO, NO. I SEE WHAT YOU MEAN.

24 YOU MEAN THAT DAVIS V. ALASKA OR ALASKA V. DAVIS  
25 IS APPLICABLE IN THIS PARTICULAR CASE BY REASON OF THE FACT  
26 THAT EVEN THOUGH BY STATUTE HERE, IT IS PRIVILEGED, THAT  
27 SAME PRIVILEGE WAS DISCUSSED BY THE SUPREME COURT?

28 MR. BARENS: AND JUSTICE BERGER SPENDS A LOT OF TIME

1 TALKING ABOUT BIAS.

2 THE COURT: WHAT IS YOUR OPINION WITH RESPECT TO THAT?

3 MR. WAPNER: YOUR HONOR, I HAVEN'T HAD A CHANCE TO READ  
4 DAVIS V. ALASKA BUT THE STATE -- I WAS UNDER THE IMPRESSION  
5 THAT THE COURT HAD ALREADY MADE A RULING ON THIS ISSUE QUITE  
6 A WHILE AGO AND THAT IT ORDERED THAT THE TWO FILES OF THE --

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1 THE COURT: LET ME HAVE THE BENEFIT OF YOUR OPINION ON  
2 THIS. TELL ME WHETHER OR NOT THE STATE BAR, AS FAR AS  
3 CALIFORNIA IS CONCERNED, THE SANCTITY SO TO SPEAK OF THE  
4 STATE BAR RECORDS HAS BEEN UNIFORMLY ACCORDED CONFIDENTIALITY.  
5 I DON'T THINK THAT THE UNITED STATES SUPREME COURT IS GOING  
6 TO TAKE ANY DIFFERENT POSITION WITH RESPECT TO THE  
7 CONFIDENTIALITY.

8 MR. WAPNER: WELL, I WILL READ THE CASE.

9 THE COURT: IN VIEW OF THE DECISION IN THIS CASE AS  
10 ARGUED BY THE DEFENSE, IT IS ARGUED THAT THE PRIVILEGE DOESN'T  
11 EXIST, IN VIEW OF THAT DECISION.

12 SO, YOU BETTER TAKE A LOOK AT IT.

13 MR. WAPNER: I WILL HAVE SOME COMMENTS FOR THE COURT  
14 TOMORROW.

15 THE COURT: WELL, YOU SEE, UNTIL THERE IS A UNITED STATES  
16 SUPREME COURT DECISION COVERING SOMETHING AS IS INVOLVED HERE,  
17 THE STATE BAR QUESTIONS WE HAVE HERE, I HAVE GOT TO BE BOUND  
18 BY WHAT THE CALIFORNIA STATE SUPREME COURT OR ANY OTHER  
19 INTERMEDIATE COURT HAS DECIDED ON THIS SPECIFIC QUESTION.

20 UNTIL THAT HAS BEEN CHANGED BY THE UNITED STATES  
21 SUPREME COURT SPECIFICALLY REFERABLE TO THE STATE BAR, I HAVE  
22 TO FOLLOW THE DECISIONS OF THE STATE.

23 IT IS NOT WHAT MAY BE DONE BY THE SUPREME COURT  
24 OR WHETHER THE SUPREME COURT OF THE UNITED STATES INTENDED  
25 THAT THE STATE BAR HAVE NO PRIVILEGE WITH RESPECT TO MATTERS  
26 ABOUT THE DEFENDANT.

27 YOU READ IT AND LET ME HAVE YOUR REACTIONS.

28 MR. BARENS: THANK YOU.

1 CAN ADJOURNMENT WAS TAKEN AT 4:38 P.M.  
2 UNTIL THURSDAY, DECEMBER 11, 1986, AT  
3 10:30 A.M.)  
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