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Date FEB 09 1988

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

SEP 10 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 22 OF 101
(PAGES 2994 TO 3152 , INCLUSIVE)

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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

MONDAY, DECEMBER 15, 1986

VOLUME 22

(PAGES 2994 TO 3152, 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
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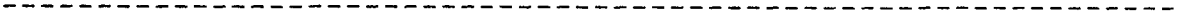
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MONDAY, DECEMBER 15, 1986 VOLUME 22 PAGES 2994 TO 3152

A.M. 2994

P.M. 3056



PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 2994

1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 15, 1986; 10:45 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

3 (APPEARANCES AS NOTED ON TITLE PAGE
4 EXCEPT MR. CHIER IS NOT PRESENT.)

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

8 THE COURT: THE RECORD WILL INDICATE THAT WE ARE PRESENTLY
9 IN CHAMBERS.

10 IS THERE ANY KIND OF A MOTION?

11 MR. BARENS: MR. WAPNER HAD A COMMENT OR TWO, YOUR HONOR.

12 MR. WAPNER: FIRST OF ALL, I HAVE SOME ADDITIONAL
13 DISCOVERY TO TURN OVER TO THE DEFENSE REGARDING THE
14 INVESTIGATION THAT WE HAVE DONE WITH RESPECT TO THIS INCIDENT
15 IN ARIZONA, IS THE BEST WAY TO REFER TO IT, AND MOST OF THIS
16 THAT IS SO THICK ARE TRANSCRIPTS OF TAPES THAT HAVE BEEN
17 PREVIOUSLY TURNED OVER TO THE DEFENSE.

18 THE RECORD SHOULD REFLECT I AM HANDING IT TO
19 MR. BARENS AT THIS TIME.

20 MR. BARENS: THANK YOU, MR. WAPNER.

21 MR. WAPNER: SECOND OF ALL, JUST AS A PROCEDURAL THING
22 AND I HAVE RAISED THIS BEFORE, WHEN COUNSEL GENERALLY COME
23 IN CHAMBERS AT ANY TIME DURING A CASE OR COME TO THE BENCH,
24 THE DEFENDANTS ARE USUALLY NOT PRESENT. I UNDERSTAND THAT
25 MR. HUNT HAD TO BE HERE WHEN WE WERE DOING THE HARDSHIP
26 VOIR DIRE IN CHAMBERS BUT EVER SINCE THEN IT HAS JUST BECOME
27 PART OF THE ROUTINE AND I WANT TO VOICE MY OBJECTION TO
28 HAVING HIM COME INTO CHAMBERS EVERY TIME WE HAVE A CONFERENCE.

1 I DON'T THINK IT IS NECESSARY.

2 USUALLY, CHAMBERS CONFERENCES ARE JUST FOR THE
3 LAWYERS.

4 THE COURT: HOW DOES THAT AFFECT YOU IN ANY WAY?

5 MR. WAPNER: WELL, TO THE EXTENT THAT IT HAPPENS DURING
6 TRIAL WHEN THE JURORS ARE HERE AND THEY --

7 THE COURT: ARE HERE?

8 MR. WAPNER: IF THEY ARE IN THE COURTROOM AND WE ADJOURN
9 TO CHAMBERS AND THEY SEE HIM GOING IN, FOR EXAMPLE, I JUST --

10 THE COURT: WHAT WILL BE UNFAVORABLE TO THE PROSECUTION
11 IF THEY SAW THAT?

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1 MR. WAPNER: WELL, FIRST OF ALL IT IS THE CONTINUING
2 IMPRESSION WHICH IS THAT THE BAILIFF DOESN'T COME IN AND THEY
3 GET A CONSTANT IMPRESSION THAT THE CASE IS NOT THAT SERIOUS
4 BECAUSE AFTER ALL, THE JUDGE WILL GO INTO CHAMBERS WITH THE
5 DEFENDANT WITHOUT A BAILIFF. SO HE MUST NOT THINK THE CASE
6 IS THAT SERIOUS. THAT IS TO ME, A PSYCHOLOGICAL REMAINDER.

7 THE COURT: WELL, GENERALLY SPEAKING, MUSTN'T THE
8 DEFENDANT BE PRESENT AT ALL TIMES ALL THROUGHOUT THE PROCEDURES?

9 MR. WAPNER: NOT IN CHAMBERS CONFERENCES. I JUST ASK
10 THE COURT TO RECOLLECT ALL OF THE PRIOR CASES FOR EXAMPLE,
11 IF YOU HAVE CHAMBERS CONFERENCES WITH LAWYERS WITH THE
12 DEFENDANT IN CUSTODY OR EVEN WITH A DEFENDANT NOT IN CUSTODY,
13 THEY DON'T COME INTO CHAMBERS.

14 FOR EXAMPLE, WHEN YOU COME INTO CHAMBERS TO
15 DISCUSS THE JURY INSTRUCTIONS OR YOU COME INTO CHAMBERS --

16 THE COURT: WELL, I CAN UNDERSTAND IT WOULDN'T BE
17 NECESSARY. BUT THERE ARE ASPECTS OF THE CASE WHICH HE SHOULD
18 KNOW ABOUT, LIKE FOR EXAMPLE, YOU ARE TURNING OVER CERTAIN
19 RECORDS. HE IS NOW HERE. I HAVE SOMETHING TO SAY BECAUSE
20 I HAD RESERVED A RULING IN CONNECTION WITH THE SUBPOENA WHICH
21 HAD BEEN SERVED ON THE STATE BAR OF CALIFORNIA, WHICH I AM
22 PREPARED AT THIS TIME TO MAKE A RULING OR A STATEMENT ON.

23 MR. BARENS: YOUR HONOR, I WOULD -- MAY I BE HEARD ON
24 THE SAME MATTER?

25 THE COURT: YES.

26 MR. BARENS: YOUR HONOR, I WOULD LIKE TO EMPHASIZE AGAIN
27 THAT THROUGHOUT THE OVER TWO YEARS I HAVE BEEN WITH MR. HUNT,
28 HE HAS ACTIVELY PARTICIPATED WITH MY OFFICE IN THE PREPARATION

1 OF HIS DEFENSE.

2 HE IS DAILY IN THE LAW LIBRARY --

3 THE COURT: WELL, I WANT HIM TO CONTINUE TO BE HERE.

4 NOW, WITH RESPECT TO THE STATE BAR, OVER THE
5 WEEKEND, I TOOK A FILE HOME WITH ME THAT THE STATE BAR SENT
6 TO ME. I HAVE GONE OVER IT VERY, VERY, VERY THOROUGHLY. THE
7 ONLY THING WHICH -- AND I AM IN AGREEMENT WITH THE STATE BAR --
8 THAT THEY ARE WILLING TO HAVE TURNED OVER TO YOU ARE FILES
9 1 AND 2.

10 I DON'T KNOW WHAT THEY MEAN BY 1 AND 2. BUT
11 ANYWAY, HERE THEY ARE. PRINCIPALLY, THERE IS A TRANSCRIPT
12 OF THE DEPOSITION TAKEN OF KARNY IN THE CANTOR-FITZGERALD
13 CASE.

14 AND ALSO, THERE IS THE INTERVIEW OF MR. KARNY
15 TAKEN BY THE ATTORNEY GENERAL'S OFFICE IN CONNECTION WITH
16 THE INVESTIGATION OF THE ESLAMINIA MATTER.

17 MR. WAPNER: WOULD IT BE DATED NOVEMBER 28?

18 THE COURT: THE INTERVIEW, YOU MEAN?

19 MR. WAPNER: YES.

20 THE COURT: WELL THE INTERVIEW IS NOVEMBER 28, THAT'S
21 CORRECT. LET ME SEE, NOW. YES, IT IS NOVEMBER 28.

22 AND SINCE THEY AGREED TO IT ANYWAY, I THINK THAT
23 IT IS RELEVANT AND THAT IS TO OUR CASE AND I WILL TURN THOSE
24 OVER OR MAKE THEM AVAILABLE TO YOU, SO THAT YOU CAN EXAMINE
25 THEM. HAVE YOU NOT ALREADY EXAMINED THEM?

26 MR. BARENS: I BELIEVE WE HAVE EXAMINED -- WELL, I
27 WOULD HAVE TO LOOK AT THE MATERIALS BEFORE I COULD CONFIRM
28 THAT.

1 THE COURT: I WILL SHOW IT TO YOU. I READ IT OVER THE
2 WEEKEND. AND I ALSO READ THE DEPOSITION TAKEN OF KARNY. SO
3 THAT WILL BE MADE AVAILABLE TO YOU.

4 (MR. CHIER ENTERS CHAMBERS.)

5 MR. BARENS: I WOULD LIKE TO COMMENT TO MR. CHIER AS
6 TO WHERE WE ARE.

7 THE COURT: YES.

8 (PAUSE.)

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1 THE COURT: AND THE TWO REMAINING FILES TO WHICH THEY
2 CLAIM CONFIDENTIALITY.

3 I WILL INDICATE CATEGORICALLY FOR THE RECORD THERE
4 ISN'T A SINGLE THING IN ANY OF THOSE OTHER FILES WHICH EVEN
5 REMOTELY SUGGEST ANY BASIS ON WHICH THEY COULD POSSIBLY BE
6 HELPFUL TO YOU.

7 AND QUITE APART FROM YOU EVEN, I AGREE WITH THE
8 STATE BAR, THE ATTORNEYS FOR THE STATE BAR, THAT THE REST
9 OF THESE FILES THAT ARE MARKED CONFIDENTIAL AND PRIVILEGED,
10 AND THEY ARE PRIVILEGED, DESPITE -- I DON'T THINK THAT THE
11 DECISION OF THE SUPREME COURT IN -- WHAT WAS THE CASE, WAS
12 THAT HARRIS V. ALASKA?

13 MR. WAPNER: DAVIS.

14 MR. CHIER: DAVIS.

15 THE COURT: -- WHICH IN ANY WAY AFFECTS THE DECISION
16 THAT I MADE.

17 THERE ISN'T ANYTHING -- ANYTHING THAT POSSIBLY
18 COULD BE OF ANY HELP IN THAT FILE. ALL OF IT LEADS TO KARNY
19 AND THEIR INVESTIGATION OF KARNY, ALL OF THE QUESTIONS AND
20 EVERYTHING ELSE, THEY RELATE TO THE CIVIL ACTIONS WHICH HAVE
21 BEEN INSTITUTED.

22 ALSO, THEY HAVE A COMPLAINT WHICH HE HAS MADE
23 AGAINST A LAWYER WHO REPRESENTED HIM IN THAT CANTOR-FITZGERALD
24 CASE AND I READ ALL OF THE CONTENTS OF ALL OF THAT AND THERE
25 ISN'T ANYTHING REMOTELY THAT COULD POSSIBLY BE RELEVANT IN
26 THIS CASE. YOU WILL HAVE TO TAKE MY WORD FOR IT. IF YOU
27 DON'T WANT TO TAKE MY WORD FOR IT, THEN I WILL MAKE A RULING
28 THAT THEY CANNOT BE MADE AVAILABLE TO YOU ON THE GROUND OF

1 THE PRIVILEGE ASSERTED AND THE CONFIDENTIALITY IS WELL TAKEN.

2 MR. BARENS: YOUR HONOR, I BELIEVE WE NEED A RULING,
3 ALTHOUGH I ABSOLUTELY ACCEPT IT, YOUR HONOR.

4 THE COURT: RULING ON WHAT?

5 MR. BARENS: THE COURT'S REPRESENTATION, I BELIEVE THE
6 DEFENSE NEEDS A RULING THAT YOU ARE HONORING THE PRIVILEGE
7 REQUESTED BY THE STATE BAR.

8 THE COURT: YES, I AM HONORING THE PRIVILEGE REQUESTED
9 BY THE STATE BAR.

10 I WILL ALSO MAKE AN OBSERVATION ON MY HAVING READ
11 ALL OF THESE FILES, THERE ISN'T ANYTHING IN THERE WHICH CAN
12 POSSIBLY BE OF ANY INTEREST IN THIS PARTICULAR CASE.

13 MR. CHIER YOUR HONOR --

14 THE COURT: YES?

15 MR. BARENS: YOUR HONOR, THEREFORE, THE DEFENSE MOTION
16 TO DISCOVER THE BALANCE OF THAT FILE IS DENIED?

17 THE COURT: THAT IS CORRECT.

18 MR. CHIER: YOUR HONOR --

19 THE COURT: YES.

20 MR. CHIER: THE STATE BAR ASSERTED SEVERAL DIFFERENT
21 PRIVILEGES. THEY ASSERTED A PRIVILEGE UNDER 1040 OF THE
22 EVIDENCE CODE, AND I THINK THEY ASSERTED THE PRIVACY PRIVILEGE.
23 COULD YOU, FOR THE RECORD, SPECIFY WHAT PRIVILEGES?

24 THE COURT: ALL OF THE PRIVILEGES THEY HAVE ASSERTED,
25 I HAVE HONORED.

26 MR. CHIER: ALL RIGHT.

27 MR. BARENS: I THANK YOUR HONOR.

28 THE COURT: WHAT DO YOU WANT ME TO DO WITH THIS?

1 MR. BARENS: ABOUT THIS MATERIAL, LET ME INQUIRE FROM
2 HIM.

3 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
4 AND MR. CHIER.)

5 MR. BARENS: THAT IS THE BREILING INTERVIEW.

6 MR. WAPNER: I HAVEN'T SEEN IT BUT THAT IS THE BREILING
7 INTERVIEW, YOU HAVE HAD IN YOUR POSSESSION FOR TWO YEARS.

8 THE COURT: THAT WAS THE DEPOSITION THAT WAS TAKEN IN
9 THE CANTOR-FITZGERALD MATTER?

10 MR. BARENS: WE DON'T HAVE THAT TO MY KNOWLEDGE, YOUR
11 HONOR.

12 MR. WAPNER: YOUR HONOR, THE DEPOSITION, THAT IS PART
13 OF THAT FILE, MAY THAT BE MADE AVAILABLE TO THE PEOPLE FOR
14 COPYING?

15 THE COURT: CERTAINLY.

16 I WILL JUST CALL YOUR ATTENTION TO CERTAIN
17 RELEVANT PORTIONS: ON PAGE 22 OF THE DEPOSITION, THERE IS
18 EVIDENCE THAT IN LEVIN'S HOME THAT KARNY HAD HEARD OF THE
19 MAY BROTHERS' LAND CORPORATION AND WHETHERBEE -- I CAN'T
20 READ IT -- SOMETHING CAME FROM LEVIN -- PAGES 24 AND 25 --
21 MET LEVIN SIX MONTHS BEFORE --

22 I HAVE INDICATED THOSE PAGES WHICH WOULD BE
23 RELEVANT TO YOUR INQUIRY.

24 AT
25 INTRODUCED BY THE DEFENDANT/LEVIN'S HOME -- THAT
26 THE DEFENDANT HAD DROPPED SOMETHING OFF AND DEFENDANT HAD
27 BEEN TRADING FOR LEVIN, THAT IS ON PAGE 33. YOU WILL READ
28 IT ANYWAY.

MR. BARENS: YOUR HONOR, HOW WILL WE ACCESS THAT FROM

1 THE COURT? MIGHT WE HAVE PERMISSION TO TAKE THAT WITH US
2 TODAY AND WE WILL RETURN IT? WE WILL COPY IT.

3 THE COURT: I WILL TRUST YOU WITH IT.

4 MR. BARENS: IF YOU WOULD, YOUR HONOR, I WILL HAVE IT
5 BACK HERE FIRST THING IN THE MORNING.

6 MR. WAPNER: MAKE A COPY FOR ME.

7 MR. BARENS: I WILL MAKE TWO COPIES. I WILL MAKE ONE
8 AVAILABLE FOR YOU, MR. WAPNER.

9 I HANDED THEM BACK TO YOUR HONOR. THEY MAY
10 POSSIBLY BE THERE.

11 THE COURT: YOU HAVE THE INTERVIEW, DO YOU?

12 MR. WAPNER: YES.

13 THE COURT: LET THE RECORD SHOW I AM HANDING YOU THAT.

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 THE COURT: I AM TELLING YOU THE ONLY PLACES THAT YOU
16 MIGHT FOCUS ON WHICH MIGHT BE OF SOME RELEVANCY WHERE LEVIN
17 IS MENTIONED ON PAGES 22, 24 AND 25, ET SEQ., AND THAT IS
18 ABOUT ALL. ALL RIGHT?

19 MR. WAPNER: YOUR HONOR, AS A MATTER OF HOUSEKEEPING,
20 WE ARE SCHEDULED TO BE IN SESSION THROUGH THE 23RD. I DON'T
21 KNOW HOW LONG IT IS GOING TO TAKE US TO GET A JURY BUT IF
22 IT TAKES EVEN THE BALANCE OF THIS WEEK --

23 THE COURT: IT WILL TAKE LONGER.

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1 MR. WAPNER: OKAY. WELL, I HAVE NOT SCHEDULED ANY
2 WITNESSES FOR THIS WEEK OR EVEN FOR NEXT WEEK.

3 THE COURT: DON'T SCHEDULE ANY WITNESSES. DON'T BE
4 CONCERNED ABOUT IT. IT IS NOT GOING TO THE JURY. THE JURY
5 WILL NOT BE SELECTED BY THAT TIME.

6 YOU KNOW, WE HAVE AT LEAST FOUR ALTERNATES. AND
7 IF WE EXHAUST YOUR CHALLENGES, YOU EXERCISE ALL OF YOUR
8 CHALLENGES, WE'LL HAVE TO GET SOME MORE JURORS IN. SO IT
9 IS LIKELY THAT WE WON'T GET TO THE SUBPOENAED WITNESSES FOR
10 THIS MONTH, IN ANY EVENT.

11 MR. BARENS: YOUR HONOR, WE ARE NOT WORKING NEXT
12 WEDNESDAY, AS A MATTER OF FACT? THE 24TH WE ARE ABSOLUTELY
13 DARK?

14 THE COURT: NO.

15 MR. BARENS: WE WOULD THEN RESUME --

16 THE COURT: A WEEK FROM WEDNESDAY, YOU MEAN?

17 MR. BARENS: YES. I MEAN A WEEK FROM NEXT WEDNESDAY.
18 THEN WE RESUME THE MONDAY FOLLOWING THE HOLIDAY?

19 THE COURT: YES, ON THE 5TH OF JANUARY.

20 MR. BARENS: THANK YOU.

21 THE COURT: ALL RIGHT.

22 MR. WAPNER: THANK YOU.

23 (THE FOLLOWING PROCEEDINGS WERE HELD
24 IN OPEN COURT:)

25 THE COURT: ALL RIGHT. IT WILL BE STIPULATED THE
26 DEFENDANT IS PRESENT. COUNSEL ARE PRESENT. THE PROSPECTIVE
27 JURORS ARE PRESENT.

28 GOOD MORNING, LADIES AND GENTLEMEN. I THINK THAT

1 MISS MATERNA WAS THE LAST ONE. IS THAT CORRECT?

2 MS. MATERNA: YES.

3 THE COURT: ALL RIGHT.

4 MR. BARENS: THANK YOU, YOUR HONOR.

5 GOOD MORNING, LADIES AND GENTLEMEN. SPECIFICALLY,
6 GOOD MORNING, MS. MATERNA.

7 MS. MATERNA: GOOD MORNING.

8 MR. BARENS: MS. MATERNA, I LEFT HERE ON THURSDAY
9 CONCERNED AND I THINK APPROPRIATELY, BASED ON SOME OF THE
10 VERY BAD, BAD THINGS THAT HAVE HAPPENED TO PEOPLE CLOSE TO
11 YOU AND YOURSELF OF A CRIMINAL NATURE.

12 CERTAINLY, I AM SURE WITHOUT ANY REAL SURPRISE
13 TO YOU OR ANYBODY ELSE IN THIS COURTROOM, HAD I OR MY FAMILY
14 BEEN VICTIMIZED ON THAT LEVEL, I WOULD HAVE A REAL HARD TIME
15 COMING HERE BEING FAIR TO ANY DEFENDANT, WHETHER IT BE
16 MR. HUNT OR ANYBODY ELSE COMING IN HERE ACCUSED OF A VIOLENT
17 CRIME OR ANY KIND OF CRIME, FOR THAT MATTER.

18 IT IS JUST BECAUSE WE ARE PEOPLE. AND AS PEOPLE,
19 WE GET BIASES THAT TEND TO PERVADE OUR OUTLOOK AND ORIENTATION,
20 WHETHER YOU ARE RIGHT OR WRONG OR EVEN WHETHER IT IS
21 RELEVANT, SOMETIMES.

22 THURSDAY, IN RESPONSE TO THE JUDGE ASKING YOU
23 IF YOU COULD BE FAIR, I BELIEVE YOU SAID YOU WOULD TRY TO
24 BE FAIR. HOW DO YOU REALLY FEEL ABOUT IT IN YOUR HEART?
25 AND THE QUESTION I AM ASKING NOW, WHAT I AM REALLY ASKING
26 YOU IS, IF YOU WERE ON TRIAL INSTEAD OF MY DEFENDANT AND I
27 HAD 12 PEOPLE HERE WHO WOULD COME HERE WITH THE EXPERIENCE
28 LEVEL THAT YOU HAVE AS YOU SIT THERE TODAY, WOULD YOU REALLY

1 BELIEVE YOU COULD GET A FAIR TRIAL?

2 MS. MATERNA: YOU MEAN FROM 12 JURORS LIKE ME?

3 MR. BARENS: YES, MA'AM.

4 MS. MATERNA: I WOULD BE PRETTY CONCERNED.

5 MR. BARENS: I THINK CANDIDLY, THAT YOUR OUTLOOK HAS
6 BEEN SO CORRUPTED BY THE THINGS THAT HAVE HAPPENED TO YOU
7 THAT YOU WOULD BE --

8 THE COURT: WHY DON'T YOU USE THE WORD "AFFECTED"
9 INSTEAD OF "CORRUPTED"?

10 MR. BARENS: AGREED, YOUR HONOR. BUT I DON'T MEAN THAT
11 IN ANY PEJORATIVE MANNER. I MEAN I AM SURE MS. MATERNA
12 REALIZES I DON'T MEAN IT PEJORATIVELY BUT RATHER, RESPECTFULLY,
13 THAT THE OUTLOOK IS SO AFFECTED AND SO JAUNDIZED AS A RESULT
14 OF THOSE EXPERIENCES.

15 I KNOW THAT THERE ARE CERTAIN ASPECTS OF MY LIFE
16 WHERE I FEEL VERY MUCH THAT WAY BECAUSE OF THINGS THAT HAVE
17 HAPPENED IN MY LIFE. DO YOU FEEL OR DO YOU NOT FEEL THAT
18 YOU COULD BE THE TYPE OF NEUTRAL AND FAIR JUROR THAT WE ARE
19 LOOKING FOR IN THIS CASE OR DO YOU HONESTLY FEEL THAT THOSE
20 EXPERIENCES HAVE LEFT YOU WHERE YOU ARE JUST GOING TO BE
21 BIASED AGAINST THAT DEFENDANT JUST BECAUSE OF WHAT BRINGS
22 YOU HERE TODAY?

23 MS. MATERNA: I WOULD TRY TO BE FAIR. BUT I AM NOT
24 SAYING -- LET'S PUT IT TO YOU THIS WAY. I AM LIKE, FED UP
25 WITH CRIME, OKAY? SO, I AM NOT SAYING I WOULD BE TOTALLY
26 UNBIASED. I WOULD HOPE TO BE.

27 BUT I CAN'T GUARANTEE THAT I WOULD FEEL TOTALLY
28 UNBIASED BECAUSE I AM PRETTY FED UP.

1 MR. BARENS: I DON'T THINK THAT YOU ARE REALLY SURE
2 THAT YOU COULD BE TOTALLY UNBIASED, THAT YOU ARE EVEN CAPABLE
3 AT THIS TIME, FACING A SITUATION INVOLVING A DEFENDANT ACCUSED
4 OF CRIMINAL CONDUCT OF A VIOLENT CRIMINAL TYPE OF CONDUCT
5 WHERE A DEATH IN FACT OCCURRED, THAT YOU ACTUALLY COULD BE
6 FAIR TO ANY INDIVIDUAL IN THAT POSITION. AND I WANT YOU TO
7 BE HONEST WITH ME ABOUT THAT. I NEED YOU TO BE HONEST WITH
8 ME ABOUT THAT.

9 HOW DO YOU REALLY FEEL?

10 MS. MATERNA: I THINK I WOULD HAVE A HARD TIME BEING
11 TOTALLY FAIR. ALTHOUGH YOU KNOW, I WOULD HATE TO SAY THAT
12 I WOULD NOT BE FAIR.

13 MR. BARENS: SURE. I AM NOT SAYING TO YOU THAT I DON'T
14 THINK YOU ARE GOING TO BE A FAIR PERSON. I AM ASKING YOU
15 WHAT YOU ARE CAPABLE OF DOING AT THIS TIME IN LIFE, WHETHER
16 YOU ARE CAPABLE OF MAKING AN UNBIASED AS WELL AS FAIR -- AND
17 UNBIASED IN THE SENSE THAT MY JOB REPRESENTING A CRIMINAL
18 DEFENDANT WITH YOU, WOULD NOT BE HARDER THAN MR. WAPNER'S
19 JOB, THAT YOU WOULD BE AS SYMPATHETIC TO ME, KNOWING WHAT
20 I DO FOR A LIVING, KNOWING THAT I REPRESENT A GUY ACCUSED
21 OF A VIOLENT CRIME, COULD I GET A FAIR TRIAL FROM YOU OR WOULD
22 I ALWAYS BE GOING UPHILL?

23 MS. MATERNA: I THINK YOU WOULD BE GOING A LITTLE BIT
24 UPHILL.

25 MR. BARENS: ALL OF THE TIME?

26 MS. MATERNA: PROBABLY.

27 MR. BARENS: I UNDERSTAND. I SAID TO ALL OF YOUR FELLOW
28 PROSPECTIVE JURORS THAT THERE IS NOTHING WRONG WITH THAT.

1 I AM NOT JUDGING YOUR ANSWERS. I APPRECIATE YOUR HONESTY.

2 THIS IS SERIOUS BUSINESS WE ARE DOING HERE. I
3 AM JUST TRYING TO HAVE AN EVEN CHANCE FOR A FAIR TRIAL, JUST
4 LIKE THE PEOPLE WOULD WANT TO IF THERE WAS PERHAPS A JUROR
5 THAT CAME FORWARD AND SAID THAT THEY HAD A BROTHER WHO WAS
6 CONVICTED OF A CRIME AND HE WAS INNOCENT. A YEAR LATER THEY
7 FOUND OUT ABOUT IT. AND THEY RELEASED HIM AND I WOULD NEVER
8 BELIEVE ANYTHING A D.A. SAID TO ME, EVER.

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1 THAT KIND OF A PERSON WOULD BE AS DIFFICULT FOR
2 THE PEOPLE TO ACCEPT AS THE POSSIBLE DIFFICULTY I AM HAVING
3 WITH THE EXPERIENCE THAT YOU HAVE HAD, THAT BRINGS YOU HERE.

4 IT IS HARD FOR YOU, ISN'T IT TO FEEL THAT IT IS
5 PROPER AND FAIR THAT MR. HUNT HAS A PRESUMPTION OF INNOCENCE?
6 ARE YOU HAVING A PROBLEM WITH THAT?

7 MS. MATERNA: YES. I AM HAVING KIND OF A PROBLEM WITH
8 IT.

9 MR. BARENS: AND I WOULD ALSO IMAGINE THAT YOU HAVE
10 A PROBLEM WITH THE FIFTH AMENDMENT THAT DEFENDANTS ARE GETTING
11 AWAY WITH CRIMES BECAUSE THEY CAN'T BE COMPELLED TO TESTIFY
12 DURING A TRIAL? DO YOU FEEL THAT THEY HIDE BEHIND THAT?

13 MS. MATERNA: WELL, I DON'T KNOW IF THAT IS THE REASON
14 WHY THEY ARE GETTING AWAY. BUT I DO FEEL LIKE THERE IS A
15 LOT OF DEFENDANTS GETTING OFF FOR VARIOUS REASONS, NOT
16 NECESSARILY RELATED TO THE FIFTH AMENDMENT.

17 MR. BARENS: ISN'T IT TRUE THAT WERE YOU SITTING WITH
18 YOUR EXPERIENCE LEVEL THAT BRINGS YOU HERE, THAT IF THERE
19 WAS A DOUBT IN YOUR MIND ON THE SCALES AND THE SCALES WERE
20 ABOUT EVEN, YOU WOULD HAVE A GREATER PROPENSITY TO FIND
21 GUILT THAN INNOCENCE?

22 MS. MATERNA: YES.

23 MR. BARENS: AND YOU WOULD HAVE A HARD TIME OVERCOMING
24 THAT, WOULDN'T YOU?

25 MS. MATERNA: AT THIS POINT IN MY LIFE, YEAH. YOU KNOW,
26 MAYBE SIX MONTHS AGO I WOULD HAVE BEEN THE FAIREST PERSON
27 IN THE COURTROOM.

28 MR. BARENS: ALL RIGHT. COULD WE APPROACH THE BENCH,

1 YOUR HONOR?

2 THE COURT: WELL, DO YOU HAVE ANY QUESTIONS, MR. WAPNER?

3 MR. BARENS: WHAT I WOULD LIKE TO DO YOUR HONOR, IF
4 I MIGHT RESPECTFULLY REQUEST IT, I WOULD LIKE TO RESERVE ANY
5 FURTHER QUESTIONS I WOULD HAVE, PENDING A RULING ON THE
6 OBVIOUS ISSUE.

7 THE COURT: VERY WELL. WE WILL GIVE THE DISTRICT ATTORNEY
8 A CHANCE TO QUESTION HER.

9 MR. BARENS: THANK YOU.

10 THE COURT: ANY QUESTIONS?

11 MR. WAPNER: YES. JUST BRIEFLY, YOUR HONOR.

12 GOOD MORNING, MISS MATERNA. DO YOU THINK THAT
13 IF YOU ARE CHOSEN AS A JUROR IN THIS CASE, THAT YOUR JOB IS
14 GOING TO BE TO SOLVE THE CRIME PROBLEM IN LOS ANGELES?

15 MS. MATERNA: NO.

16 MR. WAPNER: DO YOU THINK THAT YOU WILL TAKE IT UPON
17 YOURSELF TO DO YOUR PART TO SOLVE THE CRIME PROBLEM IN
18 LOS ANGELES BY FINDING THE DEFENDANT IN THIS CASE GUILTY?

19 MS. MATERNA: NO.

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1 MR. WAPNER: AND IS IT POSSIBLE FOR YOU TO SEPARATE
2 IN YOUR MIND A DECISION ON THE GUILT OR INNOCENCE OF THIS
3 DEFENDANT FROM THE GUILT OR INNOCENCE OF THE PEOPLE WHO ROBBED
4 YOUR HUSBAND, FOR EXAMPLE?

5 MS. MATERNA: I COULD SEPARATE THOSE TWO CASES.

6 MR. WAPNER: WERE THOSE PEOPLE EVER APPREHENDED?

7 MS. MATERNA: YES.

8 MR. WAPNER: WERE THEY EVER CHARGED?

9 MS. MATERNA: THEY WERE CHARGED, MY HUSBAND DROPPED
10 THE CHARGES BUT THEY HAD ALREADY BEEN WANTED AT THE TIME THEY
11 WERE APPREHENDED. THEY WERE ALREADY WANTED FOR SOME OTHER
12 STUFF AND THEY FACED PROSECUTION FOR THOSE CRIMES.

13 MR. WAPNER: WOULD YOU BE ABLE TO, IF YOU WERE A JUROR
14 ON THIS CASE, KEEP OUT OF YOUR MIND ANY SPECULATION ABOUT
15 THE BACKGROUND OF THE DEFENDANT IN THIS CASE DURING THE GUILT
16 PHASE OF THE TRIAL?

17 MS. MATERNA: ARE WE SUPPOSED TO?

18 I DON'T KNOW IF WE ARE SUPPOSED TO TAKE THAT INTO
19 CONSIDERATION.

20 MR. WAPNER: WELL, YOU ARE SUPPOSED TO DECIDE THE CASE
21 ON THE GUILT OR INNOCENCE OF THE DEFENDANT BASED ON THE
22 EVIDENCE THAT YOU GET IN THE COURTROOM AND IF IT TURNS OUT
23 THAT YOU RECEIVE SOME EVIDENCE ABOUT HIS CRIMINAL BACKGROUND
24 DURING THE GUILT PHASE, THEN YOU CAN CONSIDER THAT BUT IT
25 IS MORE LIKELY THAT YOU WON'T GET ANY EVIDENCE ONE WAY OR
26 THE OTHER ABOUT HIS CRIMINAL BACKGROUND DURING THE GUILT PHASE;
27 DO YOU UNDERSTAND THAT?

28 MS. MATERNA: OKAY.

1 MR. WAPNER: AND IF THAT IS TRUE, THAT YOU DON'T HAVE
2 ANY EVIDENCE ONE WAY OR THE OTHER ABOUT HIS CRIMINAL BACKGROUND
3 DURING THE GUILT PHASE --

4 MR. BARENS: OBJECTION, YOUR HONOR. COUNSEL IS
5 SUGGESTING THERE IS A CRIMINAL BACKGROUND HERE. THERE IS
6 NO EVIDENCE THAT IT IS GOING TO BE PRODUCED.

7 MR. WAPNER: I AM NOT SUGGESTING ONE WAY OR THE OTHER
8 THAT THERE IS. I AM TRYING TO USE THE EXAMPLE THAT THEY HAVE
9 TO DECIDE THE CASE ON THE EVIDENCE THAT IS PRESENTED WITHOUT
10 ANY REFERENCE TO IT.

11 THE COURT: REPHRASE YOUR QUESTION, PLEASE.

12 MR. BARENS: THANK YOU, YOUR HONOR.

13 MR. WAPNER: OKAY, THE CASES ARE DECIDED BASED ON THE
14 EVIDENCE YOU HEAR IN THE COURTROOM; DO YOU UNDERSTAND THAT?

15 MS. MATERNA: YES.

16 MR. WAPNER: AND CAN YOU KEEP OUT OF YOUR MIND ANY
17 SPECULATION ABOUT THINGS THAT YOU DON'T HEAR?

18 (NO AUDIBLE REPLY.)

19 MR. WAPNER: LET ME TAKE IT AWAY FROM THIS CASE AND
20 TAKE YOUR HUSBAND'S CASE, BECAUSE YOU HAVE ALREADY BROUGHT
21 THE EXAMPLE THAT THEY WERE ALREADY WANTED FOR SOMETHING ELSE;
22 DO YOU UNDERSTAND THAT?

23 MS. MATERNA: YES.

24 MR. WAPNER: LET'S ASSUME THAT THE PEOPLE WHO ASSAULTED
25 YOUR HUSBAND WENT ON TRIAL FOR THAT CRIME AND DURING THEIR
26 TRIAL, THERE WAS NO MENTION MADE OF THEIR BEING WANTED IN
27 SOME OTHER CASE AND THE JURORS IN THAT CASE WERE TOLD THAT
28 THEY HAD TO DECIDE THE CASE BASED ON THE FACTS AND THE

1 EVIDENCE AND THE LAW THAT THEY GOT IN THAT CASE; DO YOU
2 UNDERSTAND THAT?

3 MS. MATERNA: YES.

4 MR. WAPNER: AND DO YOU THINK THAT IT WOULD BE PROPER
5 FOR THE JURORS IN THAT CASE TO THINK "WELL, DOES THIS GUY
6 HAVE A RECORD? DOES HE NOT HAVE A RECORD" IF THEY DIDN'T
7 HEAR ANY EVIDENCE ONE WAY OR THE OTHER?

8 MS. MATERNA: WOULD IT BE PROPER?

9 MR. WAPNER: RIGHT.

10 MS. MATERNA: I THINK IF IT IS ALLOWABLE, THEN IT WOULD
11 BE PROPER.

12 IF IT IS NOT ALLOWABLE, THEN --

13 MR. WAPNER: IF YOU DON'T HEAR ANY EVIDENCE DURING THE
14 TRIAL AND THE JUDGE TELLS YOU AT THE END OF THE TRIAL THAT
15 YOU HAVE TO DECIDE THE CASE ONLY ON THE EVIDENCE THAT YOU
16 HAVE HEARD AND NOT SPECULATE ABOUT OTHER THINGS, COULD YOU
17 KEEP ANY SPECULATION ABOUT THAT OUT OF IT?

18 MS. MATERNA: I WOULD TRY TO, IF THAT IS WHAT THE
19 INSTRUCTIONS ARE.

20 MR. WAPNER: WERE YOU SOMEWHAT CONCERNED ABOUT THE JOB
21 THAT THE POLICE DID IN INVESTIGATING THE ASSAULT ON YOUR
22 HUSBAND?

23 MS. MATERNA: NO, NOT AT ALL, BECAUSE THE POLICE JUST
24 HAPPENED TO DRIVE AROUND THE CORNER, LIKE TWO MINUTES AFTER
25 THESE GUYS ASSAULTED MY HUSBAND AND SO AFTER MY HUSBAND
26 FINALLY FOUGHT THEM OFF WITH A CROW BAR, THE COPS CAME AROUND
27 THE CORNER AND HE KIND OF, YOU KNOW, YELLED AT THE COPS,
28 "GO GET THOSE GUYS, THEY JUST RAN DOWN THE STREET." AND THE

1 COPS DROVE AROUND THE BLOCK AND PICKED THOSE TWO GUYS UP.

2 MR. WAPNER: WAS YOUR HUSBAND ASKED TO MAKE AN
3 IDENTIFICATION OF THEM AT THAT TIME?

4 MS. MATERNA: YES.

5 MR. WAPNER: WAS HE ABLE TO DO THAT?

6 MS. MATERNA: OH, YES.

7 MR. WAPNER: AND WHAT WERE HIS REASONS, IF YOU KNOW,
8 FOR IN YOUR WORDS "DROPPING THE CHARGES"?

9 MS. MATERNA: THE REASON IS BECAUSE HE DIDN'T WANT TO
10 GET INVOLVED IN A BIG COURT CASE, A LONG COURT CASE. HE IS
11 TOO BUSY.

12 MR. WAPNER: AND WOULD YOU HOLD IT AGAINST ANY WITNESS
13 WHO TESTIFIED IN THIS CASE IF THEY DID WANT TO GET INVOLVED,
14 FOR EXAMPLE, AND HAD GONE TO THE POLICE AND TOLD THEM WHAT
15 THEY KNEW ABOUT A CERTAIN SET OF FACTS?

16 MS. MATERNA: WOULD I HOLD IT AGAINST A WITNESS FOR
17 TESTIFYING?

18 MS. WAPNER: IN THIS CASE, BECAUSE THEY DID WANT TO
19 GET INVOLVED.

20 MS. MATERNA: NO, IF THEY HAVE SOMETHING TO SAY.

21 MR. WAPNER: CAN YOU APPRECIATE THAT THERE ARE
22 CIRCUMSTANCES, THERE ARE INSTANCES WHERE CIRCUMSTANTIAL
23 EVIDENCE MIGHT BE BETTER THAN DIRECT EVIDENCE?

24 MR. BARENS: BETTER?

25 MS. MATERNA: I CAN'T IMAGINE IT WOULD BE AS GOOD AS --

26 MR. BARENS: WHAT DOES THE QUALITATIVE DIFFERENCE HAVE
27 TO DO WITH BETTER THAN? I DON'T BELIEVE THE CODE EVEN SPEAKS
28 ABOUT BETTER THAN OR LESS THAN EVIDENCE.

1 MR. WAPNER: MAYBE I GAVE A BAD EXAMPLE. I WILL
2 PROCEED WITH ANOTHER EXAMPLE.

3 THE COURT: ALL RIGHT.

4 MR. WAPNER: LET'S TAKE THE SITUATION SIMILAR TO THE
5 ONE YOUR HUSBAND WAS INVOLVED IN, THAT FACTUAL SETTING WITH
6 TWO SLIGHTLY DIFFERENT SETS OF FACTS: IN ONE SITUATION, YOU
7 HAVE A PERSON COMING UP TO SOMEONE LIKE YOUR HUSBAND AND
8 ASSAULTING THEM AND THE ONLY EVIDENCE THAT YOU HAVE IS THE
9 PERSON BEING ASSAULTED MAKING AN EYEWITNESS IDENTIFICATION
10 OF THE PERSON WHO ASSAULTED HIM. IN THAT PARTICULAR SET OF
11 FACTS, HE SEES THE PERSON FOR MAYBE 15 TO 30 SECONDS. HE
12 HAS NEVER SEEN THE PERSON BEFORE. IT IS AT NIGHT AND
13 MAYBE THE LIGHTING IS NOT TOO GOOD. AND THEN THE PERSON GETS
14 AWAY AND MAYBE A FEW WEEKS LATER, THE POLICE ASK THIS PERSON
15 WHO WAS ASSAULTED TO PICK SOMEONE OUT OF PHOTOGRAPHS AND HE
16 HAS PICKED OUT SOME PERSON.

17 DO YOU HAVE THAT FACTUAL SCENARIO IN MIND?

18 MS. MATERNA: YES.

19 MR. WAPNER: AND HE SAYS "THAT IS THE PERSON. THIS
20 IS THE PERSON THAT ASSAULTED ME." AND POSITIVELY IDENTIFIES
21 THE INDIVIDUAL. THAT IS DIRECT EVIDENCE. HE SAYS HE WAS
22 THERE AND HE SAW THE PERSON, OKAY?

23 MS. MATERNA: OKAY.

24 MR. WAPNER: AND THE OTHER SET OF FACTS IS THAT ALTHOUGH
25 THE PERSON ASSAULTED CAN'T IDENTIFY ANYONE, CAN'T PICK HIM
26 OUT OF THE PICTURES, HE HAS SOME PROPERTY TAKEN FROM HIM WHEN
27 HE IS ROBBED AND A FEW MINUTES LATER, THE POLICE CATCH THIS
28 PERSON AND HE HAS GOT THE PROPERTY IN HIS POSSESSION; DO YOU

1 UNDERSTAND THAT?

2 (MS. MATERNA NODS HER HEAD UP AND DOWN.)

3 MR. WAPNER: HAVE YOU EVER HAD A SITUATION WHERE YOU
4 SAW SOMEONE THAT YOU THOUGHT WAS SOMEONE ELSE AND YOU WERE
5 WRONG?

6 MS. MATERNA: PROBABLY, ALTHOUGH I HAVE TO ADMIT I AM
7 REALLY GOOD AT RECOGNIZING FACES AND NAMES SO I DON'T NORMALLY
8 FORGET ANYBODY. EVEN PATIENTS I HAVE SEEN ONCE, I AM REAL
9 GOOD AT REMEMBERING.

10 MR. WAPNER: USUALLY WHEN YOU SEE PATIENTS IT IS IN
11 A FAIRLY WELL-LIGHTED SETTING, OKAY?

12 MS. MATERNA: YES, YES.

13 MR. WAPNER: AND IF BOTH OF THESE CASES HAD TO GO TO
14 TRIAL, THE ONE WHERE YOU HAVE A WITNESS WHO SEES SOMEONE WHO
15 HE HAS NEVER SEEN BEFORE, IN A DARK SITUATION FOR MAYBE 15
16 SECONDS AND IDENTIFIES HIM, AND THE OTHER ONE WHERE THERE
17 IS NO IDENTIFICATION BUT THEY CATCH THE PERSON VERY SHORTLY
18 AFTER WITH THE STOLEN PROPERTY IN HIS POSSESSION, CAN YOU
19 UNDERSTAND THAT -- WELL, DO EITHER OF THOSE CASES SEEM BETTER
20 OR WORSE TO YOU IN YOUR MIND?

21 MS. MATERNA: THE CASE WHERE THE GUY WITH THE STUFF
22 IN HIS POCKET SEEMS MORE -- IT IS MORE OBVIOUS THAT HE DID
23 IT THAN IT WAS FOR THE OTHER PERSON WHO ONLY SAW HIM FOR 15
24 SECONDS.

25 MR. WAPNER: DO YOU UNDERSTAND THAT THE SECOND SITUATION,
26 THAT SITUATION YOU PICKED OUT, IS A CIRCUMSTANTIAL EVIDENCE
27 CASE?

28 MS. MATERNA: YES.

1 MR. WAPNER: OKAY, WOULD YOU AGREE IN THAT PARTICULAR
2 SITUATION THAT CIRCUMSTANTIAL EVIDENCE IS, IN THOSE
3 CIRCUMSTANCES, AS GOOD OR BETTER THAN DIRECT EVIDENCE?

4 MS. MATERNA: YES.

5 MR. WAPNER: IF YOU ARE CHOSEN AS A JUROR IN THIS CASE,
6 ARE YOU GOING TO MAKE UP FOR THE BEATING AND DEATH OF YOUR
7 CLOSE FRIEND BY FINDING MR. HUNT GUILTY?

8 MS. MATERNA: NO.

9 MR. WAPNER: ARE YOU GOING TO GET ANY OF YOUR CARS BACK
10 OR SOLVE THE CAR THEFT PROBLEM IN THIS CITY BY FINDING
11 MR. HUNT GUILTY?

12 MS. MATERNA: NO.

13 MR. WAPNER: TELL ME WHAT EFFECT IN YOUR MIND YOU THINK
14 ALL OF THESE THINGS ARE GOING TO HAVE ON YOU IF YOU SERVE
15 AS A JUROR IN THIS CASE?

16 MS. MATERNA: WELL, I WOULD TRY TO NOT KEEP THEM IN
17 MIND IN THIS CASE.

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1 MR. WAPNER: LET'S ASSUME THAT YOU HAD THEM IN YOUR
2 MIND. HOW IS IT GOING TO AFFECT YOUR ABILITY TO DECIDE THIS
3 CASE, BASED ON THE FACTS AND THE LAW THAT THE JUDGE GIVES
4 YOU?

5 MS. MATERNA: IT SHOULD HAVE NO EFFECT. I MEAN, I WOULD
6 TRY TO NOT LET IT HAVE AN EFFECT ON ME.

7 MR. WAPNER: WELL, THOSE ARE THINGS THAT INDICATE TO
8 YOU ON A VERY PERSONAL LEVEL THAT THERE IS A LOT OF CRIME
9 IN LOS ANGELES?

10 MS. MATERNA: YES.

11 MR. WAPNER: MORE THAN YOU WOULD EVER CARE TO THINK
12 ABOUT, RIGHT?

13 MS. MATERNA: WELL, IT IS NOT THAT I MIND THINKING ABOUT
14 IT. IT IS JUST THAT I DON'T LIKE BEING THE VICTIM OF IT.

15 SO UNFORTUNATELY, I HAVE TO THINK ABOUT IT A LOT,
16 LATELY.

17 MR. WAPNER: NO FURTHER QUESTIONS AT THE MOMENT. I
18 WILL RESERVE THE RIGHT TO FURTHER QUESTIONS.

19 MR. BARENS: MIGHT WE APPROACH THE BENCH?

20 THE COURT: YOU WILL RESERVE THE RIGHT TO WHAT?

21 MR. WAPNER: TO ASK FURTHER QUESTIONS, BASED ON THE
22 COURT'S RULING AND THE REQUEST COUNSEL IS ABOUT TO MAKE.

23 THE COURT: WELL, WHY DON'T YOU EXHAUST YOUR QUESTIONS
24 SO I CAN MAKE A RULING ON THEM?

25 MR. WAPNER: WELL, ON THE SUBJECT OF THE CHALLENGE FOR
26 CAUSE, I HAVE EXHAUSTED THEM.

27 THE COURT: YOU HAVE EXHAUSTED THEM? ALL RIGHT. WOULD
28 YOU APPROACH THE BENCH, PLEASE?

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 AT THE BENCH:)

3 MR. BARENS: YOUR HONOR, THE DEFENSE HAS A MOTION TO
4 CHALLENGE FOR CAUSE, NOT UNEXPECTEDLY. THERE ARE THREE
5 SPECIFICS. SHE TOLD ME THAT I WOULD HAVE AN UPHILL BATTLE
6 ON EVERY ISSUE. SHE TOLD ME THAT IF THERE IS ANY DOUBT, SHE
7 WOULD CONVICT AND SHE ALSO TOLD ME THAT SHE, HERSELF, WOULD
8 NOT WANT TO BE TRIED IN A CRIMINAL ACTION BY 12 PEOPLE WITH
9 HER OWN ORIENTATION.

10 THAT WAS ONE OF THE MOST HONEST STATEMENTS I CAN
11 IMAGINE HER MAKING. SHE WAS VERY HONEST.

12 LAST WEEK, WHEN SHE WAS ASKED A QUESTION BY YOUR
13 HONOR, SHE SHOWED SOME HOSTILITY TOWARD THE DEFENDANT IN ONE
14 OF HER RESPONSES.

15 YOUR HONOR, IF THERE EVER WOULD LIE A CHALLENGE
16 FOR CAUSE ON A PHILOSOPHICAL BASIS, THIS IS IT.

17 THE COURT: YES?

18 MR. WAPNER: WELL, I AM NOT SURE THAT COUNSEL CORRECTLY
19 CHARACTERIZED EVERYTHING SHE SAID. BUT THE COURT HEARD IT.
20 SO THERE IS NO POINT IN MY RECHARACTERIZING IT.

21 THE COURT: I AM INCLINED TO FEEL THAT SHE IS NOT A
22 COMPLETELY IMPARTIAL JUROR. I WILL GRANT THE MOTION FOR THE
23 CHALLENGE FOR CAUSE.

24 MR. BARENS: THANK YOU.

25 MR. CHIER: WOULD YOU PLEASE THANK HER FOR HER EXTREME
26 CANDOR.

27 THE COURT: SURE. THANK YOU.
28

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT:)

3 THE COURT: MRS. MATERNA, THE COURT THANKS YOU FOR YOUR
4 FRANKNESS AND YOUR CANDOR. THE COURT REALIZES THAT YOUR STATE
5 OF MIND IS SUCH THAT YOU ARE NOT COMPLETELY IMPARTIAL.

6 FOR THAT REASON, I AM GOING TO EXCUSE YOU FROM
7 FURTHER JURY DUTY IN THIS CASE. THANK YOU VERY MUCH FOR BEING
8 HERE AND SUFFERING THROUGH ALL OF THIS TIME AND EVERYTHING
9 ELSE.

10 AGAIN, MY DEEPEST SYMPATHIES FOR YOUR EXPERIENCES
11 THAT YOU HAVE HAD. BUT I DON'T THINK WITH YOUR PRESENT STATE
12 OF MIND, THAT YOU CAN SERVE AS A JUROR IN THIS CASE. THANK
13 YOU VERY MUCH. YOU ARE EXCUSED.

14 (PROSPECTIVE JUROR MATERNA EXITED
15 THE COURTROOM.)

16 THE CLERK: MS. SUZETTE MONROE, M-O-N-R-O-E.

17 THE COURT: IS THAT MISS MONROE?

18 MS. MONROE: MRS.

B 19 THE COURT: MRS. MONROE, UP TO THIS POINT, YOU HAVE
20 HEARD ALL OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND
21 GIVEN. THAT IS, THOSE WHICH I ASKED AND THOSE WHICH COUNSEL
22 HAD?

23 MS. MONROE: YES I HAVE.

24 THE COURT: AND IF THE SAME GENERAL QUESTIONS WERE ASKED
25 OF YOU, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME OR WOULD
26 THEY BE IN ANY WAY DIFFERENT?

27 MS. MONROE: THEY WOULD BE SUBSTANTIALLY THE SAME.

28 THE COURT: ALL RIGHT. WHAT DO YOU DO, PLEASE?

1 MS. MONROE: PARDON ME?

2 THE COURT: WHAT IS YOUR OCCUPATION OR BUSINESS?

3 HOMEMAKER?

4 MS. MONROE: I AM A SUPERVISING PUBLIC HEALTH NURSE.

5 THE COURT: AND BY WHOM ARE YOU EMPLOYED?

6 MS. MONROE: LOS ANGELES COUNTY DEPARTMENT OF HEALTH
7 SERVICES.

8 THE COURT: AND THERE IS A MR. MONROE, IS THERE?

9 MS. MONROE: YES THERE IS.

10 THE COURT: AND WHAT DOES HE DO, PLEASE?

11 MS. MONROE: HE IS AN ATTORNEY IN PRIVATE PRACTICE.

12 THE COURT: DOES HE HAVE ANY PARTICULAR SPECIALTY?

13 MS. MONROE: FAMILY LAW, INTERNATIONAL LAW.
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1 THE COURT: HE DOESN'T PRACTICE ANY CRIMINAL LAW, DOES
2 HE?

3 MS. MONROE: OCCASIONALLY.

4 THE COURT: DO YOU UNDERSTAND OF COURSE, THAT IF YOU
5 ARE A JUROR IN THIS CASE, YOU ARE NOT PERMITTED TO TALK TO
6 ANYBODY, PARTICULARLY YOUR HUSBAND, IS THAT RIGHT?

7 MS. MONROE: I KNOW THAT.

8 THE COURT: AND YOU WILL PRESERVE THAT INVIOLABLE RULE
9 NOT TO TALK TO ANYBODY, INCLUDING HIM?

10 MS. MONROE: YES.

11 THE COURT: AS A RESULT OF YOUR HAVING BEEN MARRIED --
12 HOW LONG HAVE YOU BEEN MARRIED, BY THE WAY?

13 MS. MONROE: THREE YEARS.

14 THE COURT: AS A RESULT OF HAVING BEEN MARRIED, DID
15 YOU HAVE ANY DISCUSSIONS WITH YOUR HUSBAND ABOUT LAW OR
16 CRIMINAL LAW OR CIVIL LAW OR ANY KIND OF LAW?

17 MS. MONROE: GENERAL DISCUSSIONS.

18 THE COURT: HAVE YOU FORMED ANY KIND OF A CONCLUSION
19 OR CONCEPT ABOUT CRIMINAL LAW AS A RESULT OF THOSE CONVERSATIONS
20 THAT YOU HAD WITH HIM?

21 MS. MONROE: POSSIBLY, WHAT WE WENT INTO DURING THE
22 QUESTIONING EARLIER.

23 THE COURT: YOUR STATE OF MIND AT THIS TIME IS SUCH
24 THAT YOU CAN GIVE BOTH SIDES IN THIS CASE A FAIR TRIAL, IS
25 THAT RIGHT?

26 MS. MONROE: YES.

27 THE COURT: NOTWITHSTANDING ANY DISCUSSIONS YOU MIGHT
28 HAVE HAD WITH YOUR HUSBAND ABOUT LAW OR CRIMINAL LAW OR

1 ANYTHING CONNECTED WITH THE LAW, IS THAT RIGHT?

2 MS. MONROE: NO.

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

5 MS. MONROE: YES, YOUR HONOR. DRIVING UNDER THE
6 INFLUENCE, APPROXIMATELY --

7 THE COURT: THAT IS MUNICIPAL COURT?

8 MS. MONROE: YES.

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

10 MS. MONROE: NO.

11 THE COURT: DO YOU MEAN THAT IT WAS A HUNG JURY, WAS
12 IT?

13 MS. MONROE: CORRECT.

14 THE COURT: ALL RIGHT. AS I SAY, WHATEVER YOU MIGHT
15 HAVE HEARD IN THAT CASE, WHATEVER THE INSTRUCTIONS WERE THAT
16 YOU GOT FROM THE JUDGE OR THE EXPERIENCES OR THE REACTIONS
17 YOU GOT, FORGET ABOUT THEM. JUST BE GUIDED BY THE EVIDENCE
18 IN THIS CASE, WOULD YOU NOT?

19 MS. MONROE: YES.

20 THE COURT: ALL RIGHT. DID YOU HAVE ANY KIND OF A FORMAL
21 EDUCATION?

22 MS. MONROE: YES I DID.

23 THE COURT: WHAT? WHERE DID YOU GO? WHAT SCHOOLS?

24 MS. MONROE: I HAVE A BACHELOR OF SCIENCE DEGREE FROM
25 LOMA LINDA UNIVERSITY. I HAVE A MASTER'S OF SCIENCE DEGREE
26 IN HEALTH CARE MANAGEMENT FROM CAL STATE, L.A.

27 THE COURT: WHAT ABOUT YOUR HUSBAND?

28 MS. MONROE: HE TOOK HIS UNDERGRADUATE AT THE UNIVERSITY

1 OF PENNSYLVANIA AND HIS LAW DEGREE FROM HARVARD UNIVERSITY.

2 THE COURT: HARVARD?

3 MS. MONROE: HARVARD LAW SCHOOL.

4 THE COURT: HE COULDN'T HAVE GOTTEN ANY BETTER EDUCATION.
5 THAT IS WHERE I WENT, TOO.

6 MS. MONROE: THAT IS WHAT HE THINKS.

7 THE COURT: I WENT TO COLLEGE THERE.

8 WHERE DO YOU LIVE?

9 MS. MONROE: BEVERLY HILLS.

10 THE COURT: AND YOU TOLD ME THAT YOU HAVE NOT SAT AS
11 A JUROR IN ANY CRIMINAL CASE BEFORE? NEVER?

12 MS. MONROE: IF DRIVING UNDER THE INFLUENCE WAS --

13 THE COURT: NOTHING IN THE SUPERIOR COURT?

14 MS. MONROE: NO.

15 THE COURT: ALL RIGHT. YOU MAY INQUIRE.

16 MR. BARENS: THANK YOU. GOOD MORNING, MS. MONROE.

17 MS. MONROE: GOOD MORNING.

18 MR. BARENS: MS. MONROE, JUST A FEW MOMENTS AGO, HIS
19 HONOR ASKED IF YOU HAD ANY VIEWS OF THE CRIMINAL JUSTICE
20 SYSTEM OR THE CRIMINAL LAW BASED ON YOUR DISCUSSIONS WITH
21 YOUR HUSBAND.

22 AND I BELIEVE THAT YOU INDICATED AFFIRMATIVELY,
23 THAT YOU DID HAVE SOME ATTITUDES TOWARD THE CRIMINAL JUSTICE
24 SYSTEM. COULD YOU TELL US WHAT THAT IS?

25 MS. MONROE: I THINK THAT I CAN BE A FAIR JUROR, BASED
26 ON THE EVIDENCE PRODUCED IN COURT. I PREFER NOT TO HAVE ANY
27 PREVIOUS OPINIONS UNTIL I HAVE HEARD ALL OF THE EVIDENCE.

28 MR. BARENS: HOW DO YOU FEEL AS A GENERAL MATTER ABOUT

1 YOUR HUSBAND HAVING CRIMINAL CLIENTS?

2 MS. MONROE: THAT IS HIS BUSINESS.

3 MR. BARENS: YOU DON'T SAY TO HIM, "GEE, I WISH THAT
4 YOU COULD JUST STICK WITH THOSE DIVORCE PEOPLE," OR SOMETHING
5 LIKE THAT?

6 MS. MONROE: NO. THAT IS HIS DEPARTMENT.

7 MR. BARENS: OKAY.

8 THE COURT: IS HE ASSOCIATED WITH ANY LAW FIRM?

9 MS. MONROE: NO. HE IS IN PRIVATE PRACTICE.

10 THE COURT: ALL RIGHT. WHERE IS HIS OFFICE?

11 MS. MONROE: CENTURY CITY.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: YOU DON'T HAVE ANY FEELINGS ONE WAY OR
14 ANOTHER ABOUT WHETHER HE REPRESENTS CRIMINAL DEFENDANTS?

15 MS. MONROE: NO.

16 MR. BARENS: HAVE YOU EVER HAD AN OCCASION WHERE YOU
17 ASKED HIM OR TOLD HIM THAT YOU WOULD PREFER THAT HE DIDN'T
18 REPRESENT A PARTICULAR CLIENT THAT HE HAD IN A CRIMINAL
19 MATTER?

20 MS. MONROE: NO.

21 MR. BARENS: WHY IS YOUR HOUSE SO DIFFERENT THAN MINE?
22 DOES YOUR HUSBAND DISCUSS HIS CRIMINAL CASES WITH YOU AT ALL?

23 MS. MONROE: NO.

24 MR. BARENS: HE NEVER TELLS YOU HIS OPINION ABOUT THE
25 GUILT OR INNOCENCE OF HIS CLIENTS?

26 MS. MONROE: NO.

27 MR. BARENS: DID YOU EVER HEAR HIM TALKING ABOUT THAT
28 TYPE OF THING IN CRIMINAL PRACTICE WHEN YOU GO TO PARTIES

1 OR SOCIAL GATHERINGS WITH FRIENDS OF YOURS?

2 MS. MONROE: NOT THAT I RECALL.

3 MR. BARENS: TO YOUR KNOWLEDGE, HAS YOUR HUSBAND HANDLED
4 ANY MURDER CASES?

5 MS. MONROE: I DON'T KNOW.

6 MR. BARENS: EITHER BEFORE YOU WERE MARRIED OR SINCE
7 YOU HAVE BEEN MARRIED?

8 MS. MONROE: I DON'T KNOW OF ANY.

9 MR. BARENS: DO YOU KNOW WHAT TYPE OF CRIMINAL CASES
10 HE DOES HAVE, IF ANY PARTICULAR TYPE OF CRIMINAL MATTER COMES
11 TO HIS ATTENTION?

12 MS. MONROE: NO. I ASKED HIM OVER THE WEEKEND IF HE
13 HANDLED ANY, IN CASE I WOULD GET THIS QUESTION.

14 HE SAID YES. BUT I DIDN'T GO INTO WHAT KIND.

15 MR. BARENS: DID YOUR HUSBAND SHOW AN INTEREST IN THIS
16 CASE WHEN YOU WERE TALKING WITH HIM?

17 MS. MONROE: I REALLY HATE TO SAY THIS, BUT HE WAS NOT
18 FAMILIAR WITH IT. I JUST TOLD HIM WHAT HAD BEEN DONE. BUT
19 I DIDN'T TELL HIM ANYTHING ELSE ABOUT IT.

20 MR. BARENS: SURE. I RECALL ON PREVIOUS QUESTIONS YOU
21 HAD TOLD US THAT YOU HAD READ SOME MATERIALS THAT MADE
22 REFERENCE TO THE MATTER.

23 I WAS WONDERING IF YOUR HUSBAND HAD READ ANY OF
24 THOSE, TO YOUR KNOWLEDGE?

25 MS. MONROE: HE IS A VERY BUSY MAN. APPARENTLY, HE
26 DIDN'T GET TO THOSE ARTICLES.

27 MR. BARENS: YOU NEVER DISCUSSED ANY OF THOSE ARTICLES
28 WITH HIM?

1 MS. MONROE: NO.

2 MR. BARENS: SO YOU DON'T FEEL THAT THERE IS ANYTHING
3 ABOUT YOUR HUSBAND'S LEGAL PRACTICE WITH REFERENCE TO THE
4 CRIMINAL WORK THAT WOULD HAVE ANY BEARING ON YOUR OUTLOOK
5 HERE?

6 MS. MONROE: NOT AT ALL.

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1 MR. BARENS: NOW, IF YOU WERE CONFUSED ABOUT THINGS,
2 LIKE CONCEPTS ON CIRCUMSTANTIAL EVIDENCE OR THE BURDEN OF
3 PROOF OR WHAT NOT, WOULD YOU ASK YOUR HUSBAND TO GIVE YOU
4 SOME ADVICE OR INFORMATION ABOUT HOW THOSE THINGS WORK IN
5 THE SYSTEM?

6 MS. MONROE: IF I WERE ON A CASE, I WOULD -- I WOULD
7 GO ON THE PERSONS INVOLVED HERE. I WOULDN'T ASK FOR OUTSIDE
8 INFORMATION.

9 MR. BARENS: OKAY, BECAUSE HIS HONOR WOULD TELL YOU,
10 AS HE DID, NOT TO DISCUSS THIS WITH ANYONE.

11 MS. MONROE: RIGHT.

12 MR. BARENS: I REALIZE IT SEEMS PECULIAR NOT TO EVEN
13 DISCUSS IT WITH A SPOUSE BUT WE ALL KNOW FROM PRACTICE OF
14 THIS TYPE OF LAW THAT PEOPLE HAVE DIFFERENT VIEWS ON WHAT
15 EVIDENTIARY REQUIREMENTS ARE NECESSARY AND JUST DIFFERENT
16 PHILOSOPHIES ON HOW A CASE SHOULD BE TRIED.

17 I TRUST YOU WOULD LEAVE OUT ALL OF YOUR
18 UNDERSTANDING AND JUST GO BY WHAT YOU HAVE IN THIS COURTROOM?

19 MS. MONROE: YES.

20 MR. BARENS: WERE YOU MARRIED PRIOR TO MR. MONROE?

21 MS. MONROE: YES.

22 MR. BARENS: COULD YOU TELL ME WHAT YOUR FIRST HUSBAND
23 DID?

24 MS. MONROE: HE WAS IN MIDDLE MANAGEMENT, AN EXECUTIVE
25 IN AN INSURANCE FIRM IN SAN FRANCISCO.

26 MR. BARENS: WAS HE A LAWYER, BY ANY CHANCE, AS WELL?

27 MS. MONROE: NO.

28 MR. BARENS: MRS. MONROE, WHAT EXACTLY DO YOU DO IN

1 YOUR WORK WITH L.A. COUNTY HEALTH SERVICES?

2 MS. MONROE: I SUPERVISE THE TUBERCULOSIS PROGRAM.

3 MR. BARENS: ARE YOU HANDS-ON WITH THE PATIENTS OR
4 ARE YOU ADMINISTRATIVELY ASSIGNED TO THE CONDUCT OF NURSES
5 AND OTHER ADMINISTRATIVE PEOPLE?

6 MS. MONROE: I AM ADMINISTRATIVELY ASSIGNED TO SUPERVISE
7 AND COORDINATE THEIR ACTIVITIES. I HAVE NO HANDS ON EXCEPT
8 IN TIMES OF EMERGENCY.

9 MR. BARENS: PRIOR TO YOUR ASSIGNMENT, WERE YOU DOING A
10 DIFFERENT KIND OF WORK AS A NURSE?

11 MS. MONROE: I WAS A PUBLIC HEALTH NURSE PRIOR TO THE
12 ASSIGNMENT, THE PROMOTION.

13 MR. BARENS: AND WHAT DID YOU DO IN THAT CAPACITY, MA'AM?

14 MS. MONROE: I MADE HOME VISITS AND DID FOLLOW-UP ON
15 VARIOUS ASPECTS INVOLVING VARIOUS TYPES OF CASES SUCH AS
16 MATERNITY, CHILD HEALTH, COMMUNICABLE DISEASES.

17 MR. BARENS: AND HOW DID YOUR PRIOR JURY EXPERIENCE
18 AFFECT YOUR VIEWS ON HOW, WELL, LET'S SAY, THE CRIMINAL JUSTICE
19 SYSTEM WORKS ON THE DRUNK DRIVING CASE YOU DID -- IT WAS A
20 CRIMINAL MATTER -- THE STANDARD OF PROOF, PROOF BEYOND A
21 REASONABLE DOUBT APPLIED AS MUCH IN THAT CASE AS IT DOES IN
22 THIS CASE, AS A MATTER OF LAW --

23 MS. MONROE: YES.

24 MR. BARENS: -- HIS HONOR WILL TELL YOU THAT.

25 HOW DO YOU FEEL ABOUT JURY SERVICE AS A RESULT
26 OF YOUR EXPERIENCE ON THAT JURY?

27 MS. MONROE: I FELT IT WAS -- IT WAS THE MOST FAIR SYSTEM
28 THAT I HAVE KNOWN ABOUT IN COMPARISON WITH THOSE IN OTHER

1 COUNTRIES.

2 MR. WAPNER: FAIR TO BOTH SIDES, MRS. MONROE?

3 MS. MONROE: YES.

4 MR. BARENS: FAIR TO THE PROSECUTION?

5 MS. MONROE: OH, YES.

6 MR. BARENS: AND FAIR TO THE DEFENDANT?

7 MS. MONROE: YES.

8 MR. BARENS: YOU UNDERSTAND THAT WHATEVER INSTRUCTIONS
9 YOU WERE GIVEN BY THE COURT IN THAT MATTER, YOU HAVE TO
10 DISREGARD AND JUST LISTEN TO THE LEGAL INSTRUCTIONS THAT THE
11 JUDGE WOULD GIVE YOU IN THIS CASE PRIOR TO DELIBERATING?

12 MS. MONROE: I WOULD DO THAT.

13 MR. BARENS: AND THAT WHATEVER INSTRUCTIONS YOU GOT
14 THEN, I AM SURE WERE ABSOLUTELY FINE AND ADEQUATE FOR THAT
15 CASE BUT YOU WOULD RECEIVE PERHAPS DIFFERENT OR ADDITIONAL
16 INSTRUCTIONS IN THIS CASE; IS THAT CORRECT?

17 MS. MONROE: YES.

18 MR. BARENS: OKAY, HOW DO YOU FEEL ABOUT THE PRESUMPTION
19 OF INNOCENCE, THAT COCOON I MADE REFERENCE TO LAST WEEK, WHICH
20 STAYS WITH ME THIS WEEK AND STAYS WITH MR. HUNT, MOST
21 ASSUREDLY THIS WEEK, HOW DO YOU FEEL ABOUT THAT CONCEPT IN
22 OUR LEGAL SYSTEM?

23 MS. MONROE: I AM COMFORTABLE WITH THAT CONCEPT.

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

25 MS. MONROE: YES.

26 MR. BARENS: AND WHAT ABOUT THIS BUSINESS OF WHETHER
27 A DEFENDANT NEED TESTIFY IN HIS OWN BEHALF, DO YOU THINK THAT
28 IS FAIR?

1 MS. MONROE: I THINK THE DEFENDANT SHOULD HAVE THAT
2 OPPORTUNITY. I DON'T THINK HE SHOULD BE FORCED TO DO THAT
3 IF HE DOESN'T WANT TO.

4 MR. BARENS: DO YOU THINK A DEFENDANT WHO EXERCISED
5 THAT OPPORTUNITY, RIGHTFULLY PUT, MRS. MONROE, SHOULD BE
6 JUDGED DIFFERENTLY THAN ANY OTHER WITNESS IS JUDGED IN TERMS
7 OF WHETHER HE IS TELLING THE TRUTH OR NOT?

8 MS. MONROE: NO.

9 MR. BARENS: WOULD YOU LISTEN AS OPEN-MINDEDLY TO THE
10 TESTIMONY OF A MAN WHO COULD BE ON TRIAL FOR HIS LIFE AS YOU
11 WOULD TO THE TESTIMONY OF HIS ACCUSERS?

12 MS. MONROE: YES.

13 MR. BARENS: AND DO YOU FEEL YOU COULD BE FAIR IN THAT
14 RESPECT?

15 MS. MONROE: YES.

16 MR. BARENS: AND WHAT WAS THE LAST BOOK YOU READ?

17 MS. MONROE: THE LAST BOOK I READ, I HESITATE TO SAY
18 THIS, BUT IT WAS CALLED "ADRIFT" BY I THINK IT IS STEPHEN
19 CALLAHAN.

20 (LAUGHTER IN COURTROOM.)

21 MS. MONROE: IT WAS A NONFICTION BOOK ABOUT A MAN'S
22 ACCOUNT OF 76 DAYS IN A LIFERAFT.

23 MR. BARENS: MY GOODNESS. PRAY TELL THAT HE STARTED
24 THAT TRIP BY HIMSELF AND FINISHED BY HIMSELF.

25 WAS THERE ANY BUSINESS THERE WITH PEOPLE GOING
26 OVERBOARD AND THAT SORT OF THING?

27 MS. MONROE: NO. IT WAS A SOLE SAILOR. HE WANTED TO --

28 MR. BARENS: NO MYSTERY?

1 MS. MONROE: NO MYSTERY.

2 MR. BARENS: I WILL TRY TO KEEP IT TO THAT.

3 AND WHAT WAS THE LAST MOVIE THAT YOU SAW?

4 MS. MONROE: I TOOK MY DAUGHTER THIS WEEKEND, SHE WANTED
5 TO SEE "STAND BY ME".

6 MR. BARENS: AND DID YOU ENJOY THAT MOVIE?

7 MS. MONROE: MORE THAN I THOUGHT I WOULD.

8 MR. BARENS: AN INTERESTING MOVIE.

9 YOUR DAUGHTER CHOSE THAT MOVIE ACTUALLY?

10 MS. MONROE: YES.

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1 MR. BARENS: AND WHAT IS THE MOVIE YOU WENT TO THAT
2 YOU CHOSE?

3 MS. MONROE: "TOP GUN."

4 MR. BARENS: HOW DID YOU RELATE TO, IN "STAND BY ME,"
5 THOSE BOYS THAT WERE PUBLICLY OSTRACIZED BY THEIR AGE GROUP;
6 COULD YOU REMEMBER ANY OF THAT WHEN YOU WERE A CHILD, SEEING
7 THAT HAPPEN TO OTHER KIDS?

8 MS. MONROE: I FELT EMPATHY FOR THEM.

9 MR. BARENS: YOU FELT EMPATHY FOR THEM?

10 DO YOU REMEMBER IN THERE THAT SOMETIMES THOSE
11 BOYS WOULD TEND TO BRAG ABOUT ACCOMPLISHMENTS THAT THEY HADN'T
12 REALLY DONE AND TRIED TO KIND OF PUMP THEMSELVES UP FOR THEIR
13 PEER AUDIENCE?

14 MS. MONROE: I THINK THERE WERE PARTS LIKE THAT IN THERE.

15 MR. BARENS: DO YOU REMEMBER, THERE WAS ONE OF THEM
16 WHO EVEN TRIED TO BE A TOUGH GUY, THAT HE WAS GOING TO BE
17 THE TOUGHEST GUY IN THE TREE HOUSE THERE AND HE THOUGHT THAT
18 IS HOW HE COULD GAIN STATURE WITH THOSE OTHER BOYS THROUGH
19 BEING THE TOP GUN, SO TO SPEAK, IN THAT GROUP?

20 MS. MONROE: I FELT HE NEEDED THE SELF ESTEEM THAT HE
21 WASN'T GETTING AT HOME.

22 MR. BARENS: EVEN THOUGH SOME OF THE THINGS HE TOOK
23 CREDIT FOR WEREN'T TRUE, WERE THEY?

24 MS. MONROE: I GUESS NOT.

25 I GUESS I MISSED PART OF THAT.

26 MR. BARENS: AND THEN EVERYTHING GOT TO BE DIFFERENT
27 WHEN THEY HAD TO DO WITH THE REAL THING, DIDN'T THEY?

28 MS. MONROE: YES.

1 MR. BARENS: THE TOUGH GUYS WEREN'T SO TOUGH IN REALITY?

2 MS. MONROE: THAT'S RIGHT.

3 MR. BARENS: AND THE APPEARANCE OF THINGS, THE APPEARANCE
4 OF THE INDIVIDUAL WHEN CONFRONTED WITH REALITY CHANGED
5 DRAMATICALLY, DIDN'T IT?

6 MS. MONROE: YES.

7 MR. BARENS: A LOT OF TIMES, WHAT PEOPLE APPEAR TO BE --
8 COULD YOU BELIEVE THAT WHAT APPEARS TO BE, BASED ON SOMETHING
9 ONE SAYS, IS A LOT DIFFERENT THAN WHAT THAT PERSON IS IN
10 REALITY AT THE MOMENT OF TRUTH, SO TO SPEAK?

11 MS. MONROE: YES.

12 MR. BARENS: NOW, YOU MENTIONED A DAUGHTER. DO YOU
13 HAVE ANY OTHER CHILDREN?

14 MS. MONROE: YES. I HAVE ONE SON.

15 MR. BARENS: AND HOW OLD IS YOUR SON?

16 MS. MONROE: 20.

17 MR. BARENS: AND WHAT DOES HE DO?

18 MS. MONROE: HE IS A COLLEGE STUDENT IN ENGINEERING.

19 MR. BARENS: WHERE DOES HE GO TO SCHOOL?

20 MS. MONROE: CAL POLY, SAN LUIS OBISPO.

21 MR. BARENS: HOW OLD IS YOUR DAUGHTER?

22 MS. MONROE: SIXTEEN AND A HALF.

23 MR. BARENS: AND SHE GOES TO HIGH SCHOOL AT?

24 MS. MONROE: BEVERLY HILLS HIGH.

25 MR. BARENS: HAS SHE STARTED LOOKING AT COLLEGE? I
26 WOULD THINK SO.

27 MS. MONROE: YES. SHE IS NOT SURE WHAT SHE WANTS TO
28 DO YET.

1 MR. BARENS: IS SHE MOTIVATED TO BE A LAWYER, BY ANY
2 CHANCE?

3 MS. MONROE: NO.

4 MR. BARENS: LAST WEEK YOU HEARD ME ASK SOME QUESTIONS
5 ABOUT THE BILLIONAIRE BOYS CLUB AS A NAME; HOW DO YOU FEEL
6 ABOUT THAT, WOULD YOU BE SUSPICIOUS OF ANYBODY WHO BELONGED
7 TO A CLUB WITH THAT NAME?

8 MS. MONROE: NO.

9 MR. BARENS: DO YOU BELONG TO ANY CLUBS OR SOCIAL
10 ORGANIZATIONS?

11 MS. MONROE: YES.

12 MR. BARENS: AND WHICH DO YOU PARTICIPATE WITH?

13 MR. MONROE: I AM A VOLUNTEER RN WITH THE AMERICAN RED
14 CROSS AND I ALSO BELONG TO THE SOUTHERN CALIFORNIA PUBLIC
15 HEALTH ASSOCIATION AND I AM A BOARD MEMBER, AND I BELONG TO
16 THE LAW GUILD OF BEVERLY HILLS.

17 MR. BARENS: THAT USED TO BE THE LAWYERS WIVES, WASN'T
18 IT?

19 MS. MONROE: RIGHT, YES.

20 MR. BARENS: HOW OFTEN DO YOU GO TO THE LAW GUILD?

21 MS. MONROE: NOT VERY OFTEN, BECAUSE MOST OF THE MEETINGS
22 ARE DURING THE DAYTIME WHEN I AM ON DUTY.

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1 MR. BARENS: TO MAKE SURE NONE OF THE HUSBANDS ARE THERE?
2 THAT WAS RECENTLY RENAMED, WASN'T IT, A COUPLE OF YEARS AGO?

3 MS. MONROE: BECAUSE SOME OF THE SPOUSES ARE NOT WIVES,
4 THEY ARE HUSBANDS.

5 MR. BARENS: ARE YOU ACTIVE IN ANY OF THE COMMITTEES
6 THAT THE LAW GUILD HAS?

7 MS. MONROE: YES.

8 MR. BARENS: WHICH COMMITTEES?

9 MS. MONROE: THE JUVENILE JUSTICE AND ALSO THE TOURS
10 THROUGH THE COURTHOUSE IN BEVERLY HILLS FOR STUDENTS WHICH
11 I WOULD LIKE TO PARTICIPATE IN BUT I HAVE NOT BEEN ABLE TO.

12 MR. BARENS: ARE YOU ACTIVE IN ANY OTHER -- OR DO YOU
13 ATTEND ANY OF YOUR HUSBAND'S PROFESSIONAL GROUP MEETINGS THAT
14 HE MIGHT GO TO?

15 MS. MONROE: YES.

16 MR. BARENS: WHICH WOULD THOSE BE?

17 MS. MONROE: THE LOS ANGELES COUNTY BAR ASSOCIATION
18 AND THE STATE BAR CONVENTIONS.

19 MR. BARENS: DO YOU GO TO ANY OF THE LECTURES OR
20 SEMINAR CLASSES THAT THEY MIGHT HAVE ON CRIMINAL MATTERS?

21 MS. MONROE: NOT THAT I RECALL ON CRIMINAL MATTERS,
22 MOSTLY ON FAMILY LAW.

23 MR. BARENS: ALL RIGHT. HAVE YOU OR ANYONE IN YOUR
24 IMMEDIATE FAMILY BEEN THE VICTIM OF ANY ECONOMIC -- BEEN
25 DEFRAUDED OR CHEATED OUT OF MONEY?

26 MS. MONROE: NO.

27 MR. BARENS: HAVE YOU HAD ANY MAJOR INCIDENT LIKE THAT?

28 MS. MONROE: NO.

1 MR. BARENS: DOES YOUR HUSBAND REPRESENT ANY DEFENDANTS
2 THAT WERE ACCUSED OF EMBEZZLING OR WHITE COLOR CRIME OR
3 STOCK MANIPULATION?

4 MS. MONROE: I DON'T THINK SO.

5 MR. BARENS: NOT THAT YOU ARE AWARE OF?

6 MS. MONROE: NOT THAT I AM AWARE OF.

7 MR. BARENS: HAS ANYONE IN THE BEVERLY HILLS COMMUNITY
8 DISCUSSED THIS CASE WITH YOU?

9 MS. MONROE: NO.

10 MR. BARENS: HAVE YOU EVER HEARD ABOUT IT IN THE LOCAL
11 NEWSPAPERS, THE POST OR THE COURIER?

12 MS. MONROE: I READ THOSE. BUT I HAVE NOT SEEN ANYTHING
13 IN THEM.

14 MR. BARENS: WHAT DO YOU THINK AS A RESULT OF YOUR
15 PROFESSIONAL TRAINING AND EXPERIENCES, IS THE MOST IMPORTANT
16 THING YOU COULD TEACH YOUR SON OR DAUGHTER?

17 MS. MONROE: COULD YOU REPEAT THAT?

18 MR. BARENS: SURE. AS A RESULT OF YOUR EXPERIENCE AND
19 TRAINING, WHAT DO YOU THINK IS THE MOST IMPORTANT THING YOU
20 COULD TEACH YOUR SON OR DAUGHTER?

21 MS. MONROE: TO RESPECT PRIVACY AND RESPECT OTHERS AND
22 TO STAY AWAY FROM DRUGS.

23 MR. BARENS: I WILL STIPULATE TO THAT. HOW DO YOU FEEL
24 ABOUT BEING A JUROR ON THIS CASE? WOULD YOU LIKE TO BE A
25 JUROR ON THIS CASE?

26 MS. MONROE: IT WOULD TAKE ME AWAY FROM MY DUTIES, MY
27 JOB. BUT I REALLY HAVE NO FEELINGS ONE WAY OR THE OTHER.

28 MR. BARENS: THAT CONCERN FOR YOUR JOB WOULDN'T INFLUENCE

1 YOU OR MAKE YOU FEEL ANXIOUS TO CONCLUDE THIS PROCESS?

2 MS. MONROE: NO. I DON'T THINK SO.

3 MR. BARENS: LET'S SAY THERE WERE 11 JURORS GOING ONE
4 WAY AND YOU WERE GOING THE OTHER WAY, MS. MONROE AND YOU REALLY
5 BELIEVED YOUR POSITION. WOULD THE FACT THAT THERE MIGHT BE
6 AN INCREASING TIME URGENCY ABOUT THIS FOR YOU TO GET BACK
7 TO YOUR JOB, CAUSE YOU IN ANY WAY TO COMPROMISE YOUR VOTE?

8 MS. MONROE: NOT AT ALL.

9 MR. BARENS: AND DO YOU FEEL PRINCIPLED THAT WE ARE
10 ALL PEOPLE-PLEASERS TO ONE DEGREE OR ANOTHER, WHETHER WE WANT
11 TO OR NOT? DO YOU THINK THAT YOU COULD STICK BY YOUR
12 CONVICTIONS IN THIS MATTER IF YOU WERE A MINORITY VOTE,
13 IRRESPECTIVE OF THE VIEWS OF THE OTHER JURORS?

14 MS. MONROE: YES.

15 MR. BARENS: NOW OF COURSE, WE ALL EXPECT YOU TO
16 CONSIDER THE OPINIONS OF OTHER JURORS AND HAVE MEANINGFUL
17 DIALOGUE WITH THEM.

18 BUT IF YOU CAME TO A CONVICTION ON YOUR OWN THAT
19 DIFFERED FROM THEIRS, WOULD YOU STAND BY THAT CONVICTION?

20 MS. MONROE: YES.

21 MR. BARENS: PASS FOR CAUSE. THANK YOU, MS. MONROE.

22 THE COURT: ALL RIGHT. MR. WAPNER?

23 MR. WAPNER: THANK YOU, YOUR HONOR.

24 GOOD MORNING, MS. MONROE. DID YOU ENJOY THE BOOK?

25 MS. MONROE: YES, VERY MUCH.

26 MR. WAPNER: OKAY. SINCE YOU MENTIONED THAT, WE WILL
27 GET INTO SOME OTHER EXAMPLES LATER.

28 (LAUGHTER FROM THE AUDIENCE.)

1 MR. WAPNER: GROANS? I FEEL TERRIBLE WHEN THEY DO THAT.
2 THIS IS OF SOME IMPORTANCE TO ME, NOT BECAUSE I LIKE TO KNOW
3 HOW PEOPLE FEEL ABOUT BEING ON BOATS BUT BECAUSE AT LEAST
4 FOR ME, IT IS A WAY TO TRY TO GET SOME INSIGHT INTO YOUR
5 THOUGHT PROCESSES.

6 YOU HEARD THE EXAMPLE OBVIOUSLY, BECAUSE YOU
7 GROANED WHEN YOU MENTIONED THE DRIFTING BOOK. DO YOU HAVE
8 ANY THOUGHTS ABOUT WHAT HAPPENED TO THE PERSON ON THE BOAT?

9 MS. MONROE: IN YOUR EXAMPLE OR IN THE BOOK I READ?

10 MR. WAPNER: IN MY EXAMPLE. WE ARE STUCK WITH THAT
11 FOR THE TIME BEING.

12 MS. MONROE: OKAY. I THINK THE --
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1 MR. BARENS: I WOULD HAVE AN OBJECTION. I AM UNCLEAR
2 AS TO WHICH PERSON, THE PERSON THAT IS ALLEGEDLY IN THE BOAT
3 OR WHETHER IT IS THE PERSON THAT REMAINED AND BECAME A
4 DEFENDANT FOR MURDER.

5 THE COURT: CLEAR IT UP, PLEASE.

6 MR. BARENS: THANK YOU.

7 THE COURT: WHICH PERSON DO YOU MEAN?

8 MR. WAPNER: WELL, THAT IS MR. BARENS' EXAMPLE. THAT
9 WAS NOT MINE.

10 I AM TALKING ABOUT THE PERSON WHO WAS ON THE BOAT
11 AT NIGHT AND WAS NOT THERE IN THE MORNING. DO YOU HAVE ANY
12 THOUGHTS ABOUT WHAT HAPPENED TO THAT PERSON?

13 MS. MONROE: IT IS MOST LIKELY THAT THAT PERSON JUMPED
14 OR FELL OVERBOARD AND IS PROBABLY NOT ALIVE, DUE TO SHARKS
15 AND OVEREXPOSURE AND NOT BEING ABLE TO GET ONTO SOME OTHER
16 PASSING BOAT OR TO BE RESCUED.

17 MR. WAPNER: OKAY. AND ASSUMING THAT THAT PERSON WAS
18 OF RELATIVELY SOUND MIND AND WOULD HAVE KNOWN THE TYPES OF
19 THINGS YOU ARE TALKING ABOUT, THAT IS, SHARKS, EXPOSURE AND
20 THAT KIND OF THING AND THAT HE DIDN'T TAKE A LIFEBOAT, DO
21 YOU THINK IT IS -- OR A LIFE JACKET -- DO YOU THINK IT IS
22 REASONABLE TO ASSUME THAT HE JUMPED?

23 MS. MONROE: I COULDN'T ANSWER THAT. I REALLY DON'T
24 KNOW.

25 MR. WAPNER: ASSUMING FOR EXAMPLE, THAT HE WAS NOT
26 INTENDING TO KILL HIMSELF --

27 MS. MONROE: HE PROBABLY DIDN'T JUMP.

28 MR. WAPNER: OKAY. DID YOU HEAR THE QUESTIONS THAT

1 I ASKED OF MR. TAUB ABOUT IMMUNIZED WITNESSES?

2 MS. MONROE: YES.

3 MR. WAPNER: HOW DO YOU FEEL ABOUT A WITNESS WHO
4 TESTIFIES UNDER A GRANT OF IMMUNITY?

5 MS. MONROE: THAT IS A LEGAL RIGHT. IT IS ALL RIGHT.

6 MR. WAPNER: OKAY. YOU CAN USE THE SAME STANDARDS,
7 THE SAME SCALES, THE SAME LAW THAT THE JUDGE GIVES YOU ABOUT
8 EVALUATING THE TESTIMONY OF WITNESSES AS YOU USE FOR ALL OTHER
9 WITNESSES?

10 MS. MONROE: IS THAT A QUESTION?

11 MR. WAPNER: CAN YOU -- YES. THAT IS A QUESTION. CAN
12 YOU DO THAT?

13 MS. MONROE: YES. I CAN USE THE SAME STANDARDS FOR
14 ALL PERSONS. IS THAT WHAT YOU ARE ASKING?

15 MR. WAPNER: THAT IS WHAT I AM ASKING.

16 MS. MONROE: YES.

17 MR. WAPNER: DO YOU UNDERSTAND THAT THAT INCLUDES
18 POLICEMEN AS WELL AS DEFENDANTS?

19 MS. MONROE: YES.

20 MR. WAPNER: SO IF A POLICEMAN -- IF YOU FELT THE
21 POLICEMAN HAD A BIAS, WOULD YOU TAKE THAT INTO CONSIDERATION?
22 DO YOU UNDERSTAND THAT?

23 MS. MONROE: ALL PEOPLE I SUPPOSE HAVE BIASES. SO THAT
24 COULD BE CONSIDERED.

25 MR. WAPNER: AND IF YOU THOUGHT THAT THE DEFENDANT,
26 IF HE TESTIFIED, HAD A BIAS TO TESTIFY ONE WAY OR ANOTHER,
27 YOU COULD TAKE THAT INTO CONSIDERATION?

28 MS. MONROE: YES.

1 MR. WAPNER: OKAY. YOUR SON THAT IS AT CAL POLY, DOES
2 HE LIVE ON CAMPUS?

3 MS. MONROE: NOT ANY MORE. HE LIVES NEAR CAMPUS.

4 MR. WAPNER: OKAY. HOW OFTEN DO YOU TALK TO HIM?

5 MS. MONROE: ABOUT EVERY THREE WEEKS.

6 MR. WAPNER: AND DOES HE COME HOME FOR THE HOLIDAYS
7 AND VACATIONS AND THINGS LIKE THAT?

8 MS. MONROE: RIGHT.

9 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

10 MS. MONROE: YES.

11 MR. WAPNER: DO THEY LIVE IN THE LOS ANGELES AREA?

12 MS. MONROE: NO, IN SAN LUIS OBISPO COUNTY.

13 MR. WAPNER: HOW OFTEN DO YOU SPEAK WITH THEM?

14 MS. MONROE: APPROXIMATELY EVERY OTHER WEEK.

15 MR. WAPNER: HOW OFTEN DO YOU SEE THEM?

16 MS. MONROE: USUALLY AROUND THE HOLIDAYS OR ABOUT EVERY
17 TWO OR THREE MONTHS.

18 MR. WAPNER: THE JURY THAT YOU SAT ON, ON THE DRIVING
19 UNDER THE INFLUENCE CASE, DID YOU FEEL THAT ALL OF THE PEOPLE
20 WHO WENT IN THE JURY ROOM MADE A CONSCIENTIOUS EFFORT TO TRY
21 TO REACH A VERDICT?

22 MS. MONROE: YES.

23 MR. WAPNER: AND IT WAS JUST ONE OF THOSE THINGS WHERE
24 FACTUALLY, YOU COULDN'T AGREE?

25 MS. MONROE: RIGHT.

26 MR. WAPNER: THAT WAS YOUR ONLY PRIOR EXPERIENCE OF
27 JURY DUTY?

28 MS. MONROE: YES.

1 MR. WAPNER: HAVE YOU HAD ANY EXPERIENCES WITH LAW
2 ENFORCEMENT THAT LEFT SUCH A BAD TASTE IN YOUR MOUTH THAT
3 YOU WOULD HOLD IT AGAINST A POLICEMAN IF HE TESTIFIED IN THIS
4 CASE?

5 MS. MONROE: NO.

6 MR. WAPNER: BEFORE YOU CAME TO SIT ON THIS CASE, DID
7 YOU HAVE ANY REACTIONS WHEN SOMEONE SAID TO YOU THE WORDS,
8 "CIRCUMSTANTIAL EVIDENCE"?

9 MS. MONROE: REACTION?

10 MR. WAPNER: DID YOU FEEL THAT YOU COULDN'T PROVE A
11 CASE BY CIRCUMSTANTIAL EVIDENCE OR IT WAS NOT AS GOOD AS OTHER
12 KINDS OF EVIDENCE OR ANYTHING LIKE THAT?

13 MS. MONROE: I THINK I FELT THAT IT WAS NOT AS GOOD
14 AS OTHER KINDS OF EVIDENCE UNTIL IT WAS CLEARED UP LATER ON.

15 MR. WAPNER: YOU HEARD THE JUDGE READ THE INSTRUCTION
16 FROM THE JURY INSTRUCTION BOOK?

17 MS. MONROE: YES.

18 MR. WAPNER: ALL RIGHT. DID THAT HELP YOU WITH
19 UNDERSTANDING THAT IT IS JUST AS GOOD AS ANY OTHER KIND OF
20 EVIDENCE?

21 MS. MONROE: YES.

22 MR. WAPNER: DID YOU HAVE ANY PROBLEM WITH ANY OF THE
23 EXAMPLES I USED WITH ANY OF THE OTHER JURORS?

24 MS. MONROE: NONE THAT I RECALL.

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1 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT, THE PEOPLE'S PEREMPTORY.

4 MR. BARENS: IS THAT CORRECT?

5 MR. WAPNER: YES, IT IS CORRECT.

6 WE WOULD THANK AND ASK THE COURT TO THANK AND
7 EXCUSE MR. PEIKERT, JUROR NUMBER 6. THANK YOU, SIR.

8 THE COURT: ALL RIGHT, THANK YOU, MR. PEIKERT. YOU
9 ARE EXCUSED.

10 MR. PEIKERT: COUNSELORS, AND YOUR HONOR, HAVE A HAPPY
11 HOLIDAY.

12 THE COURT: THANK YOU VERY MUCH. YOU WILL BE EXCUSED,
13 MR. PEIKERT.

14 THE CLERK: BEATRICE AGSAOAY, A-G-S-A-O-A-Y.

15 IS THAT MRS.?

16 MS. AGSAOAY: MRS.

17 THE COURT: MRS. AGSAOAY, I THINK YOU TOLD US THE OTHER
18 DAY THAT YOU OR SOME MEMBER OF YOUR FAMILY HAVE BEEN THE
19 VICTIM OF SOME KIND OF A CRIME.

20 MS. AGSAOAY: YES.

21 THE COURT: TELL US ABOUT THAT, PLEASE.

22 MS. AGSAOAY: MY NIECE WAS ASSAULTED AND HER CAR WAS
23 TAKEN AWAY FROM HER, TOO. THIS WAS ABOUT TWO YEARS AGO.

24 THE COURT: THREE WEEKS AGO?

25 MS. AGSAOAY: TWO YEARS AGO.

26 THE COURT: AND WAS THE CAR EVER RECOVERED?

27 MS. AGSAOAY: YES, AFTER TWO WEEKS.

28 THE COURT: DID THEY GET THE MAN WHO DID IT?

1 MS. AGSAOAY: NO.

2 THE COURT: WAS IT INVESTIGATED BY THE POLICE?

3 MS. AGSAOAY: YES.

4 THE COURT: ARE YOU SATISFIED WITH THE WAY THE
5 INVESTIGATION WENT DOWN?

6 MS. AGSAOAY: MY NIECE WAS.

7 THE COURT: YOUR NIECE WAS, BUT NOT YOU, THOUGH?

8 MS. AGSAOAY: AH, I FELT NOTHING.

9 THE COURT: I SEE, ALL RIGHT.

10 AS A RESULT OF THAT EXPERIENCE, BECAUSE A CRIME
11 HAD BEEN COMMITTED AGAINST YOUR NIECE, WOULD THAT IN ANY WAY
12 AFFECT YOU IN DETERMINING THE GUILT OR INNOCENCE OF THIS
13 DEFENDANT?

14 MS. AGSAOAY: NO.

15 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
16 SAME GENERAL QUESTIONS WHICH WERE ASKED OF THE OTHER JURORS,
17 WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY BE
18 SUBSTANTIALLY THE SAME?

19 MS. AGSAOAY: SUBSTANTIALLY THE SAME.

20 THE COURT: ALL RIGHT. WHAT DO YOU DO, PLEASE?

21 MS. AGSAOAY: I AM A SCHOOLTEACHER.

22 THE COURT: AND WHAT SYSTEM DO YOU TEACH IN?

23 MS. AGSAOAY: I AM WITH THE TUSTIN UNIFIED SCHOOL
24 DISTRICT IN TUSTIN, CALIFORNIA.

25 THE COURT: LET ME SEE, THAT IS MRS. WHAT DOES
26 MR. AGSAOAY DO?

27 MS. AGSAOAY: MY HUSBAND IS AN EXPEDITER FOR HUGHES
28 AIRCRAFT IN EL SEGUNDO.

1 THE COURT: AND DO YOU HAVE ANY CHILDREN?

2 MS. AGSAOAY: NO.

3 THE COURT: WHERE DO YOU LIVE?

4 MS. AGSAOAY: WEST LOS ANGELES.

5 THE COURT: TELL ME SOMETHING OF YOUR SCHOOLING, YOUR
6 BACKGROUND.

7 MS. AGSAOAY: I HAVE A BACHELOR'S DEGREE FROM UCLA.

8 I AM A BRUIN BOOSTER.

9 THE COURT: YOU ARE A BRUIN BOOSTER? THE SAME AS
10 MISS HOFER.

11 AND WHAT EDUCATION DID YOUR HUSBAND HAVE?

12 MS. AGSAOAY: HIGH SCHOOL.

13 THE COURT: AND WHERE DO YOU LIVE?

14 MS. AGSAOAY: WHERE DOES HE LIVE?

15 THE COURT: WHERE DO YOU LIVE?

16 MS. AGSAOAY: WEST LOS ANGELES.

17 THE COURT: HAVE YOU EVER SAT AS A JUROR ON A CRIMINAL
18 CASE BEFORE?

19 MS. AGSAOAY: YES.

20 THE COURT: WHAT KIND OF CASE WAS THAT?

21 MS. AGSAOAY: DRUNK DRIVING WITH A HUNG JURY.

22 THE COURT: HOW LONG AGO WAS THAT?

23 MS. AGSAOAY: SEVEN YEARS AGO.

24 THE COURT: WAS THAT IN WEST LOS ANGELES COURT?

25 MS. AGSAOAY: NO, DOWNTOWN COURT.

26 THE COURT: DOWNTOWN. I SEE.

27 AGAIN, WHATEVER EXPERIENCE YOU' HAD THERE, YOU
28 JUST FORGET ABOUT IT AND BE GUIDED BY THE EVIDENCE IN THIS

1 CASE AND MY INSTRUCTIONS, WOULD YOU NOT?

2 MS. AGSAOAY: YES.

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

4 MR. CHIER: THANK YOU, YOUR HONOR.

5 GOOD MORNING.

6 MS. AGSAOAY: GOOD MORNING.

7 MR. CHIER: AGSAOAY?

8 MS. AGSAOAY: AGSAOAY.

9 MR. CHIER: I AM RICHARD CHIER AND I AM CO-COUNSEL IN
10 THIS CASE.

11 I WOULD LIKE TO OPEN THE QUESTIONING, MA'AM, WITH
12 SOME QUESTIONS ABOUT WHAT YOU DO AS A TEACHER, WHAT YOU TEACH
13 AND THE GRADE THAT YOU TEACH. WHAT GRADE DO YOU TEACH?

14 MS. AGSAOAY: I AM A HIGH SCHOOL SPANISH TEACHER.
15 I TEACH SPANISH 1 --

16 MR. CHIER: I AM SORRY?

17 MS. AGSAOAY: I TEACH SPANISH 1, 3, 4 AND 5.

18 MR. CHIER: I SEE. SO YOU TEACH AT TUSTIN HIGH SCHOOL?

19 MS. AGSAOAY: YES.

20 MR. CHIER: HOW LONG HAVE YOU DONE THAT?

21 MS. AGSAOAY: HERE IN TUSTIN, I MEAN HERE IN CALIFORNIA,
22 20 YEARS.

23 MR. CHIER: HOW LONG HAS YOUR HUSBAND BEEN WITH HUGHES?

24 MS. AGSAOAY: HE CAME HERE IN '68, 18 YEARS.

25 MR. CHIER: WHAT DOES HE DO FOR THEM?

26 MS. AGSAOAY: HE IS AN EXPEDITER WITH HUGHES AIRCRAFT.

27 MR. CHIER: AND WHAT DOES THAT ENTAIL ESSENTIALLY?

28 MS. AGSAOAY: I DON'T KNOW. I GUESS EXPEDITE THINGS.

1 (LAUGHTER IN COURTROOM.)

2 MS. AGSAOAY: WE DO NOT DISCUSS HIS JOB BECAUSE HE SAYS
3 WE DON'T DISCUSS IT.

4 MR. CHIER: HOW LONG AGO DID YOU SIT ON THE DRUNK
5 DRIVING TRIAL, THE DRIVING UNDER THE INFLUENCE?

6 MS. AGSAOAY: I WOULD SAY ABOUT SEVEN YEARS AGO,
7 DOWNTOWN.

8 IT IS A LONG TIME AGO.

9 MR. CHIER: HOW LONG DID THE JURY DELIBERATE BEFORE
10 IT WAS DECLARED A MISTRIAL OR HUNG JURY?

11 MS. AGSAOAY: THAT SAME DAY.

12 MR. CHIER: THAT SAME DAY?

13 MS. AGSAOAY: YES.

14 MR. CHIER: AND WERE THE JURORS, DID THEY APPEAR TO
15 BE HOPELESSLY DEADLOCKED FROM THE BEGINNING OF THEIR
16 DELIBERATIONS?

17 MS. AGSAOAY: YES, I THINK THEY WERE SIX AND SIX.

18 MR. CHIER: WERE YOU THE FOREPERSON?

19 MS. AGSAOAY: WAS I WHAT?

20 MR. CHIER: WERE YOU THE FOREPERSON?

21 MS. AGSAOAY: FOR?

22 MR. CHIER: THE FOREMAN, FOREPERSON.

23 MS. AGSAOAY: NO, I WAS NOT.

24 MR. CHIER: DID THE DEFENDANT TESTIFY IN THAT CASE?

25 MS. AGSAOAY: YES.

26 MR. CHIER: AND DID THE POLICE OFFICER TESTIFY IN THAT
27 CASE?

28 MS. AGSAOAY: YES.

1 MR. CHIER: AND WAS THERE SOME CIRCUMSTANTIAL EVIDENCE
2 IN THAT CASE PRESENTED BY THE PROSECUTION?

3 MS. AGSAOAY: YES.

4 MR. CHIER: AND DID YOU THINK THAT CIRCUMSTANTIAL EVIDENCE
5 WAS QUALITATIVELY DIFFERENT FROM ANY OF THE OTHER EVIDENCE
6 YOU HEARD?

7 MS. AGSAOAY: QUALITATIVELY?

8 MR. CHIER: WAS IT BETTER OR WORSE, IN YOUR MIND, WAS
9 IT MORE CONVINCING OR LESS CONVINCING?

10 MS. AGSAOAY: THE EVIDENCE WAS CONVINCING, IN MY MIND.

11 MR. CHIER: AND YOU SAID THAT THE DEFENDANT IN THAT
12 CASE DID TESTIFY?

13 MS. AGSAOAY: YES.

14 MR. CHIER: AND DID YOU FEEL THAT IN THAT CASE THE
15 DEFENDANT WAS NOT AS BELIEVABLE, LET'S SAY, AS THE POLICE
16 OFFICERS BECAUSE HE WAS THE DEFENDANT IN THAT CASE?

17 MS. AGSAOAY: NO. HE BELIEVED WHAT HE SAID.

18 MR. CHIER: DID THE POLICE OFFICERS IN THAT CASE TESTIFY
19 TO ANY STATEMENT THAT THE DEFENDANT SUPPOSEDLY MADE AT THE
20 TIME OF THE ARREST OR AT THE SCENE OF THE OFFENSE?

21 MS. AGSAOAY: NO.

22 MR. CHIER: DO YOU UNDERSTAND THAT -- IS IT MRS. AGSAOAY?

23 MS. AGSAOAY: YES.

24 MR. CHIER: DO YOU UNDERSTAND THE COURT WOULD INSTRUCT
25 YOU IN THIS CASE, IF YOU WERE A JUROR, AND WILL INSTRUCT THE
26 JURY, I AM SURE, THAT ORAL ADMISSIONS OF THE DEFENDANT IN
27 A CRIMINAL CASE OUGHT TO BE VIEWED WITH CAUTION; DO YOU UNDER-
28 STAND APROPOS OF THAT INSTRUCTION THAT PERHAPS THE EASIEST

1 EVIDENCE TO EITHER FABRICATE OR TO MISAPPREHEND, DEPENDING
2 ON ONE'S MOTIVES, ARE STATEMENTS OF AN ACCUSED PERSON OR BY
3 AN ACCUSED PERSON? DO YOU KNOW WHAT I MEAN?

4 MS. AGSAOAY: YES.

5 THE COURT: YOU ARE ASKING HER TO PREJUDGE THE TESTIMONY
6 IN THIS PARTICULAR CASE.

7 MR. CHIER: NO, I AM NOT, YOUR HONOR.

8 THE COURT: YES, YOU ARE. I WILL OBJECT TO THAT. THAT
9 IS ARGUMENT, TOO.

10 MR. CHIER: OKAY, LET'S GET ON TO SOMETHING ELSE.

11 ARE YOUR PARENTS LIVING?

12 MS. AGSAOAY: MY FATHER IS.

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1 MR. CHIER: AND DO YOU MAINTAIN REGULAR CONTACT?

2 MS. AGSAOAY: YES. HE LIVES FOUR BLOCKS AWAY FROM US.

3 MR. CHIER: AND HOW OFTEN DO YOU HAVE CONTACT WITH HIM?

4 MS. AGSAOAY: QUITE OFTEN BECAUSE HE IS A BLIND, 84-YEAR-
5 OLD MAN.

6 MR. CHIER: SO THEN, HE IS DEPENDENT UPON YOU?

7 MS. AGSAOAY: WELL, YES.

8 MR. CHIER: DO YOU HAVE BROTHERS OR SISTERS?

9 MS. AGSAOAY: I HAVE A BROTHER HERE.

10 MR. CHIER: AND WHAT TYPE OF WORK DOES HE DO?

11 MS. AGSAOAY: HE IS A GARDENER FOR THE LOS ANGELES
12 PARKS AND RECREATION.

13 MR. CHIER: AND DO YOU ALTERNATE WITH YOUR BROTHER?

14 MS. AGSAOAY: YES. I SEE HIM EVERY DAY. I TALK TO
15 HIM EVERY DAY.

16 MR. CHIER: I SEE. DOES YOUR FATHER CALL YOU EVERY
17 DAY?

18 MS. AGSAOAY: YES, WHEN HE WANTS TO.

19 MR. CHIER: ALL RIGHT. WHAT IS THE LONGEST PERIOD OF
20 TIME THAT YOU CAN THINK OF IN THE LAST FEW YEARS THAT YOU
21 DIDN'T HEAR FROM YOUR FATHER?

22 MS. AGSAOAY: WELL, WHEN THEY WERE ON VACATION IN THE
23 PHILIPPINES.

24 MR. CHIER: OKAY. WAS THAT FOR A PERIOD OF HOW LONG?

25 MS. AGSAOAY: THE LAST TIME THEY WERE GONE FOR TWO YEARS.
26 I WOULD HEAR FROM THEM ON THE PHONE, TELEGRAM OR BY LETTER.

27 MR. CHIER: WERE YOU PREVIOUSLY MARRIED TO --

28 MS. AGSAOAY: NO.

1 MR. CHIER: THIS IS A FIRST MARRIAGE?

2 MS. AGSAOAY: MY FIRST MARRIAGE.

3 MR. CHIER: HOW ABOUT MR. AGSAOAY?

4 MS. AGSAOAY: FIRST MARRIAGE.

5 MR. CHIER: FIRST MARRIAGE FOR HIM ALSO? DO YOU HAVE
6 ANY GUNS IN THE HOUSE?

7 MS. AGSAOAY: NO.

8 MR. CHIER: AND WHAT IS YOUR ATTITUDE TOWARD FIREARMS?

9 MS. AGSAOAY: I LIKE TO STAY AWAY FROM THEM. I GET
10 SQUEAMISH.

11 MR. CHIER: WHEN YOU SEE THEM OR HEAR ABOUT THEM?

12 MS. AGSAOAY: WHEN SOMEBODY TELLS ABOUT SOMEBODY HAVING
13 A GUN.

14 MR. CHIER: OKAY.

15 MS. AGSAOAY: MY FATHER USED TO HAVE A GUN.

16 MR. CHIER: IN THE HOUSE THAT YOU GREW UP IN?

17 MS. AGSAOAY: NO. I WAS ALREADY NOT LIVING WITH THEM.

18 MR. CHIER: OKAY. DID THAT BOTHER YOU, THE FACT THAT
19 HE HAD A GUN?

20 MS. AGSAOAY: IN A WAY, YES. BUT HE KNEW HOW TO HANDLE
21 THEM. HE WENT TO THE RANGES WHEN HE WAS STILL ABLE TO SEE
22 AND STRONG ENOUGH, YET.

23 IT DIDN'T BOTHER ME BECAUSE OF THE FACT THAT HE
24 KNEW HOW TO HANDLE HIS INSTRUMENTS.

25 MR. CHIER: OKAY. LET ME CHANGE THE SUBJECT, MS. AGSAOAY.
26 DID YOU HEAR MR. BARENS' EXAMPLE OR FIGURE OF SPEECH ABOUT
27 THE COCOON?

28 MS. AGSAOAY: YES.

1 MR. CHIER: AND AS YOU SIT HERE NOW, CAN YOU VISUALIZE
2 MR. HUNT WRAPPED IN THAT COCOON?

3 MS. AGSAOAY: YES. HE STILL IS IN IT.

4 MR. CHIER: AND DO YOU THINK THAT THAT IS EITHER UNFAIR
5 OR UNWISE IN A SOCIETY, TO HAVE PEOPLE ACCUSED OF A CRIME
6 PRESUMED TO BE INNOCENT BEFORE ANYTHING EVER HAPPENS?

7 MS. AGSAOAY: THAT IS THE LAW. HE IS PRESUMED INNOCENT
8 UNTIL OTHERWISE.

9 MR. CHIER: I UNDERSTAND THAT THAT IS THE LAW. BUT
10 WHAT I AM REALLY ASKING ABOUT AND I WOULD LIKE TO INTERJECT
11 AT THIS TIME THAT HOWEVER UNORTHODOX HE MAY HAVE BEEN, THE
12 GENTLEMAN THAT OCCUPIED YOUR SEAT BEFORE YOU, MR. PEIKERT,
13 HE WAS A VERY, VERY FORTHRIGHT, CANDID PROSPECTIVE JUROR.

14 AND AS I MAY HAVE POINTED OUT BEFORE AND I CAN'T
15 OVEREMPHASIZE, HOW IMPORTANT IT IS FOR EACH OF THE JURORS
16 HERE THAT ARE BEING QUESTIONED TO REALLY SPEAK UP AND SPEAK
17 OUT.

18 MS. MATERNA AND MR. PEIKERT, THESE ARE PEOPLE
19 WHO HAD OR HAVE AGENDAS OF SOME KIND THAT THEY KNOW WITHIN
20 THEMSELVES, WOULD INFLUENCE THEM IN SOME IRREGULAR WAY IF
21 THEY WERE JURORS IN THIS CASE.

22 SO, I AM REALLY ASKING YOU A NUMBER OF QUESTIONS
23 WHICH ARE DESIGNED TO JUST SEE HOW YOU FEEL ABOUT THINGS.

24 MR. AGSAOAY: YES.

25 MR. CHIER: IN A VISCERAL WAY.

26 MS. AGSAOAY: A GUT REACTION.

27 MR. CHIER: INTERNALLY, RATHER THAN INTELLECTUALLY.

28 AND THIS IS NOT TO BE JUDGING ANYBODY. YOUR ANSWERS ARE NOT

1 BEING JUDGED --

2 THE COURT: WILL YOU PLEASE ASK YOUR QUESTION. PLEASE?

3 MR. CHIER: DO YOU THINK THAT IT IS GOOD FOR SOCIETY
4 TO HAVE A CONCEPT WHERE PEOPLE ARE ON THE ONE HAND, ACCUSED
5 OF A CRIME AND ARE ON THE OTHER HAND, PRESUMED TO BE INNOCENT
6 OF ANY WRONGDOING, WHICH PRESUMPTION STAYS WITH THEM ALL OF
7 THE WAY INTO THE JURY ROOM AND STAYS THERE DURING THE
8 DELIBERATIONS? IT DOESN'T COME AWAY UNTIL OR UNLESS THEY
9 ARE FOUND GUILTY?

10 MS. AGSAOAY: IT IS A GOOD RULE. IT IS A GOOD LAW.

11 MR. CHIER: WELL, HAVE YOU HEARD THE EXPRESSION, "WHERE
12 THERE IS SMOKE THERE IS FIRE"?

13 MS. AGSAOAY: YES.

14 MR. CHIER: DO YOU THINK THAT APPLIES IN THE CONTEXT
15 OF A CRIMINAL TRIAL WHERE A DEFENDANT IS ACCUSED OF CRIME,
16 THAT HE WOULDN'T BE ACCUSED OF ANYTHING UNLESS THERE WAS SOME
17 FIRE?

18 MS. AGSAOAY: WELL, MY FEELING IS THIS, THAT WE ARE
19 HERE IN THIS COURT. HE HAS BEEN ACCUSED OF A CRIME. THIS
20 IS WHY WE ARE ALL SITTING HERE.

21 SO, AS YOU SAY, WHERE THERE IS SMOKE, THERE IS
22 FIRE. THERE HAS GOT TO BE SOMETHING, OTHERWISE HE WOULDN'T
23 BE SITTING HERE AT ALL.

24 MR. CHIER: OKAY. WHEN YOU SAY THAT THERE HAS TO BE
25 SOMETHING GOING ON, DO YOU MEAN THAT -- WHAT DO YOU MEAN BY
26 THAT?

27 MS. AGSAOAY: WELL, I GUESS THE PROSECUTOR MUST HAVE
28 SOME EVIDENCE, WHETHER IT IS CIRCUMSTANTIAL OR --

1 THE COURT: DIRECT?

2 MS. AGSAOAY: DIRECT. BECAUSE IF THERE IS NONE, THEN
3 HE WOULDN'T BE HERE. NONE OF US WOULD BE HERE. THERE WOULDN'T
4 BE ANY SESSION AT ALL.

5 SO THIS IS WHY AS I SAY, THERE MUST BE THAT.
6 THERE HAS GOT TO BE SMOKE SOMEPLACE.

7 MR. CHIER: WELL, THERE IS SMOKE. BUT DO YOU THINK
8 THERE HAS TO BE SOME FIRE WHERE THERE IS SMOKE? IS THAT WHAT
9 YOU ARE SAYING?

10 MS. AGSAOAY: YES.

11 MR. CHIER: DO YOU THINK THE PROSECUTOR MUST HAVE
12 EVIDENCE OF MR. HUNT'S GUILT OR YOU WOULDN'T BE SITTING THERE?
13 IS THAT WHAT YOU ARE SAYING?

14 MS. AGSAOAY: YES, SIR.

15 MR. CHIER: AND IF THE PROSECUTOR HAS EVIDENCE WHICH
16 THE PROSECUTOR THINKS POINTS TO MR. HUNT'S GUILT, HOW DO YOU
17 RECONCILE THAT WITH THE PRESUMPTION OF INNOCENCE AND MR. HUNT'S
18 COCOON?

19 MS. AGSAOAY: WELL, MR. HUNT IS STILL IN THE COCOON.
20 HE HAS TO PROVE TO US -- SEE, HE HAS TO PROVE TO US THAT THE
21 GENTLEMAN THERE IS OTHERWISE.

22 BUT AS FAR AS I AM CONCERNED, HE IS STILL INNOCENT.
23 HE IS STILL IN THE COCOON. WE DON'T TOUCH HIM YET UNTIL WE
24 HEAR EVERYTHING. HE IS TO PRESENT IT TO US AND CONVINCING US
25 OTHERWISE.

26 MR. CHIER: AND DO YOU UNDERSTAND THE STANDARD BY WHICH
27 MR. HUNT IS TO BE JUDGED IN THIS CASE?

28 MS. AGSAOAY: YES. THE JUDGE HAS TOLD US THAT.

1 MR. CHIER: IT IS BEYOND A REASONABLE DOUBT?

2 MS. AGSAOAY: YES.

3 THE COURT: WELL, I THINK IT IS TIME FOR LUNCH. LADIES
4 AND GENTLEMEN, WE'LL TAKE A RECESS AT THIS TIME UNTIL 1:45
5 THIS AFTERNOON.

6 PLEASE ALL COME BACK AND SIT IN THE JURY BOX.
7 COME BACK HERE DIRECTLY INTO THE COURTROOM AT 1:45.

8 YOU TAKE YOUR SEATS IN THE JURY BOX THEN.

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

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1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 15, 1986; 1:55 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: STIPULATED THE DEFENDANT IS PRESENT, COUNSEL
6 ARE PRESENT AND THE JURORS ARE PRESENT.

7 ALL RIGHT, YOU MAY PROCEED.

8 MR. CHIER: THANK YOU, YOUR HONOR.

9 MRS. AGSAOAY, JUST BEFORE THE LUNCH HOUR, I THINK
10 WE WERE TALKING ABOUT -- WE WERE TRYING TO RECONCILE, IF YOU
11 WILL, THE FACT THAT YOU MORE OR LESS BELIEVE IN THE NOTION
12 THAT WHERE THERE IS SMOKE, THERE IS SOME FIRE, AND THE FACT
13 THAT THIS DEFENDANT JOE IS PRESUMED TO BE INNOCENT.

14 NOW, IN EUROPE, THE CONTINENTAL SYSTEM OF
15 CRIMINAL JUSTICE REQUIRES THAT THE DEFENDANT PROVE HIS
16 INNOCENCE ONCE AN ACCUSATION IS MADE; DO YOU THINK THAT THAT
17 IS A BETTER SYSTEM THAN THE SYSTEM WE HAVE, WHERE THE
18 DEFENDANT IS NOT REQUIRED TO PROVE ANYTHING AND THAT THE
19 PROSECUTION, THE STATE, IF YOU WILL, WITH ALL OF ITS
20 RESOURCES HAS THIS BURDEN?

21 MS. AGSAOAY: I BELIEVE THAT OUR WAY OF JUSTICE IS RIGHT
22 FOR US, THAT THE STATE MUST DO THE PROVING.

23 MR. CHIER: ALL RIGHT, DO YOU THINK THAT -- DO YOU
24 UNDERSTAND THE FACT THAT THE DISTRICT ATTORNEY'S OFFICE HAS
25 BROUGHT AN ACCUSATION AGAINST MR. HUNT IS NOT EVIDENCE, THE
26 FACT THAT HE HAS BEEN ACCUSED OF THIS CRIME IS NOT EVIDENCE
27 THAT HE DID ANYTHING; DO YOU UNDERSTAND WHAT I AM SAYING?

28 MS. AGSAOAY: YES, I UNDERSTAND.

1 MR. CHIER: IT IS MERELY THE INDICTMENT OR THE
2 INFORMATION MERELY REPRESENTS THE OPINION OF MR. WAPNER'S
3 OFFICE THAT MR. HUNT IS GUILTY OF SOMETHING. IT IS NOT
4 EVIDENCE. IT IS NOT A FACT. IT IS JUST THE THING BY WHICH
5 THEY FORMALLY ACCUSE HIM, AND THE FACT THAT PEOPLE ARE ACCUSED
6 OF CRIMES WITHOUT MORE DOESN'T MEAN ANYTHING; DO YOU UNDERSTAND
7 THAT?

8 MS. AGSAOAY: YES, I DO.
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1 MR. CHIER: YOU HAVE TO PUT OUT OF YOUR MIND FOR
2 PURPOSES OF THIS EXERCISE IN CIVICS, THE IDEA THAT WHERE THERE
3 IS SMOKE THERE IS NECESSARILY FIRE. SOMETIMES THERE IS JUST
4 SMOKE AND THERE IS NO FIRE, SO TO SPEAK IN THE SENSE OF REAL
5 GUILT. DO YOU UNDERSTAND THAT? DO YOU UNDERSTAND WHAT I
6 AM SAYING?

7 MS. AGSAOAY: AGAIN, ABOUT THE SMOKE AND THERE IS NO
8 FIRE?

9 MR. CHIER: YEAH. THERE IS JUST SOME SMOLDERING
10 EMBERS. THERE IS NO FIRE.

11 MS. AGSAOAY: WELL, IT WOULD HAVE TO BE A FIRE TO START
12 THE SMOKE. YOU HAVE TO SEE SMOKE FROM A FIRE.

13 MR. CHIER: IF WE EQUATE THE ACCUSATION OF THE DISTRICT
14 ATTORNEY'S OFFICE WITH SMOKE, RIGHT. WE'LL CALL THAT THE
15 SMOKE.

16 MS. AGSAOAY: HE IS THE SMOKE? OKAY.

17 MR. CHIER: NO, THE ACCUSATION IS.

18 MS. AGSAOAY: WELL, WHY DON'T WE DO SOMETHING WHICH
19 IS MORE CONCRETE, RATHER THAN TALKING ABOUT SMOKE WHEN THERE
20 IS NO FIRE OR EMBERS? LET'S TALK SOMETHING STRAIGHT.

21 MR. CHIER: OKAY.

22 MS. AGSAOAY: WHERE I CAN UNDERSTAND. ALL THIS IS GOING
23 AROUND THE BUSH AND --

24 MR. CHIER: WELL, WE ARE NOT ALLOWED TO TALK ABOUT THE
25 CASE ITSELF, RIGHT NOW UNTIL THE TRIAL STARTS. OKAY?

26 MS. AGSAOAY: YES.

27 MR. CHIER: SO WE NECESSARILY HAVE TO I GUESS AS YOU
28 CALL IT, BEAT AROUND THE BUSH IN ORDER THAT THE JUDGE DOESN'T

1 COME OFF THE BENCH AND STOP THIS.

2 THIS IS JUST THE WAY IT WORKS. LET ME ASK YOU
3 THIS. LET ME ASK YOU ABOUT SOME MORE PEDESTRIAN THINGS.

4 THEN MAYBE WE CAN GET BACK TO THIS, AFTER THE
5 FIRE DIES DOWN. YOU HAVE BEEN TEACHING OVER THERE IN TUSTIN,
6 TEACHING SPANISH FOR 18 YEARS?

7 MS. AGSAOAY: SINCE 1966.

8 MR. CHIER: HAVE YOU ALWAYS TAUGHT SPANISH?

9 MS. AGSAOAY: I HAVE TAUGHT ENGLISH AND AMERICAN HISTORY
10 IN OHIO.

11 MR. CHIER: MORE RECENTLY --

12 MS. AGSAOAY: NO, STRICTLY SPANISH.

13 MR. CHIER: AND LET'S SAY IN THE LAST TEN YEARS, HAVE
14 YOU PRIMARILY TAUGHT HIGH SCHOOL STUDENTS?

15 MS. AGSAOAY: YES.

16 MR. CHIER: THIS IS A PUBLIC HIGH SCHOOL?

17 MS. AGSAOAY: YES.

18 MR. CHIER: AND THE STUDENTS YOU TEACH, IS THIS A THREE
19 OR FOUR-YEAR HIGH SCHOOL?

20 MS. AGSAOAY: IT IS A FOUR-YEAR HIGH SCHOOL.

21 MR. CHIER: FROM NINTH TO TWELFTH GRADES?

22 MS. AGSAOAY: YES.

23 MR. CHIER: DO YOU TEACH THEM IN EACH GRADE, 9 THROUGH
24 12?

25 MS. AGSAOAY: YES. IN FOREIGN LANGUAGE, WE HAVE
26 MIXTURES.

27 MR. CHIER: OKAY. SO, YOU HAVE STUDENTS THAT REPRESENT
28 NINTH, TENTH, ELEVENTH AND TWELFTH GRADES?

1 MS. AGSAOAY: YES.

2 MR. CHIER: AND HAVE YOU EVER TAUGHT AT A PRIVATE SCHOOL?

3 MS. AGSAOAY: NO.

4 MR. CHIER: DO YOU HAVE ANY STUDENTS OR DO YOU KNOW
5 OF ANY STUDENTS THAT YOU HAVE TAUGHT RECENTLY THAT CAME FROM
6 PRIVATE SCHOOL?

7 MS. AGSAOAY: YES.

8 MR. CHIER: WERE THOSE STUDENTS DEMONSTRABLY DIFFERENT
9 IN ANY WAY THAT YOU CAN THINK OF QUICKLY?

10 MS. AGSAOAY: NO. THEY ARE STUDENTS.

11 MR. CHIER: DID THEY HAVE DIFFERENT ATTITUDES OR
12 DIFFERENT BEHAVIOR PATTERNS, IF THERE WAS A PATTERN?

13 MS. AGSAOAY: NO. SOME WHO COME FROM THE PRIVATE SCHOOLS
14 ARE MORE OR LESS ON THE QUIET SIDE.

15 OTHERS ARE JUST AS RAMBUNCTIOUS AS CAN BE.

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1 MR. CHIER: NOW ESPECIALLY IN THE TEEN YEARS AND
2 PARTICULARLY AMONG MALE STUDENTS, THERE IS A LOT OF WHAT YOU
3 MIGHT CALL POSTURING, ISN'T THERE?

4 MS. AGSAOAY: OH, YES.

5 MR. CHIER: AND THERE IS A LOT OF THE BEHAVIOR WHICH
6 IS INTENDED TO BE ASSERTIONS OF THEIR PERSONALITY AND
7 INDIVIDUALITY?

8 MS. AGSAOAY: YES.

9 MR. CHIER: THERE IS A LOT OF STUFF COMING OUT WITH
10 THE STUDENTS IN THIS PARTICULAR AGE AND THERE ARE DIFFERENT
11 TYPES, THERE ARE BOISTEROUS TYPES, RIGHT?

12 MS. AGSAOAY: YES.

13 MR. CHIER: AND THERE ARE BOOKISH --

14 MS. AGSAOAY: YES.

15 MR. CHIER: -- WIMPISH TYPES, RIGHT?

16 MS. AGSAOAY: YES.

17 MR. CHIER: SOMETIMES MORE AGGRESSIVE TYPES PICK ON
18 THE TYPES THAT THEY CALL WIMPISH, WIMPY TYPES; THAT HAPPENS
19 A LOT, RIGHT?

20 MS. AGSAOAY: YES.

21 MR. CHIER: YOUNG PEOPLE TEND TO BE KIND OF CRUEL
22 TOWARDS ONE ANOTHER?

23 MS. AGSAOAY: OH, YES.

24 MR. CHIER: AND THE TREATMENT, LET'S SAY, BY THE MORE
25 POPULAR STUDENTS OF THE LESS POPULAR, MORE INNER STUDENTS,
26 SOMETIMES HAS THE EFFECT OF TRAUMATIZING THE LESS POPULAR
27 STUDENTS, CORRECT?

28 MS. AGSAOAY: YES.

1 MR. CHIER: AND SOMETIMES THE STUDENTS THAT ARE KIND
2 OF OSTRACIZED BY THE OTHERS DO UNUSUAL THINGS TO TRY TO BE
3 NOTICED OR LIKED; HAVEN'T YOU SEEN THAT HAPPEN A LOT?

4 MS. AGSAOAY: YES.

5 MR. CHIER: HAVE YOU EXPERIENCED ANY STUDENTS WITHIN
6 THE SCHOOL SETTING TAKING CREDIT FOR, LET'S SAY, THINGS THAT
7 THEY DIDN'T DO BUT JUST TO BE NOTICED?

8 MS. AGSAOAY: OH, YES, SHOWING OFF.

9 MR. CHIER: SHOWING OFF AND SHOWING OFF IN A WAY WHICH,
10 TO SOME OF US, WOULD SEEM LIKE KIND OF A NEGATIVE THING,
11 TAKING CREDIT FOR WHAT WOULD APPEAR TO BE BAD THINGS AS OPPOSED
12 TO GOOD THINGS; DO YOU KNOW WHAT I MEAN?

13 MS. AGSAOAY: YES, IT IS BOTH.

14 MR. CHIER: SOMEBODY WOULD COME IN AFTER HOURS OR WHEN
15 NOBODY WAS IN THE CLASSROOM AND WRITE SOME CRUDE OR VULGAR
16 THING ON THE BLACKBOARD AND MAYBE SOMEBODY WOULD TAKE CREDIT
17 FOR IT THAT DIDN'T DO IT IN ORDER TO --

18 MS. AGSAOAY: WELL, NOT NECESSARILY IN A CLASSROOM.
19 THE CLASSROOMS ARE LOCKED ALL OF THE TIME.

20 IT IS ON THE OUTSIDE.

21 MR. CHIER: ON THE OUTSIDE ON THE SCHOOLGROUNDS?

22 MS. AGSAOAY: THE SCHOOLGROUNDS, YES, LITTLE MESSAGES.

23 MR. CHIER: GRAFFITI MESSAGES?

24 MS. AGSAOAY: OR IN THE BATHROOMS, THE GIRLS' BATHROOMS.

25 MR. CHIER: HAVE YOU EVER EXPERIENCED A SITUATION WHERE
26 SOMEBODY TOOK CREDIT FOR DOING ONE OF THOSE THINGS THAT REALLY
27 DIDN'T DO IT, ONLY FOR THE SAKE OF IMPRESSION?

28 MS. AGSAOAY: OH, I DON'T KNOW. I THINK THEY WOULD

1 DENY THAT. THEY WOULD NOT EVEN TELL ANYBODY BECAUSE IF THEY
2 ARE CAUGHT, WHEN THEY ARE CAUGHT THE PARENTS ARE CALLED
3 IN AND THEY HAVE TO PAY THE EXPENSE OF CLEANING UP, SO I DON'T
4 THINK THEY WOULD GO AROUND SHOWING OFF, AT LEAST, I DON'T
5 KNOW.

6 MR. CHIER: WELL, SOMETIMES YOUNG PEOPLE DON'T HAVE
7 THE MATURITY OF JUDGMENT AS OLDER PEOPLE HAVE, RIGHT?

8 MS. AGSAOAY: YES.

9 MR. CHIER: AND THEY DON'T ALWAYS FORESEE --

10 THE COURT: ALL OF THIS IS VERY INTERESTING BUT WHERE
11 IS THIS LEADING TO ON THE QUALIFICATIONS OF THE JUROR TO BE
12 ON THE JURY? IT IS LIKE GILBERT AND SULLIVAN, "THE FLOWERS
13 BLOOM IN THE SPRING, TRA-LA TRA-LA TRA-LA." IT HAS NOTHING
14 TO DO WITH THIS CASE. LET'S GO ON TO SOMETHING ELSE.

15 MR. CHIER: I THINK THERE IS AN ISSUE OF STATEMENTS
16 BY THE DEFENDANT IN THIS CASE, YOUR HONOR.

17 THE COURT: LET'S GET ON, WILL YOU? WE HAVE BEEN ON
18 IT NOW FOR TEN OR FIFTEEN MINUTES.

19 MR. CHIER: DO YOU HAVE ANY HOBBIES, MRS. AGSAOAY?

20 MS. AGSAOAY: HOBBIES, YES.

21 MR. CHIER: WHAT KIND OF HOBBIES DO YOU LIKE?

22 MS. AGSAOAY: I LIKE DANCING. MY HUSBAND AND I TRAVEL
23 A LOT. WE LIKE GARDENING. AND WHILE WE TRAVEL, WE TAKE
24 PICTURES FOR OUR OWN PERSONAL SATISFACTION.

25 MR. CHIER: TRAVEL PHOTOGRAPHY?

26 MS. AGSAOAY: PARDON?

27 MR. CHIER: TRAVEL PHOTOGRAPHY?

28 MS. AGSAOAY: YES.

1 MR. CHIER: HOW ABOUT, DO YOU GO TO THE MOVIES?

2 MS. AGSAOAY: VERY SELDOM.

3 THE LAST ONE I SAW WAS, I THINK, "KARATE KID."

4 MR. CHIER: DO YOU WATCH TELEVISION AT ALL?

5 MS. AGSAOAY: OH, YES.

6 MR. CHIER: DO YOU HAVE ANY FAVORITE SHOWS?

7 MS. AGSAOAY: OH, THE SATURDAY ONES, "GOLDEN GIRLS."

8 ON SUNDAY, "MURDER SHE WROTE," "SIXTY MINUTES."

9 AT 9:30, OFF TO BED.

10 (LAUGHTER IN BEDROOM.)

11 MR. CHIER: IF YOU WERE SELECTED AS A JUROR IN THIS
12 CASE, WOULD THE FACT THAT THE CASE MIGHT TAKE A COUPLE OF
13 MONTHS DURATION, WOULD THAT CAUSE YOU TO BE ANXIOUS ABOUT
14 MISSING YOUR TEACHING OBLIGATIONS AT SCHOOL?

15 MS. AGSAOAY: WELL, I AM ANXIOUS NOW BECAUSE OF THE
16 FACT THAT I DO NOT SEE MY KIDS UNTIL FRIDAY. WHEN I GET THERE,
17 I HAVE GOT A STACK FULL OF PAPERS TO DO OVER THE WEEKEND.

18 MR. CHIER: YOUR STUDENTS, YOU MEAN WHEN YOU SAY YOUR
19 KIDS?

20 MS. AGSAOAY: YES.

21 MR. CHIER: AND IT IS MAKING YOU ANXIOUS RIGHT NOW,
22 ISN'T IT?

23 MS. AGSAOAY: NOT TOO ANXIOUS. I MEAN IN A WAY IT IS
24 GREAT BECAUSE I AM NOT DOING THE WORK AND THEY ARE AWAY FROM
25 ME, SO IT IS RECIPROCAL IN A WAY.

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1 MR. CHIER: YOU DON'T FEEL YOU WOULD BE PREOCCUPIED
2 BY THAT?

3 MS. AGSAOAY: A LITTLE BIT, BECAUSE OF THE FACT THAT
4 I GO THERE ON FRIDAY TO SEE A STACK FULL OF PAPERS I HAVE
5 TO DO OVER THE WEEKEND.

6 MR. CHIER: DO YOU THINK IT WOULD INTERFERE IN ANY WAY
7 WITH YOUR ABILITY TO DISCHARGE YOUR OBLIGATION AS A JUROR?

8 MS. AGSAOAY: HERE? NO.

9 MR. CHIER: NOW, YOU MAY HAVE NOTICED THAT MR. HUNT
10 HAS TWO ATTORNEYS IN THIS CASE?

11 MS. AGSAOAY: YES.

12 MR. CHIER: HOW DO YOU FEEL ABOUT THAT?

13 MS. AGSAOAY: HE CAN HAVE AS MANY AS HE WANTS.

14 MR. CHIER: DO YOU FEEL IT IS UNFAIR TO THE PEOPLE THAT
15 HE HAS TWO ATTORNEYS?

16 MS. AGSAOAY: NO.

17 MR. CHIER: DO YOU KNOW THERE ARE ABOUT 500 ATTORNEYS
18 IN THE DISTRICT ATTORNEY'S OFFICE OF WHICH HE IS ONE? DO
19 YOU UNDERSTAND THAT?

20 MS. AGSAOAY: I DIDN'T KNOW THAT.

21 MR. CHIER: OKAY. SO, HE COULD HAVE TWO IF HE WANTS
22 TO. HE MIGHT HAVE SOME HELP, DON'T YOU THINK IF HE NEEDS
23 IT, MR. WAPNER?

24 MS. AGSAOAY: IF HE NEEDS THE HELP. I DON'T KNOW. I
25 DON'T KNOW THAT ANGLE.

26 MR. CHIER: OKAY. NOW, FROM TIME TO TIME DURING THE
27 COURSE OF THE TRIAL, ATTORNEYS MAKE OBJECTIONS WHEN THE
28 EVIDENCE IS BEING RECEIVED. DO YOU UNDERSTAND THAT OBJECTIONS

1 BY THE ATTORNEYS AREN'T A SIGN THAT ANYTHING IS TRYING TO
2 BE CONCEALED OR COVERED UP?

3 MS. AGSAOAY: YES.

4 MR. CHIER: THAT THERE IS AN EVIDENCE CODE WHICH
5 REGULATES THE RECEIPT OF EVIDENCE AND THAT IF THE EVIDENCE
6 IS COMING IN IN A MANNER WHICH IS INCONSISTENT WITH THE CODE,
7 THAT IT IS THE OBLIGATION OF AN ATTORNEY TO OBJECT TO THAT
8 EVIDENCE SO THAT IT EITHER DOESN'T COME IN OR IT COMES IN
9 CORRECTLY? DO YOU UNDERSTAND THAT?

10 MS. AGSAOAY: YES.

11 MR. CHIER: AND SIMILARLY, THE DEFENDANT, JOE HUNT,
12 IS THE ONE ON TRIAL HERE AND NOT HIS ATTORNEYS AND NOT THE
13 DISTRICT ATTORNEY.

14 MS. AGSAOAY: YES. I UNDERSTAND THAT.

15 MR. CHIER: AND THAT ANY EXCHANGES BETWEEN THE COURT
16 AND HIS ATTORNEYS SHOULD NOT BE ASCRIBED TO MR. HUNT, WHO
17 IS JUST SITTING THERE?

18 MS. AGSAOAY: YES.

19 MR. CHIER: NOW, DO YOU OWN ANY PETS, MRS. AGSAOAY?

20 MS. AGSAOAY: ANY PETS? YES. I HAVE A CAT.

21 MR. CHIER: HAVE YOU EVER HAD A DOG?

22 MS. AGSAOAY: NO.

23 MR. CHIER: DO YOU LIKE DOGS?

24 MS. AGSAOAY: YES I DO. BUT I PREFER CATS.

25 MR. CHIER: OKAY. DO YOU UNDERSTAND AS A RESULT OF
26 HAVING BEEN IN THIS DRIVING UNDER THE INFLUENCE CASE, THAT
27 THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT IS ENTIRELY
28 DIFFERENT FROM A CIVIL TYPE OF BURDEN, WHERE IT IS BY A

1 PREPONDERANCE OF THE EVIDENCE?

2 MS. AGSAOAY: YES.

3 MR. CHIER: AND THAT IT IS DIFFICULT TO TRANSLATE BURDENS
4 OF PROOF INTO ANY KIND OF MATHEMATICAL FORMULA, BUT THAT
5 GENERALLY SPEAKING, IT IS AGREED THAT THE PREPONDERANCE OF
6 THE EVIDENCE REPRESENTS ABOUT 51 PERCENT, SO THAT THE BURDEN
7 OF PROOF IN A CIVIL CASE BEING PREPONDERANCE OF THE EVIDENCE,
8 IS SUSTAINED OR MET IF THE EVIDENCE TIPS IN FAVOR OF ONE PARTY
9 BY 1 PERCENT.

10 AND THERE IS ANOTHER INTERMEDIATE BURDEN OF PROOF
11 CALLED CLEAR AND CONVINCING EVIDENCE, WITH WHICH YOU DON'T
12 HAVE TO BE CONCERNED HERE. BUT IT IS SOMEWHERE I GUESS, IN
13 THE SEVENTIETH PERCENTILE.

14 FINALLY, THERE IS THIS IDEA OF PROOF BEYOND A
15 REASONABLE DOUBT WHICH MEANS THAT THE PROOF MUST ATTAIN A
16 KIND OF MATHEMATICAL CERTAINTY, SOMEWHERE IN THE NINETIES.
17 DO YOU UNDERSTAND THAT?

18 MS. AGSAOAY: YES.

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1 MR. CHIER: IT DOESN'T HAVE TO BE 99.9 PERCENT, 100 PERCENT.
2 100 PERCENT WOULD BE ALL POSSIBLE DOUBT. OF COURSE, THAT
3 IS NOT THE CASE HERE.

4 MR. WAPNER: YOUR HONOR, I OBJECT TO TRYING TO PUT ANY
5 KIND OF MATHEMATICAL NUMBER ON WHAT IS PROOF BEYOND A
6 REASONABLE DOUBT.

7 THE COURT: I WILL SUSTAIN THAT. THE JURY WILL
8 DISREGARD THE EXAMPLE GIVEN BY COUNSEL.

9 MR. CHIER: LET ME ASK YOU THIS. DO YOU WANT TO BE
10 A JUROR IN THIS CASE, MS. AGSAOAY? DO YOU WANT TO SIT AS
11 A JUROR IN THIS CASE?

12 MS. AGSAOAY: WELL, YES AND NO. I WOULD LIKE TO BE
13 A JUROR BECAUSE IT IS A CITIZEN'S DUTY TO SERVE.

14 MR. CHIER: OKAY. AND NO?

15 MS. AGSAOAY: NO BECAUSE OF THE FACT THAT I HAVE A JOB
16 WAITING FOR ME.

17 MR. CHIER: DO YOU THINK THAT UNDER THE CIRCUMSTANCES,
18 THAT YOUR CONCERN ABOUT THIS JOB THAT YOU HAVE HAD FOR THE
19 LAST 18 YEARS AND YOUR SENSE OF RESPONSIBILITY MIGHT BEGIN
20 TO WORK ON YOU IN THIS CASE, IF THE TRIAL WENT BEYOND THE
21 TIME THAT IT WAS ESTIMATED BY THE LAWYERS IN THE CASE?

22 MS. AGSAOAY: WELL, I CAN STAY HERE AS LONG AS I AM
23 NEEDED HERE.

24 BUT I DON'T KNOW ABOUT MY SUPERINTENDENT OR MY
25 PRINCIPAL. I DON'T KNOW WHAT THEY ARE GOING TO SAY. I DON'T
26 KNOW IF THEY ARE GOING TO WRITE TO YOU OR WHAT. I DON'T KNOW.

27 MR. CHIER: ARE THEY GOING TO WRITE TO US?

28 MS. AGSAOAY: YES, ASKING FOR YOU TO DISMISS ME OR

1 EXCUSE ME OR WHAT. I DON'T KNOW.

2 I HAVE NEVER BEEN IN A PROBLEM LIKE THIS BEFORE.

3 MR. CHIER: WELL, IS IT YOUR DESIRE IF YOU HAD YOUR
4 WISHES -- WOULD YOU DESIRE TO BE EXCUSED HERE?

5 MS. AGSAOAY: IS IT MY DESIRE TO BE EXCUSED? YES.

6 MR. CHIER: AND IT IS YOUR DESIRE TO BE EXCUSED BECAUSE
7 YOU ARE CONCERNED ABOUT THE EMPLOYMENT SITUATION THAT YOU
8 HAVE OR THE STUDENTS THAT YOU HAVE?

9 MS. AGSAOAY: I AM PAID, WHETHER I AM THERE OR NOT.
10 BUT MY CONCERN IS THAT I AM AWAY FROM THE STUDENTS THAT I
11 HAVE BEEN ASSIGNED TO, WHOSE PARENTS --

12 THE COURT: I THOUGHT WE EXHAUSTED ALL OF THIS AT THE
13 TIME THAT WE HAD THE HARDSHIP PROBLEMS. LET'S NOT GET INTO
14 THIS ANY FURTHER.

15 GET ON TO SOMETHING ELSE, WILL YOU?

16 MR. CHIER: NOW, DO YOU THINK THAT IF YOU WERE A JUROR
17 IN THIS CASE, THAT YOU COULD GIVE MR. HUNT THE BENEFIT OF
18 THE DOUBT IF YOU HAD A REASONABLE DOUBT AS TO HIS GUILT OR
19 INNOCENCE?

20 MS. AGSAOAY: IF I WERE A JUROR, I WOULD DO THE BEST
21 I CAN.

22 MR. CHIER: IS THERE ANY DOUBT IN YOUR MIND AS TO
23 WHETHER OR NOT YOU WOULD BE ABLE TO GIVE MR. HUNT THE BENEFIT
24 OF THE DOUBT, WHICH IS OUR SYSTEM?

25 MS. AGSAOAY: I HAVE NO DOUBT IN MY MIND.

26 MR. CHIER: PASS FOR CAUSE, YOUR HONOR.

27 THE COURT: ALL RIGHT. MR. WAPNER?

28 MR. WAPNER: THANK YOU. GOOD AFTERNOON, MRS. AGSAOAY.

1 ELABORATE FOR ME A LITTLE BIT ON THIS INCIDENT WHERE YOUR
2 NIECE HAD HER CAR TAKEN.

3 YOU SAID THAT SHE WAS SATISFIED ABOUT THE JOB
4 THE POLICE DID. THEN THERE WAS A KIND OF PREGNANT PAUSE.
5 IT SOUNDED LIKE YOU WEREN'T SATISFIED.

6 MS. AGSAOAY: WELL, BECAUSE OF THE FACT THAT THE PERSON
7 WHO ASSAULTED MY NIECE WAS NEVER FOUND. AND I FELT THAT IT
8 SHOULD HAVE GONE A LITTLE FURTHER.

9 BUT SHE WAS SATISFIED WHEN SHE WAS NOT REALLY,
10 REALLY HURT. HER WOUNDS WERE HEALED. SHE GOT HER CAR BACK.

11 AND SHE SAID WELL, WE WILL JUST LEAVE IT THAT
12 WAY. IT IS JUST A BAD EXPERIENCE.

13 MR. WAPNER: SO, YOU THINK THE POLICE DIDN'T PURSUE
14 IT AS VIGOROUSLY AS YOU WOULD WANT FOR THEM TO HAVE DONE?

15 MS. AGSAOAY: NO.

16 MR. WAPNER: DO YOU HOLD ANY PREJUDICE AGAINST THE POLICE
17 DEPARTMENTS OR POLICEMEN IN GENERAL BECAUSE OF THAT?

18 MS. AGSAOAY: NO.

19 MR. WAPNER: SO, WOULD THAT AFFECT YOU IF A POLICEMAN
20 CAME AND TESTIFIED IN THIS CASE?

21 MS. AGSAOAY: NO.

22 MR. WAPNER: WHAT PART OF TOWN WAS THAT?

23 MS. AGSAOAY: IT HAPPENED AT THE FOX HILLS SHOPPING
24 CENTER.

25 MR. WAPNER: WAS THAT THE CULVER CITY POLICE DEPARTMENT,
26 DO YOU KNOW?

27 MS. AGSAOAY: YES.

28 MR. WAPNER: THE CASE THAT YOU SAT ON THAT WAS A HUNG

1 JURY, DID YOU THINK THAT ALL OF THE JURORS IN THAT CASE
2 MADE A CONSCIENTIOUS EFFORT TO TRY AND REACH A VERDICT?

3 MS. AGSAOAY: YES WE DID.

4 MR. WAPNER: AND THAT WAS JUST A CASE WHERE YOU COULDN'T
5 AGREE ON THE FACTS?

6 MS. AGSAOAY: YES.

7 MR. WAPNER: DID IT START OUT AND END UP AT SIX TO SIX?

8 MS. AGSAOAY: YES.

9 MR. WAPNER: DID YOU FEEL THAT YOU WERE ABLE TO LISTEN
10 TO THE ARGUMENTS OF THE PEOPLE ON THE OTHER SIDE?

11 MS. AGSAOAY: YES.

12 MR. WAPNER: DID YOU FEEL THAT THEY TRIED TO LISTEN
13 TO YOUR ARGUMENTS?

14 MS. AGSAOAY: YES.

15 MR. WAPNER: DID YOU HEAR THE EXAMPLE I USED THE OTHER
16 DAY ABOUT GETTING INTO A SERIOUS DISCUSSION WITH A FRIEND
17 OR RELATIVE ABOUT ANY SUBJECT?

18 MS. AGSAOAY: I DIDN'T PAY ATTENTION.

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1 MR. WAPNER: HAVE YOU EVER BEEN IN A SERIOUS DISCUSSION
2 WITH A FRIEND OR FAMILY MEMBER ABOUT ANY SUBJECT?

3 MS. AGSAOAY: YES.

4 MR. WAPNER: HAVE YOU, IN THE COURSE OF ANY OF THOSE
5 DISCUSSIONS, CHANGED YOUR OPINION WHEN --

6 MS. AGSAOAY: YES.

7 MR. WAPNER: -- WHEN SOMEBODY SHOWED YOU YOU WERE WRONG?

8 MS. AGSAOAY: YES, OR ALSO --

9 MR. WAPNER: GO AHEAD.

10 MS. AGSAOAY: -- OR SOMETIMES OUT OF EXASPERATION,
11 ESPECIALLY WITH A HUSBAND.

12 (LAUGHTER IN COURTROOM.)

13 MR. WAPNER: THAT IS WHY I TRY NOT TO USE THAT EXAMPLE
14 BECAUSE THAT GETS ALL COMPLICATED. I WILL TRY TO JUST KEEP
15 IT WHERE YOU ARE DISCUSSING SOMETHING FACTUALLY, WITHOUT ALL
16 OF THESE EXTRA EMOTIONS IN THE WAY.

17 MS. AGSAOAY: EMOTIONS HAVE TO COME IN.

18 MR. WAPNER: WELL, HOPEFULLY IN THE JURY ROOM, YOU WON'T
19 HAVE THE SAME PROBLEM THAT YOU HAVE WITH HUSBANDS.

20 TELL ME A LITTLE BIT ABOUT YOUR HOBBIES. WHAT
21 KIND OF DANCING DO YOU ENJOY?

22 MS. AGSAOAY: BALLROOM DANCING, CHA-CHA-CHA, LATIN MUSIC.

23 MR. WAPNER: DO YOU DO THAT COMPETITIVELY AT ALL?

24 MS. AGSAOAY: NO, NO, NO. FOR ENJOYMENT.

25 MR. WAPNER: WHAT KIND OF TRAVELING DO YOU DO?

26 MS. AGSAOAY: WELL, I HAVE TRAVELED AROUND THE WORLD.
27 I HAVE TRAVELED TO MEXICO WITH MY HUSBAND, HAWAII SEVERAL
28 TIMES, TO GUAM, BACK TO GUAM WHERE I USED TO TEACH BEFORE.

1 THE PHILIPPINES AND THE ORIENT.

2 MR. WAPNER: QUITE A BIT.

3 MS. AGSAOAY: YES.

4 MR. WAPNER: IN THE SAME SENSE THAT THE CHARGES AGAINST
5 A DEFENDANT ARE NOT EVIDENCE, DO YOU UNDERSTAND THAT HIS PLEA
6 IS NOT EVIDENCE?

7 MS. AGSAOAY: THAT IS PLEA IS NOT EVIDENCE?

8 MR. WAPNER: IN OTHER WORDS, WHEN HE SAYS "NOT GUILTY"
9 THAT IS A PLEA THAT HE ENTERS --

10 MR. BARENS: I BEG TO DIFFER, YOUR HONOR. THAT IS
11 EVIDENTIARY, FROM ALL STANDPOINTS THAT IS BEFORE THE JURY
12 AS A PLEA.

13 THE COURT: I WILL SUSTAIN THE OBJECTION.

14 MR. BARENS: THANK YOU.

15 MR. WAPNER: WHAT I AM TRYING TO GET AT IS NOT -- THOUGH
16 THIS MAY BE A TOUCHY SUBJECT -- BUT DID YOU UNDERSTAND THE
17 QUESTIONS THAT WERE ASKED OF THE OTHER JURORS ABOUT A
18 DEFENDANT'S RIGHT NOT TO TESTIFY IF THAT IS WHAT HE DECIDES
19 TO DO?

20 MS. AGSAOAY: YES.

21 MR. WAPNER: DO YOU HAVE ANY PROBLEMS WITH THAT?

22 MS. AGSAOAY: NO, I DON'T.

23 MR. WAPNER: DID YOU HEAR THE EXAMPLE THAT I GAVE ABOUT
24 THE TWO DIFFERENT ROBBERIES, ONE OF THE DOPE DEALER AND ONE
25 OF THE PRIEST?

26 MS. AGSAOAY: YES.

27 MR. WAPNER: AND THE POINT OF THAT WAS THAT CASES SHOULD
28 NOT BE TREATED DIFFERENTLY BASED ON THE OCCUPATION OF THE

1 VICTIM.

2 MS. AGSAOAY: YES.

3 MR. WAPNER: YOU GRADE A LOT OF PAPERS AS A TEACHER,
4 I TAKE IT?

5 MS. AGSAOAY: YES, SIR.

6 MR. WAPNER: WHEN YOU GRADE YOUR PAPERS, DO THE STUDENTS
7 TURN THEM IN WITH A NUMBER OR NAME?

8 MS. AGSAOAY: WITH A NAME ON THEM.

9 MR. WAPNER: DO YOU MAKE ANY EFFORT WHEN YOU GRADE THEM
10 TO GRADE THEM WITHOUT LOOKING AT THE NAME?

11 MS. AGSAOAY: YES.

12 MR. WAPNER: WHY DO YOU DO THAT?

13 MS. AGSAOAY: I -- WELL, THE NAME MAKES NO DIFFERENCE.
14 IT IS WHAT THEY ARE WRITING DOWN IS WHAT I AM GOING TO CORRECT,
15 NOT THEIR NAMES.

16 MR. WAPNER: WHETHER IT IS A STUDENT THAT YOU LIKE OR
17 YOU DON'T LIKE SHOULDN'T MAKE ANY DIFFERENCE IN WHAT GRADE
18 THEY GET, RIGHT?

19 MS. AGSAOAY: IT MAKES NO DIFFERENCE.

20 MR. WAPNER: YOU SEE, THAT IS KIND OF THE SAME, WHEN
21 A PERSON IS A VICTIM OF A CRIME, WHETHER YOU LIKE THEM OR
22 DON'T LIKE THEM, IT MAKES NO DIFFERENCE AS TO WHETHER THE
23 CRIME WAS COMMITTED OR NOT.

24 MS. AGSAOAY: RIGHT, IT MAKES NO DIFFERENCE.

25 MR. WAPNER: DOES IT BOTHER YOU THAT WE USE THE SAME
26 STANDARD OF PROOF BEYOND A REASONABLE DOUBT FOR DRIVING UNDER
27 THE INFLUENCE AND FOR MURDER CASES?

28 MS. AGSAOAY: NO.

1 MR. WAPNER: BECAUSE THIS IS A MURDER CASE, WILL YOU
2 HOLD THE PROSECUTION TO A HIGHER STANDARD THAN THAT, EVEN
3 THOUGH THE JUDGE TELLS YOU IT IS THE SAME STANDARD?

4 MS. AGSAOAY: IT MAKES NO DIFFERENCE.

5 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
6 OF A THEFT OR FRAUD?

7 MS. AGSAOAY: NO.

8 MR. WAPNER: WHAT ARE YOUR GENERAL FEELINGS ABOUT
9 WITNESSES WHO TESTIFY UNDER A GRANT OF IMMUNITY?

10 MS. AGSAOAY: IT IS THEIR CHOICE.

11 MR. WAPNER: WOULD YOU HOLD IT AGAINST A PERSON?

12 MS. AGSAOAY: NO, I DON'T.

13 MR. WAPNER: DO YOU HAVE ANY PROBLEM WITH THE CONCEPT
14 THAT WE HAVE A MURDER CASE AND WE DON'T HAVE A BODY?

15 MS. AGSAOAY: NO, I DON'T.

16 MR. WAPNER: YOU ARE GOING TO BE THE LUCKY ONE AND I
17 AM GOING TO BE TESTING MYSELF TO SEE WHAT KIND OF REACTION
18 I GET. I HAVE A NEW EXAMPLE.

19 (LAUGHTER IN COURTROOM.)

20 MR. WAPNER: THIS TIME WE ARE OFF THE BOAT BUT I MAY
21 BE STUCK ON MODES OF TRANSPORTATION. I AM ON AIRPLANES NOW.
22 AND THERE IS A GUY IN AN AIRPLANE AND HE IS GOING TO JUMP
23 OUT OF THE AIRPLANE. HE IS GOING TO MAKE A PARACHUTE JUMP.

24 DO YOU KNOW ANYTHING ABOUT PARACHUTING?

25 MS. AGSAOAY: WHAT I SEE IN THE TV WHERE THEY GET OUT
26 OF -- JUMP OUT OF A PLANE.

27 MR. WAPNER: GOOD. WE ARE ON THE SAME STANDARD, SO
28 I AM NOT TALKING WITH A GUY WHO KNEW ABOUT SHIPPING LANES

1 AND ELECTRICITY AND ALL OF THAT STUFF, OKAY?

2 THIS IS GOING TO BE A LITTLE FAR-FETCHED BUT SEE
3 IF YOU CAN BEAR WITH ME.

4 FOR WHATEVER REASON, THE GUY WHO IS GOING TO JUMP
5 OUT DECIDES HE IS TO GET A NEW PARACHUTE AND HE HAS TO ADJUST
6 IT OR SOMETHING AND HE IS TAKING OFF THE PARACHUTE AND HE
7 FALLS OFF THE PLANE WITHOUT THE PARACHUTE AND THE PLANE IS
8 GOING OUT OVER A REMOTE, MOUNTAINOUS AREA AND IT IS MAYBE
9 TEN TO FIFTEEN THOUSAND FEET UP AND THE PERSON IS NEVER HEARD
10 FROM AGAIN. THEY TAKE SEARCH PARTIES OUT. THEY COMB THIS
11 AREA. THEY CAN'T FIND THE GUY AND HE IS NEVER SEEN OR HEARD
12 FROM AGAIN. WHAT DO YOU THINK HAPPENED TO THAT PERSON?

13 MR. BARENS: IS THERE A QUESTION PENDING?

14 MR. WAPNER: YES.

15 THE QUESTION IS: WHAT DOES SHE THINK HAPPENED
16 TO HIM?

17 MR. BARENS: I DIDN'T KNOW THAT THERE COULD BE A QUESTION
18 AT THIS POINT. ALL RIGHT. SORRY.

19 MR. WAPNER: WAS THAT AN OBJECTION, COUNSEL?

20 MR. BARENS: I DIDN'T QUITE SEE THERE WAS A QUESTION.

21 THE COURT: NO, IT WAS A COMMENT.

22 MS. AGSAOAY: WELL, IF ANYTHING HAPPENED TO THE PERSON,
23 HE WOULD HAVE DISINTEGRATED UP IN THE MOUNTAINS OR HE COULD
24 HAVE FALLEN INTO A HOLE WHERE THEY -- THE BRUSH, WHERE HE
25 WENT UNDER.

26 THE COURT: HE WANTS TO KNOW WHETHER YOU THINK HE HAD
27 BEEN KILLED.

28 MS. AGSAOAY: PARDON ME?

1 THE COURT: HE WANTS TO KNOW WHETHER OR NOT YOU THINK
2 THAT PERSON HAD BEEN KILLED.

3 MR. WAPNER: DO YOU THINK HE IS ALIVE?

4 MS. AGSAOAY: . . . WHETHER HE IS ALIVE?

5 I DON'T KNOW. IT COULD BE.

6 HE COULD WALK OUT IN A 15,000-FOOT HOLE.

7 MR. WAPNER: WELL, HE COULD WALK OUT, IT HAS HAPPENED,
8 WE HAVE ALL SEEN --

9 THE COURT: I THINK YOU OUGHT TO STAY AWAY FROM THESE
10 EXAMPLES. THEY PRESENT TOO MANY PROBLEMS.

11 MR. WAPNER: WHY AM I THE ONLY ONE WHO LOVES THESE
12 EXAMPLES?

13 WHAT DO YOU THINK ARE THE REASONABLE THINGS TO
14 INFER FROM THE FACT THAT HE HAS NEVER BEEN HEARD OF SINCE
15 THEN?

16 MS. AGSAOAY: HE COULD BE DEAD, IT IS ONE OF THE --
17 OR EITHER HE DIDN'T WANT ANYONE TO KNOW WHERE HE IS.

18 MR. WAPNER: ASSUMING THAT HE WAS ORIGINALLY INTENDING
19 TO JUMP OUT WITH A PARACHUTE AND FOR WHATEVER REASON, BECAUSE
20 HE GOT TWISTED UP AND HE DIDN'T HAVE THE PARACHUTE ON, HE
21 FELL OUT, IF HE WERE ALIVE, WHAT DO YOU THINK, ASSUMING THAT
22 HE HAD SURVIVE THE FALL, WHAT DO YOU THINK IS REASONABLE FOR
23 HIM TO HAVE DONE AT THAT POINT?

24 MS. AGSAOAY: TO TRY TO REACH CIVILIZATION, TO TRY TO
25 REACH SOMEBODY AND CONTACT THEM.

26 MR. WAPNER: AND GET SOME HELP BECAUSE, MOST LIKELY,
27 HE WOULD AT LEAST HAVE A BROKEN ANKLE?

28 MS. AGSAOAY: YES.

1 (LAUGHTER IN COURTROOM.)

2 MR. WAPNER: THE POINT OF ALL THIS IS NOT TO ASK YOU
3 HOW YOU FEEL ABOUT PEOPLE FALLING OUT OF AIRPLANES.

4 THE POINT REALLY IS TO TRY AND SEPARATE WHAT ARE
5 REASONABLE INFERENCES FROM POSSIBLE OR IMAGINARY THINGS; DO
6 YOU UNDERSTAND THAT?

7 MS. AGSAOAY: YES, I DO.

8 MR. WAPNER: AS IN YOUR DRIVING UNDER THE INFLUENCE
9 CASE, THE JUDGE IN THIS CASE IS GOING TO TELL YOU THAT BEYOND
10 A REASONABLE DOUBT DOESN'T MEAN BEYOND ALL POSSIBLE OR
11 IMAGINARY DOUBT, YOU UNDERSTAND THAT?

12 MS. AGSAOAY: YES, I DO.

13 MR. WAPNER: DO YOU UNDERSTAND WE CAN ALL IMAGINE
14 POSSIBLE SCENARIOS WHERE INCREDIBLE THINGS HAPPEN, YOU
15 UNDERSTAND THAT?

16 MS. AGSAOAY: YES.

17 MR. WAPNER: DO YOU THINK IF YOU ARE CHOSEN AS A JUROR
18 IN THIS CASE THAT YOU WOULD HAVE ANY DIFFICULTY IN ANALYZING
19 THE EVIDENCE IN TERMS OF WHAT IS REASONABLE AND WHAT IS NOT?

20 MS. AGSAOAY: NO, I WOULDN'T.

21 MR. WAPNER: PART OF THE POINT OF ALL OF THE EXAMPLES,
22 TOO, IS BECAUSE THERE IS NO BODY, IT IS ALWAYS POSSIBLE, YOU
23 CAN ALWAYS SAY ANYTHING IS POSSIBLE, RIGHT?

24 MS. AGSAOAY: YES.

25 MR. WAPNER: WILL YOU PROMISE ME THAT YOU WILL USE YOUR
26 REASON AND YOUR COMMON SENSE IN ANALYZING THE EVIDENCE IN
27 THIS CASE AND NOT JUST SPECULATE ON EVIDENCE THAT IS NOT THERE?

28 MS. AGSAOAY: I PROMISE YOU.

1 MR. WAPNER: OKAY. MAY WE APPROACH THE BENCH, JUST
2 BRIEFLY?

3 THE COURT: YES.

4 (THE FOLLOWING PROCEEDINGS WERE HELD
5 AT THE BENCH:)

6 MR. WAPNER: YOUR HONOR, A DEFENDANT'S PLEA IS NOT
7 EVIDENCE IN THIS CASE. AND I THINK THAT BY SUSTAINING THAT
8 OBJECTION, THE JURORS MAY HAVE THE ERRONEOUS BELIEF THAT IT
9 IS EVIDENCE. HIS PLEA IS NOT EVIDENCE. IT JUST PUTS INTO
10 ISSUE THE ISSUES IN THE TRIAL.

11 I THINK THE JURORS SHOULD BE SO INSTRUCTED.

12 MR. BARENS: NOW YOUR HONOR, WE ALL KNOW THAT A GUILTY
13 PLEA CERTAINLY THE PEOPLE KNOW IS EVIDENCE.

14 IF YOU PLEAD GUILTY, IT CAN BE INTRODUCED AGAINST
15 YOU, A GUILTY PLEA ON A FELONY MATTER, CAN BE INTRODUCED
16 AT A SUBSEQUENT TRIAL.

17 IT IS EVIDENCE FOR A PROBATION VIOLATION. A NOT
18 GUILTY PLEA IS EVIDENCE, AS WELL.

19 MR. WAPNER: NO. A NOT GUILTY PLEA IS NOT EVIDENCE
20 THAT THE JURORS CAN CONSIDER. SO A STATEMENT --

21 THE COURT: WELL, HAVE YOU GOT ANY AUTHORITY FOR THE
22 CLAIM THAT A NOT GUILTY PLEA IS EVIDENCE IN THE CASE?

23 MR. WAPNER: IT IS NOT EVIDENCE.

24 THE COURT: IT IS NOTHING AT ALL.

25 MR. BARENS: IF IT IS NOT EVIDENCE, WHAT IS IT?

26 THE COURT: ALL IT DOES IS PUT IN ISSUE THE PLEA MADE.
27 THE LAW REQUIRES HIM TO PLEAD GUILTY OR NOT GUILTY.

28 IF THE PLEA IS NOT GUILTY, THEN YOU HAVE A TRIAL.

1 ALL OF THE RULES OF EVIDENCE COME INTO PLAY AT THAT PARTICULAR
2 POINT.

3 ARE YOU CLAIMING A PLEA OF NOT GUILTY IS OR ISN'T
4 EVIDENCE?

5 MR. WAPNER: I AM CLAIMING IT IS NOT EVIDENCE IN THE
6 CASE.

7 BUT I THINK THE COURT, BY SUSTAINING COUNSEL'S
8 OBJECTION, HAS GIVEN THE JURORS THE IMPRESSION THAT HIS PLEA
9 OF NOT GUILTY IS EVIDENCE.

10 THE COURT: I DIDN'T SAY ANYTHING OF THE KIND. I JUST
11 SUSTAINED AN OBJECTION.

12 MR. WAPNER: WELL, WILL YOU PERMIT ME TO ASK THE JURORS
13 IF THEY UNDERSTAND THAT A PLEA OF NOT GUILTY IS NOT EVIDENCE
14 IN THIS CASE?

15 MR. BARENS: I OBJECT TO THAT. I BELIEVE THAT IT IS
16 MISLEADING FOR HIM TO SAY THAT, TO BEGIN WITH.

17 THE EVIDENCE BEFORE THE JURY IS THAT WE HAVE PLED
18 NOT GUILTY. THEY HAVE THAT AT HAND. OR ELSE, WHAT AM I DOING
19 HERE?

20 THE COURT: I DON'T THINK WE NEED TO GO ANY FURTHER.
21 I DON'T THINK IT MEANS ANYTHING.

22 YOU ARE JUST INFLATING SOMETHING INTO SOMETHING
23 THAT MIGHT BE IN ISSUE. IT ISN'T AN ISSUE.

24 A MAN PLEADS NOT GUILTY. IT DOESN'T MEAN ANYTHING
25 EXCEPT THAT HE IS PUTTING YOU TO THE PROOF OF PROVING HIM
26 GUILTY BEYOND A REASONABLE DOUBT.

27 MR. WAPNER: BUT IT IS NOT EVIDENCE IN THE CASE.

28 THE COURT: OF COURSE IT IS NOT EVIDENCE IN THE CASE.

1 MR. WAPNER: WELL, WILL THE COURT TELL THE JURORS THAT?

2 THE COURT: THERE IS NO REASON FOR DOING IT.

3 MR. WAPNER: WELL, THE ONLY REASON I AM ASKING YOU TO

4 DO IT IS BECAUSE WHEN WE SAID THAT TO THE JURORS --

5 THE COURT: THE ONLY THING THAT THEY SHOULD KNOW IS

6 THAT THERE IS A PRESUMPTION OF INNOCENCE AS HE SITS THERE.

7 HE IS PRESUMED TO BE INNOCENT. ALL RIGHT?

8 MR. WAPNER: I UNDERSTAND THAT.

9 THE COURT: THAT IS THE EVIDENCE IN THE CASE.

10 MR. WAPNER: WELL, --

11 THE COURT: PRESUMPTIONS ARE EVIDENCE, AREN'T THEY?

12 MR. WAPNER: THAT PRESUMPTION IS NOT EVIDENCE IN THE

13 SAME SENSE. IT IS NOT EVIDENCE IN THE CASE.

14 THE COURT: LET'S NOT PROLONG THIS DISCUSSION ANY MORE.

15 MR. BARENS: I AGREE.

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1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT:)

3 MR. WAPNER: PASS FOR CAUSE.

4 THE COURT: IT IS THE DEFENSE PEREMPTORY.

5 MR. CHIER: WILL THE COURT THANK AND EXCUSE MS. AGSAOAY?

6 THE COURT: YES. THANK YOU, MRS. AGSAOAY. THANK YOU
7 VERY MUCH. YOU HAVE BEEN EXCUSED BY THE DEFENDANT IN THE
8 CASE.

9 (PROSPECTIVE JUROR AGSAOAY EXITED
10 THE COURTROOM.)

11 THE CLERK: HARRIET KOSSOVE, K-O-S-S-O-V-E.

12 THE COURT: MISS KOSSOVE, DO YOU PRONOUNCE IT KOSSOVE?

13 MS. KOSSOVE: YES, SIR.

14 THE COURT: YOU TOO DILIGENTLY OR OTHERWISE, HAVE HEARD
15 ALL OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

16 MS. KOSSOVE: YES.

17 THE COURT: THOSE WHICH I ASKED AND THOSE WHICH COUNSEL
18 HAVE ASKED, IS THAT RIGHT?

19 MS. KOSSOVE: YES.

20 THE COURT: NOW, IF THOSE SAME GENERAL QUESTIONS WERE
21 ASKED OF YOU, WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD
22 THEY BE SUBSTANTIALLY THE SAME?

23 MS. KOSSOVE: SUBSTANTIALLY THE SAME.

24 THE COURT: DOES ANYTHING OCCUR TO YOU OR DID IT DURING
25 THE COURSE OF THE QUESTIONING WHERE YOU POSSIBLY MIGHT HAVE
26 ANSWERED DIFFERENTLY TO THE GENERAL QUESTIONS?

27 MS. KOSSOVE: NO, YOUR HONOR.

28 THE COURT: ALL RIGHT. THANK YOU.

1 WHAT DO YOU DO, MISS KOSSOVE?

2 MS. KOSSOVE: I AM RETIRED.

3 THE COURT: FROM WHAT DID YOU RETIRE?

4 MS. KOSSOVE: I WAS A SCHOOL FOOD SERVICE DIRECTOR.

5 THE COURT: WHAT?

6 MS. KOSSOVE: SCHOOL FOOD SERVICE DIRECTOR AND DIETICIAN/
7 NUTRITIONIST.

8 THE COURT: WHAT SCHOOL WAS THAT?

9 MS. KOSSOVE: SANTA MONICA/MALIBU UNIFIED SCHOOL
10 DISTRICT.

11 THE COURT: HOW LONG HAVE YOU BEEN WITH THE SCHOOL
12 DISTRICT?

13 MS. KOSSOVE: THAT SCHOOL DISTRICT, NINE AND A HALF
14 YEARS.

15 THE COURT: WHERE HAD YOU BEEN EMPLOYED PREVIOUSLY?
16 BY A PREVIOUS SCHOOL DISTRICT IN ANY CAPACITY?

17 MS. KOSSOVE: YES.

18 THE COURT: WHERE WAS THAT?

19 MS. KOSSOVE: SAN FRANCISCO.

20 THE COURT: WHAT KIND OF AN INSTITUTION WAS THAT UP
21 THERE? HIGH SCHOOL OR WHAT?

22 MS. KOSSOVE: NO. I WAS WITH THE ADMINISTRATIVE OFFICE
23 FOR THE ENTIRE DISTRICT.

24 THE COURT: I SEE. WHAT DID THOSE DUTIES CONSIST OF?

25 MS. KOSSOVE: THEY CONSISTED OF RUNNING A SCHOOL LUNCH
26 PROGRAM AND/OR BREAKFAST PROGRAM IN THE UNIFIED SCHOOL
27 DISTRICT, WHICH MEANS OPERATING THE SCHOOL CAFETERIAS
28 COMPLETELY WITH PERSONNEL, THE MENUS, THE PURCHASING --

1 THE COURT: DID YOU DO THE PURCHASING, TOO?

2 MS. KOSSOVE: YES.

3 THE COURT: AND NOW THAT YOU ARE RETIRED, WHAT DO YOU
4 DO TO KEEP YOURSELF OCCUPIED?

5 MS. KOSSOVE: WELL, I TAKE COURSES IN THINGS THAT I
6 HAVE NEVER HAD TIME TO DO BEFORE.

7 THE COURT: WHERE DO YOU TAKE THEM?

8 MS. KOSSOVE: PARDON ME?

9 THE COURT: WHERE?

10 MS. KOSSOVE: WELL, I TAKE SOME AT THE SANTA MONICA
11 COLLEGE EMERITUS COLLEGE. ALSO, SOME OF THE ADULT EDUCATION
12 SCHOOLS.

13 THE COURT: OKAY. WHERE DO YOU LIVE?

14 MS. KOSSOVE: I LIVE IN SANTA MONICA.

15 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN A CRIMINAL
16 CASE BEFORE?

17 MS. KOSSOVE: NO.

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

19 MR. BARENS: GOOD AFTERNOON. COULD YOU SAY YOUR NAME
20 FOR ME?

21 MS. KOSSOVE: KOSSOVE.

22 MR. BARENS: ALL RIGHT. I HAD A GENTLEMAN IN THAT CHAIR
23 THAT I HAD A DEVIL OF A TIME WITH THE NAME. BUT WE ARE GOING
24 TO TRY TO DO BETTER WITH YOU.

25 MS. KOSSOVE, WHAT SORT OF CLASSES DO YOU TAKE?
26 ARE YOU TAKING CLASSES RIGHT NOW?

27 MS. KOSSOVE: YES.

28 MR. BARENS: WHAT DO YOU HAVE RIGHT NOW?

1 MS. KOSSOVE: RIGHT NOW I HAVE CURRENT POLITICAL EVENTS
2 WHICH I HAVE BEEN MISSING AND TAI CHI WHICH I HAVE BEEN MISSING.
3 THAT IS WHAT I AM TAKING THIS SEMESTER.

4 MR. BARENS: HAVE YOU STAYED WITH POLY SCI CLASSES A
5 LOT OR --

6 MS. KOSSOVE: YES.

7 MR. BARENS: YOU TOOK AMERICAN GOVERNMENT?

8 MS. KOSSOVE: YES.

9 MR. BARENS: AND I PRESUME AMERICAN GOVERNMENT HAD A
10 LOT TO DO WITH CONSTITUTIONAL RIGHTS AND THE FRAMING OF THE
11 CONSTITUTION AND THAT WHOLE VALUE STRUCTURE THAT WAS MADE
12 INTO A LEGAL SYSTEM?

13 MS. KOSSOVE: YES.

14 MR. BARENS: AND HOW DID YOU FEEL ABOUT FOR INSTANCE,
15 THE RIGHT OF A DEFENDANT OR THE PRESUMPTION OF INNOCENCE?
16 DOES THAT MAKE SENSE TO YOU?

17 MS. KOSSOVE: IT CERTAINLY DOES.

18 MR. BARENS: AS YOU SIT THERE TODAY AS A PROSPECTIVE
19 JUROR ON THIS CASE, DOES IT MAKE SENSE TO YOU?

20 MS. KOSSOVE: IT DOES.

21 MR. BARENS: AND DO YOU IN FACT, BELIEVE IN YOUR HEART,
22 THAT THE DEFENDANT IS PRESUMED TO BE INNOCENT BEFORE YOU HAVE
23 HAD ANY TESTIMONY?

24 MS. KOSSOVE: I DO.

25 MR. BARENS: AND THAT PRESUMPTION WILL STAY AS YOU GO
26 ALONG?

27 MS. KOSSOVE: YES.

28 MR. BARENS: AND I PRESUME IN YOUR CONSTITUTION CLASS

1 OR AMERICAN HISTORY CLASS, THAT YOU TALKED ABOUT THAT FIFTH
2 AMENDMENT RIGHT, DID YOU?

3 MS. KOSSOVE: YES.

4 MR. BARENS: HOW DID YOU FEEL? DID YOU THINK IT WAS
5 FAIR THAT PEOPLE WHO ARE ACCUSED OF CRIMINAL ACTS ARE AFFORDED
6 THAT PROTECTION BY LAW?

7 MS. KOSSOVE: YES.

8 MR. BARENS: FAIR?

9 MS. KOSSOVE: YES.

10 MR. BARENS: FUNDAMENTAL TO OUR WHOLE SYSTEM, ISN'T
11 IT?

12 MS. KOSSOVE: IT IS.

13 MR. BARENS: WHAT WOULD YOU DO, GIVEN THAT PRESUMPTION
14 OF INNOCENCE, IF YOU HAD CONFLICTING TESTIMONY FROM TWO
15 WITNESSES, ONE THAT WAS SAYING IT WAS BLACK AND THE OTHER
16 THAT WAS SAYING IT WAS WHITE AND YOU DIDN'T KNOW WHICH TO
17 BELIEVE? JUST GIVEN THAT? HOW WOULD YOU RESOLVE THE QUESTION
18 OF GUILT AND INNOCENCE?

19 MS. KOSSOVE: I WOULD HAVE TO SAY NOT GUILTY.

20 MR. BARENS: CORRECT. AND WHY IS THAT? BECAUSE THE
21 PEOPLE WOULD HAVE FAILED TO SUSTAIN THEIR BURDEN OF PROOF
22 THAT THEY HAVE?

23 MS. KOSSOVE: BEYOND A REASONABLE DOUBT.

24 MR. BARENS: BEYOND A REASONABLE DOUBT. WE HAVE MOVED
25 FROM BOATS TO PLANES AND WE HAVE AN UNFORTUNATE SITUATION
26 WHERE A CHAP FALLS OUT OF A PLANE.

27 AND THE JUROR PRECEDING YOURSELF AGONIZED WITH
28 EXPLANATIONS ABOUT WHAT COULD HAVE HAPPENED TO THAT PERSON.

1 DO YOU UNDERSTAND THAT THE DEFENSE NEVER HAS AN OBLIGATION
2 TO PROVE WHAT HAPPENED TO THAT PERSON?

3 MS. KOSSOVE: NO?

4 MR. BARENS: DO YOU UNDERSTAND THAT?

5 MS. KOSSOVE: NOT REALLY.

6 MR. BARENS: OKAY. I AM GLAD WE GOT TO THAT. LET'S
7 SAY SOMEONE IS ON TRIAL FOR PUSHING THAT PERSON OUT OF THE
8 PLANE. PEOPLE COME ALONG AND SAY THAT MR. SMITH PUSHED
9 WHOMEVER OUT OF THAT PLANE. WE CAN'T FIND MR. SMITH'S BODY.

10 WE CAN'T FIND ANY ARTICLES OF CLOTHING. WE CAN'T
11 FIND ANYTHING ABOUT MR. SMITH. THE DEFENDANT IS OVER THERE.

12 THE DEFENDANT TAKES THE STAND AND TESTIFIES AND
13 SAYS THAT HE HAS NO IDEA WHAT HAPPENED TO MR. SMITH. HE CAN'T
14 HELP YOU AT ALL.

15 DO YOU THINK THAT THE DEFENDANT HAS ANY DUTY TO
16 SHOW WHAT HAPPENED TO MR. SMITH, THE GUY THAT FELL OUT OF
17 THE PLANE?

18 MS. KOSSOVE: NO.

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1 MR. BARENS: THE DEFENDANT DOESN'T HAVE THAT, DOES HE?

2 MS. KOSSOVE: NO, NOT ACCORDING TO THE CONSTITUTION.

3 MR. BARENS: NOW, THE DEFENDANT DOESN'T HAVE A BURDEN
4 ON ANY OF THOSE ISSUES, DOES HE?

5 MS. KOSSOVE: NO.

6 MR. BARENS: NOW, WHEN WE ARE TALKING ABOUT USING
7 REASONABLENESS AS A STANDARD, WHAT REASONABLY COULD HAVE
8 HAPPENED AND WHAT REASONABLY COULD NOT HAVE HAPPENED AND YOU
9 ARE TOLD NOT TO SPECULATE.

10 YOU UNDERSTAND THAT YOU ARE NOT ONLY TO ACCEPT
11 REASONABLE AS DEFINED BY THE PEOPLE, BUT THE GOVERNMENT IS
12 NOT GOING TO TELL YOU WHAT IS REASONABLE AND UNREASONABLE.
13 ISN'T THAT A DECISION YOU HAVE TO MAKE AS A JUROR?

14 MS. KOSSOVE: YES.

15 MR. BARENS: REASONABLE DOESN'T COME TO SOME STANDARD
16 WHERE THEY ARE GOING TO SAY AS A JUROR, "LISTEN, MA'AM, WE
17 ARE GOING TO TELL YOU THAT UNLESS THINGS REACH A CERTAIN LEVEL,
18 THEY ARE NOT REASONABLE NO MATTER WHAT YOU THINK. IF YOU
19 HAVE GOT A DOUBT IN YOUR MIND, YOU ARE SPECULATING."

20 DO YOU UNDERSTAND THAT THE REASONABLE DOUBT TO
21 YOU IS WHATEVER YOU PERCEIVE IT TO BE AND WHAT SPECULATION
22 IS WHAT YOU PERCEIVE IT TO BE, NOT WHAT THE GOVERNMENT TELLS
23 YOU IT IS?

24 MS. KOSSOVE: YES.

25 MR. BARENS: AND YOU ARE FREE TO MAKE THOSE DECISIONS
26 ON YOUR OWN?

27 MS. KOSSOVE: YES.

28 MR. BARENS: THERE IS NO MAGIC STANDARD FOR THAT, THERE

1 IS NO PERFORMANCE STANDARD FOR THAT.

2 YOU GET TO MAKE THOSE DECISIONS, CORRECT?

3 MS. KOSSOVE: CORRECT.

4 MR. BARENS: WHAT DO WE DO IN CLOSE CALLS WHEN WE GET
5 A PHOTOFINISH UNDER THE AMERICAN JUDICIAL SYSTEM IF WE HAVE
6 A PHOTOFINISH, IT IS A CLOSE CALL, WHO WINS THAT RACE?

7 MR. WAPNER: I WANT TO OBJECT TO THAT BECAUSE THE
8 "CLOSE CALL" DOESN'T SAY WHETHER IT IS CLOSE TO BEING PROVED
9 BEYOND A REASONABLE DOUBT OR SOMETHING ELSE. I DON'T
10 UNDERSTAND IT.

11 MR. BARENS: THAT IS EXACTLY IT. THANK YOU, MR. WAPNER.
12 I WILL STIPULATE THAT IS WHAT I MEANT.

13 CLOSE, BEYOND A REASONABLE DOUBT, WHAT DO WE DO
14 UNDER OUR LEGAL SYSTEM WHEN THERE IS A CLOSE CALL LIKE THAT,
15 WHO WINS?

16 MS. KOSSOVE: THE DEFENDANT. NOT GUILTY.

17 MR. BARENS: BECAUSE HE IS NOT GUILTY BEYOND A
18 REASONABLE DOUBT.

19 THE SAME THING WE DO WHEN WE DON'T KNOW WHICH
20 WITNESS TO BELIEVE.

21 IS IT BELIEVABLE TO YOU THAT WE COULD GET TWO
22 HONEST PEOPLE IN A CASE, BOTH OF WHOM BELIEVE THEY ARE TELLING
23 THE TRUTH BASED ON THEIR PERCEPTION OF THE FACTS, AND THEY
24 ARE SAYING, THEY HAVE DIAMETRICALLY OPPOSED TESTIMONY; COULD
25 THAT HAPPEN, IN YOUR MIND?

26 MS. KOSSOVE: I THINK IT IS POSSIBLE.

27 MR. BARENS: AND HAVING THAT TIE, THAT ABSOLUTE CLASH
28 OF WITNESSES, BUT NEITHER ONE IS MORE BELIEVABLE AND NEITHER

1 APPEARS TO BE LYING, DOES THE DEFENDANT WIN?

2 MS. KOSSOVE: YES.

3 MR. BARENS: THE DEFENDANT REMAINS NOT GUILTY, NO BURDEN
4 OF PROOF WAS MET.

5 MY ASSOCIATE TALKED TO THE JURY ONE TIME ABOUT
6 THE DIFFERENCE BETWEEN NOT PROVED AND PROVED, GUILTY AND NOT
7 GUILTY.

8 THE DEFENDANT DOESN'T HAVE TO PROVE WHAT HAPPENED
9 TO THE PERSON WHO DISAPPEARED; CAN YOU ACCEPT THAT?

10 MS. KOSSOVE: YES.

11 MR. BARENS: WHAT IS THE LAST BOOK YOU READ?

12 MS. KOSSOVE: "INSIDE OUTSIDE" BY HERMAN WOUK.

13 MR. BARENS: AND THE LAST MOVIE YOU SAW?

14 MS. KOSSOVE: "CHILDREN OF A LESSER GOD."

15 MR. BARENS: DO YOU BELONG ^{TO} ANY SERVICE OR CHARITABLE
16 ORGANIZATION?

17 MS. KOSSOVE: YES. I BELONG TO BRANDEIS UNIVERSITY
18 NATIONAL WOMENS COMMITTEE.

19 MR. BARENS: AND WHAT DO YOU DO PURSUANT TO THAT?

20 MS. KOSSOVE: I AM ON THE EXECUTIVE BOARD AND WE RAISE
21 MONEY FOR THE LIBRARY.

22 MR. BARENS: I SEE.

23 HOW LONG HAVE YOU BEEN RETIRED NOW?

24 MS. KOSSOVE: OH, THREE YEARS.

25 MR. BARENS: HAVE YOU EVER HAD OCCASION WHERE YOU
26 OBSERVED THE JURY PROCESS DURING A TRIAL WHERE YOU DID ANY
27 COURT WATCHING DURING THAT PERIOD OF TIME?

28 MS. KOSSOVE: YES.

1 MR. BARENS: HAS THAT PRIMARILY BEEN IN THIS COURTHOUSE?

2 MS. KOSSOVE: NO.

3 MR. BARENS: AND WHERE WAS THAT?

4 MS. KOSSOVE: DOWNTOWN IN THE FEDERAL COURTHOUSE.

5 MR. BARENS: DID YOU GO TO THE DELOREAN TRIAL?

6 MS. KOSSOVE: YES, I DID.

7 MR. BARENS: HOW DID YOU FEEL ABOUT THE PROCESS THAT
8 YOU OBSERVED DURING THE DELOREAN TRIAL?

9 MS. KOSSOVE: I THOUGHT IT WAS VERY INTERESTING.

10 MR. BARENS: DID YOU FEEL THE GOVERNMENT GOT A FAIR
11 SHAKE IN THAT TRIAL?

12 MS. KOSSOVE: NO.

13 MR. BARENS: YOU DIDN'T?

14 MS. KOSSOVE: NO.

15 MR. BARENS: WHY DID YOU FEEL THAT WAY?

16 MS. KOSSOVE: I THOUGHT THAT THE GOVERNMENT MUFFED THE
17 CASE.

18 MR. BARENS: BY MUFFED, YOU THINK DELOREAN SHOULD HAVE
19 BEEN CONVICTED?

20 MS. KOSSOVE: I DIDN'T MAKE ANY JUDGMENT ON THAT SCORE,
21 BUT I DIDN'T LIKE THE WAY THE GOVERNMENT HANDLED THE CASE.

22 MR. BARENS: COULD YOU HELP ME WITH THAT, MA'AM?
23 WHAT DO YOU MEAN BY THAT?

24 MS. KOSSOVE: WELL, JUST -- I ONLY WAS THERE ONCE, I
25 THINK, MAYBE TWICE AND --

26 MR. BARENS: WHAT DID YOU SEE THE DAY YOU WERE THERE
27 OR THE TWO DAYS?

28 MS. KOSSOVE: I SAW SOME FILM.

1 MR. BARENS: THE "IT IS BETTER THAN GOLD" FILM?

2 MS. KOSSOVE: YES.

3 MR. BARENS: YOU SAW THAT ONE WITH JOHN THERE SAYING

4 "ALL THAT DOPE IS BETTER THAN GOLD"?

5 IT AS HARD FOR YOU TO ACCEPT THAT, AFTER SEEING
6 DELOREAN SAY THAT, THAT HE COULD HAVE BEEN ACQUITTED?

7 MS. KOSSOVE: WELL, I THINK THAT THEY COULDN'T -- THE
8 GOVERNMENT COULDN'T HAVE BUILT A BETTER CASE THAN THEY DID
9 WITH THE KIND OF EVIDENCE THEY HAD.

10 MR. BARENS: DO YOU THINK THERE MIGHT HAVE BEEN EVIDENCE
11 THAT SHOWED THAT ALTHOUGH DELOREAN MIGHT HAVE MADE A STATEMENT
12 ABOUT THAT AT THAT TIME, THAT HE HAD NO INTEREST IN SELLING
13 OR DISTRIBUTING ALL OF THAT DOPE?

14 MS. KOSSOVE: I THINK THAT IS POSSIBLE.

15 MR. BARENS: WELL, IT OCCURS TO ME THAT 12 OF YOUR FELLOW
16 CITIZENS SEEMED TO HAVE COME TO THAT CONCLUSION; COULD YOU
17 ACCEPT THAT?

18 MS. KOSSOVE: YES.

19 MR. BARENS: DO YOU THINK IT IS POSSIBLE IN YOUR MIND --
20 AND THIS IS IMPORTANT TO ME -- THAT DELOREAN WAS ACQUITTED
21 BECAUSE HE WAS NOT GUILTY AND NOT THAT THE GOVERNMENT MUFFED
22 THE CASE?

23 MS. KOSSOVE: I AM NOT SURE ABOUT THAT.

24 MR. BARENS: WELL, YOU KNOW, ONE TIME I SAID TO THE JURY
25 HERE THAT THEY ARE THE ONLY ONES WHO ARE GOING TO KNOW THE TRUTH
26 IN THIS PROCESS, IN MY MIND, ARE THE 12 PEOPLE THAT SIT IN
27 THAT BOX THERE. THEY ARE THE ONLY ONES WHOSE TRUTH IS GOING
28 TO MEAN ANYTHING AND HERE, WE HAVE GOT A SITUATION WHERE 12

1 JURORS FOUND THE TRUTH, NOT GUILTY, ACQUITTED, EVEN AFTER
2 THEY SAW THAT MOVIE BECAUSE THEY SAW THE SAME MOVIE YOU SAW
3 AND I SAW. THEY WERE CONVINCED THAT HE WAS NOT GUILTY. HOW
4 DO YOU FEEL ABOUT THAT IN RETROSPECT, DO YOU THINK THE JURY
5 SYSTEM MYFUNCTIONED?

6 MS. KOSSOVE: YES, I THINK SOMETHING HAPPENED WITH THE
7 CHARGE OF ENTRAPMENT AND THE WAY THE GOVERNMENT HANDLED IT.

8 MR. BARENS: NOW, DO YOU UNDERSTAND THAT IN THAT CASE,
9 THE DEFENSE DIDN'T WIN ON ENTRAPMENT?

10 MS. KOSSOVE: I DON'T REALLY KNOW WHAT THEY WON ON BUT
11 THAT IS JUST MY FEELING.

12 MR. BARENS: THEY WON ON PLAIN JUST NOT GUILTY.

13 YOU UNDERSTAND IN THAT CASE THE GOVERNMENT PROVIDED
14 THE DRUGS, NOT MR. DELOREAN?

15 MS. KOSSOVE: YES.

16 MR. BARENS: AND THE GOVERNMENT PROVIDED A WITNESS TO
17 SET IT UP TO MAKE IT LOOK LIKE HE WANTED TO SELL DRUGS; IS
18 THAT TRUE?

19 (MS. KOSSOVE NODS HER HEAD UP AND DOWN.)

20 MR. BARENS: DO YOU UNDERSTAND THAT DELOREAN, THROUGH
21 HIS OWN MOUTH, MADE A STATEMENT ABOUT THE DRUGS, HE MADE A
22 STATEMENT "IT LOOKS BETTER THAN GOLD", DID YOU SEE THAT ON
23 THE FILM?

24 MS. KOSSOVE: YES.

25 MR. BARENS: DID YOU EVER SEE DELOREAN ON THE FILM SAY
26 HE WANTED TO SELL THOSE DRUGS?

27 MS. KOSSOVE: NO.

28 MR. BARENS: DID YOU EVER SEE HIM SAY HE WAS INTERESTED

1 IN DISTRIBUTING THOSE DRUGS --

2 MS. KOSSOVE: NO.

3 MR. BARENS: -- OR MAKING ANY PROFIT ON THOSE DRUGS?

4 MS. KOSSOVE: NO.

5 MR. BARENS: DID YOU SEE ANYTHING, AS YOU THINK ABOUT
6 IT NOW, OTHER THAN THE FACT THAT HE IS IN THE ROOM WITH THOSE
7 DRUGS, THAT PROVED THAT HE WAS INTERESTED IN SELLING THEM,
8 THAT IS WHAT WE ARE TALKING ABOUT -- NOT PROVEN AGAIN HERE --
9 AND WHAT WE NEED YOU TO LOOK FOR AS A JUROR IN THIS CASE IS
10 NOT THE APPEARANCE, THE SUPERFICIAL APPEARANCE OF GUILT BUT
11 THAT THERE WAS PROOF THAT HE ACTUALLY DID SOMETHING.

12 MS. KOSSOVE: NOT BEYOND A REASONABLE DOUBT.

13 MR. BARENS: RIGHT, AND WHAT WE ARE LOOKING FOR IN THIS
14 CASE, OR IN ANY OTHER CRIMINAL CASE IS PROOF NOT THAT SOMEBODY
15 SAID SOMETHING, NOT THAT SOMEBODY LOOKED LIKE SOMETHING BUT
16 THAT THEY DID SOMETHING; DO YOU UNDERSTAND WHAT I MEAN?

17 MS. KOSSOVE: YES, I DO.

18 MR. BARENS: THE DEFENDANT, ON THE OTHER HAND, DOESN'T
19 HAVE TO PROVE THAT HE DIDN'T DO SOMETHING; DO YOU UNDERSTAND
20 THAT?

21 MS. KOSSOVE: I UNDERSTAND THAT.

22 MR. BARENS: HOW DO YOU FEEL ABOUT MR. DELOREAN NOT
23 TESTIFYING?

24 MS. KOSSOVE: I FEEL THAT WAS HIS CONSTITUTIONAL RIGHT.

25 MR. BARENS: DO YOU THINK THERE WAS ANYTHING WRONG WITH
26 THE FACT THAT A JURY WOULD ACQUIT HIM BECAUSE THE CASE AGAINST
27 HIM WAS NOT PROVEN, EVEN THOUGH HE DIDN'T TESTIFY?

28 MS. KOSSOVE: NO.

1 MR. BARENS: DO YOU THINK DELOREAN GOT OFF BECAUSE HE
2 HAD SOME KIND OF SLICK LAWYER?

3 MS. KOSSOVE: NO.

4 MR. BARENS: COULD YOU ACCEPT THAT HE WAS ACQUITTED
5 BECAUSE HE WAS IN FACT NOT GUILTY?

6 MS. KOSSOVE: HE WAS FOUND NOT GUILTY BY 12 JURORS.

7 MR. BARENS: WHAT DOES THAT TELL YOU IN LIGHT OF YOUR
8 EDUCATION IN THE AMERICAN CONSTITUTIONAL SYSTEM?

9 MS. KOSSOVE: IT TELLS ME THAT IS THE WAY THE SYSTEM
10 WORKS.

11 MR. BARENS: ARE YOU WILLING TO ACCEPT THE SYSTEM AS
12 IT EXISTS?

13 MS. KOSSOVE: I AM WILLING TO ACCEPT THE SYSTEM.

14 MR. BARENS: NOW, WHERE DID YOU ATTEND SCHOOL?

15 MS. KOSSOVE: THE UNIVERSITY OF MINNESOTA AND THE
16 UNIVERSITY OF IOWA.

17 MR. BARENS: AND DID YOU OBTAIN ANY PARTICULAR DEGREES
18 THERE?

19 MS. KOSSOVE: YES, BACHELOR'S OF SCIENCE.

20 MR. BARENS: WAS THAT FROM IOWA?

21 MS. KOSSOVE: NO.

22 MINNESOTA. IN NUTRITION.

23 MR. BARENS: THAT WAS IN NUTRITIONAL SCIENCE?

24 MS. KOSSOVE: YES.

25 MR. BARENS: DID YOU RECEIVE ANY TRAINING IN ANY OTHER
26 SPECIALIZED AREAS ASIDE FROM THAT?

27 MS. KOSSOVE: YES, HOSPITAL SERVICES ADMINISTRATION.

28

1 MR. BARENS: ANYTHING BOTHERSOME TO YOU ABOUT A YOUNG
2 MAN THAT MIGHT BELONG TO A CLUB CALLED THE BILLIONAIRE BOYS
3 CLUB?

4 MS. KOSSOVE: NOT BOTHERSOME.

5 MR. BARENS: CURIOUS?

6 MS. KOSSOVE: CURIOUS, YES.

7 MR. BARENS: IN WHAT SENSE?

8 MS. KOSSOVE: IT SOUNDS THEATRICAL.

9 MR. BARENS: ANYTHING WRONG WITH THAT?

10 MS. KOSSOVE: NO, NOTHING WRONG.

11 MR. BARENS: YOU HAVE PURSUED A LIFE OF ACADEMIC
12 STUDY BY CHOICE AND PUBLIC SERVICE THROUGH THIS SCHOOL SYSTEM.

13 DO YOU FEEL THERE IS ANYTHING WRONG OR SUSPECT
14 ABOUT PEOPLE WHO PURSUE A LIFE SEEKING ECONOMIC REWARDS,
15 ALTERNATIVELY?

16 MS. KOSSOVE: NO.

17 MR. BARENS: THAT IS ACCEPTABLE TO YOU UNDER OUR
18 SYSTEM?

19 MS. KOSSOVE: IT IS.

20 MR. BARENS: DO YOU HAVE ANY BACKGROUND OR TRAINING
21 IN ACCOUNTING?

22 MS. KOSSOVE: YES.

23 MR. BARENS: AND WHAT SORT OF ACCOUNTING BACKGROUND
24 DO YOU HAVE?

25 MS. KOSSOVE: JUST GENERAL ACCOUNTING. I WAS
26 RESPONSIBLE FOR THE PROFIT AND LOSS STATEMENTS OF ALL THE
27 SCHOOL CAFETERIAS. I HAD TO BE ABLE TO INTERPRET THEM.

28 MR. BARENS: ANY TRAINING OR EXPERIENCE IN PHILOSOPHY?

1 MS. KOSSOVE: ONLY FROM READING AND GENERAL INTEREST.

2 MR. BARENS: ANY PARTICULAR PHILOSOPHERS THAT HAVE
3 APPEALED TO YOU?

4 MS. KOSSOVE: NONE IN PARTICULAR.

5 MR. BARENS: ANY PARTICULAR SCHOOL OF PHILOSOPHIC
6 DISCIPLINE?

7 MS. KOSSOVE: I THINK THE GREEK SCHOOL PROBABLY MORE
8 THAN ANY OTHER, SOCRATES AND SO FORTH.

9 MR. BARENS: SOCRATES IS AN INTERESTING FELLOW, HEY?
10 HE WAS ALWAYS SEEKING SOME SORT OF EMPIRIC PROOF
11 FOR THE PROPOSITIONS THAT HE ASSERTED.

12 MS. KOSSOVE: YES.

13 MR. BARENS: THAT SEEMS TO UNDERLY OUR GENERAL
14 EDUCATIONAL SYSTEM, DOESN'T IT?

15 MS. KOSSOVE: I THINK SO.

16 MR. BARENS: SO, LET'S SEE IF WE CAN STRETCH SOCRATES
17 AND DELOREAN ON SOME LEVEL. THAT IS, AS WE MAKE A GREAT LEAP
18 FORWARD. WHAT WOULD WE DO IF WE HAD A SITUATION WHERE YOU ARE
19 CONVINCED IN YOUR OWN MIND THAT DELOREAN WAS THINKING ABOUT
20 SELLING DOPE, THINKING ABOUT SELLING DOPE BUT NEVER MADE A
21 MOVE. HE STOOD THERE IN THAT ROOM AND LOOKED AT THAT DOPE
22 AND SAID THAT IT LOOKED BETTER THAN GOLD.

23 HE TOLD STORIES ABOUT 24 MILLION DOLLARS OR
24 WHATEVER AND THOUGHT TO HIMSELF THAT IT WOULD BE A GOOD IDEA
25 TO SELL DOPE. DO YOU THINK THAT HE IS GUILTY OF ANYTHING AT
26 THAT POINT?

27 MS. KOSSOVE: NO.

28 MR. BARENS: NO PROOF THAT HE DID ANYTHING, IS THERE?

1 MS. KOSSOVE: HE ONLY THOUGHT. HE DIDN'T DO.

2 MR. BARENS: RIGHT. WE DON'T CONVICT PEOPLE FOR WHAT
3 THEY THINK, DO WE?

4 MS. KOSSOVE: I HOPE NOT.

5 MR. BARENS: INDEED, I HOPE NOT, TOO. YOU ARE GOING
6 TO BE POSSIBLY ASKED TO MAKE THAT JUDGMENT. AND WOULD YOU
7 REMEMBER YOUR STATEMENT THAT WE ARE NOT GOING TO CONVICT
8 SOMEBODY FOR WHAT THEY THOUGHT ABOUT, BUT RATHER WHAT THEY
9 ACTED OUT? ISN'T THAT TRUE?

10 MS. KOSSOVE: IT IS TRUE.

11 MR. BARENS: PASS FOR CAUSE, YOUR HONOR. THANK YOU,
12 YOUR HONOR.

13 THE COURT: ALL RIGHT. MR. WAPNER?

14 MR. WAPNER: THANK YOU, YOUR HONOR. MAY I HAVE JUST
15 ONE MOMENT?

16 (PAUSE.)

17 MR. WAPNER: GOOD AFTERNOON, MISS KOSSOVE. DO YOU
18 HAVE BROTHERS OR SISTERS LIVING IN THE LOS ANGELES AREA?

19 MS. KOSSOVE: NO.

20 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

21 MS. KOSSOVE: NO.

22 MR. WAPNER: DO YOU HAVE BROTHERS OR SISTERS LIVING
23 OUTSIDE THE LOS ANGELES AREA?

24 MS. KOSSOVE: YES.

25 MR. WAPNER: WHERE DO THEY LIVE?

26 MS. KOSSOVE: I HAVE ONE SISTER IN ST. PAUL, MINNESOTA.

27 MR. WAPNER: AND HOW OFTEN DO YOU TALK TO HER?

28 MS. KOSSOVE: OH, MAYBE EVERY TWO OR THREE WEEKS.

1 MR. WAPNER: AND DO YOU VISIT HER PERIODICALLY?

2 MS. KOSSOVE: YES.

3 MR. WAPNER: HOW OFTEN?

4 MS. KOSSOVE: WELL, I HAVE BEEN VISITING ABOUT ONCE
5 A YEAR. WHEN MY MOTHER WAS ALIVE, IT WAS MORE.

6 MR. WAPNER: DID YOUR MOTHER LIVE IN MINNESOTA, ALSO?

7 MS. KOSSOVE: YES.

8 MR. WAPNER: YOU GREW UP I TAKE IT THERE?

9 MS. KOSSOVE: NO. I GREW UP IN IOWA.

10 MR. WAPNER: DID YOU GO TO THE UNIVERSITY OF IOWA
11 FIRST AND THEN FINISH AT MINNESOTA?

12 MS. KOSSOVE: YES, SIR.

13 MR. WAPNER: IT IS A GOOD THING YOU ARE NOT FROM
14 U.C.L.A. THE U.C.L.A. PEOPLE HAVE NOT BEEN LASTING ON THIS
15 JURY.

16 WHICH DO YOU LIKE BETTER, THE BOAT EXAMPLE OR
17 THE AIRPLANE OR NEITHER?

18 MS. KOSSOVE: NEITHER.

19 MR. WAPNER: DID YOU UNDERSTAND THE POINT I WAS TRYING
20 TO MAKE, EVEN IF YOU DIDN'T LIKE THE WAY I WAS TRYING TO
21 GET THERE?

22 MS. KOSSOVE: I UNDERSTOOD YOUR POINT.

23 MR. WAPNER: OKAY. IN THE REVISED EDITION THAT YOU
24 GOT FROM MR. BARENS ABOUT THERE BEING SOMEBODY ON TRIAL FOR
25 MURDER, THERE ARE TWO THINGS THAT CAME TO MY MIND ABOUT THAT.

26 ONE OF THEM IS ONE OF THE REASONS THAT I WAS
27 GIVING THESE EXAMPLES IN THE FIRST PLACE. THAT IS, THE WHOLE
28 IDEA THAT WE CAN HAVE A MURDER PROSECUTION WITHOUT A BODY.

1 HOW DO YOU FEEL ABOUT THAT?

2 MS. KOSSOVE: I THINK IT IS POSSIBLE.

3 MR. WAPNER: OKAY. THERE ARE ALL KINDS OF POSSIBLE
4 SCENARIOS. I WAS NOT TRYING TO GET INTO IT ALL WITH THE
5 AIRPLANE. BUT ASSUMING THAT THERE WERE FIVE PRIESTS STANDING
6 ON THE AIRPLANE AND THEY WATCHED ANOTHER PERSON TAKE A GUN
7 AND SHOOT THE PERSON ON THE AIRPLANE FIVE TIMES AND AFTER
8 THEY SHOT HIM FIVE TIMES, HE FELL OUT OF THE AIRPLANE. THEY
9 NEVER FOUND HIS BODY.

10 AND THEY HAD A TRIAL AND FIVE PRIESTS CAME IN
11 AND THEY TESTIFIED THAT WE SAW THIS GUY SHOOT HIM FIVE TIMES.
12 WOULD YOU HAVE ANY DIFFICULTY IN THAT SITUATION, FINDING THAT
13 THERE WAS A MURDER, EVEN THOUGH THEY NEVER FOUND THE PERSON'S
14 BODY?

15 MS. KOSSOVE: NO.

16 MR. WAPNER: DO YOU THINK THAT A PERSON SHOULD BE
17 REWARDED FOR BEING CLEVER ENOUGH TO DISPOSE OF A BODY?

18 MS. KOSSOVE: WHAT DO YOU MEAN BY "REWARDED"?

19 MR. WAPNER: IF THE EVIDENCE PROVES A PERSON GUILTY
20 OF MURDER BEYOND A REASONABLE DOUBT, SHOULD HE NEVERTHELESS,
21 BE REWARDED BY BEING FOUND NOT GUILTY JUST BECAUSE THE BODY
22 HAS NOT BEEN RECOVERED?

23 MS. KOSSOVE: NO.

24 MR. WAPNER: OKAY. DID YOU HAVE SOME TROUBLE FOLLOWING
25 THAT?

26 MS. KOSSOVE: YES.

27 MR. WAPNER: OKAY. THE PROOF IN THIS CASE OF THE DEATH,
28 IS GOING TO COME FROM CIRCUMSTANTIAL EVIDENCE. DO YOU HAVE

1 ANY PROBLEM WITH THE GENERAL CONCEPT OF CIRCUMSTANTIAL
2 EVIDENCE?

3 MS. KOSSOVE: NO.

4 MR. WAPNER: OKAY. AND IF CIRCUMSTANTIAL EVIDENCE PROVES
5 TO YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY
6 OF MURDER, CAN YOU ENTER SUCH A VERDICT NOTWITHSTANDING THE
7 FACT THAT THE BODY HAS NEVER BEEN RECOVERED?

8 MS. KOSSOVE: YES.

9 MR. WAPNER: IN THAT CIRCUMSTANCE, IF THE CIRCUMSTANTIAL
10 EVIDENCE PROVES HIM GUILTY BEYOND A REASONABLE DOUBT, SHOULD
11 HE -- MY QUESTION SHOULD BE REWORDED. SHOULD HE NEVERTHELESS
12 BE FOUND GUILTY JUST BECAUSE THE BODY HAS NOT BEEN RECOVERED,
13 IF THE EVIDENCE PROVES HIM GUILTY BEYOND A REASONABLE DOUBT?
14 I LOST YOU AGAIN, DIDN'T I?

15 MS. KOSSOVE: YES. YOU LOST ME.

16 MR. WAPNER: OKAY. TAKE FOR A GIVEN, FOR THE PURPOSES
17 OF THIS EXAMPLE, THAT WE HAVE NOT FOUND THE BODY. ALL RIGHT?

18 MS. KOSSOVE: ALL RIGHT.

19 MR. WAPNER: AND THE NEXT PIECE IN THE --

20 MR. BARENS: YOUR HONOR, I HAVE AN OBJECTION. COUNSEL
21 IS MISLEADING THE WITNESS SOMEWHAT IN THIS REGARD. HE IS
22 SAYING, "TAKE FOR EXAMPLE THAT WE HAVE NOT FOUND THE BODY."
23 THAT IS PRESUMING A FACT THAT MAY NEVER BE IN EVIDENCE. THAT
24 IS THE FACT THAT THERE IS A BODY.

25 THE COURT: HE IS ASSUMING THAT THE BODY HAS NEVER
26 BEEN FOUND.

27 MR. BARENS: THEN HE SHOULD QUALIFY IT HYPOTHETICALLY
28 THAT THERE IS NOT A BODY, WHICH THE DEFENSE DISPUTES.

1 THE COURT: ALL RIGHT. DO THAT.

2 MR. WAPNER: I WILL, THANK YOU, YOUR HONOR. I AM NOT
3 TRYING TO FOCUS ON THE PARTICULAR FACTS OF THIS CASE.
4 OKAY?

5 NOBODY LIKES THE BOAT OR THE AIRPLANE EXAMPLE.
6 SO, WE ARE STUCK SOMEWHERE IN THE MIDDLE. BUT IN A HYPO-
7 THETICAL CASE, IF THERE IS A MURDER CASE -- IN A HYPOTHETICAL
8 MURDER CASE, THE BODY HAS NEVER BEEN FOUND. OKAY?

9 AND IF IN THAT CASE, THE EVIDENCE PROVES THE
10 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, SO THAT YOU BELIEVE
11 THERE WAS A MURDER AND THAT HE DID IT, WOULD YOU, NOTWITH-
12 STANDING THAT PROOF BEYOND A REASONABLE DOUBT, SAY THAT WELL,
13 I HAVE TO VOTE NOT GUILTY BECAUSE THEY DIDN'T FIND THE BODY?

14 MS. KOSSOVE: NO.

15 MR. WAPNER: OKAY. SO THE FACT IN AND OF ITSELF, IF
16 IT IS A FACT, THAT NO BODY WAS RECOVERED, WOULD NOT PRECLUDE
17 YOU FROM FINDING A PERSON NOT GUILTY, IF THE EVIDENCE PROVES
18 HIM GUILTY BEYOND A REASONABLE DOUBT?

19 MS. KOSSOVE: NO.

20 MR. WAPNER: WHAT WAS IT ABOUT THE DELOREAN CASE THAT
21 YOU THOUGHT THE GOVERNMENT DIDN'T DO THAT THEY SHOULD HAVE
22 DONE?

23 MS. KOSSOVE: WELL, I AM REALLY NOT THAT CONVERSED IN
24 ALL OF THE DETAILS. BUT IT WAS JUST MY GENERAL, GUT FEELING
25 FROM THE THEATRICAL THINGS THAT WENT ON.

26 MR. WAPNER: DID YOU WATCH THE TRIAL, OUTSIDE OF THE
27 TRIAL THAT WAS BEING CONDUCTED IN THE PRESS?

28 MS. KOSSOVE: YES. IT WAS ALWAYS ON THE NEWS.

1 MR. WAPNER: ALL RIGHT. DO YOU THINK THAT THAT IS HOW
2 TRIALS SHOULD BE CONDUCTED OR SHOULD THEY BE CONDUCTED IN THE
3 COURTROOM?

4 MS. KOSSOVE: I THINK THEY SHOULD BE DONE IN THE COURT-
5 ROOM.

6 MR. WAPNER: SO DO I. IN RESPONSE TO ONE OF
7 MR. BARENS' QUESTIONS ABOUT THE AIRPLANE -- I CAN'T REMEMBER
8 WHICH ONE -- YOU SAID IT IS POSSIBLE. DO YOU UNDERSTAND
9 THAT? DO YOU REMEMBER THAT?

10 I DON'T EVEN REMEMBER EXACTLY WHAT IT WAS.
11 BUT IF THE BOAT IN THESE EXAMPLES WOULD BE BOATS AND THE
12 AIRPLANES -- WELL, WHAT I WAS TRYING -- WHAT I AM TRYING
13 TO DO IS MAKE A DISTINCTION BETWEEN THE STATEMENT THAT WE
14 OFTEN HEAR THAT ANYTHING IS POSSIBLE AND INFERENCES THAT ARE
15 REASONABLY SUGGESTED BY THE EVIDENCE. DO YOU THINK THAT YOU
16 UNDERSTAND THAT?

17 MS. KOSSOVE: I THINK SO.

18 MR. WAPNER: SO IT IS POSSIBLE, I GUESS, THAT ONE OF
19 THE JURORS SAID THAT THE GUY WHO FELL OFF THE BOAT GOT PICKED
20 UP BY A HELICOPTER. DO YOU REMEMBER HEARING HER SAY THAT?

21 MS. KOSSOVE: YES.

22 MR. WAPNER: BEFORE YOU MADE THOSE DETERMINATIONS,
23 WOULDN'T YOU WANT TO KNOW, FOR EXAMPLE, HOW FAR OUT TO SEA
24 THE BOAT WAS AND WHAT THE RANGE OF THE HELICOPTER WAS AND
25 WHETHER ANYBODY ON THE BOAT HEARD ANY NOISE AND THINGS LIKE
26 THAT?

27 MS. KOSSOVE: YES.

28 MR. WAPNER: WOULD YOU LISTEN FOR THOSE TYPES OF

1 THINGS, THAT TYPE OF EVIDENCE BEFORE YOU MADE A DECISION ABOUT
2 WHAT HAPPENED OR DIDN'T HAPPEN?

3 MS. KOSSOVE: YES.

4 MR. WAPNER: NOW, WHEN MR. BARENS MENTIONED TO YOU
5 ABOUT THE BILLIONAIRE BOYS CLUB, THERE WAS SOMETHING THAT I
6 THOUGHT YOU WANTED TO SAY, THAT YOU DIDN'T SAY AND I DIDN'T
7 KNOW WHAT IT WAS.

8 WAS THERE SOMETHING? DO YOU HAVE ANY REACTION
9 TO THAT TERM?

10 MS. KOSSOVE: NO. I DON'T HAVE ANY REACTION TO THE
11 TERM EXCEPT I THINK THAT IT IS A THEATRICAL TERM. I DON'T
12 KNOW HOW IT GOT ITS NAME. I DON'T KNOW, YOU KNOW. SOMEBODY
13 GAVE IT.

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1 MR. WAPNER: AND DO YOU THINK THAT CRIMES, PROOF OF
2 CRIMES SHOULD BE JUDGED ANY DIFFERENTLY BASED ON THE OCCUPATION
3 OR BACKGROUND OF THE PARTICULAR VICTIM?

4 MS. KOSSOVE: NO.

5 MR. WAPNER: AGAIN, THE DOPE DEALER AND PRIEST ARE
6 BOTH VICTIMS OF THE SAME CRIME, SHOULD THE PROOF, WHATEVER
7 IT IS, OF THAT CRIME BE EXAMINED IN THE SAME WAY BY THE SAME
8 STANDARDS, REGARDLESS OF THEIR BACKGROUND?

9 MS. KOSSOVE: YES.

10 MR. WAPNER: HAVE YOU BEEN THE VICTIM OF A THEFT OR
11 ANY KIND OF A CON SCHEME OR ANY FRIEND BEEN THE VICTIM OF
12 THAT KIND OF THING?

13 MS. KOSSOVE: MINOR.

14 MR. WAPNER: MINOR? TELL ME ABOUT THAT.

15 MS. KOSSOVE: A LOCKER IN MY APARTMENT BUILDING WAS
16 BROKEN INTO AND THE THINGS WERE STOLEN AND A FRIEND OF MINE'S
17 MOTHER WAS -- HAD HER PURSE SNATCHED AND ALSO ANOTHER FRIEND
18 WAS THE VICTIM OF A PURSE SNATCHING.

19 MR. WAPNER: OKAY. DID --

20 THE COURT: I ASKED THE QUESTION ABOUT ANYBODY BEING
21 THE VICTIM OF ANY KIND OF A SERIOUS CRIME, I DIDN'T PUT YOUR
22 NAME DOWN. DID YOU FORGET ABOUT IT?

23 MS. KOSSOVE: I DIDN'T CALL IT THAT SERIOUS. IT WAS
24 SORT OF COMMONPLACE, SIR.

25 THE COURT: ALL RIGHT, GO AHEAD.

26 MR. WAPNER: WERE ANY OF THE PEOPLE WHO WERE ALLEGED
27 TO HAVE DONE THIS EVER APPREHENDED?

28 MS. KOSSOVE: NO.

1 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT THE POLICE
2 AS A RESULT OF THAT?

3 MS. KOSSOVE: NO.

4 MR. WAPNER: HAVE YOU HAD ANY BAD EXPERIENCE WITH ANY
5 POLICE OFFICERS GENERALLY?

6 MS. KOSSOVE: NO.

7 MR. WAPNER: WHEN YOU ARE NOT IN SCHOOL, WHAT KIND OF
8 THINGS DO YOU LIKE TO DO?

9 MS. KOSSOVE: I LIKE TO TRAVEL. I LIKE SWIMMING.
10 I LIKE PLAYING BRIDGE. I LIKE THEATER, READING, AND I LIKE
11 MANY THINGS.

12 MR. WAPNER: OKAY. HAVE YOU SERVED ON ANY KIND OF A
13 JURY BEFORE?

14 I KNOW THE JUDGE ASKED YOU ABOUT CRIMINAL
15 CASES.

16 HAVE YOU SERVED AS A JUROR ON A CIVIL CASE?

17 MS. KOSSOVE: NO -- ONLY THIS TIME I WAS ON THE FIRST
18 DAY, I WAS CALLED IN FOR A CASE THAT WAS SETTLED BEFORE WE
19 EVER MET AS A JURY.

20 MR. WAPNER: BUT YOU HAVE NEVER ACTUALLY BEEN IN A
21 JURY ROOM DELIBERATING?

22 MS. KOSSOVE: NO.

23 MR. WAPNER: HAVE YOU GOTTEN INTO ANY POLITICAL
24 DISCUSSIONS WITH YOUR CLASSMATES ABOUT CURRENT EVENTS WITH
25 YOUR CLASSMATES ABOUT SUBJECTS YOU DISCUSSED IN CLASS?

26 MS. KOSSOVE: CERTAINLY.

27 MR. WAPNER: HAVE YOU EVER BEEN ABLE TO CONVINCe ANY
28 OF YOUR FRIENDS TO CHANGE THEIR OPINION OF SOMETHING?

1 MS. KOSSOVE: I DON'T KNOW.

2 MR. WAPNER: HAS ANY ONE OF THEM EVER CONVINCED YOU
3 TO CHANGE YOUR MIND?

4 MS. KOSSOVE: YES, I THINK SO.

5 MR. WAPNER: DO YOU CONSIDER YOURSELF A FAIRLY OPEN-
6 MINDED PERSON?

7 MS. KOSSOVE: YES.

8 MR. WAPNER: IF YOU ARE IN THE JURY ROOM, ARE YOU
9 WILLING TO DISCUSS YOUR VIEWS WITH THE OTHER ELEVEN PEOPLE?

10 MS. KOSSOVE: YES.

11 MR. WAPNER: ARE YOU WILLING TO HOLD FIRM TO YOUR VIEW
12 IF YOU ARE CONVINCED IT IS RIGHT?

13 MS. KOSSOVE: YES.

14 MR. WAPNER: ARE YOU WILLING TO CHANGE IT IF YOU ARE
15 CONVINCED THAT IT IS WRONG?

16 MS. KOSSOVE: YES.

17 MR. WAPNER: THANK YOU.

18 PASS FOR CAUSE, YOUR HONOR.

19 THE COURT: I THINK IT WOULD BE WELL AT THIS TIME,
20 LADIES AND GENTLEMEN OF THE JURY, WE WILL TAKE A 15-MINUTE
21 RECESS. YOU ALL COME BACK TO THE JURY BOX AND YOU ALL SIT
22 WHERE YOU WOULD LIKE TO SIT.

23 (RECESS.)

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1 THE COURT: IT WILL BE STIPULATED THE DEFENDANT IS
2 PRESENT. COUNSEL ARE PRESENT AND THE JURORS ARE PRESENT
3 AND SEATED IN THE JURY BOX.

4 MR. BARENS: YOUR HONOR, SHOULD WE ADDRESS THAT NOW?

5 THE COURT: DON'T DO THAT NOW. AFTERWARDS.

6 MR. BARENS: ALL RIGHT, YOUR HONOR.

7 THE COURT: ALL RIGHT. THE PEOPLE MAY CONCLUDE YOUR
8 VOIR DIRE.

9 MR. WAPNER: I THINK THAT I HAD.

10 THE COURT: YOU HAD ALREADY?

11 MR. WAPNER: YES.

12 THE COURT: ALL RIGHT. THEN IT IS THE PEOPLE'S
13 PEREMPTORY.

14 MR. WAPNER: YES. WE WOULD ASK THE COURT TO THANK
15 AND EXCUSE MISS KNUEDELER, JUROR NO. 8.

16 THE COURT: THANK YOU, MISS KNUEDELER.

17 (PROSPECTIVE JUROR KNUEDELER

18 EXITS THE COURTROOM.)

19 THE CLERK: ARMAND DELROWCINI.

20 THE COURT: MR. DELROWCINI, YOU, TOO, HAVE HEARD ALL
21 OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN TO
22 QUESTIONS WHICH HAVE BEEN ASKED BY ME AND BY OPPOSING COUNSEL?

23 MR. DELROWCINI: YES.

24 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
25 OF YOU, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME OR WOULD
26 THEY BE ANY DIFFERENT?

27 MR. DELROWCINI: THE SAME.

28 THE COURT: ALL RIGHT, SIR, WHAT DO YOU DO?

1 MR. DELROWCINI: I AM A CUSTOMER REPRESENTATIVE FOR
2 GENERAL TELEPHONE.

3 THE COURT: AND ARE YOU MARRIED?

4 A VOICE: I CAN'T HEAR.

5 THE COURT: KEEP YOUR VOICE UP. PLEASE READ THE ANSWER.

6 (THE RECORD WAS READ

7 BY THE REPORTER.)

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1 THE COURT: ARE YOU MARRIED?

2 MR. DELROWCINI: SINGLE.

3 THE COURT: WHERE DO YOU LIVE, AGAIN?

4 MR. DELROWCINI: NORTHRIDGE.

5 THE COURT: HAVE YOU OR ANY MEMBER OF YOUR FAMILY
6 OR CLOSE PERSONAL FRIEND EVER BEEN THE VICTIM OF ANY KIND
7 OF A CRIME?

8 MR. DELROWCINI: NO.

9 THE COURT: AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

10 MR. DELROWCINI: HIGH SCHOOL.

11 THE COURT: AND YOU TOLD US WHERE YOU LIVE, DIDN'T
12 YOU?

13 MR. DELROWCINI: NORTHRIDGE.

14 THE COURT: ANY QUESTIONS?

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 GOOD AFTERNOON, MR. DELROWCINI.

17 MR. DELROWCINI: GOOD AFTERNOON.

18 MR. BARENS: HOW DO YOU FEEL ABOUT MR. HUNT'S COCOON?

19 MR. DELROWCINI: I SEE IT.

20 MR. BARENS: DO YOU BELIEVE IN THAT PART OF OUR SYSTEM?

21 MR. DELROWCINI: YES, I DO.

22 MR. BARENS: AND I DON'T MEAN TO BELABOR THIS WHOLE
23 COURTROOM WITH THIS BUSINESS, BUT SINCE IT IS FUNDAMENTAL TO
24 WHAT WE ARE ABOUT, YOU UNDERSTAND THAT THAT PRESUMPTION OF
25 INNOCENCE LASTS THROUGHOUT ALL THE TESTIMONY AND THROUGHOUT
26 ALL OF THIS TRIAL?

27 MR. DELROWCINI: YES.

28 MR. BARENS: YOU UNDERSTAND THAT IF THERE IS SOMEBODY

1 MISSING IN THIS CASE, THAT THE DEFENSE DOES NOT HAVE TO PROVE
2 WHERE THAT PERSON IS?

3 MR. DELROWCINI: YES.

4 MR. BARENS: DO YOU UNDERSTAND THAT?

5 MR. DELROWCINI: UH-HUH.

6 MR. BARENS: WE HAVE HAD SOME HYPOTHETICALS GIVEN TO
7 PEOPLE THAT INVOLVED A ROBBERY OF A PRIEST AND THE ROBBERY
8 OF A DOPE DEALER. WOULDN'T YOU NEED TO KNOW SOMETHING ABOUT
9 THE BACKGROUND OF THE VICTIM IN ORDER TO DETERMINE WHETHER OR
10 NOT IN FACT A CRIME TOOK PLACE?

11 MR. DELROWCINI: WELL, I BELIEVE IT WOULD HELP TO HAVE
12 AS MUCH INFORMATION AS I COULD FIND OUT.

13 MR. BARENS: DID YOU HEAR MR. WAPNER'S EXAMPLES WHEN
14 HE TALKED ABOUT THAT BEFORE?

15 MR. DELROWCINI: YES.

16 MR. BARENS: IN THOSE EXAMPLES, WASN'T IT TRUE THAT
17 WAS ALSO SOMEONE WHO WAS PUT IN A POSITION OF SAYING, YOU
18 SAW A ROBBERY TAKE PLACE, YOU ACTUALLY SAW IT, YOU SAW A
19 DOPE DEALER GET ROBBED, OR YOU SAW A PRIEST GET ROBBED;
20 WASN'T THAT THE EXAMPLE, AS YOU RECALL IT?

21 MR. DELROWCINI: YES.

22 MR. BARENS: NOW, WHAT IF WE HAD A SITUATION WHERE
23 NOBODY SAW ANYTHING TAKE PLACE BUT, RATHER, WE ARE TOLD THAT
24 CIRCUMSTANTIALLY THE GOVERNMENT, THE PEOPLE ARE GOING TO TRY
25 TO CONVINCING US THAT A CRIME TOOK PLACE THAT NOBODY SAW;
26 WOULDN'T YOU BE INTERESTED IN KNOWING SOMETHING ABOUT THE
27 MOTIVES AND NATURE OF THE VICTIM IN THAT CASE --

28 MR. DELROWCINI: YES.

1 MR. BARENS: -- IN ORDER TO DETERMINE NOT WHETHER WE HAVE
2 GOT A MURDER OR NOT, NOT WHETHER WE HAVE GOT A BODY MISSING
3 OR NOT, BUT DO WE HAVE ANYTHING; ISN'T THAT WHAT YOU WOULD BE
4 LOOKING FOR IN THAT INSTANCE?

5 MR. DELROWCINI: YES.

6 MR. BARENS: NOW, WHAT ABOUT THE FACT THAT THE
7 DEFENDANT DOESN'T HAVE TO TESTIFY; ARE YOU COMFORTABLE WITH
8 THAT, SIR?

9 MR. DELROWCINI: YES, I AM.

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1 MR. BARENS: AND I HAVE ASKED BEFORE THAT IF THE
2 DEFENDANT DOES TESTIFY, WOULD YOU BE ABLE IN ALL HONESTY,
3 TO WEIGH HIS TESTIMONY THE SAME WAY YOU WOULD ANY OTHER
4 WITNESS, EVEN THOUGH HE IS ON TRIAL FOR HIS LIFE?

5 MR. DELROWCINI: YES.

6 MR. BARENS: YOU WOULDN'T FEEL, WOULD YOU, BASED ON
7 YOUR BACKGROUND OR EXPERIENCE, THAT WELL, YOU KNOW, THIS GUY
8 IS TRYING TO SAVE HIS SKIN AND HE WILL SAY ANYTHING?

9 MR. DELROWCINI: NO.

10 MR. BARENS: WOULD YOU LISTEN TO HIM OPEN-MINDEDLY
11 AND FAIRLY?

12 MR. DELROWCINI: YES, I WOULD.

13 MR. BARENS: WHAT DO YOU LIKE TO DO WHEN PEOPLE ARE
14 NOT BEATING YOU UP WITH CUSTOMER COMPLAINTS?

15 MR. DELROWCINI: I DO STAINED GLASS. I LIKE TO GO
16 SWIMMING.

17 MR. BARENS: IS THERE ANY PARTICULAR TYPE OF STAINED
18 GLASS, PORTRAITS OR WHAT DO YOU PREFER TO DO OR DEPICTIONS
19 OF STAINED GLASS THAT YOU ARE FOND OF?

20 MR. DELROWCINI: I LIKE SMALL WINDOW PROJECTS AND
21 SMALL PROJECTS BASICALLY.

22 MR. BARENS: IS THAT SOMETHING YOU ARE SELF-TAUGHT IN?

23 MR. DELROWCINI: NO. A FRIEND OF MINE TAUGHT ME HOW
24 TO DO THAT.

25 MR. BARENS: DO YOU BELONG TO ANY CHARITABLE OR
26 PHILANTHROPIC ORGANIZATIONS OR SERVICE GROUPS?

27 MR. DELROWCINI: NO.

28 MR. BARENS: HAVE YOU ALWAYS BEEN SINGLE, SIR?

1 MR. DELROWCINI: YES.

2 MR. BARENS: ALWAYS DOESN'T SEEM LIKE A LONG TIME?

3 MR. DELROWCINI: RIGHT.

4 MR. BARENS: I WILL TAKE ALWAYS ON THAT. WHAT IS THE
5 LAST BOOK YOU READ?

6 MR. DELROWCINI: DREAM GIRL, BY MARY WILSON.

7 MR. BARENS: AND THE LAST MOVIE YOU SAW?

8 MR. DELROWCINI: JUMPING JACK FLASH.

9 MR. BARENS: DO YOU FOLLOW SPORTS AT ALL?

10 MR. DELROWCINI: NO.

11 MR. BARENS: NONE OF THEM?

12 MR. DELROWCINI: NONE OF THEM.

13 MR. BARENS: NOT EVEN SWIMMING COMPETITION?

14 MR. DELROWCINI: NO.

15 MR. BARENS: ARE YOU FROM THE LOS ANGELES AREA
16 ORIGINALLY?

17 MR. DELROWCINI: NO.

18 MR. BARENS: WHERE WOULD YOU BE FROM?

19 MR. DELROWCINI: NEW JERSEY.

20 MR. BARENS: AND DO YOU HAVE BROTHERS OR SISTERS THAT
21 ARE LIVING?

22 MR. DELROWCINI: YES.

23 MR. BARENS: WHAT DO YOU HAVE, SIR?

24 MR. DELROWCINI: I HAVE TWO BROTHERS AND THREE SISTERS.

25 MR. BARENS: AND ANY OF THEM LIVING LOCALLY?

26 MR. DELROWCINI: NO.

27 MR. BARENS: DO YOU HAVE MORE CONTACT WITH SOME OF THE
28 OTHER FIVE DELROWCINI'S THAN YOU DO WITH OTHERS?

1 MR. DELROWCINI: BASICALLY THE SAME.

2 MR. BARENS: ARE ANY OF THEM INVOLVED WITH LAW
3 ENFORCEMENT?

4 MR. DELROWCINI: NONE OF THEM.

5 MR. BARENS: OR THE COURT SYSTEM IN GENERAL BY BEING
6 LAWYERS, BAILIFFS, CLERKS?

7 MR. DELROWCINI: NO.

8 MR. BARENS: ARE YOU THE OLDEST OF THE GROUP?

9 MR. DELROWCINI: NO.

10 MR. BARENS: WHO IS?

11 MR. DELROWCINI: MY OLDEST SISTER IS 45.

12 MR. BARENS: WHAT DOES SHE DO?

13 MR. DELROWCINI: SHE IS A HOUSEWIFE. SHE DOESN'T WORK.

14 MR. BARENS: WHO IS THE YOUNGEST?

15 THE COURT: HAVE YOU IMPLIED THAT A HOUSEWIFE NEVER
16 WORKS?

17 MR. DELROWCINI: WELL, PUT IT THIS WAY. SHE DOESN'T
18 GET PAID.

19 THE COURT: ANY REMUNERATION? YOU MEAN THAT SHE
20 DOESN'T GET PAID?

21 THERE IS A MOVEMENT AFOOT WHERE MARRIED WOMEN
22 INSIST UPON THEIR GETTING PAID, YOU KNOW, FOR DOING HOUSEWORK,
23 THE SAME AS ANYBODY ELSE THAT WORKS OUTSIDE THE HOME. DID
24 YOU KNOW THAT?

25 MR. DELROWCINI: YES.

26 MR. BARENS: ACTUALLY, IN DOMESTIC RELATIONS THEY ARE
27 PUTTING AN ECONOMIC CO-EFFICIENT ON THE VALUE OF THE WIFE'S
28 SERVICES, NOT TO MENTION THE MARVIN CASE, YOUR HONOR.

1 DO YOU HAVE ANY HOBBIES ASIDE FROM THE STAINED
2 GLASS THAT YOU MIGHT BE INTERESTED IN?

3 MR. DELROWCINI: NOT PARTICULARLY.

4 MR. BARENS: DO YOU EVER WORK JIGSAW PUZZLES?

5 MR. DELROWCINI: I HATE JIGSAW PUZZLES.

6 MR. BARENS: YOU DO? THANK YOU, MR. CHIER.

7 MR. WAPNER: GO AHEAD AND BLAME HIM. BLAME IT ON
8 SOMEBODY ELSE.

9 MR. BARENS: I HAVE THIS NOTE RIGHT HERE.

10 WHAT DO YOU THINK ABOUT WHAT WE TALKED ABOUT
11 EARLIER, IF THERE IS A CLOSE CALL, THAT THE DEFENDANT IN THIS
12 SYSTEM WINS THE CLOSE CALLS? THE DEFENDANT WINS BECAUSE THE
13 PEOPLE HAVE NOT PROVEN THE BURDEN OF PROOF THAT IS ESTABLISHED
14 FOR THEM IN THIS CASE. DO YOU THINK THAT IS FAIR?

15 MR. DELROWCINI: I BELIEVE THAT IS FAIR, YES.

16 MR. BARENS: DO YOU UNDERSTAND THAT THE PEOPLE HAVE
17 A DUTY TO PROVE THEIR CASE BEYOND A REASONABLE DOUBT ON ALL
18 OF THE ELEMENTS NECESSARY TO PROVE THE CRIME ALLEGED HERE?

19 MR. DELROWCINI: YES, I DO.

20 MR. BARENS: AND YOU WOULD BE LOOKING FOR THAT PROOF,
21 NOT JUST ON ONE BEYOND A REASONABLE DOUBT BUT ON EVERY ELEMENT,
22 THAT THEY HAVE TO ESTABLISH ALL THE ELEMENTS TO SHOW ON A
23 FIRST DEGREE MURDER?

24 MR. DELROWCINI: YES.

25 MR. BARENS: ARE YOU UNDER PRESSURE OR DO YOU HAVE ANY
26 PROBLEMS OR PREOCCUPATIONS BECAUSE YOU ARE OFF OF YOUR JOB
27 HERE?

28 MR. DELROWCINI: NO.

1 MR. BARENS: IT IS NOT A PROBLEM. HOW DO YOU FEEL
2 ABOUT THE EXPRESSION, "BILLIONAIRE BOYS CLUB"? DOES THAT
3 CONJURE ANY THOUGHTS OR POSSIBLE BIASES IN YOUR MIND?

4 MR. DELROWCINI: NOT AT ALL.

5 MR. BARENS: NONE?

6 MR. DELROWCINI: NONE.

7 MR. BARENS: DO YOU WORK IN A PARTICULAR AREA IN
8 CUSTOMER SERVICES, GEOGRAPHICALLY WHERE YOU HANDLE MATTERS?

9 MR. DELROWCINI: ARE YOU ASKING ME WHERE I WORK?

10 MR. BARENS: DO YOU WORK IN A PARTICULAR DISTRICT OF
11 THE CITY OR COUNTY WHERE YOU HAVE YOUR RESPONSIBILITY LEVEL?

12 MR. DELROWCINI: VARIOUS LOCATIONS, WEST LOS ANGELES,
13 GRANADA HILLS, SEPULVEDA, NORTHRIDGE, SAN FERNANDO. IT GOES
14 ON AND ON. DO YOU WANT TO HEAR ALL OF THEM?

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1 MR. BARENS: NO.

2 WHAT I AM LOOKING FOR -- WHILE YOU ARE DOING
3 YOUR JOB, DO YOU EVER COME INTO CONTACT WITH LAW ENFORCEMENT
4 AGENCIES?

5 MR. DELROWCINI: NO.

6 I DO NO RESIDENTIAL.

7 THAT WOULD BE UNDER BUSINESS.

8 MR. BARENS: WELL, YOU WOULDN'T BE INVOLVED IN ANY
9 WIRE-TAP ACTIVITY?

10 MR. DELROWCINI: NO.

11 MR. BARENS: OR LINE-INTERDICTION?

12 MR. DELROWCINI: THAT IS GOVERNED BY SECURITY.

13 MR. BARENS: YOU HAVEN'T BEEN TRAINED OR INVOLVED IN
14 THAT ASPECT BY YOUR EMPLOYERS?

15 MR. DELROWCINI: NO.

16 MR. BARENS: AN EXAMPLE I GAVE YOU ABOUT IF YOU HAD
17 TWO JURORS -- I AM SORRY -- TWO WITNESSES THAT GAVE CONFLICTING
18 TESTIMONY, ONE SAYS BLACK AND ONE SAYS WHITE, YOU BELIEVE
19 THEY ARE BOTH TELLING THE TRUTH AS THEY PERCEIVE IT. ARE YOU
20 COMFORTABLE WITH THE FACT THAT NOTHING HAS BEEN PROVED AT
21 THAT POINT BEYOND A REASONABLE DOUBT?

22 MR. DELROWCINI: COULD YOU REPHRASE THE QUESTION?

23 MR. BARENS: SURE.

24 SUPPOSING YOU HEAR TWO WITNESSES TALKING ABOUT,
25 TESTIFYING ABOUT OSTENSIBLY THE SAME SET OF FACTS AND YOU
26 BELIEVE BOTH WERE REALLY TELLING THE TRUTH ABOUT WHAT THEY
27 PERCEIVED. A LOT OF REALITY IS PROBABLY NON-EXISTENT AT ALL.
28 IT IS WHAT WE PERCEIVE THINGS TO BE.

1 AND YOU GET TWO WITNESSES PERCEIVING THE SAME
2 SET OF FACTS THAT DRAW A DIFFERENT CONCLUSION AS TO WHAT THEY
3 SAW. IF YOU COULD BELIEVE BOTH WITNESSES WERE TELLING THE
4 TRUTH, IS ANYTHING PROVED IN THAT INSTANCE BEYOND A REASONABLE
5 DOUBT?

6 MR. DELROWCINI: NO.

7 MR. BARENS: IF YOU COME TO THAT SITUATION WHERE YOU
8 HAVE TWO EQUALLY BELIEVABLE WITNESSES TESTIFYING, WHAT DO YOU
9 HAVE TO DO WHEN IT COMES TO MAKING THAT DECISION ABOUT
10 REASONABLE DOUBT?

11 MR. DELROWCINI: I HAVE TO MAKE SURE THAT IT IS BEYOND
12 A REASONABLE DOUBT.

13 MR. BARENS: AND DO YOU UNDERSTAND, HIS HONOR HAS
14 DISCUSSED AND WE HAVE DISCUSSED BEFORE, THAT REASONABLE DOUBT
15 MEANS A LOT MORE THAN THE PREPONDERANCE OF EVIDENCE. IT IS
16 NOT ONE OF THOSE 51-49 DEALS.

17 MR. DELROWCINI: YES.

18 MR. BARENS: IT IS NOT A MORE LIKELY THAN NOT TEST.
19 IN OTHER WORDS, IF YOU ARE SITTING THERE SAYING, "WELL, IT
20 SOUNDS MORE LIKELY THAT HE IS GUILTY THAN INNOCENT, HE SEEMS
21 A LITTLE MORE GUILTY THAN INNOCENT," HAVE YOU REALLY MADE A
22 DETERMINATION BEYOND A REASONABLE DOUBT AT THAT POINT IN TIME?
23 WHAT DO YOU THINK, MR. DELROWCINI?

24 MR. DELROWCINI: I WOULD HAVE TO ASK YOU TO REPEAT
25 THAT AGAIN.

26 MR. BARENS: SURE.

27 IF YOU CAME TO A POINT WHERE YOU WERE EVALUATING
28 ALL OF THE EVIDENCE AND YOU GOT TO A POINT WHERE YOU SAID,

1 "WELL, HE LOOKS A LITTLE MORE GUILTY THAN INNOCENT, MORE
2 LIKELY GUILTY THAN INNOCENT --

3 MR. DELROWCINI: NO, IT HAS TO BE MORE, IT HAS TO BE
4 WITHOUT A REASONABLE DOUBT.

5 MR. BARENS: YOU UNDERSTAND IT IS A MUCH HIGHER
6 STANDARD, A MUCH HIGHER TEST FOR YOU?

7 THE LAW DOESN'T WANT YOU IN A CRIMINAL CASE TO
8 DO THE MORE LIKELY THING INTELLECTUALLY BUT, RATHER, THAT IS
9 ON THE LEVEL THAT WE HAVE TO REACH OF BEYOND A REASONABLE
10 DOUBT.

11 MR. DELROWCINI: YES.

12 MR. BARENS: NOW, DO YOU AGREE THAT IT IS UP TO YOU
13 TO DETERMINE AND TO DEFINE AS A JUROR WHAT IS REASONABLE AND
14 WHAT IS NOT REASONABLE?

15 MR. DELROWCINI: YES.

16 MR. BARENS: THAT IS NOT SOMETHING THE LAWYERS TELL
17 YOU. WE MAY SUGGEST REASONABLE AND UNREASONABLE AND WE MAY
18 SAY -- WE MAY EVEN TRY TO TELL YOU THAT ANYTHING WE DON'T
19 FIND IS REASONABLE ON SPECULATION; THAT IS THE WORD WE USE
20 FOR THOUGHT PROCESSES THAT WE DON'T ACCEPT. WE DON'T SAY YOU
21 ARE WRONG. WE SAY THAT IS SPECULATION; DO YOU UNDERSTAND
22 THAT?

23 MR. DELROWCINI: YES, I DO.

24 MR. BARENS: DO YOU HAVE ANY TRAINING IN ACCOUNTING?

25 MR. DELROWCINI: NO, I DON'T.

26 MR. BARENS: DO YOU HAVE ANY PETS?

27 MR. DELROWCINI: TWO DOGS.

28 MR. BARENS: WHAT SORT OF DOGS DO YOU HAVE?

1 MR. DELROWCINI: SHIH TZUS.

2 MR. BARENS: GLAD TO HEAR IT.

3 I WOULD PASS FOR CAUSE, YOUR HONOR. THANK YOU,
4 SIR.

5 THE COURT: ALL RIGHT, MR. WAPNER.

6 MR. WAPNER: THANK YOU.

7 GOOD AFTERNOON, MR. DELROWCINI.

8 MR. DELROWCINI: GOOD AFTERNOON.

9 MR. WAPNER: YOU DON'T TALK TO ANY OF YOUR BROTHERS AND
10 SISTERS ANY MORE OR LESS THAN ANY OTHERS. HOW OFTEN DO YOU
11 TALK TO THEM?

12 MR. DELROWCINI: WELL, PROBABLY ONCE A WEEK WHEN I CALL
13 MY PARENTS' HOUSE.

14 MR. WAPNER: I TAKE IT, THEY ARE NOT ALL LIVING AT
15 HOME, ESPECIALLY THE 45-YEAR OLD.

16 MR. DELROWCINI: NO, THEY ARE NOT.

17 THEY COME OVER ON SUNDAY FOR DINNER AT MY
18 PARENTS.

19 MR. WAPNER: SO YOU CALL THEM?

20 MR. DELROWCINI: WHILE THEY ARE THERE.

21 MR. WAPNER: OKAY, AND WHEN YOU WERE LIVING IN NEW
22 JERSEY, I TAKE IT, YOU WERE A REGULAR PARTICIPANT IN THE SUNDAY
23 DINNERS?

24 MR. DELROWCINI: YES.

25 MR. WAPNER: WILLING OR OTHERWISE?

26 MR. DELROWCINI: WILLING.

27 MR. WAPNER: OKAY, HOW LONG HAVE YOU BEEN IN CALIFORNIA?

28 MR. DELROWCINI: 10 YEARS.

1 MR. WAPNER: ALL OF IT IN THE LOS ANGELES AREA? AND I
2 AM INCLUDING NORTHRIDGE IN THAT.

3 MR. DELROWCINI: YES.

4 MR. WAPNER: IS THERE ANYTHING YOU DIDN'T TELL US ABOUT
5 IN TERMS OF HOBBIES, BESIDES THE SWIMMING AND THE STAINED
6 GLASS?

7 MR. DELROWCINI: I LIKE TO TRAVEL.

8 MR. WAPNER: WHAT KIND OF TRAVELING DO YOU DO?

9 MR. DELROWCINI: PALM SPRINGS, SANTA BARBARA.

10 MR. WAPNER: MOSTLY LOCAL?

11 MR. DELROWCINI: YES.

12 I HAVE BEEN OTHER PLACES, TOO.

13 MR. WAPNER: DID YOU UNDERSTAND WHAT I WAS TRYING
14 TO GET AT BY GIVING THE EXAMPLE ABOUT THE TWO IDENTICAL
15 CRIMES, EXCEPT THE VICTIM WAS DIFFERENT?

16 MR. DELROWCINI: YES.

17 MR. WAPNER: DO YOU THINK THAT PEOPLE SHOULD BE JUDGED
18 DIFFERENTLY BECAUSE OF THEIR OCCUPATIONS OR THE COLOR OF THEIR
19 SKIN OR ANYTHING LIKE THAT?

20 MR. DELROWCINI: NO.

21 MR. WAPNER: SO IF A PERSON WHO IS A VICTIM OF A CRIME
22 IS A PRIEST OR HE IS A DRUG DEALER, THAT SHOULDN'T MAKE ANY
23 DIFFERENCE IF THE PROOF IS THE SAME?

24 MR. DELROWCINI: THAT'S CORRECT.

25 MR. WAPNER: DOES THAT OFFEND YOU IN ANY WAY?

26 MR. DELROWCINI: NO.

27 MR. WAPNER: OKAY, ARE YOU WILLING TO TAKE INTO
28 CONSIDERATION IN EVALUATING THE TESTIMONY OF ALL THE WITNESSES

1 ANY BIAS, INTEREST OR OTHER MOTIVE THAT ANY WITNESS MIGHT
2 HAVE IN TELLING THE TRUTH OR NOT TELLING THE TRUTH?

3 MR. DELROWCINI: YES.

4 MR. WAPNER: IF, AS YOU LISTEN TO THE DEFENDANT IF HE
5 CHOOSES TO TESTIFY, IF IT APPEARS TO YOU FROM LISTENING TO
6 HIM AND EVALUATING ALL OF THE FACTS, THAT HE IS TRYING TO SAVE
7 HIS SKIN, CAN YOU TAKE THAT INTO CONSIDERATION AS A MOTIVE
8 THAT HE MIGHT HAVE?

9 MR. DELROWCINI: COULD YOU PUT THAT TO ME AGAIN?

10 MR. WAPNER: A PERSON CHARGED WITH A CRIME HAS THE RIGHT
11 TO TESTIFY IF THEY WANT TO BUT CANNOT BE FORCED TO DO SO;
12 DO YOU APPRECIATE THAT?

13 MR. DELROWCINI: YES, I DO.

14 MR. WAPNER: IF HE CHOOSES TO TESTIFY, DO YOU THINK
15 THAT THERE ARE CIRCUMSTANCES WHERE A PERSON CHARGED WITH A
16 CRIME MIGHT HAVE A MOTIVE TO TELL SOMETHING OTHER THAN THE
17 TRUTH?

24 F 18 MR. DELROWCINI: YES, IT IS POSSIBLE.

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1 MR. WAPNER: AND ARE YOU WILLING TO TAKE INTO
2 CONSIDERATION A DEFENDANT'S BIAS OR MOTIVE NOT TO TELL THE
3 TRUTH, THE SAME AS YOU WOULD WITH ANY OTHER WITNESS?

4 MR. DELROWCINI: YES.

5 MR. WAPNER: YOU CAN'T HOLD IT AGAINST HIM BECAUSE HE
6 IS CHARGED WITH A CRIME. DO YOU UNDERSTAND THAT?

7 MR. DELROWCINI: YES, I DO.

8 MR. WAPNER: BUT AS OUR FRIEND MR. PEIKERT SAID, IF
9 EVERYBODY ALWAYS TOLD THE TRUTH UNDER OATH, WE WOULDN'T NEED
10 COURTS. DO YOU UNDERSTAND THAT?

11 MR. DELROWCINI: YES.

12 MR. WAPNER: OKAY. SO, I AM NOT TELLING YOU THAT
13 JUST BECAUSE A PERSON IS CHARGED WITH A CRIME, THAT THEY ARE
14 GOING TO LIE.

15 BUT, CAN YOU USE THE SAME STANDARDS THAT YOU
16 WOULD USE FOR ANY OTHER WITNESS IN EVALUATING THE DEFENDANT'S
17 TESTIMONY?

18 MR. DELROWCINI: YES, I CAN.

19 MR. WAPNER: THE SAME SCALES, BASICALLY?

20 MR. DELROWCINI: YES.

21 MR. WAPNER: OKAY. IN THE EXAMPLE YOU WERE GIVEN
22 ABOUT TWO WITNESSES COMING IN AND ONE SAYING SOMETHING IS
23 WHITE AND ONE SAYING SOMETHING IS BLACK, ARE BOTH OF THESE
24 PEOPLE TELLING THE TRUTH, ASSUMING THAT THEY LOOKED AT EXACTLY
25 THE SAME THING AND IT DIDN'T CHANGE COLORS WHILE THEY WERE
26 LOOKING AT IT?

27 MR. DELROWCINI: I IMAGINE IN THEIR MINDS, THEY ARE.

28 MR. WAPNER: OKAY. DO YOU APPRECIATE THERE IS A

1 DIFFERENCE BETWEEN WHAT THEY ARE THINKING AND WHAT THE TRUTH
2 ACTUALLY IS?

3 MR. DELROWCINI: YES.

4 MR. WAPNER: AND SO IF TWO PEOPLE LOOK AT EXACTLY THE
5 SAME THING AND ONE SAID IT IS BLACK AND ONE SAYS IT IS WHITE,
6 ONE IS NOT TELLING THE TRUTH, CORRECT?

7 MR. DELROWCINI: YES.

8 MR. WAPNER: DO YOU APPRECIATE THAT THERE IS A
9 DIFFERENCE BETWEEN SOMEONE INTENTIONALLY LYING ABOUT SOMETHING
10 AND SOMEBODY HAVING A MISTAKEN IMPRESSION ABOUT SOMETHING?

11 MR. DELROWCINI: I UNDERSTAND THE DIFFERENCE.

12 MR. WAPNER: OKAY. SO THAT IN THAT SITUATION, BOTH OF
13 THOSE PEOPLE CAN'T BE TELLING THE TRUTH, CAN THEY?

14 MR. DELROWCINI: NO.

15 MR. WAPNER: ALL RIGHT. IN THAT SITUATION, WOULD YOU
16 ATTEMPT AS MUCH AS YOU COULD, TO DETERMINE WHAT THE TRUTH
17 WAS BY LISTENING TO THE TESTIMONY OF OTHER WITNESSES OR TRYING
18 TO DETERMINE WHAT THE FACTS ARE?

19 MR. DELROWCINI: YES, I WOULD.

20 MR. WAPNER: OKAY. WELL, WHAT KINDS OF THINGS MIGHT BE
21 IMPORTANT TO YOU IN THAT SITUATION, IN TRYING TO FIGURE OUT
22 WHO WAS TELLING THE TRUTH AND WHO WAS NOT?

23 MR. DELROWCINI: PROBABLY WHAT THEIR OTHER TESTIMONY
24 WAS REGARDING OTHER THINGS.

25 MR. WAPNER: AND THE TESTIMONY OF THOSE SAME PEOPLE
26 ABOUT OTHER THINGS?

27 MR. DELROWCINI: YES.

28 MR. WAPNER: OKAY. SO THAT IF YOU FOUND OUT

1 FOR EXAMPLE, THAT ONE OF THEM WAS ACTUALLY COLOR-BLIND, THAT
2 MIGHT MAKE A DIFFERENCE TO YOU?

3 MR. DELROWCINI: THAT WOULD HELP, YES.

4 MR. WAPNER: OKAY. AND ARE YOU WILLING TO LISTEN TO
5 THE TESTIMONY OF ALL OF THE WITNESSES AND TRY TO FIGURE OUT
6 FROM THEIR TESTIMONY OR THE TESTIMONY OF OTHER WITNESSES, WHAT
7 THE FACTS ARE?

8 MR. DELROWCINI: CERTAINLY, YES.

9 MR. WAPNER: OKAY. I AM SOMEWHAT TROUBLED BY
10 MR. BARENS' USE OF THE WORD "CLOSE CALL."

11 MAYBE HE AND I ARE QUIBBLING OVER WORDS. BUT
12 LAWYERS, I GUESS, LIKE TO DO THAT.

13 DO YOU HAVE ANY TROUBLE ACCEPTING THE FACT THAT
14 I AM REQUIRED TO PROVE THE CASE TO YOU BEYOND A REASONABLE
15 DOUBT?

16 MR. DELROWCINI: I HAVE NO TROUBLE AT ALL.

17 MR. WAPNER: OKAY. CAN YOU SEE SITUATIONS WHERE
18 THERE MIGHT BE ABSOLUTE PROOF, FOR EXAMPLE?

19 MR. DELROWCINI: YES.

20 MR. WAPNER: OKAY. AND OTHER SITUATIONS WHERE THERE
21 MIGHT NOT BE ANY PROOF AT ALL OR VERY LITTLE?

22 MR. DELROWCINI: YES.

23 MR. WAPNER: AND CAN YOU ALSO IMAGINE A SITUATION
24 WHERE YOU HAVE SOME QUESTION IN YOUR MIND, IS IT PROVED BEYOND
25 A REASONABLE DOUBT OR IS IT NOT QUITE ENOUGH? CAN YOU SEE
26 THAT KIND OF SITUATION?

27 MR. DELROWCINI: YES, I CAN.

28 MR. WAPNER: ALL RIGHT. AND IF YOU ARE DISCUSSING THE

1 EVIDENCE WITH ELEVEN OTHER JURORS AND YOU ARE TRYING TO DECIDE
2 WHETHER OR NOT THE PROOF IS SUFFICIENT, WHETHER IT IS PROVED
3 BEYOND A REASONABLE DOUBT, IF IT IS CLOSE, BUT NEVERTHELESS
4 YOU THINK IT IS BEYOND A REASONABLE DOUBT, CAN YOU FIND THE
5 DEFENDANT GUILTY?

6 MR. DELROWCINI: IF I FEEL IT IS BEYOND A REASONABLE
7 DOUBT, YES.

8 MR. WAPNER: ALL RIGHT. HAVE YOU EVER SERVED ON A
9 JURY BEFORE?

10 MR. DELROWCINI: NO.

11 MR. WAPNER: NOT CRIMINAL OR CIVIL?

12 MR. DELROWCINI: NO.

13 MR. WAPNER: DO YOU FEEL THAT THE PROSECUTION SHOULD
14 BE ALLOWED TO PROVE THINGS BY CIRCUMSTANTIAL EVIDENCE?

15 MR. DELROWCINI: IF THAT IS THE ONLY WAY THEY CAN, YES.

16 MR. WAPNER: DO YOU MEAN BY THAT, THAT IT SHOULD BE --
17 WOULD YOU LOOK AT THIS ANY DIFFERENTLY THAN ANY OTHER KIND OF
18 EVIDENCE?

19 MR. DELROWCINI: NO. WHAT I MEANT, IF THAT IS ALL
20 THAT YOU HAVE TO BASE THE CASE ON, THEN, YES. YES IS THE
21 ANSWER.

22 MR. WAPNER: DID YOU HEAR THE EXAMPLE THAT I USED WITH
23 MISS MATERNA, EARLIER TODAY ABOUT THE TWO ROBBERIES AND ONE
24 WAS DIRECT EVIDENCE BY AN EYEWITNESS AND ONE WAS CIRCUM-
25 STANTIAL EVIDENCE WITH THE PROPERTY BEING RECOVERED?

26 MR. DELROWCINI: YES.

27 MR. WAPNER: AND IN THAT PARTICULAR CIRCUMSTANCE,
28 HOW DID YOU FEEL ABOUT THE QUALITY OF THE CIRCUMSTANTIAL

1 EVIDENCE VERSUS THE QUALITY OF THE DIRECT EVIDENCE?

2 MR. DELROWCINI: WHATEVER IT WAS, IT WOULD HAVE TO BE
3 BEYOND A REASONABLE DOUBT, AS FAR AS I AM CONCERNED.

4 MR. WAPNER: OKAY. THAT IS A GIVEN. AND WE ALL ACCEPT
5 THAT.

6 DID YOU HAVE IN YOUR MIND ANY IDEAS ABOUT
7 CIRCUMSTANTIAL EVIDENCE WHEN YOU WALKED INTO THE COURTROOM
8 BEFORE YOU HEARD WHAT YOU HAVE HEARD SO FAR?

9 MR. DELROWCINI: NO.

10 MR. WAPNER: DID YOU HEAR ANYTHING ON TELEVISION ABOUT
11 CIRCUMSTANTIAL EVIDENCE?

12 MR. DELROWCINI: NO.

13 MR. WAPNER: DID YOU THINK THAT IT IS ANY LESS RELIABLE
14 THAN ANY OTHER KIND OF EVIDENCE?

15 MR. DELROWCINI: NO, I DON'T.

16 MR. WAPNER: DID YOU BEFORE?

17 MR. DELROWCINI: BEFORE, I DID, BEFORE I UNDERSTOOD
18 THAT.

19 MR. WAPNER: TELL ME WHAT YOU THOUGHT ABOUT THE EXAMPLE
20 THAT I GAVE -- DO YOU REMEMBER THE EXAMPLE THAT I GAVE
21 MS. MATERNA ABOUT THE TWO ROBBERIES?

22 MR. DELROWCINI: YES.

23 MR. WAPNER: ONE, THEY FIND THE PROPERTY ON THE GUY
24 RIGHT AFTERWARDS BUT THERE IS NO IDENTIFICATION. THE OTHER
25 ONE IS WHERE THEY DON'T CATCH THE GUY FOR SOME TIME AND THEN
26 THERE IS AN IDENTIFICATION, MAYBE FOR 15 SECONDS IN SOMEWHAT
27 DARKENED CONDITIONS. DO YOU REMEMBER THAT?

28 MR. DELROWCINI: YES.

1 MR. WAPNER: HOW DO YOU FEEL ABOUT THE QUALITY OF
2 EVIDENCE IN THE FIRST ONE, AS OPPOSED TO THE SECOND ONE?

3 MR. DELROWCINI: I WOULD HAVE TO HEAR THEM AGAIN.
4 I WOULD HAVE TO HEAR THE SITUATION AGAIN BECAUSE I DON'T
5 RECALL ALL OF IT.

6 MR. WAPNER: OKAY. HERE ARE TWO DIFFERENT FACTUAL
7 SETTINGS. IN CASE NUMBER ONE, THE MAN COMES UP TO ANOTHER
8 MAN ON THE STREET AND PUTS A GUN IN HIS FACE AND ROBS HIM.
9 THE ROBBERY TAKES PLACE ABOUT 15 SECONDS. IT IS AT NIGHT.
10 IT IS NOT VERY WELL-LIGHTED.

11 AND THE ROBBER GETS AWAY. AND THE PERSON WHO IS
12 ROBBED DIDN'T KNOW THE PERSON WHO WAS ROBBING HIM. HE HAD
13 NEVER SEEN HIM BEFORE THAT NIGHT. ALL RIGHT?

14 AND ABOUT, LET'S SAY, TWO WEEKS LATER, THE
15 POLICE HAVE DONE SOME INVESTIGATION AND THEY PUT SOME PHOTO-
16 GRAPHS TOGETHER AND THEY ASK THIS VICTIM TO PICK OUT SOMEONE
17 FROM THE PHOTOGRAPHS. HE PICKS OUT THE PERSON AND HE SAYS
18 THAT THAT IS THE PERSON WHO ROBBED ME.

19 IN THE SECOND CASE, IT IS THE SAME ROBBER.
20 THE MAN COMES UP TO ANOTHER MAN ON THE STREET. HE PUTS A
21 GUN IN HIS FACE. HE ROBS HIM. HE TAKES HIS WALLET. HE
22 TAKES SOME OF THE PROPERTY.

23 THE PERSON WHO IS ROBBED CANNOT IDENTIFY THE
24 PERSON WHO IS ROBBING HIM. BUT A SHORT TIME LATER, THEY
25 FIND A PERSON MATCHING THE GENERAL DESCRIPTION IN THE SAME
26 AREA WHERE THE ROBBERY OCCURRED AND HE HAS GOT THE VICTIM'S
27 WALLET AND HE HAS GOT ALL HIS MONEY. ALL RIGHT?

28 DO YOU UNDERSTAND THAT IN THE FIRST CASE,

1 IT IS DIRECT EVIDENCE? SOMEONE SAYS, "I SAW THAT PERSON
2 ROB ME."

3 MR. DELROWCINI: YES.

4 MR. WAPNER: AND IN THE SECOND CASE, IT IS CIRCUM-
5 STANTIAL EVIDENCE. HE DOESN'T SAY THAT I SAW THE PERSON ROB
6 ME, BUT THEY FIND HIM WITH THE PROPERTY.

7 MR. DELROWCINI: YES.

8 MR. WAPNER: IS THERE A QUALITATIVE DIFFERENCE TO YOU
9 IN THOSE CASES?

10 MR. DELROWCINI: NO.

11 MR. WAPNER: NEITHER ONE IS IN YOUR MIND, STRONGER OR
12 WEAKER THAN THE OTHER?

13 MR. DELROWCINI: NOT FROM WHAT YOU TOLD ME, NO.

14 MR. WAPNER: AND YOU WOULD ACCEPT THE FACT THAT THOSE
15 CASES COULD BE EQUALLY PROVED BY THE CIRCUMSTANTIAL EVIDENCE
16 AS STRONG AS THE DIRECT EVIDENCE?

17 MR. DELROWCINI: YES. I THINK IT WOULD NEED SOME
18 EXPLANATION OF THE CIRCUMSTANTIAL EVIDENCE.

19 MR. WAPNER: SUCH AS?

20 MR. DELROWCINI: WHERE HE GOT THE WALLET.

21 MR. WAPNER: OKAY. THEY CATCH HIM IN THE SAME NEIGH-
22 BORHOOD WITHIN, LET'S SAY, FIVE MINUTES.

23 WHAT WOULD YOU WANT TO HEAR ABOUT WHERE HE GOT
24 THE WALLET FROM?

25 MR. DELROWCINI: THAT HE FOUND IT ON THE GROUND.
26 THAT IS A POSSIBILITY THAT COULD HAVE HAPPENED.

27 MR. WAPNER: CERTAINLY IT IS A POSSIBILITY THAT COULD
28 HAVE HAPPENED. DO YOU THINK IT IS REASONABLE?

1 MR. DELROWCINI: NO.

2 MR. WAPNER: AND CAN YOU SEPARATE IN YOUR MIND WHAT
3 APPEARS TO BE REASONABLE TO YOU FROM WHAT APPEARS TO BE
4 POSSIBLE?

5 MR. DELROWCINI: YES.

6 MR. WAPNER: THAT IS ESPECIALLY SIGNIFICANT BECAUSE
7 DO YOU REMEMBER THE JUDGE TELLING YOU THAT REASONABLE DOUBT
8 IS NOT A POSSIBLE OR IMAGINARY DOUBT?

9 MR. DELROWCINI: YES.

10 MR. WAPNER: AND DO YOU REMEMBER IN THE HYPOTHETICAL,
11 THAT WHEN HE IS FOUND WITH THE WALLET, IT STILL HAD ALL OF
12 THE MONEY IN IT, ALL RIGHT?

13 MR. DELROWCINI: RIGHT.

14 MR. WAPNER: OKAY. WOULD IT BE REASONABLE TO YOU
15 THAT IF HE WAS NOT THE ROBBER, THAT HE WOULD HAVE THE WALLET
16 WITH ALL THE MONEY IN IT?

17 MR. DELROWCINI: YES.

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1 MR. WAPNER: THAT WOULD BE REASONABLE TO YOU?

2 MR. DELROWCINI: WELL, IT WOULD.

3 MR. WAPNER: THAT THE ROBBER WOULD TAKE THE WALLET
4 AND DUMP IT ON THE STREET AND LEAVE ALL THE MONEY IN THE
5 STREET FOR SOMEBODY ELSE TO PICK UP?

6 MR. DELROWCINI: NO, THAT WOULD NOT BE REASONABLE.

7 MR. WAPNER: OKAY, THE PURPOSE -- I HOPE YOU DON'T
8 FEEL WHEN I GO THROUGH THIS STUFF THAT I AM PICKING ON YOU.

9 MR. DELROWCINI: NOT AT ALL.

10 MR. WAPNER: DO YOU UNDERSTAND THAT THE LAW IN THIS
11 STATE DOES NOT REQUIRE US TO PRODUCE A BODY TO CONVICT SOMEONE
12 OF MURDER?

13 MR. DELROWCINI: YES, I DO.

14 MR. WAPNER: DO YOU HAVE ANY DIFFICULTY WITH THAT
15 CONCEPT?

16 MR. DELROWCINI: NO, I DON'T.

17 MR. WAPNER: IN THE WORDS OF MR. PEIKERT, DO YOU THINK
18 I HAVE TO BE HOUDINI TO PROVE TO YOU THAT A MURDER OCCURRED,
19 EVEN THOUGH THERE IS NO BODY?

20 MR. DELROWCINI: I WOULDN'T GO THAT FAR.

21 MR. WAPNER: I AM WILLING TO BE HELD ABSOLUTELY TO
22 PROVE BEYOND A REASONABLE DOUBT BUT HOUDINI IS TOO MUCH FOR
23 ANYBODY.

24 MR. BARENS WAS ASKING ONE OF THE JURORS ABOUT
25 MR. DELOREAN.

26 LET ME ASK YOU ABOUT JIMMY HOFFA, HAVE YOU SEEN
27 HIM LATELY?

28 MR. DELROWCINI: NO, I HAVEN'T.

1 (LAUGHTER IN COURTROOM.)

2 MR. WAPNER: DO YOU EXPECT TO?

3 MR. DELROWCINI: IT DOESN'T LOOK GOOD TO ME.

4 MR. WAPNER: WHAT DO YOU THINK HAPPENED TO MR. HOFFA?

5 MR. DELROWCINI: HE IS EITHER DEAD OR HE IS HIDING
6 SOMEWHERE.

7 MR. BARENS: INDEED.

8 MR. WAPNER: AND OF THE TWO OF THOSE, DO YOU THINK
9 ANYONE IS ANY MORE LIKELY THAN THE OTHER TO BE CORRECT?

10 MR. DELROWCINI: FROM WHAT I KNOW?

11 MR. WAPNER: RIGHT, I AM NOT ASKING YOU TO BE AN EXPERT
12 ON JIMMY HOFFA. I DON'T KNOW WHAT YOU KNOW. I AM JUST ASKING
13 YOU FOR YOUR OPINION.

14 MR. DELROWCINI: IN MY OPINION, IT IS MOST LIKELY THAT
15 HE IS DEAD.

16 MR. WAPNER: WHY?

17 MR. DELROWCINI: BECAUSE OF EVERYTHING I HAVE HEARD
18 ABOUT THE PARTICULAR PROBLEM.

19 MR. WAPNER: SUCH AS?

20 MR. DELROWCINI: WELL, THE PEOPLE HE HAS DEALT WITH
21 IN THE PAST.

22 MR. WAPNER: OKAY, SINCE YOU WEREN'T THERE WHEN HE
23 DISAPPEARED, YOU ARE BASING WHATEVER YOU KNOW BASED ON THE
24 CIRCUMSTANCES, SUCH AS YOU KNOW THAT THEY ARE?

25 MR. DELROWCINI: THINGS I KNOW.

26 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF A FRAUD
27 OR ANY KIND OF A CON SCHEME?

28 MR. DELROWCINI: NO.

1 MR. WAPNER: HAVE YOU OR ANYONE CLOSE TO YOU EVER BEEN
2 THE VICTIM OF ANY KIND OF A CRIME?

3 MR. DELROWCINI: NO.

4 MR. WAPNER: ARE YOU THE KIND OF PERSON WHO IS CAPABLE
5 OF CHANGING YOUR MIND IN A DISCUSSION YOU MIGHT HAVE WITH A
6 FRIEND OF YOURS IF YOU ARE PROVEN TO BE WRONG?

7 MR. DELROWCINI: I WOULD HAVE TO BE PROVEN WRONG.

8 MR. WAPNER: WOULD IT TAKE A LOT?

9 MR. DELROWCINI: WELL, IT WOULD HAVE TO TAKE CONVINCING
10 ON THEIR PART.

11 MR. WAPNER: HAS IT EVER HAPPENED IN YOUR MEMORY WHEN
12 YOU WERE DISCUSSING ANYTHING WITH FRIENDS THAT YOU HAVE
13 EVER CHANGED YOUR MIND?

14 MR. DELROWCINI: I AM SURE THERE -- THERE WOULD HAVE TO
15 BE SOMETHING BUT I CAN'T RECALL ANYTHING RIGHT NOW.

16 MR. WAPNER: IF YOU WERE IN THE JURY ROOM DELIBERATING
17 WITH THE OTHER ELEVEN PEOPLE, CAN YOU MAKE YOUR POINT OF VIEW
18 KNOWN TO THEM?

19 MR. DELROWCINI: YES.

20 MR. WAPNER: CAN YOU LISTEN TO WHAT THEY HAVE TO SAY?

21 MR. DELROWCINI: YES.

22 MR. WAPNER: IF WHAT THEY HAVE TO SAY CONVINCES YOU
23 THAT A POSITION YOU TOOK ORIGINALLY WAS WRONG, DO YOU THINK
24 YOU COULD CHANGE YOUR MIND?

25 MR. DELROWCINI: YES.

26 MR. WAPNER: IF YOU WEREN'T CONVINCED, COULD YOU STICK
27 WITH YOUR ORIGINAL POSITION?

28 MR. DELROWCINI: YES, I COULD.

1 MR. WAPNER: KNOWING WHAT YOU KNOW ABOUT YOUR BACK-
2 GROUND, WITHOUT MORE, I DON'T KNOW WHAT THE FACTS OF THIS CASE
3 ARE GOING TO BE WHEN YOU GET THEM, BUT IS IT MORE LIKELY
4 YOU WOULD BE ABLE TO CHANGE YOUR MIND OR IS IT MORE LIKELY,
5 BASED ON WHAT YOU KNOW ABOUT YOURSELF, THAT ONCE YOU GET AN
6 OPINION, THAT IS IT?

7 MR. DELROWCINI: WELL, PERHAPS I COULD MISS SOMETHING
8 THAT THEY HEARD OR BROUGHT TO MY ATTENTION THAT COULD HELP
9 ME CHANGE A DECISION IF I HAD TO, IF I WASN'T WHOLLY DECIDED.

10 MR. WAPNER: IN TWO AND A HALF TO THREE MONTHS OF TRIAL
11 IT IS POSSIBLE YOU MIGHT MISS SOMETHING.

12 MR. DELROWCINI: YOU NEVER KNOW.

13 MR. WAPNER: IF THEY POINTED OUT SOMETHING LIKE THAT TO YOU,
14 DO YOU THINK YOU COULD CHANGE YOUR MIND?

15 MR. DELROWCINI: I COULD POSSIBLY, YES.

16 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT, THE DEFENSE'S PEREMPTORY.

19 MR. BARENS: THE DEFENSE WOULD REQUEST THAT YOUR HONOR
20 THANK AND EXCUSE JUROR NO. 12, MRS. WALKER.

21 THE COURT: THANK YOU. YES. THANK YOU, MRS. WALKER.

22 THE CLERK: DOROTHY K. WAUGH, W-A-U-G-H.

23 MS. WAUGH: WAUGH.

24 THE CLERK: IS THAT MRS?

25 MS. WAUGH: MRS., YES.

26 THE COURT: MRS. WAUGH, YOU HEARD, TOO, ALL OF THE
27 QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

28 MS. WAUGH: YES.

1 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
2 OF YOU, WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY BE
3 SUBSTANTIALLY THE SAME?

4 MS. WAUGH: SUBSTANTIALLY THE SAME.

5 THE COURT: ALL RIGHT. WHAT DO YOU DO, PLEASE?

6 MS. WAUGH: I TEACH.

7 THE COURT: WHERE DO YOU TEACH?

8 MS. WAUGH: COMPTON UNIFIED SCHOOL DISTRICT.

9 THE COURT: WHAT GRADE DO YOU TEACH?

10 MS. WAUGH: KINDERGARTEN.

11 THE COURT: THAT IS AS REWARDING AS ANYTHING ELSE IN
12 THE SCHOOL SYSTEM, IS IT?

13 MS. WAUGH: YES, IT IS.

14 THE COURT: HOW LONG HAVE YOU TAUGHT IN THE SYSTEM?

15 MS. WAUGH: 18 YEARS.

16 THE COURT: ALWAYS IN THE KINDERGARTEN?

17 MS. WAUGH: NO. I HAVE HAD FIRST THROUGH THREE.

18 THE COURT: AND YOUR CHOICE IS KINDERGARTEN, ISN'T IT?

19 MS. WAUGH: AT THIS AGE.

20 (LAUGHTER IN COURTROOM.)

21 THE COURT: ALL RIGHT, WHAT IS YOUR EDUCATIONAL
22 BACKGROUND?

23 MS. WAUGH: I HAVE A B.S. FROM THE UNIVERSITY OF
24 ARKANSAS AND A MASTER'S FROM THE UNIVERSITY OF SAN FRANCISCO.

25 THE COURT: ALL RIGHT. THERE IS A MR. WAUGH, IS THERE?

26 MS. WAUGH: NOT ANYMORE.

27 THE COURT: WHAT DID HE USED TO DO?

28 MS. WAUGH: HE WAS A BEER SALESMAN FOR ANHEUSER BUSCH.

1 THE COURT: AND THAT WAS YOUR FIRST AND ONLY MARRIAGE,
2 WAS IT?

3 MS. WAUGH: YES.

4 THE COURT: HOW LONG HAD YOU BEEN MARRIED?

5 MS. WAUGH: 10 YEARS.

6 THE COURT: WHERE DO YOU LIVE NOW?

7 MS. WAUGH: IN NORTH INGLEWOOD.

8 THE COURT: I DIDN'T MAKE A NOTE THAT YOU OR ANY MEMBER
9 OF YOUR FAMILY HAD EVER BEEN THE VICTIM OF A CRIME.

10 MS. WAUGH: NO.

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

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1 MR. CHIER: GOOD AFTERNOON, MS. WAUGH. DO YOU HAVE
2 CHILDREN?

3 MS. WAUGH: NO.

4 MR. CHIER: AND HOW LONG HAVE YOU BEEN TEACHING
5 KINDERGARTEN?

6 MS. WAUGH: ABOUT FIVE YEARS.

7 MR. CHIER: LET ME ASK YOU THIS. I WILL ASK YOU TO
8 TAKE A MOMENT TO THINK ABOUT IT, IF YOU NEED TO. WHAT DO
9 YOU THINK IS THE MOST IMPORTANT THING THAT YOU AS A TEACHER,
10 COULD TEACH TO YOUR CHILDREN IN YOUR CLASS?

11 MS. WAUGH: THEY NEED THE BASICS, REALLY.

12 MR. CHIER: I MEAN IN TERMS OF VALUES, TRUTHFULNESS?
13 ONE LADY --

14 MS. WAUGH: TRUTHFULNESS AND HONESTY.

15 MR. CHIER: NOW, APROPOS OF THAT, IF THE JUDGE -- IF
16 YOU WERE A JUROR ON THIS CASE AND THE JUDGE WERE TO INSTRUCT
17 YOU THAT IF YOU HAD ANY REASONABLE DOUBT AS TO THE CREDIBILITY
18 OR TRUTHFULNESS OF ANY STATEMENT MADE BY ANY WITNESS AGAINST
19 THE DEFENDANT, THAT YOU HAD TO RESOLVE ANY SUCH DOUBT IN FAVOR
20 OF THE DEFENDANT AND FIND SUCH A STATEMENT TO BE UNTRUE, WOULD
21 YOU HAVE ANY PROBLEMS WITH DOING THAT? DO YOU UNDERSTAND
22 WHAT I JUST SAID?

23 MS. WAUGH: WOULD YOU REPEAT THAT, PLEASE?

24 MR. CHIER: OKAY. LET ME SEE IF I CAN PARAPHRASE IT.
25 IF A WITNESS TESTIFIES AGAINST THE DEFENDANT AND YOU HAVE
26 ANY REASONABLE DOUBT ABOUT THE TRUTHFULNESS OF ANY STATEMENT
27 MADE BY ANY WITNESS AGAINST THE DEFENDANT, THAT REASONABLE
28 DOUBT HAS TO BE RESOLVED IN FAVOR OF THE DEFENDANT, TO THE

1 EXTENT THAT YOU HAVE TO FIND THE STATEMENT UNTRUE.

2 IN OTHER WORDS, IF YOU SAY TO YOURSELF, WELL,
3 I DON'T KNOW. I HAVE A DOUBT ABOUT THE TRUTHFULNESS OF THAT
4 STATEMENT. I DON'T KNOW WHETHER IT IS TRUE OR NOT.

5 DO YOU UNDERSTAND THAT YOU HAVE TO FIND IN FAVOR
6 OF THE DEFENDANT? THIS IS OUR SYSTEM.

7 IT CREEPS INTO OUR LIVES IN A LOT OF DIFFERENT
8 WAYS. IN BASEBALL, THEY CALL IT THE TIE GOING TO THE RUNNER.

9 IN COURT, THEY CALL IT REASONABLE DOUBT. THE
10 DEFENDANT GETS THE BENEFIT OF THE DOUBT.

11 IS THERE ANY REASON THAT YOU CAN THINK OF WHY
12 YOU WOULDN'T BE A COMPLETELY NEUTRAL AND IMPARTIAL JUROR IN
13 THIS CASE?

14 MS. WAUGH: NO.

15 MR. CHIER: IF YOU WERE IN THE DEFENDANT'S SEAT, WOULD
16 YOU WANT 12 PEOPLE OF YOUR PRESENT LIKES OR NEUTRALITY TO
17 SIT IN JUDGMENT? WOULD YOU FEEL COMFORTABLE?

18 MS. WAUGH: YES.

19 MR. CHIER: ALL RIGHT. I PASS FOR CAUSE.

20 THE COURT: ALL RIGHT.

21 MR. WAPNER: GOOD AFTERNOON, MS. WAUGH.

22 MS. WAUGH: GOOD AFTERNOON.

23 MR. WAPNER: DO YOU FEEL THAT YOU GOT SHORT SHRIFT BY
24 MR. CHIER? HE JUST GAVE YOU A FIVE MINUTE VERSION OF HIS
25 HALF HOUR SPEECH.

26 MS. WAUGH: I DON'T FEEL SLIGHTED AT ALL.

27 MR. WAPNER: OKAY. TELL ME WHAT YOU LIKE TO DO IN YOUR
28 SPARE TIME.

1 MS. WAUGH: WELL, I LIKE TO COOK. I LIKE TO GO TO THE
2 THEATER.

3 MR. WAPNER: WHAT KIND OF COOKING DO YOU LIKE TO DO?

4 MS. WAUGH: GOURMET.

5 MR. WAPNER: DO YOU TAKE ANY COOKING CLASSES?

6 MS. WAUGH: NO.

7 MR. WAPNER: AND DO YOU DO ANY BAKING?

8 MS. WAUGH: YES.

9 MR. WAPNER: I THINK THERE ARE 11 PEOPLE SITTING HERE
10 WHO MIGHT WANT YOU ON THIS JURY.

11 WHAT KIND OF THEATER DO YOU LIKE?

12 MS. WAUGH: STAGE.

13 MR. WAPNER: ANYTHING IN PARTICULAR OR JUST ALL KINDS?

14 MS. WAUGH: MUSICALS, MOSTLY.

15 MR. WAPNER: ANY OTHER HOBBIES OR INTERESTS OR THINGS
16 YOU LIKE TO DO WHEN YOU ARE AT HOME OR NOT IN SCHOOL?

17 MS. WAUGH: READING. DID I SAY READING?

18 MR. WAPNER: YOU DIDN'T SAY THAT.

19 MS. WAUGH: READING.

20 MR. WAPNER: WHAT KIND OF THINGS DO YOU READ?

21 MS. WAUGH: ENTERTAINING BOOKS. AND THE LAST ONE I
22 READ WAS "THE COLOR PURPLE" AND THE "JOAN KENNEDY STORY."

23 MR. WAPNER: HAVE YOU HAD ANY BAD EXPERIENCES WITH LAW
24 ENFORCEMENT, THAT LEFT SUCH A BAD TASTE IN YOUR MOUTH THAT
25 YOU WOULD HOLD IT AGAINST THE POLICE OFFICER IF HE TESTIFIED
26 IN THIS CASE?

27 MS. WAUGH: I HAVE NOT HAD ANY EXPERIENCES WITH THE
28 POLICE.

1 MR. WAPNER: OKAY. ARE YOU GLAD YOU WEREN'T IN
2 COMPTON TODAY? DID YOU HEAR ABOUT WHAT WAS GOING ON? THEY
3 HAD SOME KIND OF A CHEMICAL LEAK AND HAD TO EVACUATE THE
4 COURTHOUSE AND THE POLICE DEPARTMENT.

5 MS. WAUGH: YES. I HEARD IT ON THE NEWS THIS MORNING.

6 MR. WAPNER: THEY HAD IT ON THE NEWS REPORTS BECAUSE
7 I GOT IT WHEN I CAME TO WORK ON THE RADIO. BUT IF YOU WERE
8 IN COMPTON TODAY AND YOU HEARD THE REPORT -- YOU STARTED TO
9 SMELL SOMETHING FUNNY IN THE AIR AND SOME OF YOUR STUDENTS
10 STARTED GETTING SICK, WOULD YOU TAKE IT AS A SIGN THAT THERE
11 WAS MAYBE, SOMETHING WRONG, LIKE SOMETHING SIMILAR TO A
12 CHEMICAL LEAK OR SOMETHING LIKE THAT?

13 MS. WAUGH: YES I WOULD.
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1 MR. WAPNER: OKAY. BUT YOU NEVER WOULD HAVE ACTUALLY
2 SEEN THE PROBLEM, SEEN THE CHEMICAL LEAKING FOR EXAMPLE, RIGHT?

3 MS. WAUGH: NO.

4 MR. WAPNER: CAN YOU APPRECIATE THAT THAT IS
5 CIRCUMSTANTIAL EVIDENCE?

6 MR. BARENS: OBJECTION. I DON'T BELIEVE THAT IS AN
7 EXAMPLE OF CIRCUMSTANTIAL EVIDENCE AT ALL. IF IT IS SOME
8 KIND OF GAS AND YOU ARE PASSING OUT, THAT IS DIRECT EVIDENCE,
9 MR. WAPNER.

10 THE COURT: NOW YOU ARE ARGUING, INSTEAD OF GIVING ME
11 YOUR OBJECTION.

12 MR. BARENS: WELL, I OBJECT. HE MISCHARACTERIZED THE
13 DIRECT EVIDENCE AS CIRCUMSTANTIAL. HE IS GOING TO CONFUSE
14 THESE GOOD PEOPLE MORE THAN THEY ALREADY ARE.

15 MR. WAPNER: MAY I PROCEED?

16 THE COURT: YOU MAY PROCEED. YOU DON'T NEED A RULING
17 AFTER THAT SPEECH.

18 MR. BARENS: WELL, I SHOULD THINK THAT WE SHOULD HAVE
19 A RULING THAT DIRECT OR CIRCUMSTANTIAL -- IF YOU ARE PASSING
20 OUT FROM CLOUDS OF GAS --

21 THE COURT: WELL, YOU ARE GOING TO GET UP AGAIN WITH
22 SOME OTHER JUROR. YOU CAN MAKE IT A POINT WITH THEM.

23 MR. BARENS: THANK YOU, YOUR HONOR.

24 MR. WAPNER: THIS IS KIND OF AN ASIDE. DO YOU UNDERSTAND
25 THAT THIS ISN'T A CONTEST BETWEEN ME AND MR. BARENS OR ME
26 AND MR. CHIER AS TO WHO IS BETTER OR SWIFTER OR ANYTHING LIKE
27 THAT?

28 MS. WAUGH: I UNDERSTAND THAT.

26-6
1 MR. WAPNER: OKAY. AND IF ANYTHING THAT I SAY CONFUSES
2 YOU, YOU LET ME KNOW. I WILL TRY TO CLEAR IT UP.

3 MS. WAUGH: YES.

4 MR. WAPNER: OKAY. HAVE YOU UNDERSTOOD THE EXAMPLES
5 I HAVE USED WITH THE OTHER JURORS ABOUT CIRCUMSTANTIAL EVIDENCE?

6 MS. WAUGH: SOME OF THEM.

7 MR. WAPNER: OKAY. ALL CIRCUMSTANTIAL EVIDENCE INVOLVES
8 CERTAIN ELEMENTS OF DIRECT EVIDENCE. DO YOU UNDERSTAND THAT?

9 MS. WAUGH: YES.

10 MR. WAPNER: OKAY. I AM GOING TO GO BACK TO THE
11 EXAMPLE THAT I USED WITH MR. ENGLE ABOUT THE PIE. DO YOU
12 REMEMBER THAT EXAMPLE?

13 MS. WAUGH: THE PIE?

14 MR. WAPNER: OKAY. LET ME KEEP MY VOICE UP. THE EXAMPLE
15 WAS THE CHERRY PIE THAT WAS BAKED AND MRS. JONES COOKED THE
16 CHERRY PIE.

17 SHE TOOK IT OUT OF THE OVEN AND SHE LEFT IT ON
18 THE TABLE. DO YOU REMEMBER THAT?

19 YOU DON'T REMEMBER THAT?

20 MS. WAUGH: NO.

21 MR. WAPNER: I THOUGHT IT WAS A GREAT STORY. AND THEY
22 LIKE IT BETTER THAN THE BOAT.

23 SHE LEAVES THE CHERRY PIE ON THE TABLE. SHE GOES
24 OUT OF THE ROOM. AND THE ONLY TWO PEOPLE THAT ARE IN THE
25 HOUSE ARE HER AND HER SON, JOHNNY.

26 SHE IS OUT OF THE ROOM FOR HALF AN HOUR. SHE
27 COMES BACK INTO THE KITCHEN AND THERE IS A PIECE MISSING FROM
28 THE PIE.

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1 MS. WAUGH: THAT'S RIGHT.

2 MR. WAPNER: A LIGHT GOES OFF IN HER HEAD. SHE CALLS
3 JOHNNY.

4 IN COMES JOHNNY. HE HAS GOT CHERRY PIE ALL OVER
5 HIS FACE. HE HAS GOT CHERRY PIE ALL OVER HIS SHIRT.

6 SHE SAYS, "JOHNNY, DID YOU EAT THE PIE?" HE SAYS,
7 "NO."

8 MS. WAUGH: I REMEMBER.

9 MR. WAPNER: OKAY. NOW, THE ONLY TWO PEOPLE THAT WERE
10 IN THE HOUSE, WERE JOHNNY AND HIS MOM. OKAY?

11 AND THE MOM WAS IN THE OTHER ROOM SOMEPLACE. SO
12 SHE NEVER SAW HIM EAT THE PIE. ARE YOU WITH ME SO FAR?

13 MS. WAUGH: YES

14 MR. WAPNER: IS THERE ANY DOUBT IN YOUR MIND THAT JOHNNY
15 ATE THE PIECE OF PIE?

16 MS. WAUGH: HE HAD THE PIE ALL OVER HIM.

17 MR. WAPNER: IS THERE ANY QUESTION IN YOUR MIND?

18 THE COURT: WHAT DID YOU SAY?

19 MR. WAPNER: SHE SAID THAT HE HAD PIE ALL OVER HIM.

20 THE COURT: RIGHT.

21 MR. WAPNER: IS THERE ANY QUESTION THAT HE ATE THE PIE?

22 THE COURT: WELL, DO YOU HAVE A REASONABLE DOUBT THAT
23 HE ATE THE PIE?

24 MS. WAUGH: NO.

25 THE COURT: ALL RIGHT.

26 MR. WAPNER: DO YOU HAVE SOME QUESTION ABOUT IT?

27 MS. WAUGH: SOMEBODY ELSE COULD HAVE EATEN THE PIE AND
28 GOTTEN A HOLD OF JOHNNY, TOO.

26- 1 MR. WAPNER: SOMEBODY ELSE COULD HAVE. WHO DO YOU HAVE
2 IN MIND THAT COULD HAVE?

3 MS. WAUGH: IT COULD HAVE BEEN A PLAYMATE.

4 MR. WAPNER: OKAY. THERE IS NO PLAYMATE. DID YOU HEAR
5 ANYTHING ABOUT A PLAYMATE IN THE EXAMPLE?

6 MS. WAUGH: WELL, MAYBE NOT. NO.

7 MR. WAPNER: OKAY. LOTS OF THINGS COULD HAVE HAPPENED,
8 RIGHT?

9 MS. WAUGH: YES.

10 MR. WAPNER: THE SAME HELICOPTER THAT RESCUED THE GUY
11 IN THE MIDDLE OF THE OCEAN, COULD HAVE FLOWN IN AND DROPPED
12 OFF SOMEBODY WHO COULD HAVE SPREAD THE PIE ON JOHNNY, TOO.

13 MS. WAUGH: OKAY. YES.

14 MR. WAPNER: IS IT REASONABLE TO THINK THAT A PLAYMATE
15 CAME AND ATE THE PIE AND SPREAD IT ON JOHNNY, GIVEN THE FACTS
16 YOU WERE GIVEN?

17 MS. WAUGH: NO. THERE WAS NO PLAYMATE. NO.

18 MR. WAPNER: RIGHT.

19 MS. WAUGH: OKAY.

20 MR. WAPNER: IF YOU FOUND A PLAYMATE WHO HAD PIE ON
21 HIM, WOULD IT BE REASONABLE TO THINK THAT BOTH JOHNNIE AND
22 THE PLAYMATE COULD HAVE EATEN THE PIE?

23 MS. WAUGH: YES.

24 MR. WAPNER: RATHER THAN THE PLAYMATE EATING THE PIE
25 AND SMEARING IT ON JOHNNY?

26 MS. WAUGH: YES.

27 MR. WAPNER: OKAY. IN THAT EXAMPLE, THERE IS BOTH DIRECT
28 AND CIRCUMSTANTIAL EVIDENCE. THE DIRECT EVIDENCE IS MRS. JONES

1 PUTTING THE PIE ON THE TABLE. SHE SAW THE PIE ON THE TABLE.

2 THE FURTHER DIRECT EVIDENCE IS THAT THE PIE IS
3 WHOLE WHEN SHE LEAVES. OKAY?

4 MS. WAUGH: YES.

5 MR. WAPNER: DO YOU APPRECIATE THAT?

6 MS. WAUGH: YES.

7 MR. WAPNER: SHE SAYS, "I SAW THE PIE. I PUT IT THERE.
8 IT WAS WHOLE."

9 THAT IS DIRECT EVIDENCE, OKAY?

10 MS. WAUGH: YES.

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1 MR. WAPNER: AND THEN SHE COMES BACK AND THERE IS A PIECE
2 MISSING. THAT IS DIRECT EVIDENCE THAT THERE WAS A PIECE
3 MISSING, OKAY?

4 MS. WAUGH: YES.

5 MR. WAPNER: AND SHE SEES JOHNNY WITH THE PIE ALL OVER
6 HIS FACE. THAT IS DIRECT EVIDENCE.

7 I SEE HIM. HE HAS GOT THE PIE ON HIS FACE. HE
8 HAS GOT THE PIE ON HIS SHIRT. THAT IS ALL DIRECT EVIDENCE.

9 ARE YOU WITH ME SO FAR?

10 MS. WAUGH: YES.

11 MR. WAPNER: DID ANYONE SEE JOHNNY EAT THE PIE?

12 MS. WAUGH: NO.

13 MR. WAPNER: CAN YOU APPRECIATE THAT THE FACT THAT HE
14 ATE THE PIE IS CIRCUMSTANTIAL EVIDENCE?

15 THAT YOU PUT ALL OF THESE PIECES OF EVIDENCE
16 TOGETHER AND YOU COME UP WITH A SET OF CIRCUMSTANCES THAT LETS
17 YOU INFER, OKAY?

18 MS. WAUGH: YES.

19 MR. WAPNER: ALL RIGHT, NOW BACK TO COMPTON. YOU SMELL
20 WHAT APPEARS TO YOU TO BE NOXIOUS FUMES, YOUR STUDENTS ARE
21 STARTING TO GET SICK AND YOU START GETTING SICK; CAN YOU INFER
22 FROM THAT THAT THERE IS A GAS LEAK SOMEWHERE?

23 MS. WAUGH: YES.

24 MR. WAPNER: IS THE FACT THAT YOUR STUDENTS ARE GETTING
25 SICK DIRECT EVIDENCE?

26 MS. WAUGH: YES.

27 MR. WAPNER: YOU CAN SEE THAT, RIGHT?

28 MS. WAUGH: YES.

27-3
1 MR. WAPNER: IS THE FACT THAT YOU CAN SMELL THE FUMES
2 DIRECT EVIDENCE?

3 MS. WAUGH: YES.

4 MR. WAPNER: IS THE FACT THAT THERE IS A GAS LEAK SOME-
5 WHERE DIRECT EVIDENCE?

6 MS. WAUGH: YES.

7 MR. WAPNER: HOW?

8 MS. WAUGH: YOU SMELL IT AND MY KIDS ARE GETTING SICK.

9 MR. WAPNER: OKAY, BUT CAN YOU SEE THE GAS LEAKING FROM
10 ANY PARTICULAR PLACE?

11 MS. WAUGH: NO.

12 MR. WAPNER: SO YOU INFER FROM THE FACT THAT YOU CAN
13 SMELL, THE SMELLING IS DIRECT EVIDENCE, RIGHT?

14 MS. WAUGH: YES.

15 MR. WAPNER: THAT THERE IS GAS IN THE AIR, RIGHT?

16 MS. WAUGH: YES.

17 MR. WAPNER: AND YOU INFER FROM THAT THAT THERE IS A LEAK
18 SOME PLACE, RIGHT?

19 MS. WAUGH: YES.

20 MR. WAPNER: BUT YOU DIDN'T HAVE ANYONE COME IN AND SAY
21 "I SEE THE GAS LEAK OR I AM STANDING OVER THE LEAK AND IT IS
22 COMING OUT"?

23 MS. WAUGH: NO.

24 MR. WAPNER: GAS MAY NOT BE THE GREATEST EXAMPLE, BECAUSE
25 EVEN IF SOMEBODY WAS STANDING THERE THEY MIGHT NOT BE ABLE TO
26 SEE IT BUT THEY COULD PROBABLY HEAR IT HISSING.

27 NOW I AM IN THE AREA TALKING TO THE ELECTRICIAN
28 ABOUT THE LIGHTS AND ABOUT THE BOAT AND SHIPPING.

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ARE YOU WIDOWED OR DIVORCED?

MS. WAUGH: I AM WIDOWED.

MR. WAPNER: AND DO YOU HAVE ANY BROTHERS AND SISTERS?

MS. WAUGH: I HAVE ONE BROTHER, HE IS A RETIRED POSTAL
WORKER.

MR. WAPNER: KEEP YOUR VOICE UP SO THE PEOPLE CAN HEAR
IT.

MS. WAUGH: HE IS A RETIRED POSTAL WORKER.

MR. WAPNER: DOES HE LIVE IN THE LOS ANGELES AREA?

MS. WAUGH: YES.

AND HE SPENDS HIS TIME ON THE GOLF COURSE.

MR. WAPNER: OKAY. DO YOU EVER TALK TO HIM?

MS. WAUGH: YES.

MR. WAPNER: HOW OFTEN?

MS. WAUGH: OH, ABOUT FOUR TIMES A WEEK.

MR. WAPNER: DOES HE LIVE NEARBY?

MS. WAUGH: YES.

MR. WAPNER: HOW OFTEN DO YOU SEE HIM?

MS. WAUGH: HOW OFTEN DO I SEE HIM?

1 MR. WAPNER: YES.

2 MS. WAUGH: ABOUT ONCE A WEEK.

3 MR. WAPNER: NOT ON THE GOLF COURSE?

4 MS. WAUGH: NO.

5 MR. WAPNER: AND ARE YOUR PARENTS STILL LIVING?

6 MS. WAUGH: NO.

7 MR. WAPNER: WHEN THEY WERE LIVING, DID THEY LIVE IN THE
8 LOS ANGELES AREA?

9 MS. WAUGH: NO.

10 MR. WAPNER: WHAT PART OF THIS COUNTRY DID THEY LIVE IN?

11 MS. WAUGH: IN ARKANSAS.

12 MR. WAPNER: HOW OFTEN DID YOU SEE THEM WHEN THEY WERE
13 LIVING?

14 MS. WAUGH: ABOUT THREE TIMES A YEAR.

15 MR. WAPNER: DID YOU GO BACK THERE ON HOLIDAYS OR WOULD
16 THEY COME OUT HERE?

17 MS. WAUGH: I WOULD GO BACK THERE.

18 MR. WAPNER: HAVE YOU ALWAYS TAUGHT IN COMPTON?

19 MS. WAUGH: NO, I HAVEN'T.

20 MR. WAPNER: WHERE ELSE HAVE YOU TAUGHT BESIDES COMPTON?

21 MS. WAUGH: IN ARKANSAS, FOR TEN YEARS.

22 MR. WAPNER: AND WHAT GRADES DID YOU TEACH WHEN YOU WERE
23 IN ARKANSAS?

24 MS. WAUGH: THE FOURTH.

25 MR. WAPNER: JUST THE FOURTH GRADE?

26 MS. WAUGH: YES.

27 MR. WAPNER: THANK YOU. WE PASS FOR CAUSE, YOUR HONOR.

28 THE COURT: ALL RIGHT, I THINK WE HAD BETTER TAKE OUR

2-5
1 ADJOURNMENT AT THIS TIME.

2 LADIES AND GENTLEMEN OF THE JURY, WE WILL TAKE
3 OUR ADJOURNMENT AT THIS TIME.

4 WHAT DO WE HAVE TOMORROW MORNING?

5 THE CLERK: OH, THE REGULAR CALENDAR. 10:30 IS FINE.

6 THE COURT: 10:30, ALL RIGHT.

7 LADIES AND GENTLEMEN, WE WILL TAKE OUR ADJOURNMENT
8 AT THIS TIME UNTIL TOMORROW MORNING AT 10:30. AND AGAIN,
9 I WILL ASK YOU TO GO TO THE JURY ASSEMBLY ROOM BECAUSE I DON'T
10 WANT YOU TO COME IN HERE IF WE HAVE SOME OTHER BUSINESS THAT
11 IS GOING ON. SO YOU GO INTO THE JURY ASSEMBLY ROOM AND WE
12 WILL SEE YOU TOMORROW AT 10:30.

13 GOOD NIGHT.

14 (THE FOLLOWING PROCEEDINGS WERE HELD
15 OUTSIDE THE PRESENCE OF THE PROSPECTIVE
16 JURORS:)

17 THE COURT: THE FOLLOWING IS A NOTE FROM JEAN SILVERSTEIN,
18 ONE OF THE PROSPECTIVE JURORS:

19 "WEDNESDAY, DECEMBER 17, 1986 I HAVE
20 TO LEAVE AT 3:00 P.M. IN ORDER TO APPEAR BEFORE
21 JUDGE WAPNER IN PEOPLE'S COURT. PLEASE MARK
22 YOUR RECORDS.

23 "THANK YOU."

24 MR. WAPNER: YOUR HONOR --

25 THE COURT: I DON'T THINK THAT IS AN EXCUSE.

26 MR. BARENS: IS THIS THE JUROR RIGHT HERE?

27 THE COURT: NO, THERE IS NO ONE HERE.

28 MR. BARENS: ALL RIGHT. WELL, HERE IS THE PROBLEM I

27-6
1 HAVE GOT, YOUR HONOR, IF JUDGE WAPNER IS KIND TO THAT JUROR,
2 WE COULD BE IN TROUBLE.

3 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

4 THE COURT: IS SHE A PLAINTIFF OR A DEFENDANT?

5 MR. BARENS: WE WILL STIPULATE, YOUR HONOR.

6 MR. WAPNER: YOUR HONOR, IF YOU WILL RECALL, THIS IS THE
7 WOMAN WHO HAD SOME INVOLVEMENT AS A CLIENT OR SOME SORT OF
8 CLIENT OF MR. CHIER'S AT ONE TIME AND I HAVE TALKED TO THEM
9 AND WE ARE WILLING TO STIPULATE THAT SHE MAY BE EXCUSED.

10 MR. BARENS: I STAND CORRECTED AND STIPULATE, YOUR HONOR.

11 THE COURT: ALL RIGHT, FINE. YOU TELL HER SHE WILL BE
12 EXCUSED, ALL RIGHT?

13 THE CLERK: ALL RIGHT.

14 THE COURT: CROSS HER OFF THE LIST.

15 (AT 4:23 P.M. AN ADJOURNMENT WAS TAKEN
16 UNTIL TUESDAY, DECEMBER 16, 1986 AT
17 10:30 A.M.)
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