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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

OCT 09 1987

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 24 OF 101
(PAGES 3322 TO 3484 , INCLUSIVE)

COPY

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A-090435)

JOSEPH HUNT,)

DEFENDANT.)

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, DECEMBER 17, 1986

VOLUME 24

(PAGES 3322 TO 3484, INCLUSIVE)

APPEARANCES:

FOR THE PEOPLE:

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

FOR THE DEFENDANT:

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

AND

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

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

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WEDNESDAY, DECEMBER 17, 1986 VOLUME 24 PAGES 3322 TO 3484

A.M. 3322

P.M. 3387

PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 3322

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, DECEMBER 17, 1986; 10:40 A.M.

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

3 (APPEARANCES AS NOTED ON TITLE PAGE)

4
5 THE COURT: ALL RIGHT, STIPULATED THE DEFENDANT IS
6 PRESENT, COUNSEL ARE PRESENT AND THE JURORS ARE PRESENT AND
7 SEATED BEHIND THE RAILING AND IN THE JURY BOX.

8 ALL RIGHT, MRS. DEEG.

9 MR. CHIER: IS IT MISS DEEG?

10 MS. DEEG: MRS.

11 MR. CHIER: IN CASE YOU FORGOT, I AM RICHARD CHIER.
12 I AM CO-COUNSEL HERE. AND I GUESS IT IS YOUR TURN.

13 MS. DEEG: YES.

14 MR. CHIER: NOW, DO YOU HAVE ANY CHILDREN?

15 MS. DEEG: NO.

16 MR. CHIER: DO YOU HAVE ANY BROTHERS OR SISTERS?

17 MS. DEEG: TWO SISTERS.

18 MR. CHIER: AND DO YOU HAVE REGULAR CONTACT WITH THEM?

19 MS. DEEG: YES.

20 MR. CHIER: HOW OFTEN DO YOU SEE THEM?

21 MS. DEEG: OH, VISUALLY, NO. ONCE A YEAR VISUALLY.

22 MR. CHIER: ONCE A YEAR VISUALLY?

23 MS. DEEG: YES.

24 MR. CHIER: PERSONALLY?

25 MS. DEEG: YES.

26 MR. CHIER: AND YOUR OCCUPATION IS?

27 MS. DEEG: I AM A DAILY COMMUNICATIONS SPECIALIST AND
28 INTERNAL CLIENT SERVICES REPRESENTATIVE.

2-1
1 MR. CHIER: FOR GENERAL TELEPHONE?

2 MS. DEEG: NO, FOR USERS INC.

3 MR. CHIER: WOULD YOU TELL US A LITTLE ABOUT WHAT YOU
4 DO, MRS. DEEG?

5 MS. DEEG: YES. I DO DATA COMMUNICATIONS AND -- WELL,
6 MAYBE I SHOULD START BY SAYING WHAT MY COMPANY DOES.

7 WE PROVIDE ON LINE DATA PROCESSING SERVICE
8 STRICTLY FOR CREDIT UNIONS, SAVINGS AND LOANS OR COMMERCIAL
9 BANKS. IN OTHER WORDS, ALL OVER THE UNITED STATES --

10 MR. CHIER: YOU MEAN IF I WANTED TO GO BUY A HOUSE,
11 WHICH I DID RECENTLY, THEY DO A NUMBER OF CREDIT CHECKS?

12 MS. DEEG: NO. I AM AT THE OTHER END OF IT. I AM NOT
13 A CREDIT UNION.

14 WHAT I DO IS, I AM BEHIND THE SCENE FROM A
15 PROCESSING POINT OF VIEW.

16 IN OTHER WORDS, WHEN YOU GO INTO YOUR BANK OR
17 SAVINGS AND LOAN AS AN EXAMPLE OR CREDIT UNION OR WHATEVER
18 AND THE TELLER KEYS IN SOMETHING ON THE MACHINE AND IT DOESN'T
19 WORK, THEN I GET THE CALL.

20 MR. CHIER: ALL RIGHT. SO YOU HAVE SOMETHING TO DO
21 WITH THE MAIN FRAME COMPUTERS?

22 MS. DEEG: YES. I AM RESPONSIBLE FOR MAINTAINING THE
23 CIRCUITS, THE LONG LINE CIRCUITS.

24 MR. CHIER: OKAY. THAT IS WHAT YOUR COMPANY DOES?

25 MS. DEEG: THAT IS WHAT I DO.

26 MR. CHIER: YOU MAINTAIN THE CIRCUITS?

27 MS. DEEG: YES, STRICTLY ON THE WEST COAST.

28 MR. CHIER: SO IT IS REALLY A HIGH PRESSURE JOB? WHEN

1 STUFF GOES WRONG, IT COMES TO YOU?

2 MS. DEEG: NO, BECAUSE I AM ABLE TO ANTICIPATE OR I
3 COULD SEE A PROBLEM WHEN IT IS GOING TO OCCUR.

4 THE COURT REPORTER: PLEASE KEEP YOUR VOICE UP.

5 MS. DEEG: I CAN ANTICIPATE WHEN A PROBLEM MAY OCCUR
6 AT LEAST, WITH THE CIRCUITS INVOLVED, THE PHONE LINES INVOLVED.

7 AND I CAN GET THEM SQUARED AWAY OR RESOLVED BEFORE
8 A PROBLEM DOES CAUSE SOME DOWN TIME TO A CREDIT UNION OR TO
9 A TERMINAL.

10 MR. CHIER: AND HOW LONG HAVE YOU DONE THAT KIND OF
11 WORK?

12 MS. DEEG: ABOUT EIGHT YEARS NOW.

13 MR. CHIER: AND BEFORE THAT, DID YOU HAVE ANY KIND OF
14 A JOB, DIFFERENT KIND OF A JOB?

15 MS. DEEG: YES. FOR TEN YEARS I WAS EMPLOYED AT
16 WESTDALE SAVINGS AND LOAN ASSOCIATION. I STARTED OUT AS A
17 TELLER AND WORKED MY WAY UP TO HEAD TELLER AND VAULT TELLER
18 AND NEW ACCOUNTS CLERK AND NEW ACCOUNTS OFFICER. THEN I
19 OPENED A BRANCH IN MARINA DEL REY.

20 MR. CHIER: OF WESTDALE?

21 MS. DEEG: YES.

22 MR. CHIER: IS THAT A LOCAL SAVINGS AND LOAN?

23 MS. DEEG: IT IS NO LONGER IN BUSINESS NOW.

24 MR. CHIER: IS THAT A SAVINGS AND LOAN OR THRIFT?

25 MS. DEEG: IT WAS A SAVINGS AND LOAN.

26 MR. CHIER: OKAY. IN YOUR EDUCATIONAL BACKGROUND --
27 THAT IS WHAT?

28 MS. DEEG: I GRADUATED FROM HAMILTON HIGH SCHOOL.

1 I WENT TO SANTA MONICA COLLEGE AND COMPLETED MY EDUCATION
2 AT THE UNIVERSITY OF UPPSALA IN SWEDEN.

3 I ALSO GOT WHAT IS CALLED A GRADUATE DIPLOMA FROM
4 THE SAVINGS AND LOAN INSTITUTE.

5 MR. CHIER: YOU FINISHED COLLEGE IN SWEDEN?

6 MS. DEEG: YES, SIR.

7 MR. CHIER: I SEE. ARE YOU A NATIVE OF CALIFORNIA?

8 MS. DEEG: YES, BORN IN SANTA MONICA HOSPITAL.

9 MR. CHIER: AND MR. DEEG?

10 MS. DEEG: HE IS SELF-EMPLOYED.

11 MR. CHIER: AS WHAT?

12 MS. DEEG: HE IS IN MARKETING AND SALES OF SOFTWARE
13 FOR MICROCOMPUTERS, PC'S AND SO FORTH, IBM PC'S.

14 MR. CHIER: OKAY. DO YOU HAVE ANY HOBBIES?

15 MS. DEEG: YES. IN FACT, THAT IS WHAT LED TO MY JOB.
16 I WAS -- THAT IS, THE JOB I AM DOING NOW. I AM AN AMATEUR
17 RADIO OPERATOR.

18 MR. CHIER: OTHERWISE KNOWN AS HAM RADIO?

19 MS. DEEG: YES. THANK YOU FOR NOT SAYING CB.

20 MR. CHIER: ALL RIGHT.

21 MS. DEEG: AND SO YOU HAVE TO TAKE A TEST FOR YOUR CW.

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1 MR. CHIER: IN MORSE CODE?

2 MS. DEEG: YES, SIR, AND WHICH IS ELECTRONICS IN EFFECT.

3 MR. CHIER: HOW LONG HAVE YOU BEEN INTO AMATEUR RADIO?

4 MS. DEEG: OH, GOLLY, I DON'T KNOW, 20 YEARS, 25 YEARS.

5 MR. CHIER: DO YOU GO TO ANY OF THE D-X EXPEDITIONS?

6 MS. DEEG: A FEW FIELD DAY EXPEDITIONS.

7 MR. CHIER: DO YOU TALK TO ANY SHIPS AT SEA?

8 MS. DEEG: I MAKE BASICALLY -- I AM BASICALLY ON UHF
9 OR VHF.

10 MR. CHIER: THE SHIPS AT SEA, THAT IS, WHAT ARE THEY,
11 A SINGLE SIDE BAND TYPE OF FREQUENCY?

12 MS. DEEG: YES, THAT IS SINGLE SIDE BAND.

13 MR. CHIER: ONE WAY OR THE OTHER, I WOULD LIKE TO GET
14 BACK TO THAT BOAT. ARE YOU READY TO TAKE THE TRIP?

15 MS. DEEG: OKAY.

16 MR. CHIER: LET'S GO. WE ARE BACK ON THE USS WAPNER
17 HERE.

18 MS. DEEG: OKAY.

19 MR. CHIER: AND THE TWO GUYS GO OUT FROM THIS TRIP, THIS
20 CRUISE, AND ONLY ONE GUY COMES BACK, YOU ARE GOING TO ASSUME
21 FOR THE PURPOSE OF THE HYPOTHETICAL. YOU ARE GOING TO, LIKE,
22 DISREGARD OTHER INFORMATION THAT HAS BEEN FED INTO THE
23 EQUATION EARLIER BY MR. BARENS OR MR. WAPNER, OKAY?

24 WE ARE GOING TO START OVER.

25 MS. DEEG: ALL WE KNOW IS ONE SHIP, TWO MEN?

26 MR. CHIER: ONE SHIP, TWO MEN.

27 MS. DEEG: ONE MAN COMES BACK TO THE SHIP?

28 MR. CHIER: ONE MAN COMES BACK, THAT IS ALL YOU KNOW.

1 THERE IS A GUY GONE AND THERE IS A GUY NOT GONE.

2 NOW, THE GUY REMAINING, THE GUY WHO COMES BACK
3 TELLS A FRIEND THAT HE KILLED THE SECOND GUY, OKAY? HE PUSHED
4 HIM OVER.

5 NOW, AT THAT POINT, LET'S ASSUME THAT IS ALL OF
6 THE EVIDENCE THAT THERE IS, THE STATEMENT OF THE PERSON THAT
7 RETURNS.

8 NOW, LET'S ASSUME THAT THERE IS A PROSECUTION AND
9 THE JURY IS INSTRUCTED THAT THE CORPUS DELICTI HAS TO BE
10 PROVED BY EVIDENCE WHICH IS INDEPENDENT OF THE OUT-OF-COURT
11 STATEMENT OF THE DEFENDANT, WHO IS THE PERSON THAT RETURNED
12 ALONE.

13 DO YOU UNDERSTAND WHAT THAT MEANS WHEN I SAY THAT?
14 DID YOU UNDERSTAND WHAT THE CORPUS DELICTI IS? THAT IS
15 SEPARATE FROM THE CORPUS. CORPUS DELICTI IS JUST A LATIN
16 TERM MEANING THE BODY OF THE OFFENSE, NOT OF THE PERSON. IT
17 MEANS THE ELEMENTS, THE ELEMENTS IN A HOMICIDE CASE.

18 MS. DEEG: I UNDERSTAND.

19 MR. CHIER: FIRST, THERE WAS A DEATH OF A HUMAN BEING
20 AND, SECOND, THAT THAT DEATH WAS BROUGHT ABOUT BY A CRIMINAL
21 AGENCY, SO IN A SITUATION LIKE THAT WHERE THE ONLY EVIDENCE
22 IS THAT THE SECOND PERSON ON THE BOAT, OR THE FIRST PERSON HAS
23 SAID THAT, IS THERE A CORPUS AT THAT POINT? ASSUMING THAT THERE
24 IS NO OTHER EVIDENCE OTHER THAN THE FACT THE GUY IS GONE AND
25 HERE IS A GUY WHO IS SAYING, "I DID IT."

26 MS. DEEG: IS THERE A CORPUS DELICTI?

27 MR. CHIER: YES.

28 MS. DEEG: WELL, THAT IS THE FACTS.

1 MR. CHIER: NO.

2 THE CORPUS DELICTI -- HAVE THE PEOPLE ESTABLISHED
3 THAT A DEATH OCCURRED?

4 MS. DEEG: HAVE THE PEOPLE ESTABLISHED THAT?

5 MR. CHIER: YES.

6 THE COURT: ARE YOU ASKING HER A LEGAL QUESTION?

7 MS. DEEG: I NEED MORE FACTS.

8 MR. CHIER: NO, YOUR HONOR.

9 LET ME EXPLAIN THIS: IN SUCH A SITUATION, MRS.
10 DEEG, THE LAW REQUIRES THAT THE DEATH BE ESTABLISHED, THE
11 CORPUS DELICTI BE ESTABLISHED BY EVIDENCE OTHER THAN THE
12 STATEMENT OF THE PERSON. ALL YOU HAVE HERE IS A MISSING
13 PERSON, RIGHT?

14 MS. DEEG: SO FAR.

15 MR. CHIER: YOU DON'T HAVE A DEATH. YOU HAVE NO EVIDENCE
16 THAT A DEATH OCCURRED, RIGHT?

17 MS. DEEG: THAT'S CORRECT.

18 MR. CHIER: AND YOU NECESSARILY DON'T HAVE ANY EVIDENCE
19 THAT A DEATH OCCURRED BY CRIMINAL MEANS, RIGHT?

20 MS. DEEG: THAT'S CORRECT.

21 MR. CHIER: SO IN THAT CASE, ON THAT HYPOTHETICAL
22 SITUATION, THERE IS NO CORPUS DELICTI.

23 MS. DEEG: CORRECT.

24 MR. CHIER: NOW, DOES THAT MAKE ANY SENSE TO YOU?

25 MS. DEEG: SURE.

26 MR. CHIER: ALL RIGHT, YOU UNDERSTAND THAT THE REASON
27 THAT THEY HAVE THIS CORPUS DELICTI RULE IS TO PROTECT THE
28 DEFENDANT AGAINST THE POSSIBILITY OF FABRICATED TESTIMONY?

1 MS. DEEG: UH-HUH.

2 MR. CHIER: WHICH MIGHT WRONGFULLY ESTABLISH EITHER THE
3 CRIME OR THE PERPETRATOR.

4 FOR EXAMPLE, I THINK YOU MAY HAVE HEARD BEFORE THAT
5 AT THE PRESENT TIME THERE ARE APPROXIMATELY 55,000 MISSING
6 PEOPLE IN THE UNITED STATES, THAT IS PEOPLE WHO HAVE JUST
7 DISAPPEARED, DROPPED OUT OF SIGHT UNDER MYSTERIOUS CIRCUMSTANCES
8 AND THEY HAVE NOT BEEN HEARD FROM IN SOME AMOUNT OF TIME.

9 OKAY, THE CORPUS DELICTI RULE PROTECTS OR PREVENTS
10 PEOPLE FROM BEING ABLE TO COME FORWARD AND SAY, I DID SOMETHING
11 TO SO AND SO, WHEN THERE IS NO OTHER EVIDENCE. OKAY, THERE
12 HAS TO BE EVIDENCE OF SOME KIND.

13 SO LET US GO BACK TO OUR BOAT SITUATION, AND LET
14 US ASSUME FOR THE PURPOSES OF THIS INQUIRY THAT THERE ARE
15 ONLY -- THAT THE PROSECUTION IN AN EFFORT TO SHOW THAT THE
16 PERSON ON THE BOAT THAT DISAPPEARED DIDN'T LEAVE ON HIS OWN
17 ACCORD BUT MUST HAVE BEEN THE VICTIM OF FOUL PLAY, THE
18 PROSECUTION BRINGS IN EVIDENCE THAT JUST BEFORE HE LEFT, HE
19 BOUGHT A TELEVISION SET ON AN INSTALLMENT CONTRACT, OKAY?

20 NOW, THAT IS A CIRCUMSTANCE, RIGHT, THAT IS A
21 CIRCUMSTANCE WHICH ARGUABLY SUGGESTS THAT THE PERSON WAS
22 NOT INTENDING TO LEAVE, CORRECT?

23 MS. DEEG: IT SOUNDS REASONABLE.

24 MR. CHIER: ALL RIGHT, THAT SEEMS REASONABLE, DOESN'T
25 IT?

26 (WHEREUPON, MRS. DEEG NODS HER HEAD UP
27 AND DOWN.)

28

4A-1
1 MR. CHIER: NOW, SUPPOSE THE DEFENDANT IN THE SAME CASE
2 BRINGS IN EVIDENCE THAT JUST BEFORE THE PERSON DISAPPEARED,
3 HE REPAID HIS BROTHER A LOAN THAT HE OWED HIM. LET'S SAY
4 IT IS ABOUT \$50,000. OKAY?

5 MS. DEEG: YES.

6 MR. CHIER: LIKE A WEEK BEFORE THIS DISAPPEARANCE --

7 MS. DEEG: YES.

8 MR. CHIER: HE REPAID THE BROTHER A LOAN THAT HE
9 BORROWED FROM HIM. OKAY, THIS IS ANOTHER CIRCUMSTANCE, RIGHT?

10 MS. DEEG: YES.

11 MR. CHIER: THIS IS A CIRCUMSTANCE WHICH SUGGESTS THAT
12 PERHAPS THE PERSON WAS INTENDING TO --

13 MS. DEEG: YES.

14 MR. CHIER: -- TO LEAVE BY TIDYING UP HIS AFFAIRS IN
15 SOME RESPECT.

16 MS. DEEG: BUT YET, HE BOUGHT A TELEVISION.

17 MR. CHIER: YES. SO YOU HAVE TWO CIRCUMSTANCES HERE --

18 MS. DEEG: YES --

19 MR. CHIER: A TELEVISION CIRCUMSTANCE AND THE REPAYMENT
20 CIRCUMSTANCE. DO YOU SEE WHAT I AM SAYING?

21 MS. DEEG: YES. I SEE WHAT YOU ARE SAYING.

22 MR. CHIER: NOW, YOU HAVE HEARD DISCUSSION ABOUT THE
23 CIRCUMSTANTIAL EVIDENCE RULE AND IT IS VERY, VERY IMPORTANT
24 THAT YOU UNDERSTAND THIS.

25 MS. DEEG: YES.

26 MR. CHIER: AND THAT YOU ACCEPT THE NOTION OF THIS RULE --

27 MS. DEEG: YES --

28 MR. CHIER: -- TO BE A JUROR IN A CASE SUCH AS THIS,

4A-2
1 ALL RIGHT?

2 MS. DEEG: YES.

3 MR. CHIER: THE CIRCUMSTANTIAL EVIDENCE RULE SAYS THAT
4 IN A SITUATION WHERE --

5 MS. DEEG: YES.

6 MR. CHIER: -- THE EVIDENCE OF THE CRIME IS
7 CIRCUMSTANTIAL AND THAT THERE ARE TWO HYPOTHESES OR TWO
8 INFERENCES, EACH OF WHICH IS REASONABLE FROM THE EVIDENCE --

9 MS. DEEG: YES.

10 MR. CHIER: -- ONE WHICH IS POINTING TO GUILT AND THE
11 OTHER POINTING TO INNOCENT, THAT BECAUSE OF THIS WHOLE CONCEPT
12 THAT SO PERVADES AMERICAN JUSTICE --

13 MS. DEEG: YES.

14 MR. CHIER: -- THAT THE JURY MUST ADOPT THE HYPOTHESIS
15 POINTING TO INNOCENCE. IT IS THE BENEFIT OF THE DOUBT.

16 MS. DEEG: YES.

17 MR. CHIER: THE TIE GOES TO THE RUNNER, OVER AND OVER
18 AGAIN. IT IS VERY IMPORTANT. I CAN'T OVER-EMPHASIZE THAT --

19 THE COURT: WILL YOU ASK YOUR QUESTIONS INSTEAD OF MAKING
20 LONG, LONG STATEMENTS? WE ARE GETTING LOST IN WHAT YOU ARE
21 SAYING. ASK A SPECIFIC QUESTION IF YOU WOULD, PLEASE. DO
22 NOT MAKE AN EXPOSITION OF WHAT THE CRIMINAL LAW IS.

23 MR. CHIER: OKAY. HERE IT COMES.

24 THE COURT: ASK YOUR SPECIFIC QUESTION.

25 MR. CHIER: ALL RIGHT. NOW, IN THE SITUATION OF THE
26 HYPOTHESIS WITH THE BOAT AND THE PAYMENT OF THE BROTHER AND
27 THE PURCHASER OF THE TELEVISION SET --

28 MS. DEEG: YES.

1 MR. CHIER: -- THERE ARE TWO HYPOTHESES, RIGHT?

2 MS. DEEG: YES.

3 MR. CHIER: NOW, ONE POINTS TO INNOCENCE AND --

4 MS. DEEG: UH-HUH.

5 MR. CHIER: ONE POINTS TO GUILT.

6 MS. DEEG: YES.

7 MR. CHIER: I MEAN, ASSUMING FOR THIS --

8 MS. DEEG: AT LEAST ON THOSE FACTS THAT YOU HAVE GIVEN
9 ME.

10 MR. CHIER: ALL RIGHT. NOW, ON THOSE FACTS, YOU HAVE
11 TO DELIBERATE AND RETURN A VERDICT OF WHAT YOU ARE GOING TO
12 DO.

13 MS. DEEG: THERE IS NO PROOF THAT HE IS GUILTY.

14 MS. CHIER: WHY?

15 MS. DEEG: THERE IS NO PROOF THAT HE IS GUILTY BECAUSE
16 HE BOUGHT THE TELEVISION.

17 MR. CHIER: WELL, THE TELEVISION INDICATES THAT HE WAS --
18 YOU ARE NOW TRYING TO ESTABLISH WHETHER A MURDER OCCURRED --

19 MS. DEEG: YES.

20 MR. CHIER: OKAY. OR WHETHER THE PERSON IS NOT DEAD.
21 SO THE TELEVISION SUGGESTS THAT HE WAS INTENDING TO STAY AROUND
22 FOR A WHILE, RIGHT?

23 MS. DEEG: EXACTLY, YES.

24 MR. CHIER: NOW, REPAYMENT OF THE LOAN THAT HE OWED
25 HIS BROTHER FOR A LONG TIME, MAYBE SUGGESTED THAT HE INTENDED
26 TO TIDY UP HIS AFFAIRS.

27 MS. DEEG: MAYBE THE PURCHASE OF THE TV COULD HAVE BEEN
28 CAMOUFLAGE.

4A-4

1 MR. CHIER: OKAY. BUT THE POINT IS, THAT JUST ON THOSE
2 FACTS ALONE MRS. DEEG, DO YOU UNDERSTAND THAT THERE IS NO
3 CORPUS THAT HAS BEEN ESTABLISHED?

4 MS. DEEG: THAT'S RIGHT.

5 THE COURT REPORTER: KEEP YOUR VOICE UP, PLEASE.

6 MR. CHIER: OKAY. NOW, ANOTHER INSTRUCTION THAT YOU
7 WOULD BE GIVEN IS THAT EVIDENCE OF ANY ORAL ADMISSION OF THE
8 DEFENDANT OUGHT TO BE VIEWED WITH CAUTION.

9 MS. DEEG: NO.

10 MR. CHIER: DO YOU KNOW WHAT THAT MEANS? DO YOU
11 UNDERSTAND THAT AN ORAL ADMISSION IS A STATEMENT MADE BY A
12 DEFENDANT OUT OF COURT?

13 MS. DEEG: OKAY.

14 THE COURT: PLEASE KEEP YOUR VOICE UP.
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1 MR. CHIER: OKAY. THAT IS A STATEMENT THAT HE SAYS.
2 EITHER IT COULD BE A WORD OR IT COULD BE A SENTENCE OR A
3 PARAGRAPH OR A BUNCH OF PARAGRAPHS.

4 MS. DEEG: YES. THAT'S RIGHT.

5 MR. CHIER: THAT IS CALLED AN ADMISSION.

6 MS. DEEG: YES.

7 MR. CHIER: SOMETHING THAT HE SAYS WHICH THEN THE
8 PROSECUTION BRINGS IN AS EVIDENCE AGAINST HIM. OKAY?

9 MS. DEEG: OKAY.

10 MR. CHIER: NOW, THE COURT WILL INSTRUCT THE JURY THAT
11 EVIDENCE OF ANY ORAL ADMISSION OUGHT TO BE VIEWED WITH
12 CAUTION. NOW, AS A BASIC PROPOSITION, ARE YOU ABLE TO
13 ACCEPT THAT NOTION?

14 MS. DEEG: YES.

15 MR. CHIER: THAT DOESN'T OFFEND YOU, THAT YOU SHOULD
16 LOOK AT SUCH EVIDENCE A LITTLE MORE CAREFULLY THAN OTHER
17 EVIDENCE?

18 MS. DEEG: YES. AT A TRAFFIC SIGNAL, THEY HAVE A YELLOW
19 LIGHT.

20 MR. CHIER: WELL, DO YOU UNDERSTAND THE REASON THAT
21 THIS INSTRUCTION IS GIVEN, IS THAT THERE ARE SEVERAL REASONS?

22 FIRST, THE REASON IS THAT THAT KIND OF TESTIMONY
23 IS CONSIDERED DANGEROUS OR LESS RELIABLE. THAT IS FIRST,
24 'CAUSE THE STATEMENT COULD BE MISAPPREHENDED BY THE PERSON
25 WHO HEARS IT.

26 MS. DEEG: YES, OR MISUNDERSTOOD.

27 THE COURT: PLEASE KEEP YOUR VOICE UP.

28 MR. CHIER: THERE COULD BE A MISUNDERSTANDING. THE

1 PERSON COMES TO COURT AND SAYS THAT I HEARD X SAY SO AND SO.
2 HE COULD HAVE MISUNDERSTOOD IT, FIRST OF ALL. RIGHT?

3 MS. DEEG: YES.

4 MR. CHIER: SECOND OF ALL, HE COULD HAVE UNDERSTOOD
5 IT ALL RIGHT BUT HE MAY NOT HAVE REMEMBERED IT CORRECTLY.

6 THIRD, HE MAY HAVE HEARD IT RIGHT AND HE MAY
7 REMEMBER IT CORRECTLY BUT HE MAY NOT REPEAT IT CORRECTLY WHEN
8 HE GETS UP TO TALK ABOUT IT.

9 FOURTH, THE STATEMENT COULD BE FALSE.

10 MS. DEEG: YES.

11 MR. CHIER: IT COULD BE FALSE EITHER BY THE PERSON GIVING
12 IT BECAUSE HE MAY HAVE MADE IT UP AND ATTRIBUTED IT TO THE
13 DEFENDANT, RIGHT?

14 MS. DEEG: IT COULD BE.

15 MR. CHIER: I MEAN, THAT'S --

16 THE COURT: MRS. DEEG, IF THE COURT GIVES YOU SUCH AN
17 INSTRUCTION, WILL YOU FOLLOW THAT?

18 MS. DEEG: YES, SIR.

19 THE COURT: ORAL STATEMENTS THAT ARE MADE SHALL BE VIEWED
20 WITH CAUTION.

21 MS. DEEG: YES.

22 THE COURT: ALL RIGHT. THAT'S FINE. GET ON TO SOMETHING
23 ELSE. WILL YOU?

24 MR. CHIER: DO YOU UNDERSTAND WHY SUCH AN INSTRUCTION
25 IS NECESSARY?

26 MS. DEEG: YES.

27 MR. CHIER: WOULD YOU FOLLOW SUCH AN INSTRUCTION?

28 MS. DEEG: YES, SIR.

1 MR. CHIER: ALL RIGHT. WOULD YOU FOLLOW IT KNOWING
2 WHAT ALL OF THE REASONS ARE?

3 MS. DEEG: THAT'S CORRECT.

4 MR. CHIER: OKAY. NOW, LET ME ASK YOU THIS. LET'S
5 GO BACK TO MR. WAPNER'S HYPOTHETICAL. THERE WAS A PIECE OF
6 CHERRY PIE. THERE ARE TWO BROTHERS. THERE IS JOHNNY AND
7 LET'S CALL THE OTHER ONE FRED.

8 MS. DEEG: YES.

9 MR. CHIER: AND THERE IS A SECTION OF PIE MISSING. AND
10 JOHNNY'S MOM COMES IN AND SHE SEES THE PIE MISSING AND SHE
11 ASKS JOHNNY IF HE KNOWS WHAT HAPPENED TO THE PIE.

12 SO JOHNNY SAYS THAT HE SAW FRED'S FACE COVERED
13 WITH CHERRY PIE.

14 THE MOTHER DOESN'T ACTUALLY SEE FRED'S FACE
15 COVERED WITH CHERRY PIE. NOW, IS THAT PROOF BEYOND A
16 REASONABLE DOUBT THAT FRED ATE THE CHERRY PIE?

17 MS. DEEG: THERE IS NO PROOF THAT HE ATE THE PIE.

18 MR. CHIER: OKAY.

19 MS. DEEG: HE COULD HAVE WASHED HIS MOUTH OFF.

20 MR. CHIER: NOW, HAVE YOU EVER BEEN THE VICTIM OF A
21 CRIME?

22 MS. DEEG: NO.

23 MR. CHIER: IS ANYBODY RELATED TO YOU BY BLOOD OR
24 MARRIAGE --

25 MS. DEEG: NO.

26 MR. CHIER: DO YOU KNOW WHAT I AM GOING TO ASK?
27 IS ANYBODY RELATED TO YOU BY BLOOD OR MARRIAGE INVOLVED IN
28 LAW ENFORCEMENT OF ANY KIND?

1 MS. DEEG: NO.

2 THE COURT: YOU HAVE NEVER BEEN ON JURY DUTY BEFORE?

3 MS. DEEG: THIS IS MY FIRST TIME.

4 MR. CHIER: DO YOU WANT TO BE A JUROR IN THIS CASE?

5 MS. DEEG: YES, VERY MUCH. YES.

6 MR. CHIER: THE CASE SEEMS INTERESTING TO YOU?

7 MS. DEEG: YES. I WOULD CONSIDER IT A PLEASURE AND
8 AN HONOR.

9 MR. CHIER: YOU WOULD FOLLOW ALL OF THE INSTRUCTIONS?

10 MS. DEEG: YES, SIR.

11 MR. CHIER: YOU WOULD GIVE THE DEFENDANT THE BENEFIT
12 OF THE DOUBT?

13 MS. DEEG: I WOULD FOLLOW THE INSTRUCTIONS BY THE JUDGE.

14 MR. CHIER: YOU WOULD GIVE MR. HUNT THE BENEFIT OF ANY
15 DOUBT THAT YOU HAD?

16 MS. DEEG: YES, SIR.

17 THE COURT: NO DOUBT? REASONABLE DOUBT IS WHAT YOU
18 MEAN.

19 MS. DEEG: REASONABLE DOUBT.

20 MR. CHIER: YES.

21 MS. DEEG: IT CAN'T GO 51/49. IT HAS TO BE ZERO TO
22 100.

23 MR. CHIER: WELL, IT HAS TO BE UP THERE. IT HAS TO BE
24 WAY UP THERE. THAT IS, SO YOU KNOW IN HERE (INDICATING) YOU
25 ARE DOING THE RIGHT THING, OKAY?

26 MS. DEEG: THAT'S CORRECT.

27 MR. CHIER: NOW, WOULD YOU WANT 12 PEOPLE OF YOUR STATE
28 OF NEUTRALITY OR IMPARTIALITY TO SIT AS A JUROR IN THIS CASE,

1 IF YOU WERE THE DEFENDANT?

2 MS. DEEG: YES.

3 MR. CHIER: KNOWING HOW YOU FEEL RIGHT NOW?

4 MS. DEEG: YES, SIR.

5 MR. CHIER: YOU ARE COMPLETELY NEUTRAL?

6 MS. DEEG: YES, SIR.

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1 MR. CHIER: THANK YOU. I PASS FOR CAUSE, YOUR HONOR.

2 THE COURT: ALL RIGHT, MR. WAPNER.

3 MR. WAPNER: GOOD MORNING, MRS. DEEG.

4 MS. DEEG: GOOD MORNING.

5 MR. WAPNER: I JUST GOT SOME INSTRUCTIONS FROM THE COURT
6 REPORTER, WHO WANTS ME TO MAKE SURE THAT EITHER OF US IS
7 FINISHED TALKING BEFORE THE OTHER ONE STARTS.

8 MS. DEEG: OKAY.

9 MR. WAPNER: BECAUSE THEY CAN ONLY WRITE ONE PERSON
10 TALKING AT THE SAME TIME --

11 MS. DEEG: THANK YOU.

12 MR. WAPNER: -- OR AT ONE TIME.

13 YOU ARE WEARING A PIN, I DON'T KNOW IF IT IS JUST
14 A DECORATIVE PIN OR IT SAYS SOMETHING. I CAN'T SEE.

15 MS. DEEG: I HAVE TWO OF THEM. ONE IS THE FLAG AND ONE
16 IS A NO SMOKING PIN.

17 THE COURT: IT SHOULD BE A BIGGER SIGN.

18 (LAUGHTER IN COURTROOM.)

19 MR. WAPNER: HOW OFTEN DO YOU TALK TO YOUR SISTERS?

20 YOU SAID YOU SEE THEM ONCE A YEAR.

21 MS. DEEG: UH-HUH. PROBABLY -- WELL, THEY ARE UP IN
22 WASHINGTON. EVEN THOUGH ALL THREE OF US WERE BORN HERE IN
23 SANTA MONICA, THEY ARE UP IN THE SEATTLE AREA, ALONG WITH MY
24 PARENTS, AND I HAVE AN INCOMING 800 NUMBER, WATTS NUMBER, SO
25 THEY CALL AFTER 4:00 O'CLOCK.

26 MR. WAPNER: HOW OFTEN DO THEY CALL YOU?

27 MS. DEEG: MY SISTERS GENERALLY MAYBE, OH, ONCE A MONTH
28

1 MAYBE.

2 MR. WAPNER: DO YOU EVER CALL THEM OR DO YOU RELY ON
3 THEM TO USE THE 800 NUMBER?

4 MS. DEEG: IF I NEED TO TALK TO THEM OR I NEED SOME
5 INFORMATION FROM THEM OR SOMETHING LIKE THAT, I WILL GIVE THEIR
6 RESIDENCE A ONE RING AND THEN THEY WILL CALL ME BACK ON THE
7 800 NUMBER.

8 MR. WAPNER: OKAY, AND ARE YOUR PARENTS STILL LIVING?

9 MS. DEEG: OH, YES.

10 MR. WAPNER: HOW OFTEN DO YOU TALK TO THEM?

11 MS. DEEG: A COUPLE OF TIMES A WEEK.

12 MR. WAPNER: THAT IS ON THE 800 NUMBER, TOO?

13 MS. DEEG: YES.

14 I DON'T HAVE TO GIVE THEM MORE THAN ONE RING.

15 MR. WAPNER: IS THAT BECAUSE THEY NORMALLY CALL YOU?

16 MS. DEEG: UH-HUH.

17 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
18 OF A THEFT OR FRAUD OR ANYTHING?

19 MS. DEEG: NO, SIR.

20 MR. WAPNER: ARE YOU PLANNING TO HAVE ANY CHILDREN?

21 MS. DEEG: NO.

22 MR. WAPNER: AND AGAIN, EXCUSE ME IF THIS IS -- I DON'T
23 MEAN TO OFFEND ANYBODY BY ASKING THESE QUESTIONS OR TO PRY INTO
24 YOUR PERSONAL LIFE. IT IS JUST THINGS WE WANT TO KNOW.

25 IS THAT A CONSCIOUS DECISION THAT YOU AND YOUR
26 HUSBAND MADE NOT TO HAVE CHILDREN --

27 MS. DEEG: YES.

28 MR. WAPNER: -- OR WAS IT SOME OTHER REASON?

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1 WHAT DO YOU THINK HAPPENED TO THE PERSON ON THE
2 BOAT IN THE ORIGINAL HYPOTHETICAL?

3 MS. DEEG: THERE HAVE BEEN SEVERAL NOW. WHICH WAS THE
4 ORIGINAL?

5 MR. WAPNER: OKAY, WELL --

6 MS. DEEG: I AM SORRY.

7 MR. WAPNER: THAT IS ALL RIGHT.

8 THE TWO PEOPLE ARE THERE IN THE EVENING AND ONE
9 DECIDES TO STAY UP ON DECK. THE OTHER ONE DECIDES TO GO TO
10 SLEEP. IN THE MORNING, THE PERSON WHO WENT TO SLEEP GETS UP,
11 LOOKS AROUND THE BOAT AND THE OTHER PERSON IS NOT ON THE
12 BOAT. THE LIFE JACKETS ARE THERE. THE DINGHY IS THERE AND
13 THEY ARE OUT IN THE MIDDLE OF THE OCEAN MILES AND MILES
14 FROM ANY LAND AND THE PERSON WHO HAD BEEN ON THE BOAT IN THE
15 EVENING HAS NEVER BEEN SEEN OR HEARD FROM AGAIN.

16 MS. DEEG: I PRESUME HE DROWNED.

17 MR. WAPNER: WHY DO YOU SAY THAT?

18 MS. DEEG: THE ODDS.

19 MR. WAPNER: I AM SORRY?

20 MS. DEEG: THE ODDS. JUST A NATURAL REACTION.

21 IT COULD HAVE BEEN A LARGE WAVE THAT COULD HAVE
22 COME BY AND, YOU KNOW, TOSSED HIM OVER OR SOMETHING, WHO
23 KNOWS? I DON'T KNOW ENOUGH ABOUT IT YET.

24 MR. WAPNER: YOU HAVE NEVER BEEN ON JURY DUTY BEFORE,
25 HAVE YOU?

26 MS. DEEG: NO, SIR.

27 A JUROR: WE CAN'T HEAR HER.

28 MR. WAPNER: YOU HAVE TO KEEP YOUR VOICE UP SO THESE

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1 PEOPLE WAY OVER THERE ON THE OTHER SIDE CAN HEAR YOU.

2 MS. DEEG: OKAY.

3 THE COURT: JUST PRETEND YOU GOT MAD AT YOUR HUSBAND
4 FOR SOMETHING HE DID, OKAY?

5 MR. WAPNER: YOU ARE OBVIOUSLY VERY SOFT-SPOKEN. DO YOU
6 THINK THAT YOU WOULD HAVE TROUBLE MAKING YOUR VIEWS KNOWN TO
7 THE OTHER JURORS IN THE JURY ROOM?

8 MS. DEEG: NO, NOT AT ALL.

9 MR. WAPNER: WHEN YOU GET INVOLVED IN SERIOUS DISCUSSIONS
10 ABOUT ANY GIVEN TOPIC WITH FRIENDS OR RELATIVES, HAVE YOU EVER
11 CHANGED YOUR OPINION ONCE YOU WERE SHOWN THAT IT WAS WRONG?

12 MS. DEEG: IF I HAD MADE A MISTAKE IN MY JUDGMENT, YES,
13 I WOULD CHANGE MY MIND.

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1 MR. WAPNER: AND THE CONVERSE OF THAT IS: CAN YOU HOLD
2 FAST TO YOUR OPINION IF YOU ARE CONVINCED IT IS RIGHT?

3 MS. DEEG: YES, SIR, IF THAT WAS --

4 MR. CHIER: DO YOU HAVE ANY HOBBIES BESIDES THE HAM
5 RADIO?

6 MS. DEEG: I LOVE TO READ. GARDENING.

7 MR. WAPNER: WHAT KIND OF THINGS DO YOU READ?

8 MS. DEEG: PRIMARILY NOVELS OR AUTOBIOGRAPHIES, LIKE
9 RIGHT NOW THE ONE THAT I HAPPEN TO BE READING IS "FLAME
10 TREES OF THICA," BY ELSA BATH HUXLEY. PART OF HER CHILDHOOD
11 WAS SPENT IN KENYA.

12 MR. WAPNER: IN KENYA?

13 MS. DEEG: YES, WHERE SHE LIVED WITH HER PARENTS.

14 MR. WAPNER: DO YOU READ A LOT?

15 MS. DEEG: YES.

16 MR. WAPNER: IF THE JUDGE TELLS YOU WHEN HE GIVES YOU
17 THE INSTRUCTIONS THAT THERE MUST BE SOME EVIDENCE OF EACH
18 ELEMENT OF THE OFFENSE, THE ELEMENTS BEING INDEPENDENT OF THE CORPUS
19 DELICTI, INDEPENDENT OF ANY ADMISSION OR CONFESSION, CAN YOU FOLLOW THAT?

20 MS. DEEG: YES, SIR.

21 MR. WAPNER: AND THAT IF, WHEN HE GIVES YOU THAT
22 INSTRUCTION THAT THERE MUST BE SOME EVIDENCE OF EACH ELEMENT
23 OF THE OFFENSE INDEPENDENT OF THE CORPUS DELICTI, THAT INCLUDES
24 THE FACT THAT ONCE YOU HAVE SOME INDEPENDENT EVIDENCE OF EACH
25 ELEMENT, THAT YOU COULD TAKE A PERSON'S STATEMENT AND ADD IT
26 TO THAT EVIDENCE TO DETERMINE WHETHER THERE WAS A CORPUS
27 DELICTI, CAN YOU FOLLOW THAT, TOO?

28 MS. DEEG: I WOULD FOLLOW THAT INSTRUCTION.

1 MR. WAPNER: IF IN A CASE SUCH AS THE ONE THAT YOU HAVE
2 HEARD ABOUT SO FAR, IF MR. CHIER OR MR. BARENS STANDS UP IN
3 THEIR ARGUMENT AND IN A RATHER DRAMATIC FASHION SAYS TO YOU
4 "WELL, WHAT HAPPENS IF RON LEVIN WALKS THROUGH THAT DOOR RIGHT
5 NOW," DO YOU THINK YOU WOULD LOOK?

6 I AM NOT ASKING YOU IF YOU KNOW WHAT THE EVIDENCE
7 IS.

8 MS. DEEG: NO.

9 MR. BARENS: I AM GOING TO OBJECT TO THE QUESTION, UNTIL
10 WE KNOW THE LIKELIHOOD OF MR. LEVIN APPEARING. I THINK WE WILL
11 HAVE TO DETERMINE THAT AT A LATER TIME.

12 THE COURT: I WILL SUSTAIN THE OBJECTION.

13 MR. BARENS: IT IS INAPPROPRIATE.

14 MR. WAPNER: DO YOU UNDERSTAND THAT WHAT THE ATTORNEYS
15 SAY NOW, THE QUESTIONS THAT WE ASK AND THE ARGUMENT THAT WE
16 MAKE IS NOT EVIDENCE IN THE CASE?

17 MS. DEEG: YES, SIR.

18 MR. WAPNER: THAT THE EVIDENCE COMES FROM THE WITNESS
19 STAND?

20 MS. DEEG: THAT IS CORRECT.

21 MR. WAPNER: IN THE EXAMPLE THAT MR. CHIER GAVE YOU WHEN
22 HE CHANGED AROUND MY CHERRY PIE EXAMPLE THAT EVERYBODY LIKED
23 SO MUCH.

24 MS. DEEG: HE BROUGHT IN MY HUSBAND.

25 MR. WAPNER: HE BROUGHT IN YOUR HUSBAND?

26 MS. DEEG: HIS NAME IS FRED.

27 MR. WAPNER: MR. CHIER.

28 (LAUGHTER IN COURTROOM.)

1 MS. DEEG: HE ATE THE CHERRY PIE.

2 MR. WAPNER: THAT EXAMPLE THAT HE GAVE YOU ABOUT THE
3 CHERRY PIE, HE CHANGED THAT INTO DIRECT EVIDENCE, DIDN'T HE?

4 MS. DEEG: YES, SIR.

5 MR. WAPNER: SO THAT THE EVIDENCE THAT HE WAS GIVING YOU
6 WAS THAT JOHNNY SAYS, "I SAW FRED EAT THE PIE," RIGHT?

7 MS. DEEG: YES.

8 MR. WAPNER: THAT IS DIRECT EVIDENCE, RIGHT?

9 MS. DEEG: YES, SIR.

10 MR. WAPNER: IN THAT CASE AND IN THE EXAMPLE THAT HE GAVE
11 YOU, YOU HAVE GOT THE TWO KIDS STANDING THERE AND THEY ARE
12 BOTH COMPLETELY CLEAN, AND WOULD YOU WANT TO KNOW SOME MORE
13 INFORMATION BEFORE YOU COULD MAKE A DECISION?

14 MS. DEEG: YES, DEFINITELY.

15 MR. WAPNER: YOU SAID THERE WAS NO EVIDENCE IN THAT CASE.

16 MS. DEEG: I SAID HE PROBABLY WIPED HIS MOUTH OFF OR
17 WASHED HIS FACE. IF HE HADN'T, THE CHERRY PIE WOULD HAVE
18 REMAINED ON HIS FACE.

19 MR. WAPNER: OKAY, SO YOU WANT TO KNOW SOME MORE FACTS,
20 WOULDN'T YOU?

21 MS. DEEG: YES.

22 MR. WAPNER: YOU WOULD WANT TO KNOW WHO WAS IN THE HOUSE,
23 FOR EXAMPLE?

24 MS. DEEG: YES, SIR.

25 MR. WAPNER: IF IT WAS JUST THE MOTHER AND THE TWO BOYS
26 IN THE HOUSE, COULD YOU KIND OF START NARROWING THINGS DOWN?

27 MS. DEEG: YES, SIR.

28 MR. WAPNER: AND YOU MIGHT WANT TO KNOW, FOR EXAMPLE,

1 IF THERE WAS A TOWEL IN THE BATHROOM THAT HAD CHERRY PIE ALL
2 OVER IT?

3 MS. DEEG: YES, SIR, OR IF HE USED A PAPER TOWEL.
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1 MR. WAPNER: HE COULD HAVE USED A PAPER TOWEL?

2 MS. DEEG: AND GOTTEN RID OF IT.

3 MR. WAPNER: OKAY. YOU MIGHT WANT TO KNOW WHETHER THE
4 PERSON WHO IS BEING ACCUSED OF EATING THE PIE IS LIKE YOUR
5 HUSBAND, SOMEONE WHO IS LIKELY TO HAVE EATEN THE PIE?

6 MS. DEEG: YES.

7 MR. WAPNER: OKAY. SO IF MOM KNOWS FRED IS USUALLY
8 EATING PIECES OF PIE AND JOHNNY SAYS THAT FRED ATE THE PIE,
9 IT WOULD BE A CIRCUMSTANCE THAT MIGHT TEND TO INDICATE THAT
10 JOHNNY WAS TELLING THE TRUTH?

11 MS. DEEG: YES, SIR. YES.

12 MR. WAPNER: OKAY. YOU DON'T EXPECT THAT A MURDER CASE
13 IS GOING TO END UP BEING ABOUT CHERRY PIES, DO YOU?

14 MS. DEEG: I DOUBT IT VERY MUCH.

15 MR. WAPNER: YOU MENTIONED IN ANSWER TO MR. CHIER'S
16 QUESTION ABOUT REASONABLE DOUBT, THAT IT HAS TO BE ZERO TO
17 100 PERCENT.

18 WHAT DID YOU MEAN BY THAT?

19 MS. DEEG: VERSUS 49 TO 51. I MEAN, THE SCALES HAVE
20 TO BE TIPPED MUCH GREATER.

21 MR. WAPNER: OKAY. YOU UNDERSTAND THAT NOBODY CAN PUT
22 A NUMBER ON REASONABLE DOUBT?

23 MS. DEEG: THAT'S CORRECT. YES.

24 MR. WAPNER: AND WHAT IS REASONABLE IN YOUR MIND, MIGHT
25 NOT BE REASONABLE TO THE PERSON SITTING NEXT TO YOU?

26 MS. DEEG: THAT'S CORRECT.

27 MR. WAPNER: OKAY. CAN YOU SEPARATE IN YOUR MIND WHAT
28 YOU THINK IS REASONABLE FROM WHAT YOU THINK IS POSSIBLE?

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1 MS. DEEG: YES.

2 MR. WAPNER: OKAY. SO WITH THE GUY FALLING OUT OF THE
3 BOAT IN THE MIDDLE OF THE OCEAN FOR EXAMPLE, YOU CAN THINK
4 OF LOTS OF POSSIBLE THINGS THAT COULD HAPPEN INCLUDING A
5 GIGANTIC PORPOISE SWAM BY AND HE GRABBED ONTO HIS FIN AND
6 IT TOOK HIM ALL OF THE WAY TO HAWAII, FOR EXAMPLE?

7 MS. DEEG: POSSIBLY.

8 MS. WAPNER: OKAY. WHEN THE COMPUTER -- ONE OF THE
9 COMPUTERS THAT YOU DEAL WITH BREAKS DOWN AND YOU GET A CALL,
10 WHAT DO YOU DO TO TRY TO DETERMINE WHAT THE PROBLEM IS?

11 MS. DEEG: NUMBER ONE, I OBTAIN THE FACTS. AGAIN, IT
12 IS ALL CIRCUMSTANTIAL BECAUSE I AM NOT WHERE IT IS LOCATED.

13 MR. WAPNER: OKAY.

14 MS. DEEG: I AM GETTING THIS ON THE PHONE. THERE ARE
15 CERTAIN INDICATIONS AND CERTAIN LIGHTS IF YOU WILL. AND I
16 ASK THE TELLER OR THE CUSTOMER OR WHATEVER TO LOOK ON THEIR
17 MODUM AND SO FORTH, TO DETERMINE WHAT AVENUE I SHOULD PROCEED.

18 MR. WAPNER: DOES IT HAPPEN SOMETIMES THAT YOU GET
19 CERTAIN INFORMATION, YOU GO UP ONE AVENUE AND YOU RUN INTO
20 A DEAD END AND THEN YOU HAVE TO GO BACK TO SQUARE ONE AND
21 THEN --

22 MS. DEEG: FORTUNATELY WITH MY EXPERIENCE, I KNOW NINE
23 TIMES OUT OF TEN I KNOW WHETHER IT IS A TERMINAL PROBLEM OR
24 A LINE PROBLEM.

25 MR. WAPNER: YOU GET IT RIGHT THE FIRST TIME MOST OF
26 THE TIME?

27 MS. DEEG: YES. AS AN EXAMPLE, ONE OF THE FIRST DAYS
28 WE WERE CALLED INTO COURT HERE, DURING THE LUNCH BREAK, I

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1 HAD TO CALL THE OFFICE.

2 ONE OF THE CIRCUITS HAD BEEN DOWN ALL MORNING.
3 AND SO, I ASKED THE GIRL WHO WAS TAKING OVER FOR ME -- I ASKED
4 HER WHAT LAMPS WERE LIT ON THE MULTIPLEX.

5 I ASKED IF SHE HAPPENED TO HAVE FIVE CHANNEL READY
6 GUARDS OR LAMPS LIT. SHE SAID NO, THAT IT WAS ONLY FOUR.

7 I SAID THAT THE PROBLEM WAS NOT WITH THE PHONE
8 COMPANY. THE PROBLEM IS WHERE THE HEADQUARTERS ARE LOCATED.
9 THEY HAD A CABLE LOOSE.

10 BUT YET, I WAS NOT IN TORRANCE AT MY OFFICE NOR
11 WAS I IN VALLEY FORGE. I WAS HERE IN SANTA MONICA DOING IT
12 ON THE PHONE.

13 MR. WAPNER: SO, BASED ON YOUR EXPERIENCE IN GETTING
14 FACTS THAT YOU GOT, YOU COULD INFER WHAT THE PROBLEM WAS?

15 MS. DEEGS: YES, SIR. AND THEY HAD BEEN DOWN ALL MORNING.
16 THEY WERE BACK UP IN 20 MINUTES.

5B F 17 MR. WAPNER: I DON'T THINK THEY WANT YOU ON JURY DUTY,
18 DO THEY?

19 MS. DEEGS: YES. WELL, THE HEADQUARTERS, YES. THEY
20 ARE ALL IN FAVOR OF IT.

21 MR. WAPNER: OKAY. THANK YOU. I WILL PASS FOR CAUSE,
22 YOUR HONOR.

23 THE COURT: IT IS THE PEOPLE'S PEREMPTORY.

24 MR. WAPNER: WE THANK AND ASK THE COURT TO EXCUSE
25 MR. CRAWFORD, JUROR NUMBER 11.

26 THE COURT: THANK YOU, MR. CRAWFORD.

27 (PROSPECTIVE JUROR CRAWFORD EXITED
28 THE COURTROOM.)

-4
1 MR. BARENS: YOUR HONOR, THE DEFENSE WISHES TO --

2 THE COURT: WILL YOU PLEASE?

3 MR. BARENS: THANK YOU.

4 THE CLERK: WILLIE HUBBARD, H-U-B-B-A-R-D.

5 THE COURT: MR. HUBBARD, ARE YOU PREPARED FOR THE
6 QUESTIONS I AM GOING TO ASK YOU, AREN'T YOU?

7 MR. HUBBARD: YES.

8 THE COURT: IF THE SAME QUESTIONS WERE ASKED OF YOU,
9 WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY BE
10 SUBSTANTIALLY THE SAME?

11 MR. HUBBARD: SUBSTANTIALLY THE SAME.

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

2 MR. HUBBARD: I AM AN ELECTRICAL ENGINEER FOR SOUTHERN
3 CALIFORNIA EDISON.

4 THE COURT: HOW LONG HAVE YOU WORKED THERE?

5 MR. HUBBARD: SEVENTEEN YEARS.

6 THE COURT: NINETEEN YEARS?

7 MR. HUBBARD: SEVENTEEN YEARS.

8 THE COURT: TELL US A LITTLE BIT ABOUT WHAT THE JOB
9 ENTAILS?

10 MR. HUBBARD: EDISON GENERATES POWER AT ABOUT -- THEY
11 BOOST IT UP TO 500,000 VOLTS AND THEY HAVE SUBSTATIONS THAT
12 REDUCE IT BACK DOWN TO CUSTOMER USE. THESE SUBSTATIONS, I
13 HELP DESIGN.

14 THE COURT: I SEE. I AM PROFOUNDLY IGNORANT OF
15 ELECTRICITY OR HOW IT FUNCTIONS. SO, I AM SATISFIED WITH
16 YOUR ANSWER AT THIS POINT.

17 IS THERE A MRS. HUBBARD?

18 MR. HUBBARD: YES.

19 THE COURT: DOES SHE HAVE EMPLOYMENT?

20 MR. HUBBARD: NO. SHE IS A STUDENT AT SOUTHWEST COLLEGE.

21 THE COURT: WHERE?

22 MR. HUBBARD: SOUTHWEST COLLEGE.

23 THE COURT: SOUTHWEST? WHERE IS THAT LOCATED?

24 MR. HUBBARD: IMPERIAL AND WESTERN. SHE IS IN A NURSING
25 PROGRAM.

26 THE COURT: AND TELL US ABOUT YOUR EDUCATIONAL BACKGROUND
27 IF YOU WILL, PLEASE.

28 MR. HUBBARD: I HAVE A BACHELOR OF SCIENCE DEGREE IN

1 ELECTRICAL ENGINEERING FROM HOWARD UNIVERSITY IN WASHINGTON,
2 D.C.

3 THE COURT: BACK EAST, ISN'T IT?

4 MR. HUBBARD: UH-HUH.

5 THE COURT: AND MRS. HUBBARD, DOES SHE HAVE ANY
6 DEGREES?

7 MR. HUBBARD: NO. SHE HAS A HIGH SCHOOL DIPLOMA.

8 THE COURT: I SEE. WHERE DO YOU LIVE, SIR?

9 MR. HUBBARD: IN LOS ANGELES.

10 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
11 OF A CRIME OR A MEMBER OF YOUR FAMILY OR CLOSE PERSONAL FRIEND?

12 MR. HUBBARD: NO. A LITTLE, MINOR THING. I HAD A BATTERY
13 STOLEN OUT OF MY CAR. NOTHING MUCH.

14 THE COURT: YOU DON'T KNOW ANYBODY CLOSE TO YOU THAT
15 IS IN LAW ENFORCEMENT OF ANY KIND?

16 MR. HUBBARD: NO.

17 THE COURT: ALL RIGHT, SIR.

18 MR. BARENS: JUST ONE MOMENT, YOUR HONOR.

19 (PAUSE.)

20 MR. BARENS: GOOD MORNING, MR. HUBBARD.

21 MR. HUBBARD, I WANTED TO ADDRESS SOMETHING
22 MR. WAPNER LEFT OFF ON. IF I WERE TO ASK YOU THAT YOU KNOW,
23 THE ALLEGED VICTIM IN THIS CASE IS A GUY NAMED RON LEVIN.
24 THERE IS AN OLD LAWYER'S TRICK, ONE OF THE OLD LAWYER TRICKS
25 THAT --

26 MR. WAPNER: IF THIS IS MR. LEVIN COMING THROUGH THE
27 DOOR, THERE WAS AN OBJECTION WHEN I ASKED IT. THIS IS THE
28 OPPOSITE SIDE OF THE COIN.

1 THE COURT: ALL RIGHT. I DIDN'T HEAR THE QUESTION.

2 MR. BARENS: I AM GETTING TO THE QUESTION. I WANT TO
3 KNOW IF -- WELL, I WOULD LIKE TO LAY A FOUNDATION FOR MY
4 QUESTION AND ASK THE QUESTION BEFORE HE OBJECTS.

5 THE COURT: WELL, ASK THE QUESTION.

6 MR. BARENS: WELL, I HAVE TO LAY A FOUNDATION FOR THE
7 QUESTION.

8 THE COURT: WELL, ASK THE QUESTION.

9 MR. BARENS: ONE OF THE OLD LAWYER TRICKS I WANT TO
10 SEE IF YOU UNDERSTAND ABOUT REASONABLE DOUBT -- ONE OF THE
11 LAWYERS' TRICKS THEY USED TO DO IS THAT IN A CASE THEY WOULD
12 SAY WELL, IF I TOLD YOU THAT MR. LEVIN WAS GOING TO WALK THROUGH
13 THE DOOR NOW, WHAT DO YOU THINK? IS MR. LEVIN WALKING THROUGH
14 THE DOOR? ALL OF THE JURORS WOULD TURN THEIR HEADS.

15 THEN THE LAWYER SAYS THAT THAT IS A REASONABLE
16 DOUBT. YOU HAVE GOT A REASONABLE DOUBT IN YOUR MIND, BECAUSE
17 YOU ALL TURNED.

18 DO YOU UNDERSTAND THAT THE DEFENSE IS NOT TRYING
19 TO CREATE THAT KIND OF TRICK IN YOUR MIND HERE? WE ARE TALKING
20 ABOUT REASONABLE DOUBT. WE ARE ASKING YOU TO WEIGH THE
21 EVIDENCE THAT YOU SEE IN THE COURTROOM, NOT WHETHER YOU SEE
22 SOMEBODY WALKING IN AND OUT OF A DOOR.

23 IT IS THE EVIDENCE THAT YOU SEE FROM THE JURY
24 BOX. IT IS WHAT IS SHOWN AND WHAT IS NOT SHOWN.

25 IT IS NOT A TRICK OR AN ILLUSION. DO YOU UNDER-
26 STAND WHAT I MEAN?

27 MR. HUBBARD: YES, SIR.

28 MR. BARENS: REASONABLE DOUBT IS SOMETHING SUBSTANTIAL.

1 IT IS NOT THAT KIND OF A DOUBT WHERE I CAN GET YOU TO TURN
2 YOUR HEAD AND LOOK FOR SOMEONE WHO MAY OR MAY NOT BE THERE.

3 DO YOU UNDERSTAND THAT IF IT IS A CLOSE CALL ABOUT
4 REASONABLE DOUBT, THAT THE LAW IS THAT IT IS RESOLVED IN FAVOR
5 OF THE DEFENDANT?

6 MR. HUBBARD: I UNDERSTAND.

7 MR. BARENS: AND DO YOU FURTHER UNDERSTAND THAT IN
8 ESTABLISHING REASONABLE DOUBT, THAT IS A DECISION SOLELY YOU
9 WOULD MAKE?

10 MR. HUBBARD: YES, SIR.

11 MR. BARENS: WHAT IS REASONABLE TO YOU IS NOT NECESSARILY
12 THE CASE WITH ANYBODY ELSE IN THE JURY BOX.

13 MR. HUBBARD: YES.

14 MR. BARENS: NOW, EACH SIDE -- ALL THAT EACH SIDE CAN
15 DO IN PRESENTING A CASE IS GIVE YOU POSSIBILITIES. YOU
16 DETERMINE WHAT IS A REASONABLE POSSIBILITY.

17 YOU UNDERSTAND THAT THE PROSECUTION, THE GOVERNMENT,
18 HAS ONE REASONABLE POSSIBILITY IN MIND THAT THEY WILL ACCEPT.
19 THEY ARE SAYING HE IS DEAD.

20 THEY HAVE TOLD YOU THEIR POSSIBILITY OFF THE BAT.
21 THE DEFENSE IS SAYING TO YOU THAT WE DON'T KNOW WHAT HAPPENED
22 TO MR. LEVIN. DO YOU UNDERSTAND THAT THE DEFENDANT DOES NOT
23 HAVE ANY OBLIGATION TO PROVE SOMETHING, WHEN THE DEFENDANT
24 DOES NOT HAVE THE SAME CONVICTION ABOUT WHAT HAPPENED THAT
25 THE GOVERNMENT DOES?

26 MR. HUBBARD: I UNDERSTAND.

27 MR. BARENS: THEY ARE GOING TO TRY TO SAY TO YOU THAT
28 WE KNOW WHAT HAPPENED AND WHY HE IS NOT HERE. DO YOU

1 UNDERSTAND THAT IF THE DEFENDANT IS SAYING THAT HE DOESN'T
2 KNOW WHAT HAPPENED, THAT THAT IS AN ACCEPTABLE RESPONSE, THAT
3 THE DEFENDANT DOESN'T HAVE TO PROVE -- DOESN'T HAVE ANY PROOF
4 OBLIGATION AT THAT POINT?

5 MR. HUBBARD: I UNDERSTAND, YES.

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1 MR. BARENS: WHAT DO YOU LIKE TO DO IN YOUR SPARE TIME?

2 MR. HUBBARD: I HAVE A CAMPER, I GO CAMPING SOMETIMES
3 AND FISH AND READ.

4 MR. BARENS: YOU LIKE TO READ, SIR?

5 MR. HUBBARD: UH-HUH.

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

7 MR. HUBBARD: THE BIBLE.

8 MR. BARENS: THE BIBLE?

9 MR. HUBBARD: UH-HUH.

10 MR. BARENS: AND IS THAT SOMETHING YOU READ OFTEN?

11 MR. HUBBARD: UH-HUH.

12 MR. BARENS: OTHER THAN THE BIBLE, CAN YOU REMEMBER THE
13 OTHER LAST PIECE OF READING YOU DID, WHETHER IT WAS A MAGAZINE
14 OR BOOKS?

15 MR. HUBBARD: MAGAZINE.

16 MR. BARENS: DO YOU KNOW WHAT MAGAZINE IT WAS?

17 MR. HUBBARD: IT WAS EITHER NEWSWEEK OR THE TIMES.

18 MR. BARENS: JUST GENERAL CURRENT EVENTS?

19 MR. HUBBARD: UH-HUH.

20 MR. BARENS: DO YOU GO TO THE MOVIES AT ALL?

21 MR. HUBBARD: ONCE IN A WHILE. IT HAS BEEN ABOUT A YEAR
22 AGO.

23 MR. BARENS: YOU HAVEN'T BEEN FOR A YEAR OR SO?

24 MR. HUBBARD: YES.

25 MR. BARENS: WOULD YOU RATHER SPEND YOUR FREE TIME DOING
26 SOMETHING THAN WATCHING SOMETHING?

27 MR. HUBBARD: YES.

28 MR. BARENS: DID YOUR WIFE EVER WORK?

7-2

1 MR. HUBBARD: NO.

2 MR. BARENS: SHE HAS BEEN A HOUSEWIFE SINCE YOU HAVE BEEN
3 MARRIED?

4 MR. HUBBARD: UF-HUH.

5 MR. BARENS: AND THIS IS YOUR ONLY MARRIAGE?

6 MR. HUBBARD: YES, SIR.

7 MR. BARENS: DID YOU HAVE ANY EMPLOYMENT PRIOR TO YOUR
8 ENGINEERING ACTIVITY?

9 MR. HUBBARD: YES, I --

10 WELL, PRIOR TO -- AFTER I GOT A DEGREE, I WORKED
11 FOR NORTH AMERICAN AVIATION AT THE TIME FOR TWO YEARS BEFORE
12 I WENT TO SOUTHERN CALIFORNIA EDISON.

13 MR. BARENS: AND YOU WORKED IN THE CAPACITY OF AN
14 ENGINEER THERE?

15 MR. HUBBARD: YES.

16 MR. BARENS: WHAT TYPE OF ENGINEERING DID YOU DO THERE?

17 MR. HUBBARD: I WAS A TEST ENGINEER AND FIELD ENGINEER.

18 MR. BARENS: IN YOUR ACTIVITIES AS AN ENGINEER, YOU
19 ARE LOOKING FOR VERY SPECIFIC AND PRECISE ANSWERS IN THE
20 WORK YOU DO, AREN'T YOU?

21 MR. HUBBARD: THAT'S CORRECT.

22 MR. BARENS: AND YOU ARE LOOKING FOR ANSWERS THAT SOME-
23 TIMES ARE VERY PREDICTABLE?

24 MR. HUBBARD: THAT'S CORRECT.

25 MR. BARENS: AND SOLUTIONS THAT GIVE YOU PREDICTABLE
26 RESULTS?

27 MR. HUBBARD: THAT'S RIGHT.

28 MR. BARENS: DO YOU UNDERSTAND THAT IN THIS TYPE OF A

7-3
1 CASE, IT IS NOT THAT TYPE OF EXERCISE?

2 MR. HUBBARD: I UNDERSTAND.

3 MR. BARENS: THERE IS NOTHING THAT DEFINITIVE THAT CAN
4 BE DEMONSTRATED FOR YOU IN THIS SETTING THAT WOULD APPROXIMATE
5 THE RESULTS YOU GET IN DOING EQUATIONS AND LOGICAL
6 EVALUATIONS THAT YOU DO AS AN ENGINEER. THIS IS A LESS
7 PRECISE SCIENCE, IF IT BE A SCIENCE AT ALL.

8 MR. HUBBARD: UH-HUH.

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

11 MR. HUBBARD: NO.

12 I BELONG TO CHURCH BUT THAT IS ALL.

13 MR. BARENS: DO YOU PERFORM ANY FUNCTION IN THE CHURCH
14 OTHER THAN AS A PARISHIONER?

15 MR. HUBBARD: NO -- I TEACH SUNDAY SCHOOL.

16 MR. BARENS: WHAT ABOUT THIS BILLIONAIRE BOYS CLUB
17 BUSINESS, DOES THAT GIVE YOU ANY SORT OF AN IMPLICATION THAT
18 THERE MIGHT BE SOMETHING SUSPECT ABOUT A MEMBER?

19 MR. HUBBARD: NO.

20 MR. BARENS: HOW DO YOU FEEL ABOUT THE WORTHWHILENESS
21 OF SOMEONE WHO MIGHT BE AN AGNOSTIC?

22 MR. HUBBARD: HE IS WHAT HE WANTS TO BE. THAT DOESN'T
23 BOTHER ME AT ALL.

24 MR. BARENS: DO YOU THINK A LACK OF CHRISTIAN
25 THEOLOGICAL BELIEF OR SUBSCRIPTION WOULD HAVE A BEARING ON
26 WHETHER OR NOT THAT PERSON WAS LIKELY TO TELL THE TRUTH?

27 MR. HUBBARD: NO.

28 MR. BARENS: COULD YOU ACCEPT THE FACT THAT AN AGNOSTIC

-4
1 COULD TELL THE TRUTH?

2 MR. HUBBARD: RIGHT. ANYBODY CAN TELL THE TRUTH.

3 MR. BARENS: WOULD YOU ALSO ACCEPT THE FACT THAT I AM
4 NOT TELLING YOU MR. HUNT IS AN AGNOSTIC?

5 MR. HUBBARD: OKAY.

6 MR. BARENS: I AM SIMPLY ASKING YOU A QUESTION.

7 MR. HUBBARD: UH-HUH.

8 MR. BARENS: HAVE YOU TAKEN ANY CLASSES IN PHILOSOPHY?

9 MR. HUBBARD: NO. JUST GENERAL READING.
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1 MR. BARENS: WHAT HAVE YOU READ ABOUT PHILOSOPHY, SIR?

2 MR. HUBBARD: I DON'T KNOW, THE ONE I CAN REMEMBER IS
3 SOCRATES.

4 MR. BARENS: ANOTHER FELLOW WHO COULD HAVE BEEN AN
5 ENGINEER, MADE PRETTY SPECIFIC FINDINGS ABOUT HIS UNIVERSE.

6 MR. HUBBARD: I DON'T KNOW ABOUT HIM. I DON'T THINK HE
7 WOULD HAVE MADE A GOOD ENGINEER.

8 MR. BARENS: DO YOU READ ANY MORE RECENT PHILOSOPHERS,
9 FOR INSTANCE, THE FRENCH PHILOSOPHER SARTRE?

10 MR. HUBBARD: NO.

11 MR. BARENS: OR CAMUS?

12 MR. HUBBARD: NO.

13 MR. BARENS: THE EXPRESSION PARADOX PHILOSOPHY DOESN'T
14 RING ANY BELLS WITH YOU?

15 MR. HUBBARD: I HAVE A GENERAL IDEA OF WHAT PARADOX MEANS,
16 BUT PARADOX PHILOSOPHY, I HAVE NO IDEA WHAT THAT MEANS.

17 MR. BARENS: WHAT WOULD THE WORD PARADOX MEAN TO YOU,
18 SIR?

19 MR. HUBBARD: TRUTH OF TWO SIDES OR A LIE, TWO SIDES,
20 OR WHATEVER.

21 MR. BARENS: COULD IT MEAN THAT TRUTH OR FALSITY ARE
22 SOMEWHAT RELATIVE TO THE BEHOLDER, AS IS BEAUTY?

23 MR. HUBBARD: TRUE.

24 MR. BARENS: AND WOULDN'T IT BE APPLICABLE TO YOUR
25 INTERPRETATION OF WHAT IS REASONABLE AS WELL?

26 MR. HUBBARD: THAT IS TRUE.

27 MR. BARENS: WHAT IS REASONABLE TO ONE PERSON MIGHT NOT
28 NECESSARILY BE REASONABLE TO YOU?

1 MR. HUBBARD: RIGHT.

2 MR. BARENS: LET ALONE HOW WE DETERMINE THE DIFFERENCE
3 BETWEEN A POSSIBILITY AND WHAT IS REASONABLE.

4 AND DO YOU UNDERSTAND THAT THAT IS A DECISION
5 THAT YOU ARE GOING TO MAKE?

6 MR. HUBBARD: THAT'S TRUE.

7 MR. BARENS: BOTH SIDES MAY BE EQUALLY CONVINCED IN
8 THEIR OWN MINDS ABOUT WHAT IS REASONABLE AND WHAT IS POSSIBLE
9 BUT YOU ARE THE ONLY ONE THAT CAN DECIDE THAT.

10 MR. HUBBARD: THAT IS TRUE.

11 MR. BARENS: AND THAT IS NOT SOMETHING WE TELL YOU.

12 MR. HUBBARD: THAT IS TRUE.

13 MR. BARENS: WOULD YOU LIKE TO BE A JUROR ON THIS CASE?

14 MR. HUBBARD: YES AND NO.

15 YES, BECAUSE THE CASE IS INTERESTING, AND NO BECAUSE
16 THE OPINION ON WHAT DECISION THE JURY MAKES DEPENDS ON WHAT
17 HAPPENS TO THIS FELLOW FOR THE REST OF HIS LIFE.

18 MR. BARENS: WELL, CAN YOU CONSIDER THAT AS A CITIZEN
19 OF THE UNITED STATES, THAT UNDER THE CIRCUMSTANCES, MAKING
20 THAT DECISION, IF YOU ARE A JUROR ON THIS CASE, IS PART OF YOUR
21 ROLE AS A PARTICIPANT IN OUR GOVERNMENT?

22 MR. HUBBARD: RIGHT, I UNDERSTAND THAT.

23 MR. BARENS: NOT ALL OF THE TIME DO WE GET TO DO WHAT
24 WE WOULD LIKE TO DO AND, CERTAINLY, MAKING HARD DECISIONS
25 ABOUT SOMEONE ELSE OTHER THAN OURSELVES IS VERY DIFFICULT
26 SOMETIMES, COULD YOU DO THAT?

27 MR. HUBBARD: YES.

28 MR. BARENS: AND YOU UNDERSTAND WHEN THE JURY MAKES A

1 DECISION, IT IS YOU THAT MAKES A DECISION?

2 MR. HUBBARD: THAT IS TRUE.

3 MR. BARENS: ALL RIGHT, IT TAKES EVERY ONE OF YOU IN
4 YOUR VOTE WHICH IS AS SIGNIFICANT AS EVERYBODY ELSE'S; DO YOU
5 UNDERSTAND THAT?

6 MR. HUBBARD: YES, I DO.

7 MR. BARENS: WOULD YOU BE ABLE TO STICK BY YOUR OWN
8 OPINION AND NOT BE INFLUENCED BY OTHERS, OTHER THAN
9 CONSIDERING OTHERS' OPINIONS?

10 MR. HUBBARD: THAT'S RIGHT.

11 MR. BARENS: THANK YOU.

12 YOUR HONOR, PASS FOR CAUSE.

13 THE COURT: ALL RIGHT, MR. WAPNER.

14 MR. WAPNER: THANK YOU.

15 GOOD MORNING, MR. HUBBARD.

16 MR. HUBBARD: GOOD MORNING.

17 MR. WAPNER: YOU SAID THAT YOU MIGHT NOT WANT TO BE A
18 JUROR IN THIS CASE BECAUSE YOUR DECISION MIGHT AFFECT WHAT
19 HAPPENS TO THE DEFENDANT FOR THE REST OF HIS LIFE; IS THAT
20 RIGHT?

21 MR. HUBBARD: THAT IS CORRECT.

22 MR. WAPNER: IF THE JUDGE TELLS YOU THAT WHEN YOU ARE
23 DECIDING GUILT OR INNOCENCE, YOU CAN'T EVEN THINK ABOUT WHAT
24 MIGHT HAPPEN TO THE PERSON, CAN YOU FOLLOW THAT, FIRST OF
25 ALL?

26 MR. HUBBARD: YES, I CAN FOLLOW THAT.

27 MR. WAPNER: DO YOU UNDERSTAND WHY WE HAVE THAT KIND OF
28 A RULE?

1 MR. HUBBARD: NO, I DON'T.

2 MR. WAPNER: WHY DO YOU THINK THAT WE HAVE THAT KIND OF
3 A RULE?

4 MR. HUBBARD: I DON'T KNOW. I GUESS AS FAR AS I AM
5 CONCERNED, IT WOULD TAKE THE GUILT OFF THE PERSON MAKING THE
6 DECISION.

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1 MR. WAPNER: YOU MEAN YOU WOULDN'T HAVE TO FEEL GUILTY
2 ABOUT A DECISION THAT YOU MADE?

3 MR. HUBBARD: RIGHT.

4 MR. WAPNER: DO YOU THINK YOU ARE GOING TO FEEL GUILTY
5 ABOUT A DECISION, IF YOU FIND -- IF THE EVIDENCE PROVES THE
6 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND, THEREFORE, YOU
7 FEEL COMPELLED TO RENDER A VERDICT OF GUILTY, DO YOU THINK YOU
8 ARE GOING TO FEEL BAD ABOUT THAT?

9 MR. HUBBARD: NO.

10 MR. WAPNER: ARE YOU A SPORTS FAN?

11 MR. HUBBARD: YES, I LIKE BASKETBALL.

12 MR. WAPNER: IN A BASKETBALL GAME, IF IT IS A CLOSE GAME
13 AND THEY ARE GETTING DOWN TOWARDS THE END AND THERE IS A GUY
14 DRIVING TO THE HOOP, HE RUNS INTO ANOTHER GUY AND IT IS A
15 QUESTION WHETHER IT IS CHARGING OR BLOCKING, WHAT SHOULD THE
16 REFEREE BE THINKING ABOUT IN TERMS OF MAKING THAT DECISION?

17 MR. HUBBARD: CALL IT THE WAY HE SEES IT.

18 MR. WAPNER: IN OTHER WORDS, WHETHER THE DEFENSIVE MAN
19 HAD POSITION OR WHETHER HE MOVED INTO IT?

20 MR. HUBBARD: RIGHT.

21 MR. WAPNER: SHOULD HE BE THINKING ABOUT WHICH TEAM
22 MIGHT WIN?

23 MR. HUBBARD: NOPE.

24 MR. WAPNER: SHOULD HE BE THINKING ABOUT WHICH TEAM
25 MIGHT MAKE THE PLAY-OFFS?

26 MR. HUBBARD: NO.

27 MR. WAPNER: SHOULD HE BE THINKING ABOUT WHAT EFFECT IT
28 MIGHT HAVE ON THE CAREER OF EITHER OF THE TWO PLAYERS INVOLVED?

1 MR. HUBBARD: NOPE.

2 MR. WAPNER: DO YOU SEE ANY PARALLEL BETWEEN THAT KIND
3 OF THING, EVEN THOUGH IT IS NOT AS SERIOUS, AND KEEPING OUT
4 OF YOUR MIND ANY MOTION OF GUILT OR INNOCENCE WHEN YOU ARE
5 MAKING A DECISION OF GUILT OR INNOCENCE?

6 MR. HUBBARD: YES, I CAN SEE A PARALLEL BECAUSE HE IS
7 THERE TO MAKE A DECISION ON WHAT HE SEES HAPPEN AND THAT IS
8 IT, AND I GUESS WE ARE HERE TO MAKE A DECISION ON WHAT THE
9 EVIDENCE TELLS US.

10 MR. WAPNER: REGARDLESS OF THE CONSEQUENCES?

11 MR. HUBBARD: RIGHT.

12 MR. WAPNER: REGARDLESS OF WHO WINS THE GAME OR WHO
13 LOSES?

14 MR. HUBBARD: THAT'S RIGHT.
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8A-1
1 MR. WAPNER: OKAY. DID YOU HEAR THE EXAMPLE THAT I
2 USED ABOUT THE ROBBERY WITH THE PRIEST AND THE DRUG DEALER?

3 MR. HUBBARD: YES I DID.

4 MR. WAPNER: FORGETTING ABOUT THE ROBBERY FOR A SECOND
5 AND WE CAN GO BACK TO THE BASKETBALL GAME. SHOULD THE
6 REFEREE MAKE THE CHARGING OR BLOCKING CALL BASED ON WHICH
7 OF THE TWO PLAYERS HE LIKES BETTER?

8 MR. HUBBARD: NO.

9 MR. WAPNER: SHOULD HE MAKE IT BASED ON WHICH OF THE
10 TWO TEAMS HE LIKES BETTER?

11 MR. HUBBARD: NO.

12 MR. WAPNER: HE SHOULD MAKE IT BASED ON THE FACTS IN
13 THE CASE?

14 MR. HUBBARD: RIGHT.

15 MR. WAPNER: IN THIS CASE, IF IT TURNS OUT THAT YOU
16 HEAR ALL OF THE EVIDENCE AND FOR WHATEVER REASON, YOU DON'T
17 LIKE THE PERSON WHO GOT KILLED BUT YOU BELIEVE THAT THERE
18 IS PROOF BEYOND A REASONABLE DOUBT THAT HE DID GET KILLED
19 AND YOU BELIEVE THERE IS PROOF BEYOND A REASONABLE DOUBT THAT
20 THE DEFENDANT DID IT, CAN YOU RENDER A GUILTY VERDICT, EVEN
21 THOUGH YOU DON'T LIKE THE PERSON WHO GOT KILLED?

22 MR. HUBBARD: YES.

23 MR. WAPNER: DO YOU HAVE ANY PROBLEM WITH THAT?

24 MR. HUBBARD: NO.

25 MR. WAPNER: DO YOU THINK THAT YOU WOULD HAVE ANY
26 DIFFICULTY KEEPING OUT OF YOUR MIND, WHAT MIGHT HAPPEN TO
27 THE DEFENDANT IF YOU FIND HIM GUILTY?

28 MR. HUBBARD: YES.

8A-2

1 MR. WAPNER: YOU ARE GOING TO HAVE PROBLEMS KEEPING
2 IT OUT OF YOUR MIND?

3 MR. HUBBARD: NO. I WOULDN'T HAVE ANY PROBLEM KEEPING
4 IT OUT OF MY MIND.

5 MR. WAPNER: OKAY. DO YOU WATCH SPORTS ON TV?

6 MR. HUBBARD: YES, BASKETBALL.

7 MR. WAPNER: DO YOU PLAY SPORTS?

8 MR. HUBBARD: NO, VERY LITTLE.

9 MR. WAPNER: BESIDES GOING TO CHURCH AND READING THE
10 BIBLE, ARE THERE ANY OTHER THINGS, HOBBIES OR INTERESTS THAT
11 YOU DO ON A REGULAR OR SEMI-REGULAR BASIS?

12 MR. HUBBARD: CAMPING AND FISHING.

13 MR. WAPNER: HOW OFTEN DO YOU GO CAMPING?

14 MR. HUBBARD: WELL, I USED TO GO ABOUT ONCE A MONTH
15 OR EVERY OTHER MONTH OR SOMETHING LIKE THAT.

16 MR. WAPNER: YOU HAVE STOPPED THAT?

17 MR. HUBBARD: UH-HUH.

18 MR. WAPNER: WHEN DID YOU STOP GOING ONCE A MONTH OR
19 EVERY OTHER MONTH?

20 MR. HUBBARD: ABOUT SIX MONTHS AGO.

21 MR. WAPNER: DID YOU GET BUSY AT WORK?

22 MR. HUBBARD: YES AND OTHER PERSONAL PROBLEMS I HAVE
23 HAD.

24 MR. WAPNER: WITHOUT TRYING TO PRY, AS TO ANY OF THOSE
25 PERSONAL PROBLEMS, DO YOU THINK THAT THEY MIGHT AFFECT YOU
26 IN YOUR ABILITY TO SIT IN THIS CASE AND LISTEN TO THE EVIDENCE
27 AND CONCENTRATE ON IT?

28 MR. HUBBARD: NO.

8A-3

1 MR. WAPNER: DO YOU HAVE ANY CHILDREN?

2 MR. HUBBARD: FOUR.

3 MR. WAPNER: AND WHAT ARE THEIR AGES?

4 MR. HUBBARD: 16, 16 AND 10 AND 9.

5 MR. WAPNER: THE TWO OLDER 16-YEAR-OLDS ARE BOTH IN
6 SCHOOL?

7 MR. HUBBARD: YES.

8 MR. WAPNER: HOPEFULLY THE NINE AND TEN-YEAR-OLD BOTH
9 GO TO SCHOOL ALSO?

10 MR. HUBBARD: RIGHT. YES.

11 MR. WAPNER: AND DO THEY ALL LIVE WITH YOU?

12 MR. HUBBARD: YES.

13 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

14 MR. HUBBARD: MY MOTHER.

15 MR. WAPNER: DOES SHE LIVE IN THE LOS ANGELES AREA?

16 MR. HUBBARD: NO. SHE LIVES IN SOUTH CAROLINA.

17 MR. WAPNER: HOW OFTEN DO YOU TALK TO HER?

18 MR. HUBBARD: ABOUT ONCE EVERY THREE MONTHS.

19 MR. WAPNER: DID YOU GROW UP HERE OR IN SOUTH CAROLINA?

20 MR. HUBBARD: SOUTH CAROLINA.

21 MR. WAPNER: I ASKED THIS QUESTION ALSO OF MR. RAGLE.

22 IN THIS COURTROOM, THE JUDGE IS THE CLOSEST THING WE ARE GOING
23 TO GET TO GOD. HE IS THE AUTHORITY. HE GIVES YOU THE LAW
24 THAT YOU HAVE TO USE IN DECIDING THIS CASE.

25 CAN YOU ACCEPT THAT?

26 MR. HUBBARD: I CAN ACCEPT THAT, YES.

27 MR. WAPNER: OKAY. SOMETIMES -- AGAIN, THIS IS BORN
28 OUT OF EXPERIENCES THAT I HAVE HAD WITH JURORS. YOU HEARD

8A-4

1 ONE OF THE JURORS SAY THAT HE HAD A BAD EXPERIENCE. SOMETIMES
2 THERE ARE JURORS WHO THINK THAT NOTWITHSTANDING WHAT THE JUDGE
3 SAYS THAT ESSENTIALLY, GOD IS A HIGHER AUTHORITY AND THEY
4 WOULD DISREGARD THE JUDGE'S INSTRUCTIONS AND GO BASICALLY
5 WITH WHAT GOD TELLS THEM TO DO.

6 MR. HUBBARD: UH-HUH.

7 MR. WAPNER: DO YOU THINK THAT YOU MIGHT DO THAT IN
8 THIS CASE?

9 MR. HUBBARD: NO. BECAUSE GOD GIVES TO HIM HIS
10 AUTHORITY. SO I HAVE TO LISTEN TO HIM.

11 MR. WAPNER: OKAY. HAVE YOU HAD ANY EXPERIENCES WITH
12 LAW ENFORCEMENT THAT LEFT YOU WITH SUCH A BAD TASTE IN YOUR
13 MOUTH THAT YOU WOULD BE UPSET WITH A POLICE OFFICER IF HE
14 CAME IN HERE TO TESTIFY, FOR EXAMPLE?

15 MR. HUBBARD: NO, NEVER.

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8B-1
1 MR. WAPNER: THE OTHER SIDE OF THAT COIN IS, HAVE YOU
2 HAD ANY EXPERIENCES WITH LAW ENFORCEMENT THAT WERE SO GOOD,
3 THAT YOU WOULD TEND TO FAVOR A POLICE OFFICER WHO TESTIFIED?

4 MR. HUBBARD: NO.

5 MR. WAPNER: HAVE YOU EVER SAT IN A JURY BEFORE?

6 MR. HUBBARD: YES.

7 MR. WAPNER: HOW MANY TIMES?

8 MR. HUBBARD: THREE.

9 MR. WAPNER: ANY OF THEM CRIMINAL CASES?

10 MR. HUBBARD: ONE.

11 MR. WAPNER: AND WAS THAT ON THIS TOUR OF DUTY OR SOME
12 OTHER TOUR?

13 MR. HUBBARD: ANOTHER TOUR.

14 MR. WAPNER: DID YOU REACH A VERDICT IN THAT CRIMINAL
15 CASE?

16 MR. HUBBARD: YES WE DID.

17 MR. WAPNER: IN THAT CASE, DID YOU HAVE OCCASION TO
18 CHANGE YOUR MIND IN THE JURY ROOM, START OUT THINKING ONE
19 WAY OR CHANGE YOUR MIND?

20 MR. HUBBARD: WHEN I WENT INTO THE JURY ROOM, I DIDN'T
21 HAVE MY MIND MADE UP. AND I MADE IT UP DURING THE
22 DELIBERATIONS.

23 MR. WAPNER: AND ONCE YOU MADE IT UP, YOU BASICALLY
24 KEPT IT THE SAME?

25 MR. HUBBARD: RIGHT. WE ALL BASICALLY AGREED ON THE
26 SAME THINGS. SO, THEY DIDN'T REALLY TRY TO CHANGE MY MIND.

27 MR. WAPNER: WHAT KIND OF A CASE WAS THAT?

28 MR. HUBBARD: IT WAS A BURGLARY.

8B-2
1 MR. WAPNER: AND THE CIVIL CASE THAT YOU SAT ON, DID
2 THEY BOTH REACH VERDICTS?

3 MR. HUBBARD: YES WE DID.

4 MR. WAPNER: DID YOU HAVE ANY PROBLEMS DISCUSSING YOUR
5 OPINIONS WITH THE OTHER JURORS?

6 MR. HUBBARD: NO I DIDN'T.

7 MR. WAPNER: WHAT DO YOU THINK HAPPENED TO THE PERSON
8 WHO WAS IN THE BOAT?

9 MR. HUBBARD: I SAILED ACROSS THE OCEAN ONE TIME ON
10 AN AIRCRAFT CARRIER. IF HE FELL OFF THAT BOAT OUT IN THE
11 MIDDLE OF THE WATER, HE IS DEAD.

12 MR. WAPNER: THE OTHER GUY WHO HAD EXPERIENCE WITH
13 SHIPPING, THOUGHT A BOAT WAS GOING TO COME BY AND PICK HIM
14 UP.

15 MR. HUBBARD: VERY UNLIKELY.

16 MR. WAPNER: OKAY. THE WHOLE POINT OF THAT EXAMPLE
17 WAS TO TRY TO GET YOU TO DISTINGUISH BETWEEN THINGS IN YOUR
18 MIND THAT ARE REASONABLE AND THINGS IN YOUR MIND THAT ARE
19 POSSIBLE.

20 MR. HUBBARD: UH-HUH.

21 MR. WAPNER: AS YOU SIT AS A JUROR IN THIS CASE, DO
22 YOU THINK YOU CAN DO THAT?

23 MR. HUBBARD: YES.

24 MR. WAPNER: WERE YOU ABLE TO DO THAT IN THE OTHER
25 CRIMINAL CASE YOU SAT ON?

26 MR. HUBBARD: YES I WAS.

27 MR. WAPNER: OKAY. DID YOU HAVE ANY FEELINGS ABOUT
28 THE PERSON WHO PROSECUTED THAT BURGLARY CASE THAT WOULD COLOR

8B-3

1 YOUR OPINION OF ME AS I TALK TO YOU AND YOU TALK TO THE OTHER
2 JURORS?

3 MR. HUBBARD: YOU AND HIM SEEM TO BE CUT FROM THE SAME
4 MOLD. YOU HAVE A LOT OF CLASS ABOUT YOU.

5 MR. WAPNER: THANK YOU.

6 MR. HUBBARD: I HAD A LOT OF RESPECT FOR HIM.

7 MR. WAPNER: OKAY. I PROBABLY SHOULD QUIT WHILE I AM
8 AHEAD. BUT, LET ME SEE IF I HAVE ANY OTHER QUESTIONS.

9 I WILL QUIT WHILE I AM AHEAD. THANK YOU VERY
10 MUCH. I PASS FOR CAUSE.

11 THE COURT: ALL RIGHT. IT IS THE DEFENSE PEREMPTORY.

12 MR. BARENS: THE DEFENDANT WOULD REQUEST THAT THE COURT
13 THANK AND EXCUSE JUROR NUMBER 2, MR. HECK.

14 THE COURT: THANK YOU, MR. HECK.

15 (PROSPECTIVE JUROR HECK EXITED THE
16 COURTROOM.)

17 THE CLERK: PAUL F. MC CABE, M-C C-A-B-E.

18 THE COURT: MR. MC CABE, I ASSUME THAT YOU TOO, HAVE
19 HEARD ALL OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND
20 GIVEN?

21 MR. MC CABE: YES, SIR.

22 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
23 OF YOU, WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY
24 BE SUBSTANTIALLY THE SAME?

25 MR. MC CABE: SUBSTANTIALLY THE SAME.

26 THE COURT: YOU REALIZE OF COURSE, THAT THERE HAS BEEN
27 A MULTITUDE OF QUESTIONS AND ANSWERS. SO, IT IS A LITTLE
28 DIFFICULT MAYBE, TO ASK YOU ALL OF THEM. DO YOU RECALL WHAT

1 YOUR ANSWERS WOULD BE, JUST THE SAME?

2 MR. MC CABE: YES, SIR.

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

4 MR. MC CABE: I AM RETIRED.

5 THE COURT: WHAT DID YOU RETIRE FROM?

6 MR. MC CABE: CONTRACT ADMINISTRATION.

7 THE COURT: AND BY WHOM WERE YOU EMPLOYED?

8 MR. MC CABE: AIRESEARCH AVIATION COMPANY.

9 THE COURT: AND WHAT DID THAT ENTAIL? THE JOB THAT
10 YOU HAD, WHAT DID YOU DO?

11 MR. MC CABE: THE COMPANY WAS IN THE BUSINESS OF
12 MAINTAINING, MODIFYING AND SERVICING PRIVATE AND CORPORATE
13 OWNED AIRCRAFT.

14 THE COURT: AND YOUR SPECIFIC JOB?

15 MR. MC CABE: I WAS SORT OF A LIAISON BETWEEN THE
16 CUSTOMER AND THE COMPANY IN DRAFTING SPECIFICATIONS AND
17 FOLLOWING A JOB THROUGH THE SHOP TO SEE THAT THE SPECIFICATIONS
18 AND THE CONTRACT WAS FULFILLED.

19 THE COURT: HOW LONG WERE YOU WITH THAT COMPANY?

20 MR. MC CABE: IT WAS APPROXIMATELY 19 YEARS. I DID
21 HAVE BROKEN SERVICE DURING THAT TIME.

22 THE COURT: BEFORE THAT TIME?

23 MR. MC CABE: BEFORE THAT TIME, I WORKED FOR A NUMBER
24 OF COMPANIES AS A CORPORATE PILOT.

25 THE COURT: ALL RIGHT, SIR. ARE YOU MARRIED?

26 MR. MC CABE: YES.

27 THE COURT: DOES YOUR WIFE HAVE ANY EMPLOYMENT OUTSIDE
28 THE HOME?

1 MR. MC CABE: NO.

2 THE COURT: HAS SHE EVER HAD ANY?

3 MR. MC CABE: NOT RECENTLY.

4 THE COURT: WHAT WAS HER LAST EMPLOYMENT?

5 MR. MC CABE: APPROXIMATELY TEN OR TWELVE YEARS AGO,
6 SHE WORKED AS AN ADMINISTRATIVE AIDE IN AN HMO.

7 THE COURT: DO YOU HAVE ANY CHILDREN?

8 MR. MC CABE: YES, TWO.

9 THE COURT: TWO, HOW OLD ARE THEY?

10 MR. MC CABE: 37 AND 33, APPROXIMATELY.

11 THE COURT: BOTH MEN?

12 MR. MC CABE: BOTH BOYS, YES.

13 THE COURT: WHAT DO THEY DO?

14 MR. MC CABE: THE OLDEST IS A PILOT FOR HAWAIIAN
15 AIRLINES.

16 THE YOUNGEST IS A COMMUNICATIONS TECHNICIAN FOR
17 A LOCAL COMPANY HERE IN LOS ANGELES.

18 THE COURT: WHERE DO YOU LIVE?

19 MR. MC CABE: EL SEGUNDO.

20 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN ANY
21 CRIMINAL CASE?

22 MR. MC CABE: NO, SIR.

23 THE COURT: ALL RIGHT.

24 MR. BARENS: THANK YOU, YOUR HONOR.

25 GOOD MORNING, MR. MC CABE.

26 MR. MC CABE, HOW DO YOU FEEL IN GENERAL ABOUT
27 THE PROPOSITION THAT THE DEFENDANT IS PRESUMED INNOCENT, AS
28 WE SIT HERE AT THIS TIME?

1 MR. MC CABE: I HAVE NO PROBLEM WITH THAT.

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

3 MR. MC CABE: YES.

4 MR. BARENS: DO YOU THINK IT IS APPROPRIATE UNDER OUR
5 SYSTEM?

6 MR. MC CABE: YES.

7 MR. BARENS: DO YOU HAVE ANY IDEA WHY THERE IS A
8 PRESUMPTION OF INNOCENCE AT THIS POINT?

9 MR. MC CABE: THAT IS THE WAY OUR SYSTEM IS.

10 MR. BARENS: IT HAS ALWAYS BEEN THAT WAY?

11 MR. MC CABE: IT HAS ALWAYS BEEN THAT WAY.

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1 MR. BARENS: ONE OF THE REASONS IS THAT THE ONLY
2 EVIDENCE THAT CAN BE BROUGHT AGAINST SOMEBODY IS EVIDENCE
3 PRODUCED IN A COURT IN TRIAL AND SINCE THERE HAS NEVER BEEN
4 A TRIAL, WE ARE ALL PRESUMED TO BE INNOCENT.

5 MR. MC CABE: RIGHT.

6 MR. BARENS: IS THAT A FAIR SYSTEM IN YOUR MIND?

7 MR. MC CABE: YES.

8 MR. BARENS: HOW DO YOU FEEL ABOUT THE FIFTH AMENDMENT
9 RIGHT NOT TO TESTIFY?

10 MR. MC CABE: I THINK THAT IS A FAIR AMENDMENT.

11 MR. BARENS: IT DOESN'T MAKE YOU FEEL UNCOMFORTABLE IN
12 ANY WAY?

13 MR. MC CABE: NO, NOT AT ALL.

14 MR. BARENS: WHAT ABOUT THE CONCEPT THAT A REASONABLE
15 DOUBT OR A DOUBT AT ALL IN YOUR MIND GOES IN FAVOR OF THE
16 DEFENDANT, THAT IF YOU HAVEN'T GOT A CONVICTION THAT RISES TO
17 THE LEVEL OF BEYOND A REASONABLE DOUBT, THAT IF IT IS A CLOSE
18 CALL, IT IS RESOLVED IN FAVOR OF THE DEFENDANT NOT THE
19 GOVERNMENT; HOW DO YOU FEEL ABOUT THAT?

20 MR. MC CABE: I THINK THAT IS FAIR. I LIKE THAT.

21 MR. BARENS: YOU ARE COMFORTABLE WITH THAT?

22 MR. MC CABE: I LIKE THAT, YES.

23 MR. BARENS: WHAT HAVE YOU BEEN DOING SINCE YOU RETIRED,
24 SIR?

25 MR. MC CABE: TRAVELING, PLAY A LITTLE GOLF, MAINTAINING
26 AN APARTMENT BUILDING, WATCHING A LITTLE TV.

27 MR. BARENS: DO YOU HAVE ANY HOBBIES OR ANYTHING IN
28 PARTICULAR THAT YOU LIKE TO DO?

9-2

1 MR. MC CABE: WELL, OTHER THAN GOLF, I DO READ.

2 MR. BARENS: ANY PARTICULAR TYPE OF THING YOU LIKE TO
3 READ?

4 MR. MC CABE: NEWSPAPERS, MAGAZINES MOSTLY, READER'S
5 DIGEST.

6 MR. BARENS: ANY PARTICULAR SUBJECT MATTER OR TYPES OF
7 STORIES THAT YOU ARE MORE INTERESTED IN THAN NOT?

8 MR. MC CABE: BUSINESS STORIES PRIMARILY. COMEDY. THINGS
9 THAT ARE LIGHT AND RELAXING.

10 MR. BARENS: DO YOU RECALL THE LAST SPECIFIC BOOK YOU
11 READ?

12 MR. MC CABE: NO.

13 MR. BARENS: DO YOU RECALL THE LAST MOVIE YOU WENT TO?

14 MR. MC CABE: IN A THEATER?

15 MR. BARENS: YES.

16 MR. MC CABE: "COCOON."

17 MR. BARENS: "COCOON." INDEED.

18 AND OTHER THAN GOLF, ARE YOU ACTIVE IN ANY
19 ORGANIZATIONS OR A MEMBER OF ANY CLUBS OR INSTITUTIONS?

20 MR. MC CABE: ONE.

21 MR. BARENS: AND THAT IS, SIR?

22 MR. MC CABE: QUIET BIRDMEN.

23 MR. BARENS: I AM SORRY, SIR?

24 MR. MC CABE: QUIET BIRDMEN.

25 MR. BARENS: I AM NOT FAMILIAR WITH THAT.

26 MR. MC CABE: IT IS A PILOT'S ORGANIZATION, THEY MEET
27 SOCIALLY. IT IS A NATIONAL ORGANIZATION. IT WAS FOUNDED IN
28 1921.

1 MR. BARENS: ARE YOU STILL ACTIVE AS A PILOT?

2 MR. MC CABE: YES.

3 MR. BARENS: ARE YOU INVOLVED IN ANY SEARCH AND RESCUE
4 TYPE ACTIVITIES?

5 MR. MC CABE: NO.

6 MR. BARENS: HAVE YOU EVER BEEN?

7 MR. MC CABE: YES.

8 MR. BARENS: AND ON THOSE OCCASIONS, DID YOU WORK
9 ADJUNCTIVE WITH ANY LAW ENFORCEMENT OR PUBLIC AGENCIES?

10 MR. MC CABE: NO.

11 MR. BARENS: IT WAS ALL STRICTLY ON A PRIVATELY
12 ENDOWED BASIS, IN OTHER WORDS, YOU DID THAT PRIVATELY,
13 VOLUNTEERED YOUR TIME?

14 MR. MC CABE: NO.

15 IT WAS MILITARY.

16 MR. BARENS: IT WAS MILITARY?

17 MR. MC CABE: YES.

18 MR. BARENS: WERE YOU A MEMBER OF THE MILITARY AT THAT
19 POINT?

20 MR. MC CABE: YES.

21 MR. BARENS: AND WHAT BRANCH WERE YOU INVOLVED WITH?

22 MR. MC CABE: THE NAVY.

23 MR. BARENS: AND YOU WERE IN THE NAVY AIR FORCE?

24 MR. MC CABE: YES.

25 MR. BARENS: HOW LONG DID YOU DO THAT, SIR?

26 MR. MC CABE: OVER-ALL, ABOUT 25 YEARS.

27 MR. BARENS: WHAT WAS THE NATURE OF YOUR ACTIVITIES
28 DURING THAT 25 YEARS, WERE YOU PRIMARILY A PILOT OR AN

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1 ENGINEER?

2 MR. MC CABE: PILOT.

3 MR. BARENS: AND I PRESUME DURING THAT 25 YEARS, YOU
4 WOULD HAVE SEEN ACTIVE SERVICE?

5 MR. MC CABE: YES.

6 MR. BARENS: IN KOREA?

7 MR. MC CABE: NO.

8 WORLD WAR II.

9 MR. BARENS: WHAT RANK DID YOU OBTAIN, SIR?

10 MR. MC CABE: WHEN I WAS FINALLY --

11 MR. BARENS: AT THE END OF YOUR DUTY.

12 MR. MC CABE: COMMANDER.

13 MR. BARENS: AND YOU COMMANDED A GROUP OF MEN UNDERNEATH
14 YOURSELF?

15 MR. MC CABE: YES.

16 MR. BARENS: WHAT WERE YOUR RESPONSIBILITIES WITH THOSE
17 MEN?

18 MR. MC CABE: JUST TO SEE THAT WE ACCOMPLISHED OUR
19 MISSION, DID OUR JOB.

20 MR. BARENS: HOW MANY MEN WOULD YOU HAVE BEEN RESPONSIBLE
21 FOR?

22 MR. MC CABE: OH, THE MAXIMUM NUMBER WAS APPROXIMATELY
23 120.

24 MR. BARENS: DID YOU LIVE WITH THOSE MEN?

25 MR. MC CABE: WE WERE IN THE RESERVE AT THAT TIME AND
26 WE LIVED TOGETHER ON WEEKENDS AND FOR TWO WEEKS ANNUALLY.

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9A-1

1 MR. BARENS: I SEE.

2 WHILE YOU WERE ON ACTIVE DUTY OR, LET'S SAY, DURING
3 WORLD WAR II, WHAT RANK WERE YOU THEN, SIR?

4 MR. MC CABE: ENSIGN.

5 MR. BARENS: AND DID YOU HAVE COMMAND OF A CERTAIN AMOUNT
6 OF MEN IN THAT FUNCTION?

7 MR. MC CABE: NO.

8 I SPENT MOST OF THAT TIME IN WORLD WAR II IN
9 TRAINING COMMAND.

10 MR. BARENS: IN TRAINING COMMAND?

11 WERE YOU ACTUALLY FLYING COMBAT MISSIONS AT THAT
12 TIME?

13 MR. MC CABE: NO.

14 MR. BARENS: AND WERE YOU ACTIVE DURING THE KOREAN
15 ENCOUNTER?

16 MR. MC CABE: NO. ONLY IN THE RESERVE.

17 MR. BARENS: AS A RESERVIST ONLY?

18 MR. MC CABE: YES.

19 MR. BARENS: ARE YOU STILL ACTIVE IN THE MILITARY AT
20 ALL?

21 MR. MC CABE: NO.

22 MR. BARENS: DO YOU FEEL THAT 25 YEARS OF SERVICE
23 INVOLVEMENT WITH THE GOVERNMENT WOULD GIVE YOU SOME GREATER
24 REASON TO BELIEVE A POSITION TAKEN BY THE GOVERNMENT THAN
25 YOU WOULD A POSITION TAKEN BY A PRIVATE CITIZEN?

26 MR. MC CABE: NO.

27 MR. BARENS: YOU DON'T FEEL THAT THERE WOULD BE SOMETHING
28 IN YOUR MIND -- AND I ASK YOU THIS AS HONESTLY AS I CAN --

SA-2

1 THAT IF THE GOVERNMENT CAME IN HERE AND THEY SAY "WELL, WE
2 ARE ACCUSING SOMEBODY OF COMMITTING A MURDER," YOU WOULDN'T
3 HAVE ANY GREATER REASON TO BELIEVE THAT THE GOVERNMENT WAS
4 PROBABLY RIGHT THAT YOU WOULD A DEFENDANT WHO IS SAYING NOT
5 GUILTY, I DIDN'T DO IT?

6 MR. MC CABE: NO.

7 MR. BARENS: THERE WOULD BE NOTHING ABOUT THAT EXPERIENCE
8 THAT WOULD INFLUENCE YOU?

9 MR. MC CABE: NO.

10 MR. BARENS: IS THERE ANYTHING ABOUT THE BILLIONAIRE
11 BOYS CLUB THAT WOULD CAUSE YOU ANY CONCERN OR BIAS ABOUT A
12 PERSON WHO MIGHT BELONG TO AN ORGANIZATION OF THAT NAME?

13 MR. MC CABE: NO.

14 MR. BARENS: DID YOU READ ANYTHING ON PHILOSOPHY?

15 MR. MC CABE: NO.

16 MR. BARENS: WAS THERE A PARTICULAR REASON WHY YOU LEFT
17 THE SERVICE AFTER 25 YEARS, SIR?

18 MR. MC CABE: I WAS OVER AGE AND RANK AND I HAD REACHED
19 ENOUGH SATISFACTORY YEARS FOR RETIREMENT. IT WAS ROUTINELY
20 EXPECTED OF ME TO TAKE RETIREMENT.

21 MR. BARENS: IT WAS SOMETHING TO DO WITH THE WHOLE
22 SYSTEM ITSELF --

23 MR. MC CABE: YES.

24 MR. BARENS: -- THAT KIND OF FOCUSED YOU TO THAT POINT?

25 HOW DID YOU THEN DECIDE TO DO WHAT YOU ARE DOING
26 NOW, WAS THAT JUST BASED ON YOUR EXPERIENCE AND TRAINING OR
27 DID YOU GET NEW TRAINING TO THEN PERFORM YOUR JOB IN PRIVATE
28 INDUSTRY?

9A-3

1 MR. MC CABE: WELL, I WENT TO SCHOOL AFTER I WAS
2 SEPARATED FROM THE SERVICE, ACTIVE DUTY, THAT IS, AND I WORKED
3 FOR A WHILE IN THE LATE '40'S AND THEN WENT TO SCHOOL FOR
4 TWO TO THREE YEARS, ABOUT 1950.

5 MR. BARENS: DID YOU CONSIDER A CAREER IN LAW ENFORCEMENT
6 BEFORE YOU WENT INTO ENGINEERING?

7 MR. MC CABE: NO.

8 MR. BARENS: AND YOU ALWAYS PRESUMED THAT YOU WOULD
9 GO AHEAD WITH ENGINEERING AS AN ACTIVITY?

10 MR. MC CABE: WELL, YES, OR WHATEVER IT LED TO.

11 MR. BARENS: ALMOST WITHOUT EXCEPTION, WITH ALL OF THE
12 JURORS WE HAVE BEEN TALKING WITH ABOUT ALL OF THESE
13 HYPOTHETICALS, THE PIE, THE BOAT AND THE AIRPLANE, ET CETERA,
14 DO YOU UNDERSTAND THAT ONE OF THE GIVENS BY THE GOVERNMENT
15 IN ALL OF THOSE EXAMPLES WAS THAT SOMETHING HAD REALLY
16 HAPPENED, THE GUY FELL OFF A PLANE, A GUY IS OFF A BOAT ONE
17 WAY OR THE OTHER AND THE PIE IS ACTUALLY MISSING; DO YOU SEE
18 A COMMON DENOMINATOR IN ALL OF THOSE HYPOTHETICALS, THAT THE
19 CONDUCT THAT APPEARS TO BE THE PROBLEM HAS REALLY OCCURRED,
20 SOMETHING HAPPENED?

21 MR. MC CABE: YES.

22 MR. BARENS: CAN YOU UNDERSTAND THAT A DEFENDANT COULD
23 COME FORWARD AND SAY TO YOU, "NOT ONLY DIDN'T I NOT DO IT
24 BUT NOTHING HAPPENED TO MY KNOWLEDGE"; DO YOU UNDERSTAND THAT
25 THAT CAN BE A DEFENSE BUT YOU JUST DON'T HAVE TO COME IN AND
26 EXPLAIN OR PROVE SOMETHING THAT THEY SAY SOMETHING HAPPENED,
27 AND WE ARE AUTOMATICALLY GOING TO SAY NO, THAT DIDN'T HAPPEN?

28 MR. MC CABE: YES, I CAN SEE THAT.

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MR. BARENS: DO YOU SEE THE DIFFERENCE?

MR. MC CABE: I CAN SEE THAT.

MR. BARENS: IN OTHER WORDS, DO YOU REALIZE THAT IN BEING GIVEN THE PROBLEM AS A JUROR IN THIS CASE, THERE IS NOTHING AUTOMATICALLY BEING PROGRAMMED INTO THAT THAT SOMEBODY IS DEAD; THAT IS ONE OF THE ELEMENTS THAT HAS TO BE PROVEN, NOT JUST WHO DID IT, DO YOU UNDERSTAND THAT?

MR. MC CABE: YES.

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1 MR. BARENS: DO YOU UNDERSTAND THAT ALL OF THOSE ELEMENTS
2 ARE WHAT WE WERE TALKING ABOUT THE OTHER DAY, ABOUT THE CORPUS
3 DELICTI? THE ELEMENTS IN THE CORPUS DELICTI ARE ELEMENTS OF
4 THE CRIME. THE CORPUS DELICTI ELEMENTS HAVE TO BE PROVEN IN
5 THEMSELVES BEYOND A REASONABLE DOUBT, BY THE PEOPLE.

6 MR. MC CABE: YES.

7 MR. BARENS: NOW, THOSE HAVE TO BE BEYOND A REASONABLE
8 DOUBT ON EACH AND EVERY ONE OF THEM. IS THAT CLEAR IN YOUR
9 MIND?

10 MR. MC CABE: YES.

11 MR. BARENS: I PASS FOR CAUSE. THANK YOU, SIR.

12 THE COURT: ALL RIGHT. I THINK IT IS CLOSE TO LUNCH
13 HOUR. I WON'T INTERRUPT THE JURY VOIR DIRE OF ANOTHER JUROR.

14 LADIES AND GENTLEMEN, WE'LL TAKE A RECESS AT THIS
15 TIME UNTIL 1:45 THIS AFTERNOON. YOU CAN COME DIRECTLY INTO
16 THE COURTROOM. THERE WON'T BE A NECESSITY OF GOING TO THE JURY
17 ASSEMBLY ROOM.

18 (PROSPECTIVE JURORS EXIT THE COURTROOM.)

19 (THE FOLLOWING PROCEEDINGS WERE HELD AT
20 THE BENCH:)

21 THE COURT: FOR PURPOSES OF THE RECORD, THE RECORD WILL
22 SHOW THAT MR. WAPNER HAS EXCUSED JUROR NUMBER 11, WHOSE NAME
23 WAS CRAWFORD AND THAT HE WAS BLACK.

24 MR. BARENS: YOUR HONOR, MIGHT I INQUIRE UNDER PEOPLE
25 V. TURNER IF THE DEFENSE WOULD BE PERMITTED TO MAKE A FURTHER
26 STATEMENT?

27 I BELIEVE THAT PEOPLE V. TURNER, WHICH IS A 1986
28 CASE, PROHIBITS THE SYSTEMATIC EXCLUSION OF MINORITIES FROM

10-2

1 JURIES.

2 THE DEFENSE HAS DEVELOPED AN OPINION THAT THREE
3 OF THE EIGHT PEREMPTORIES EXERCISED BY THE PEOPLE HAVE BEEN
4 TO EXCLUDE BLACKS TO DATE. THAT REPRESENTS OVER 40 PERCENT
5 OF THE AVAILABLE PEREMPTORIES DEDICATED TO THAT PURPOSE.

6 I BELIEVE THAT THE TURNER CASE INDICATES THAT THE
7 COURT MAY REQUEST IN FACT, THAT THE PEOPLE EXPLAIN TO THE
8 COURT THE BASIS FOR THE PEREMPTORIES BEING EXERCISED.

9 THE COURT: TURNER WAS A BLACK, WAS HE?

10 MR. BARENS: YES. IN THE TURNER CASE, I BELIEVE SO.

11 THE COURT: SO CONSEQUENTLY, THERE MIGHT BE DISCRIMINATION
12 BECAUSE HE IS BLACK, EXCUSING BLACKS FROM THE JURY?

13 MR. BARENS: I DON'T BELIEVE --

14 THE COURT: I DON'T THINK IT IS RELEVANT IN THIS PARTICULAR
15 CASE.

16 HOWEVER, IF YOU WANT MR. WAPNER AND HE IS AGREEABLE
17 TO IT -- IF HE WANTS TO EXPLAIN HIS REASONS FOR EXCUSING THREE
18 OF THE BLACKS ON THE JURY, HE IS AT LIBERTY TO DO SO.

19 I DON'T HAVE TO FORCE HIM TO DO IT, THOUGH. I AM
20 NOT COMPELLING YOU TO DO IT.

21 MR. WAPNER: WELL, IF THE COURT IS NOT COMPELLING ME TO
22 DO IT AT THIS TIME, THEN I AM NOT GOING TO DO IT. I DON'T
23 KNOW -- I AM NOT CLEAR WHETHER OR NOT THE DEFENSE HAS MADE A
24 MOTION UNDER TURNER OR UNDER WHEELER.

25 IF THEY HAVE, I WANT THAT CLARIFIED, FOR ONE.
26 AND TWO --

27 THE COURT: ARE YOU MAKING A MOTION?

28 MR. BARENS: WHAT I AM ASKING IS, PURSUANT TO TURNER,

1 THE COURT HAS THE RIGHT TO INQUIRE OF THE PEOPLE AS TO THE
2 BASIS FOR THEIR EXERCISE OF THE PEREMPTORY.

3 I AM ASKING THE COURT TO EXERCISE THAT RIGHT OF
4 INQUIRY.

5 THE COURT: I DON'T SEE ANY REASON FOR MY ASKING HIM TO
6 DO IT. BUT IF HE WANTS TO, HE MAY.

7 WE HAVE TWO BLACKS ON THE JURY AT THE PRESENT TIME.
8 WE HAVE HAD THEM ALL THROUGHOUT.

9 THAT IS A REPRESENTATIVE NUMBER OF THE POPULATION
10 OF BLACKS IN THE COMMUNITY.

11 MR. BARENS: MY ONLY CONCERN, YOUR HONOR, WAS THE
12 PERCENTAGE, THE RELATIVE PERCENTAGE OF THE EXERCISES OF
13 PEREMPTORIES SEEM TO BE SELF-EVIDENT AT THIS POINT, AT LEAST
14 THREE OUT OF EIGHT.

15 THE COURT: MR. WAPNER?

16 MR. WAPNER: MAY I HAVE THE CITATION TO THE TURNER CASE
17 DURING THE LUNCH HOUR?

18 THE COURT: YES. YOU GIVE IT TO HIM.

19 MR. BARENS: CAN WE CONTINUE THIS TO THE END OF THE LUNCH
20 HOUR, THEN?

21 THE COURT: SURE.

22 MR. WAPNER: BEFORE THE JURY ARRIVES?

23 MR. BARENS: YES.

24 THE COURT: THANK YOU.

25 (AT 12:00 NOON AN ADJOURNMENT WAS TAKEN
26 UNTIL 1:30 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, DECEMBER 17, 1986; 1:50 P.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

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

7 THE COURT: GOOD AFTERNOON. I UNDERSTAND YOU HAVE A
8 COLD.

9 MR. BARENS: I HAVE A COLD TO BEAT THE BAND. THAT IS
10 WHY I AM DEFERRING A BIT TO MR. CHIER TODAY, YOUR HONOR. ONE
11 OF THE VIRTUES OF HAVING A SECOND COUNSEL.

12 WE DO HAVE TWO LETTERS.

13 THE COURT: TWO OF THEM NOW? OH, YES.

14 MR. CHIER: I WILL BE HAPPY TO STIPULATE.

15 MR. BARENS: THE DEFENSE STIPULATES TO BOTH OF THEM, YOUR
16 HONOR.

17 MR. WAPNER: I WILL STIPULATE THAT THEY MAY BE EXCUSED.

18 THE COURT: OKAY. ANYTHING ELSE?

19 MR. BARENS: WE HAD HAD THE ISSUE ABOUT THE PEOPLE'S
20 EXERCISE OF THE PEREMPTORY PRIOR TO THE LUNCH BREAK, YOUR
21 HONOR.

22 THE COURT: PARDON ME, WHAT IS THAT CITATION? I NEVER
23 GOT IT.

24 MR. CHIER: 41 CAL.3D, I BELIEVE, YOUR HONOR.

25 MR. BARENS: I BELIEVE MR. WAPNER HAS IT WITH HIM. I
26 DIDN'T BRING MINE IN.

27 MR. CHIER: HE HAS THE WEST EDITION.

28 THE COURT: 41 CAL.3D, WHAT?

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MR. CHIER: I DON'T KNOW THE --

THE COURT: DO YOU HAVE THE PAGE NUMBER ON IT?

1 MR. WAPNER: NO. BECAUSE I HAVE THE WEST CITATION.
2 BUT I HAVE THE CASE, IF YOU WANT TO LOOK AT IT.

3 THE COURT: ALL RIGHT. GO AHEAD. YOU HAVE READ IT, HAVE
4 YOU?

5 MR. WAPNER: WELL, I HAVE READ MOST OF IT. BASICALLY,
6 IT IS A REITERATION OF WHEELER AND APPLYING THE WHEELER
7 FACTS TO THE FACTS AT BAR.

8 THE REASON I WANTED TO LOOK AT THE CASE IS BECAUSE
9 OF WHAT MR. BARENS WAS SAYING AT THE BENCH BEFORE THE BREAK,
10 I READ IT AS BEING DIFFERENT THAN WHEELER.

11 WHAT I UNDERSTOOD MR. BARENS TO SAY, WAS THAT THIS
12 CASE DISPENSED WITH THE WHEELER REQUIREMENT OF A PRIMA FACIA
13 SHOWING BY THE DEFENSE OF THE EXERCISE OF THOSE CHALLENGES
14 INTENTIONALLY TO EXCLUDE BLACKS.

15 MY READING OF TURNER, IS THAT IT JUST REITERATES
16 WHEELER AND TALKS ABOUT SOME NEW UNITED STATES SUPREME COURT
17 CASE WHICH ADOPTED THE WHEELER STANDARD. SO --

18 THE COURT: WASN'T THE RULE IN WHEELER THAT THERE MUST
19 BE A SYSTEMATIC EXCLUSION OF BLACKS WHERE THE DEFENDANT WAS
20 A BLACK?

21 MR. WAPNER: WELL, I DON'T THINK THE COLOR OF THE
22 DEFENDANT MAKES ANY DIFFERENCE BECAUSE IF A WHITE DEFENDANT,
23 FOR WHATEVER REASON, DECIDED HE WANTED TO BE TRIED BY A
24 REPRESENTATIVE CROSS SECTION OF THE COMMUNITY, THEN I THINK
25 HE HAS THAT RIGHT UNDER THE CONSTITUTION.

26 THE COURT: DOES THAT MEAN ALSO THAT IF THERE WERE ANY
27 ASIANS OR ANY LATINOS AND YOU EXCLUDED THEM IN THIS CASE, IT
28 CAN BE INVOKED?

1 MR. WAPNER: THAT IS NOT RELEVANT TO THE POINT WE ARE
2 DISCUSSING NOW AND --

3 THE COURT: WELL, BUT THE SAME RULE WOULD APPLY IF YOU
4 WERE TO EXCUSE A COUPLE OF JURORS OF A DIFFERENT RACE?

5 MR. WAPNER: YES.

6 MR. BARENS: NOW, ASSUMING THAT WE WERE IN HAWAII, FOR
7 INSTANCE, YOUR HONOR, AND TRYING TO PICK A JURY THERE INSTEAD
8 OF HAVING A PROBLEM WITH BLACKS, WE MIGHT WELL HAVE THE SAME
9 PROBLEM WITH JAPANESE OR FILIPINOS OR SOMETHING OF THAT NATURE.

10 MR. CHIER: THE IMPORTANT PART OF THAT IS HERE, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. WELL, IN THIS PARTICULAR CASE,
13 ALL OF THE BLACK PANELISTS WERE PEREMPTORILY EXCUSED. WE HAVE
14 NOT GOT THAT FACT PRESENT HERE.

15 WE HAVE GOT TWO REMAINING ON THE PANEL. I THINK
16 UNTIL THOSE TWO HAVE BEEN EXCUSED, IF HE INTENDS TO EXCUSE THEM,
17 THE POINT IS MOOT. ISN'T IT?

18 MR. BARENS: WELL YOUR HONOR, THE REASON THE DEFENSE
19 BROUGHT IT UP AT THIS POINT AGAIN, WAS BASED ON THE FACT THAT
20 THREE OUT OF EIGHT PEREMPTORIES HAD BEEN DIRECTED AT BLACK
21 JURORS. IT SEEMED TO THE DEFENSE TO BE A PATENTLY DISCRIMIN-
22 ATORY THING AT THIS POINT, PARTICULARLY SINCE THE DEFENDANT
23 EVEN IN THE MOST OPEN-MINDED WAY, CAN FIND NO OTHER BASIS
24 UPON WHICH THOSE JURORS MIGHT HAVE BEEN OBJECTIONABLE.

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1 THE COURT: MAYBE IT IS A FEELING OF THE PROSECUTION THAT
2 THE BLACKS ARE OVER-REPRESENTED ON THE JURY AND HE WANTS TO
3 GET AN EQUALLY-BALANCED JURY.

4 MR. BARENS: IF THAT BE MR. WAPNER'S REASONING, YOUR
5 HONOR, I AM NOT GOING TO DISPUTE THAT.

6 THE COURT: I DON'T KNOW HIS STATE OF MIND.

7 MR. BARENS: YOUR HONOR, ALL I HAD DONE IN ASKING TO
8 APPROACH THE BENCH WAS TO ASK THE COURT TO INQUIRE OF MR.
9 WAPNER AS TO HIS STATE OF MIND.

10 THE COURT: I AM NOT GOING TO DEMAND THAT HE TELL ME THAT
11 BUT IF HE WANTS TO VOLUNTEER IT, I WILL BE PERFECTLY WILLING
12 TO LISTEN TO IT.

13 MR. WAPNER: YOUR HONOR, I THINK WE HAVE TO GET THE
14 PROCEDURAL POSTURE OF THIS IN COMPLETE PERSPECTIVE. IF THE
15 DEFENSE IS ASKING THE COURT TO ASK ME, THAT I DON'T FEEL I AM
16 COMPELLED TO RESPOND. IF THE DEFENSE IS MAKING A MOTION UNDER
17 WHEELER AND TURNER --

18 THE COURT: WHAT IS THE MOTION?

19 MR. WAPNER: IF THE MOTION IS UNDER WHEELER THAT THESE
20 PEOPLE ARE BEING SYSTEMATICALLY EXCUSED AND, THEREFORE, THE
21 DEFENDANT IS BEING DENIED HIS RIGHT TO A JURY OF A REPRESENTATIVE
22 CROSS SECTION, THEN WHEELER AND TURNER SET OUT SOME SPECIFIC
23 REQUIREMENTS, AND THE FIRST ONE IS THAT THE DEFENSE MAKE A
24 PRIMA FACIA SHOWING THAT THESE CHALLENGES ARE MADE OF A
25 COGNIZABLE GROUP AND THEY ARE DONE ON AN ESSENTIALLY RACIALLY
26 MOTIVATED, IN THIS CASE, BASIS.

27 SO FIRST OF ALL, I WANT TO KNOW: ARE THEY MAKING
28 A MOTION OR ARE THEY JUST ASKING THE COURT? AND IF THEY ARE

1 MAKING A MOTION, THEN I WANT THE COURT TO ASK THEM TO MAKE
2 THEIR SHOWING. AND IF THEY ARE MAKING A MOTION AND ASKING THE
3 COURT TO DETERMINE THAT A PROPER SHOWING HAS BEEN MADE, I WILL
4 RESPOND.

5 MR. BARENS: WE ARE IN FACT MAKING THE MOTION, YOUR
6 HONOR.

7 THE COURT: MOTION TO WHAT?

8 MR. BARENS: THE MOTION TO COMPEL THE PEOPLE TO HAVE TO
9 DISCLOSE THE BASIS ON WHICH THEY ARE ELECTING THEIR
10 PEREMPTORIES BECAUSE IT IS THE DEFENSE POSITION THAT THE
11 PROSECUTION AT THIS POINT IS SYSTEMATICALLY EXCLUDING A
12 DEFINABLE MINORITY FOR NO OTHER THAN RACIAL GROUNDS, AND THE
13 SHOWING BEING BASED ON THE FACT THAT THREE OUT OF THE EIGHT
14 HAVE BEEN DEDICATED TO THOSE JURORS AND OF THE BLACKS THAT WERE
15 INITIALLY AVAILABLE IN THE PANEL TO BEGIN WITH, WE HAVE NOW
16 EXCLUDED -- ONE MOMENT, YOUR HONOR -- HALF.

17 THE COURT: HALF OF WHAT?

18 MR. BARENS: OF THE AVAILABLE BLACKS FROM THE POOL THAT
19 WAS AVAILABLE WHEN WE STARTED THIS PROCESS.

20 THE COURT: THE UNDENIABLE FACT IS WE STILL HAVE THREE
21 BLACK JURORS IN THE JURY BOX. THAT REPRESENTS A CROSS
22 SECTION OF THE COMMUNITY, SO THAT CONSEQUENTLY, I CAN'T SEE
23 ANY BASIS FOR ANY KIND OF A MOTION TO COMPEL HIM TO DO ANYTHING.
24 IF HE DOESN'T WANT FIVE BLACKS ON THE JURY AND HE WANTS TO HAVE
25 TWO ON THE JURY, HE IS PERFECTLY PERMITTED TO DO THAT.

26 MR. BARENS: YOUR HONOR, AGAIN -- AND I AM NOT MEANING
27 TO ARGUE WITH YOUR HONOR AT ALL -- WHAT WE ARE REALLY
28 CHALLENGING AT THIS POINT IS NOT THE NUMERICAL COMPOSITION OF

1 THE JURY BUT, RATHER, THE PEREMPTORY PROCESS ITSELF BEING USED
2 BY THE PROSECUTION; THAT IT APPEARED THROUGH SOME COINCIDENCE
3 THAT A LOT OF THE PROSPECTIVE BLACK JURORS WERE PICKED IN THE
4 EARLY STAGES OF THE PROCEEDINGS HERE AND IT SEEMED LIKE ALTHOUGH
5 THERE WERE WHITES AND BLACKS AVAILABLE TO BE KICKED OFF THE
6 JURY, THAT THE PROSECUTION WAS SYSTEMATICALLY UTILIZING THEIR
7 PEREMPTORY ON THE BLACKS.

8 MR. WAPNER: YOUR HONOR, LET ME, OUT OF AN ABUNDANCE OF
9 CAUTION, BECAUSE THIS IS DONE, I BELIEVE, PRIMARILY TO CREATE
10 AN ISSUE FOR THE APPEAL, MAKE A STATEMENT FOR THE RECORD, WHAT
11 THE BASES FOR THESE CHALLENGES WERE.

12 THE COURT: GO AHEAD.

13 MR. WAPNER: FIRST OF ALL, THE FIRST CHALLENGE WAS --

14 THE COURT: JUROR NUMBER 1.

15 MR. BARENS: MRS. EWELL.

16 THE COURT: MRS. EWELL.

17 MR. WAPNER: YES, MRS. EWELL. AND THERE WERE TWO BASES
18 FOR THAT CHALLENGE: FIRST OF ALL, ON BALANCE, I LIKED MRS.
19 EWELL A LOT. THE MAIN REASON FOR CHALLENGING MRS. EWELL WAS
20 BECAUSE WHEN I GOT DOWN TO ASKING HER A QUESTION THAT I HAVE
21 ASKED ALL OF THE OTHER JURORS ABOUT THE HYPOTHETICAL ON THE
22 BOAT, SHE, IN MY VIEW, CAME UP WITH THEORIES THAT WERE
23 SPECULATIVE AT BEST AND SHE WAS NOT WILLING TO ACCEPT IN HER
24 MIND THOSE THAT WERE REASONABLE.

25 WELL, MAYBE SHE IS ENTITLED TO THAT BUT IN MY
26 MIND -- AND I CAN'T CITE THE SPECIFIC ANSWER THAT SHE GAVE --
27 BUT IN MY MIND, IT WAS SPECULATION AND I WAS QUITE SURPRISED
28 THAT A WOMAN WHO I PERCEIVED TO BE VERY INTELLIGENT, WOULD COME

1 UP WITH THAT AND THAT DISTRESSED ME GREATLY.

2 THE SECOND REASON -- LET ME BACK UP FOR A SECOND --
3 I DON'T WANT PEOPLE ON THE JURY WHO WILL GO INTO THE JURY ROOM
4 AND SAY "WELL, GEEZ, MAYBE HE COULD BE ALIVE IN SOUTH AMERICA,
5 MAYBE HE COULD BE HERE, MAYBE HE COULD BE THERE. HOW DO WE
6 KNOW?" BECAUSE I HAVE HAD EXPERIENCES VERY RECENTLY WITH
7 PEOPLE ON JURIES WHO DID THIS, AND ALTHOUGH IT HAS COME TO MY
8 ATTENTION AFTER THE FACT THAT THOSE JURIES REACHED VERDICTS
9 I HAVE ALMOST HAD HUNG JURIES ON CASES THAT WERE VERY SOLID
10 BECAUSE OF PEOPLE WITH THAT STATE OF MIND AND FOR THAT REASON,
11 PRIMARILY BECAUSE OF THAT ANSWER, I DID NOT LIKE MRS. EWELL.

12 MR. BARENS: THE DEFENSE ACCEPTS THAT AS BEING TOTALLY
13 LEGITIMATE AS A CONCERN AND WANTS TO COMMENT TO THAT EFFECT.

14 THE COURT: YES.

15 MR. WAPNER: SECOND OF ALL, LET ME POINT OUT THE FACT
16 THAT MRS. EWELL WORKED FOR THE DISTRICT ATTORNEY'S OFFICE FOR
17 FIVE YEARS. I THINK FOR THE PROSECUTOR TO ALLOW SOMEONE TO
18 SIT ON THE JURY WITH THAT BACKGROUND OR TO ALLOW THE DEFENSE
19 TO PRE-EMPT THAT PERSON, MAKES IT APPEAR THAT THE PROSECUTION
20 IS TRYING TO GET A BIASED JUROR ON THE JURY AND I DIDN'T WANT
21 TO HAVE THAT APPEARANCE. I WANTED TO HAVE THE APPEARANCE WITH
22 THE REST OF THE JURORS THAT THAT IS A FAIR JUROR.

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1 ALTHOUGH ALL OF THE JURORS WILL ALWAYS SAY THEY
2 CAN BE FAIR, I DON'T WANT THE 11 OTHER PEOPLE SPECULATING
3 ABOUT WHAT A JUROR KNOWS FROM THE D.A.'S OFFICE OR FROM ANY
4 EXPERIENCES SHE MIGHT HAVE HAD WITH PEOPLE IN THE D.A.'S OFFICE
5 THAT WEREN'T POSITIVE THAT MIGHT AFFECT HER ON THIS CASE.

6 SO THAT IS THE SECOND REASON AS TO MRS. EWELL.

7 THE SECOND PERSON THAT WAS EXCUSED WAS --

8 MR. BARENS: MS. WAUGH.

9 MR. WAPNER: MS. WAUGH.

10 THE COURT: SHE IS THE THIRD.

11 MR. CHIER: CRAWFORD WAS THE THIRD.

12 MR. WAPNER: NO. SHE WAS THE SECOND. MR. CRAWFORD
13 WAS THE THIRD.

14 THE COURT: WELL, MR. CHIER SAYS SHE IS AN EXTREMELY
15 INTELLIGENT WOMAN. HE SAYS YOU HAD NO BUSINESS EXCUSING HER.
16 SHE WOULD MAKE A VERY FINE JUROR. DO YOU REMEMBER THAT?

17 MR. BARENS: AGAIN, YOUR HONOR, THE DEFENSE DOES NOT
18 SUBMIT THAT THAT IS AN APPROPRIATE --

19 THE COURT: WELL, THAT IS WHAT MR. CHIER SAID. HE IS
20 COUNSEL.

21 MR. BARENS: WELL, I BELIEVE MR. CHIER WAS MAKING A
22 COMMENT. I BELIEVE MR. WAPNER IS ENTITLED TO DISAGREE, NOR
23 SHOULD MR. CHIER'S COMMENT IN THAT REGARD BE OUTCOME
24 DETERMINATIVE.

25 THE COURT: NO. IT ISN'T. I AM JUST INDICATING THAT
26 I THOUGHT THAT YOU CONCURRED IN IT.

27 MR. BARENS: THANK YOU, YOUR HONOR. AGAIN, MR. WAPNER
28 IS VERY LEGITIMATELY ENTITLED TO DISAGREE WITH THAT.

14A-1

1 MR. WAPNER: MS. WAUGH I AGREE, IS PROBABLY FAIRLY
2 INTELLIGENT. THERE IS NO WAY TO KNOW, EXCEPT THAT SHE TAUGHT
3 SCHOOL FOR A WHILE AND APPEARED TO BE INTELLIGENT.

4 BUT LIKE MS. EWELL, WHEN WE GOT TO AN EXAMPLE
5 OF CIRCUMSTANTIAL EVIDENCE IN THIS CASE, THE KID WITH THE
6 PIE --

7 THE BAILIFF: ANOTHER JUROR WANTS TO BE EXCUSED.

8 THE COURT: I THINK WE HAVE TO PUT A STOP TO THIS. WE
9 ASKED THEM ALL.

10 NOW THEY ARE GOING TO BE HERE LONGER AND LONGER.
11 I CAN UNDERSTAND SOMEBODY BEING SICK. THAT'S ALL RIGHT. SHE
12 CAN BE EXCUSED.

13 NOW AS TO THE OTHER ONE WHO WANTS TO GO BACK TO
14 WORK, THIS IS A HELL OF A TIME TO TELL US.

15 (BRIEF PAUSE.)

16 THE COURT: IT SAYS THAT "I THINK I WILL BE DISQUALIFIED
17 SINCE I HAVE A CLOSE ASSOCIATION WITH FIVE MURDER VICTIMS."

18 THE BAILIFF: "I STAYED ON AS A JUROR BECAUSE MY FATHER
19 AND HUSBAND ARE LAWYERS AND I UNDERSTAND MR. HUNT'S INNOCENCE.
20 IF HE IS PROVED GUILTY, I AM NOT OPEN-MINDED ABOUT PUNISHMENT."

21 THE COURT: WELL, WHY DIDN'T SHE TELL US THAT.

22 THE BAILIFF: SHE IS LOIS CLEMENTS.

23 MR. BARENS: WE'LL STIPULATE TO MRS. CLEMENTS BEING
24 EXCUSED FROM EVERY JURY.

25 MR. WAPNER: I DON'T REMEMBER MRS. CLEMENTS.

26 THE COURT: ALL RIGHT. WE'LL EXCUSE HER.

27 MR. BARENS: INDEED. I THINK THAT IT WAS NOT FAIR NOT
28 TO TELL US ALL OF THAT DURING THE HOVEY VOIR DIRE. THEN IT

1 WOULD HAVE BEEN APPROPRIATE.

2 THE COURT: SHE SHOULD HAVE TOLD US.

3 THE BAILIFF: DO YOU WANT ME TO EXCUSE HER NOW OR WAIT
4 UNTIL YOU COME OUT?

5 THE COURT: TELL HER TO GO HOME. TELL HER SHE IS
6 EXCUSED ALTOGETHER.

7 MR. WAPNER: DON'T YOU THINK THAT WE SHOULD FIND OUT
8 IF ONE OF THE FIVE MURDER VICTIMS WAS MR. LEVIN?

9 MR. BARENS: WE ARE NOT AGREEING THAT HE WAS MURDERED,
10 MR. WAPNER.

11 MR. WAPNER: YOUR HONOR, MAY I CONTINUE ABOUT MS. WAUGH?

12 THE COURT: YES. GO AHEAD.

13 MR. WAPNER: MS. WAUGH, WHEN WE GOT TO THE EXAMPLE ABOUT
14 THE KID WITH THE CHERRY PIE, IN THE SAME FASHION AS WITH
15 MS. EWELL, STARTED IN MY OPINION, SPECULATING WILDLY ABOUT
16 ALL OF THE THINGS THAT COULD POSSIBLY HAVE HAPPENED.

17 NOW EVENTUALLY, AFTER I DISCUSSED IT WITH HER,
18 SHE SAID, WELL, SHE THINKS THAT IT IS PROBABLY REASONABLE
19 THAT HE ATE THE PIE.

20 BUT AS WITH MS. EWELL, I DON'T LIKE PEOPLE ON
21 JURIES WHO START SPECULATING ABOUT ALL THESE DIFFERENT, WILD
22 POSSIBILITIES.

23 I HAVE BEEN ASKING QUESTIONS OF EACH JUROR BLACK
24 AND WHITE, ABOUT THE DIFFERENCE BETWEEN THINGS THAT ARE
25 POSSIBLE AND THINGS THAT ARE REASONABLE.

26 AND FOR THAT REASON, I DIDN'T LIKE HER.

27 THERE IS A SECONDARY REASON AS FAR AS MS. WAUGH
28 WAS CONCERNED. THAT IS, THAT SHE IS SOMEONE WHO IS VERY

1 RELIGIOUS TO THE EXTENT THAT WHEN I ASKED HER WHAT BOOK SHE
2 READ, SHE SAID THE BIBLE.

3 WELL, EVERYBODY IS ENTITLED TO THEIR OWN PARTICULAR
4 RELIGIOUS VIEWS. MY EXPERIENCES, HOWEVER WITH PEOPLE ON
5 JURIES WHO HAVE A DEEPLY HELD RELIGIOUS VIEW TO THE EXTENT
6 THAT THE FIRST THING THEY TELL YOU ABOUT BOOKS IS THAT THEY
7 READ THE BIBLE, IS THAT THEY DON'T OFTEN MAKE GOOD JURORS
8 BECAUSE --

9 THE COURT: WELL, YOU HAVE TO BE CONSISTENT. WE HAVE
10 BUT ONE OR TWO MORE WHO READ THE BIBLE CONSISTENTLY.

11 MR. WAPNER: I UNDERSTAND THAT. BUT AS THE COURT
12 POINTED OUT BEFORE, WE ARE NOT FINISHED WITH THE PROCESS YET.

13 I HAVE A COMMENT TO MAKE ABOUT CONSISTENCY, WHEN
14 I GET FINISHED COMMENTING ON THE OTHER PERSON, WHO IS
15 MR. CRAWFORD.

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1 THE COURT: ALL RIGHT. LET'S GO TO CRAWFORD.

2 MR. WAPNER: THERE WOULD BE AGAIN, TWO REASONS. THE
3 FIRST ONE IS PRIMARILY THE SAME AS THE OTHER TWO BECAUSE HE
4 WAS AGAIN, SPECULATING IN MY VIEW, ABOUT ALL KINDS OF POSSIBLE
5 THINGS THAT COULD HAVE HAPPENED.

6 AND WHILE HIS SPECULATION MIGHT HAVE BEEN MORE
7 REASONABLE, IT WAS CERTAINLY NOT THE KIND OF THING THAT I
8 LIKED.

9 AND HE WAS BASICALLY BITING ON WHAT I THOUGHT
10 WAS THE DEFENSE THEORY ON THE CASE. BUT IN ANY EVENT, BASED
11 ON THAT HYPOTHETICAL, HE WAS SPECULATING NONETHELESS.

12 THE SECOND REASON AS TO MR. CRAWFORD IS THAT HE
13 ACCEPTED IN MY VIEW, HOOK, LINE AND SINKER, THIS DEFENSE
14 NOTION OF MACHOISM AND PEOPLE SAYING THEY DID THINGS, EVEN
15 THOUGH THEY DIDN'T REALLY DO THEM OR TAKING THE CREDIT FOR
16 THINGS THEY DIDN'T DO, JUST TO BE MACHO.

17 AS FAR AS CONSISTENCY, I AGREE WITH THE COURT.
18 YOU CAN'T JUST EXCUSE ONE GROUP, BASED ON WHAT THEY SAY AND
19 NOT OTHER PEOPLE.

20 MY FIRST PEREMPTORY WAS OF A MR. --

21 THE COURT: YOUR PEREMPTORY?

22 MR. WAPNER: THE FIRST ONE WAS FOR JUROR NUMBER --

23 MR. CHIER: NUMBER 1.

24 MR. WAPNER: MR. GHIRARDI, JUROR NUMBER 7, HE WAS THE
25 FIRST ONE TO START SPECULATING ABOUT WHAT HAPPENED TO THE
26 PERSON ON THE BOAT.

27 MAYBE HE GOT PICKED UP BY SOMEBODY ON A SHIPPING
28 LINES.

1 THEN I ASKED MR. GHIRARDI WELL, DIDN'T THE
2 HYPOTHETICAL INCLUDE WHAT HAPPENS IF THE PERSON GETS TO THE
3 SHORE. WELL, MAYBE HE CAME TO A COUNTRY THAT DOESN'T HAVE
4 ANY TELEPHONES.

5 I ASKED HOW MANY COUNTRIES DO YOU KNOW THAT DON'T
6 HAVE TELEPHONES. AND FOR FIVE MINUTES WE WENT ON AND ON AND
7 FINALLY I HAD TO GET HIM TO THE POINT OF HIKING THE MAN OUT
8 OF THE BUSH FOR TWO WEEKS AND THEN HE WOULD FINALLY ACCEPT
9 THE FACT THAT THE PERSON WOULD HAVE CALLED SOMEONE.

10 WELL, THEREFORE, I EXCUSED MR. GHIRARDI ON THAT
11 BASIS.

12 MR. BARENS: YOUR HONOR, THUS ADVISED, THE DEFENSE
13 ACCEPTS THE PROSECUTION'S EXPLANATIONS AND RATIONALE AND FEELS
14 THAT WE ACCEPT THE EXPLANATIONS AS LEGITIMATE AND CANDID.

15 WE THANK HIM FOR THAT.

16 THE COURT: ALL RIGHT. LET'S GO ABOUT OUR BUSINESS,
17 THEN.

18 MR. BARENS: INDEED WE SHALL. AGAIN, I HOPE YOUR HONOR
19 UNDERSTANDS --

20 THE COURT: I CAN UNDERSTAND PERFECTLY.

21 MR. BARENS: THE OBLIGATION THAT WE HAVE.

22 THE COURT: I CAN ALSO UNDERSTAND WHY YOU WOULD LIKE
23 TO HAVE BLACKS ON THE JURY, TOO.

24 MR. BARENS: YOUR HONOR, TWO OF THE THREE PEOPLE
25 MR. WAPNER REFERENCED, WE HAD THOUGHT WOULD HAVE BEEN VERY
26 FAIR JURORS FOR BOTH SIDES. THE BEST THE DEFENSE EVER HOPES
27 FOR IN A TRIAL, IS A JURY WHO IS OPEN-MINDED ENOUGH TO LISTEN
28 TO THE DEFENSE SIDE.

1 THE COURT: WELL, ALL RIGHT.

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

4 THE COURT: THE DEFENDANT IS PRESENT AND COUNSEL ARE
5 PRESENT AND THE PROSPECTIVE JURORS ARE PRESENT.

6 MS. KRAMER, YOU HAVE SOME PHYSICAL PROBLEM. YOU
7 WANT TO BE EXCUSED?

8 MS. KRAMER: YES.

9 THE COURT: YOU ARE EXCUSED. MR. NITZ, WHY DOES THE
10 COMPANY WANT YOU BACK SO FAST?

11 MR. NITZ: I TALKED TO THEM. THEY WOULD LIKE ME TO
12 COME BACK TO WORK STARTING TOMORROW.

13 THE COURT: WELL, DO YOU MEAN THAT YOU ARE NEEDED THERE?
14 IS THAT THE IDEA?

15 MR. NITZ: APPARENTLY I AM NEEDED THERE.

16 THE COURT: IS YOUR JOB JEOPARDIZED IN ANY WAY?

17 MR. NITZ: NOT THAT I KNOW OF.

18 THE COURT: I AM VERY RELUCTANT TO EXCUSE YOU FOR THAT
19 REASON. BUT I HAVE GOT THE APPROVAL OF BOTH SIDES. WE WILL
20 EXCUSE YOU, MR. NITZ.

21 MR. BARENS: WE SO STIPULATE.

22 MR. WAPNER: WE SO STIPULATE.

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1 THE COURT: ALL RIGHT, VERY WELL.

2 HAVE YOU FINISHED WITH MR. MC CABE?

3 MR. BARENS: IT IS THE PROSECUTION.

4 THE COURT: ALL RIGHT, YOU MAY QUESTION MR. MC CABE.

5 MR. WAPNER: GOOD AFTERNOON, MR. MC CABE.

6 MR. MC CABE: GOOD AFTERNOON.

7 MR. WAPNER: THE WORK THAT YOU ARE PRESENTLY DOING, DO

8 YOU DESIGN THE ENTIRE AIRCRAFT FOR THESE CORPORATIONS OR DO

9 YOU DESIGN THE INTERIORS?

10 MR. MC CABE: I AM RETIRED PRESENTLY.

11 MR. WAPNER: WELL, WHEN YOU DID THAT?

12 MR. MC CABE: WHEN I WAS DOING IT, JUST THE INTERIOR

13 AVIONIC INSTALLATION AND EXTERIORS, PAINT.

14 MR. WAPNER: AND WHAT DOES AVIONIC INSTALLATION MEAN?

15 MR. MC CABE: WELL, THAT HAS TO DO WITH NAVIGATIONAL

16 EQUIPMENT, COMMUNICATIONS EQUIPMENT.

17 MR. WAPNER: IT DIDN'T HAVE ANYTHING TO DO WITH THE

18 CONFIGURATION OF THE PASSENGER COMPARTMENT OR ANYTHING LIKE

19 THAT?

20 MR. MC CABE: NOT NORMALLY. THERE MIGHT HAVE BEEN A

21 TV OR ENTERTAINMENT SYSTEM, SIMILAR TO A HOME, IN THE CABIN.

22 MR. WAPNER: THESE WERE ALL FOR CORPORATIONS THAT YOU

23 DID THIS FOR?

24 MR. MC CABE: AND PRIVATE INDIVIDUALS.

25 MR. WAPNER: IF IT WAS FOR PRIVATE INDIVIDUALS, I ASSUME

26 WE ARE TALKING ABOUT PEOPLE WHO ARE FAIRLY WEALTHY?

27 MR. MC CABE: YES.

28 MR. WAPNER: AND DID YOU ENJOY THAT KIND OF WORK?

1 MR. MC CABE: YES.

2 MR. WAPNER: DID YOU MAKE ANY FRIENDS AMONG THOSE CLIENTS
3 THAT YOU DEALT WITH?

4 MR. MC CABE: YES.

5 MR. WAPNER: PEOPLE THAT YOU ARE STILL IN TOUCH WITH?

6 MR. MC CABE: AT CHRISTMAS TIME AND OCCASIONALLY.

7 MR. WAPNER: OKAY, PEOPLE THAT HAVE A LITTLE MORE MONEY
8 THAN THE PEOPLE YOU DEALT WITH IN THE NAVY OR IN THE ARMY?

9 MR. MC CABE: YES.

10 MR. WAPNER: IS THERE ANYTHING ABOUT THE FACT THAT A
11 PERSON HAS MONEY THAT CAUSES YOU TO FEEL ANYTHING ABOUT THEM
12 ONE WAY OR THE OTHER, JUST BECAUSE OF THAT?

13 MR. MC CABE: NO.

14 MR. WAPNER: WHAT KIND OF TRAVELING DO YOU LIKE TO DO?

15 MR. MC CABE: PRIMARILY AIRLINES OR PRIVATE PLANE OR
16 AUTOMOBILE.

17 MR. WAPNER: DO YOU STILL FLY?

18 MR. MC CABE: YES.

19 MR. WAPNER: WHAT KIND OF PLANE DO YOU FLY?

20 MR. MC CABE: CESSNA, PRIMARILY.

21 MR. WAPNER: DO YOU OWN YOUR OWN PLANE?

22 MR. MC CABE: NO.

23 MR. WAPNER: WHERE DO YOU FLY OUT?

24 MR. MC CABE: TORRANCE.

25 MR. WAPNER: WHAT DO YOU THINK HAPPENED TO THE PERSON
26 IN THE BOAT?

27 MR. MC CABE: WHICH BOAT WAS THAT? WOULD YOU REVIEW IT,
28 PLEASE?

1 MR. WAPNER: SURE, I WILL BE HAPPY TO DO THAT.

2 THIS IS THE BOAT THAT THE TWO PEOPLE ARE ON IN THE
3 MIDDLE OF THE OCEAN, MILES FROM ANY LAND. ONE GOES TO SLEEP
4 AT NIGHT AND THE OTHER ONE STAYS UP ON DECK. IN THE MORNING,
5 THE PERSON WHO HAD GONE TO SLEEP WAKES UP AND DOESN'T FIND THE
6 OTHER PERSON ANYWHERE ON THE BOAT. HE HAS LOOKED AROUND THE
7 BOAT AND HE FINDS ALL OF THE LIFE PRESERVERS ARE THERE,
8 THE DINGHY IS THERE BUT THE PERSON IS GONE AND THEN THIS
9 PERSON WHO IS GONE HAS NEVER BEEN HEARD FROM SINCE.

10 MR. MC CABE: PROBABLY DROWNED.

11 MR. WAPNER: WHY DO YOU THINK SO?

12 MR. MC CABE: WELL, THAT SEEMS THE MOST LIKELY TO ME.

13 MR. WAPNER: ARE THERE OTHER THINGS THAT ARE POSSIBLE
14 THAT COULD HAVE HAPPENED TO HIM?

15 MR. MC CABE: OH, YES.

16 MR. WAPNER: HAVE YOU SAT ON A JURY BEFORE?

17 MR. MC CABE: NO.

18 MR. WAPNER: WHEN YOU SIT AS A JUROR IN THIS CASE, CAN
19 YOU ATTEMPT TO SEPARATE WHAT YOU THINK IS LIKELY OR REASONABLE
20 FROM THINGS THAT YOU THINK ARE POSSIBLE?

21 MR. MC CABE: YES.

22 MR. WAPNER: DID YOU HEAR THE JUDGE'S INSTRUCTIONS ON
23 REASONABLE DOUBT?

24 MR. MC CABE: YES.

25 MR. WAPNER: DID THAT MAKE SENSE TO YOU?

26 MR. MC CABE: YES.

27 MR. WAPNER: AND DID YOU HEAR HIM SAY THAT IT IS NOT
28 BEYOND ANY POSSIBLE DOUBT?

5-4

1 MR. MC CABE: YES.

2 MR. WAPNER: AND THAT THE REASON THEY SAY THAT IS BECAUSE
3 ANYTHING IN LIFE AND DEPENDING ON MORAL EVIDENCE IS OPEN TO
4 SOME POSSIBLE OR IMAGINARY DOUBT.

5 MR. MC CABE: YES.

6 MR. WAPNER: OKAY, WOULD YOU HOLD THE PROSECUTION TO A
7 STANDARD HIGHER THAN THAT, OF PROOF BEYOND A REASONABLE
8 DOUBT, BECAUSE THIS IS A MURDER CASE WHERE NO BODY HAS BEEN
9 RECOVERED?

10 MR. MC CABE: NO.

11 MR. WAPNER: DO YOU REQUIRE ME TO PROVE THAT SAME
12 STANDARD BUT NOTHING HIGHER?

13 MR. MC CABE: THAT'S CORRECT.
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1 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
2 OF A THEFT OR FRAUD OR CON SCHEME?

3 MR. MC CABE: YES.

4 MR. WAPNER: TELL ME ABOUT IT.

5 MR. MC CABE: ON A FEW OCCASIONS THE CAR WAS ENTERED AND
6 SOME PERSONAL THINGS WERE TAKEN.

7 THE COURT: YOU MEAN A BURGLARY?

8 MR. MC CABE: A BURGLARY, YES, IN THE CAR. THE CAR
9 WAS PARKED UNATTENDED.

10 MR. WAPNER: WAS ANYONE EVER APPREHENDED?

11 MR. MC CABE: NO.

12 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT THE POLICE
13 DEPARTMENT AS A RESULT OF THAT?

14 MR. MC CABE: NO.

15 MR. WAPNER: HAVE YOU READ ANYTHING IN THE PAPERS
16 RECENTLY ABOUT CASES THAT INVOLVE THE LOS ANGELES DISTRICT
17 ATTORNEY'S OFFICE?

18 MR. MC CABE: NO.

19 MR. WAPNER: DO YOU HAVE ANY OPINIONS ABOUT THE DISTRICT
20 ATTORNEY'S OFFICE THAT MIGHT AFFECT YOU IN THIS CASE?

21 MR. MC CABE: NO.

22 MR. WAPNER: DO YOU HAVE ANY FRIENDS OR RELATIVES WHO
23 ARE LAWYERS, WHO PRACTICE PRIMARILY CRIMINAL LAW?

24 MR. MC CABE: NO.

25 MR. WAPNER: YOU HAVE NEVER GONE TO LAW SCHOOL, TAKEN
26 ANY LAW COURSES?

27 MR. MC CABE: NO.

28 MR. WAPNER: WHAT IF IT TURNS OUT THAT YOU DON'T LIKE

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1 THE PERSONALITY OF THE VICTIM IN THIS CASE, HOW IS THAT GOING
2 TO AFFECT YOU?

3 MR. MC CABE: NOT AT ALL.

4 MR. WAPNER: DO YOU THINK IT SHOULD AFFECT YOU AT ALL?

5 MR. MC CABE: NO.

6 MR. WAPNER: FORGIVE ME IF YOU MENTIONED THIS AND I
7 DIDN'T WRITE IT DOWN, HOW OFTEN DO YOU SEE YOUR SONS OR TALK
8 TO THEM?

9 MR. MC CABE: THE OLDEST SON IN HAWAII, FIVE OR SIX TIMES
10 A YEAR. THE YOUNGEST SON, I SEE WEEKLY, MAYBE TWICE A WEEK.

11 MR. WAPNER: HE LIVES LOCALLY?

12 MR. MC CABE: YES.

13 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT. THE PEOPLE'S PEREMPTORY.

16 MR. WAPNER: YES, WE WOULD THANK AND ASK THE COURT TO
17 EXCUSE MR. KNIGHT, JUROR NUMBER 6.

18 THE COURT: THANK YOU, MR. KNIGHT.

19 THE CLERK: MARK F. CAMPBELL, C-A-M-P-B-E-L-L.

20 THE COURT: MR. CAMPBELL, YOU, TOO, HAVE HEARD ALL OF
21 THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

22 MR. CAMPBELL: YES.

23 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED OF
24 YOU, YOUR ANSWERS WOULD BE SUBSTANTIALLY THE SAME?

25 MR. CAMPBELL: THEY WOULD BE SUBSTANTIALLY THE SAME.

26 THE COURT: I THINK YOU INDICATED TO US EARLIER THAT YOU
27 OR SOME MEMBER OF YOUR FAMILY ARE IDENTIFIED WITH LAW
28 ENFORCEMENT WORK OF SOME KIND.

5-7

1 MR. CAMPBELL: YES, MY FATHER IS AN ATTORNEY THAT USED
2 TO WORK, DO CRIMINAL WORK AND I AM A RESERVE DEPUTY FOR THE
3 L.A. COUNTY SHERIFF'S DEPARTMENT.

4 THE COURT: PARDON ME?

5 MR. CAMPBELL: I AM A RESERVE DEPUTY FOR THE L.A. COUNTY
6 SHERIFF'S DEPARTMENT.

7 THE COURT: YOU ARE A RESERVE DEPUTY?

8 MR. CAMPBELL: YES.

9 THE COURT: ALL RIGHT. WOULD THAT IN ANY WAY INFLUENCE
10 YOU IN YOUR OWN MIND IN SERVING AS A FAIR JUROR IN THIS CASE?

11 MR. CAMPBELL: I THINK SO.

12 THE COURT: IN WHAT RESPECT?

13 MR. CAMPBELL: I THINK I WOULD, ALL THINGS BEING EQUAL,
14 I THINK I WOULD HAVE A TENDENCY TO FAVOR THE PROSECUTION'S
15 SIDE JUST OUT OF PRINCIPLE AND NOT BE OBJECTIVE WITH THE
16 DEFENDANT.

17 THE COURT: YOU CANNOT BE OBJECTIVE, CAN YOU?

18 MR. CAMPBELL: I DO NOT THINK SO.

19 MR. WAPNER: YOUR HONOR, WE ARE WILLING TO STIPULATE THAT
20 MR. CAMPBELL MAY BE EXCUSED.

21 THE COURT: ALL RIGHT, THANK YOU VERY MUCH FOR YOUR
22 FRANKNESS AND CANDOR, MR. CAMPBELL. YOU WILL BE EXCUSED.

23 THE CLERK: IRENE F. OSBORNE, O-S-B-O-R-N-E.

24 IS THAT MISS?

25 MS. OSBORNE: MISS.

26 THE COURT: MISS OSBORNE, I THINK YOU TOLD US EARLIER
27 THAT YOU OR SOME MEMBER OF YOUR FAMILY HAS BEEN THE VICTIM OF
28 SOME KIND OF A CRIME.

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1 MS. OSBORNE: MY DAUGHTER'S HOME WAS BURGLARIZED ABOUT
2 NINE YEARS AGO.

3 THE COURT: WAS IT INVESTIGATED BY THE POLICE?

4 MS. OSBORNE: YES.

5 THE COURT: ARE YOU SATISFIED, FROM WHAT YOU KNOW, THAT
6 THE INVESTIGATION WAS SATISFACTORY?

7 MS. OSBORNE: YES. SHE GOT ALL OF HER POSSESSIONS BACK.

8 THE COURT: EXCEPT YOU DIDN'T FIND THE BURGLAR, DID YOU?

9 MS. OSBORNE: YES, THEY DID.

10 THE COURT: THEY DID FIND HIM?

11 AS A RESULT OF THAT EXPERIENCE, WOULD THAT IN ANY
12 WAY INFLUENCE YOU AGAINST THE DEFENDANT BECAUSE HE HAS BEEN
13 CHARGED WITH A CRIME WHICH, OF COURSE, ISN'T THE SAME QUALITY
14 OR CHARACTER OF THE OTHER?

15 MS. OSBORNE: NO.

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1 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
2 SAME QUESTIONS, WOULD YOUR ANSWERS BE SUBSTANTIALLY DIFFERENT
3 OR WOULD THEY BE SUBSTANTIALLY THE SAME?

4 MS. OSBORNE: SUBSTANTIALLY THE SAME.

5 THE COURT: WHAT DO YOU DO, MRS. OSBORNE?

6 MS. OSBORNE: I AM RETIRED.

7 THE COURT: WHAT DID YOU RETIRE FROM?

8 MS. OSBORNE: I WORKED AT THE AUTO CLUB OF SOUTHERN
9 CALIFORNIA IN RESERVATIONS, HOTEL RESERVATIONS AND TRAVEL.

10 THE COURT: IS THAT DOWN ON CENTURY PARK EAST?

11 MS. OSBORNE: NO, SANTA MONICA BOULEVARD.

12 THE COURT: AND HOW LONG HAVE YOU BEEN WITH THEM?

13 MS. OSBORNE: TWENTY YEARS.

14 THE COURT: ALL RIGHT. WHAT FORMAL EDUCATION DID YOU
15 HAVE?

16 MS. OSBORNE: HIGH SCHOOL GRADUATE.

17 THE COURT: ALL RIGHT. WHERE DO YOU LIVE?

18 MS. OSBORNE: WEST LOS ANGELES.

19 THE COURT: AND HAVE YOU OR ANY MEMBER OF YOUR FAMILY
20 BEEN IDENTIFIED WITH LAW ENFORCEMENT WORK OF ANY KIND?

21 MS. OSBORNE: I DON'T KNOW WHETHER YOU ARE IF YOU ARE
22 A DEPUTY CLERK IN THE COURTROOM.

23 THE COURT: WHICH COURTROOM?

24 MS. OSBORNE: LONG BEACH MUNICIPAL COURT.

25 THE COURT: DO YOU KNOW ONE OF THE CLERKS?

26 MS. OSBORNE: NO. MY DAUGHTER IS A CLERK.

27 THE COURT: SHE IS A CLERK?

28 MS. OSBORNE: YES.

6A-2
1 THE COURT: ALL RIGHT. I DON'T KNOW WHAT CONNECTION
2 THAT WOULD HAVE WITH ANY ISSUES HERE.

3 MS. OSBORNE: I DON'T EITHER.

4 THE COURT: WHERE DO YOU LIVE?

5 MS. OSBORNE: WEST L.A.

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

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 GOOD AFTERNOON, MS. OSBORNE. HOW MANY CHILDREN
9 DO YOU HAVE?

10 MS. OSBORNE: THREE DAUGHTERS.

11 MR. BARENS: AND WE KNOW THAT ONE OF THEM -- IS SHE
12 STILL A CLERK IN MUNICIPAL COURT?

13 MS. OSBORNE: YES.

14 MR. BARENS: AND WHAT DO THE OTHER TWO DO?

15 MS. OSBORNE: ONE IS AN EXECUTIVE SECRETARY AND THE
16 OTHER ONE HAS JUST MOVED TO A DIFFERENT STATE. SO RIGHT NOW,
17 SHE IS NOT DOING ANYTHING.

18 MR. BARENS: YOUR DAUGHTER THAT WORKS AS A COURT CLERK,
19 IS SHE THE OLDEST OR THE YOUNGEST?

20 MS. OSBORNE: SHE IS THE MIDDLE.

21 MR. BARENS: AND WAS SHE TRAINED IN THE SHERIFF'S
22 DEPARTMENT OR SOMETHING OF THAT NATURE?

23 MS. OSBORNE: NO. JUST TRAINED ON THE JOB.

24 MR. BARENS: ON THE JOB? DOES SHE WEAR A UNIFORM?

25 SORRY. I AM THINKING OF BAILIFFS. WHAT AM I
26 THINKING OF TODAY? COME ON, NOW. SHE IS LIKE DIANE IS OVER
27 THERE.

28 OKAY. THERE IS NOTHING WRONG WITH THAT AT ALL.

1 MR. WAPNER: BUT THERE IS SOMETHING WRONG WITH BEING
2 A BAILIFF?

3 MR. BARENS: WELL, HE WAS NOT EVEN HERE FOR THE BENEFIT
4 OF THAT.

5 MR. WAPNER: YOU LUCKED OUT.

6 MR. BARENS: DOES SHE EVER DISCUSS HER WORK WITH YOU?

7 MS. OSBORNE: WELL, SHE IS IN MUNICIPAL COURT. IT IS
8 MOSTLY SMALL CLAIMS AND TRAFFIC AND PRELIMS.

9 MR. BARENS: YOU DON'T HEAR HER TALK ABOUT IT?

10 MS. OSBORNE: A COUPLE OF TIMES SHE TOLD ME ABOUT A
11 PRELIM, LONG AFTER IT IS OVER. BUT THAT IS ABOUT IT.

12 MR. BARENS: DOES ANY OF THAT MAKE YOU THINK THAT THERE
13 IS JUST TOO MUCH CRIME AND WE HAVE TO GET TOUGHER ON THE
14 CRIMINAL DEFENDANTS?

15 MS. OSBORNE: NO, NOT NECESSARILY.

16 MR. BARENS: WHILE YOU WERE WORKING AT THE AUTO CLUB,
17 DID YOU HAVE MUCH CONTACT WITH THE COUNSEL? THE AUTO CLUB
18 EMPLOYS DOZENS AND DOZENS OF LAWYERS, I UNDERSTAND.

19 MS. OSBORNE: NOT IN MY OFFICE.

20 MR. BARENS: YOU DIDN'T DEAL WITH ANY OF THOSE DEFENSE
21 INSURANCE ADJUSTERS?

22 MS. OSBORNE: NO.

23 MR. BARENS: AND SO, YOU HAD NOTHING TO DO WITH THAT
24 ASPECT OF IT THAT INVOLVED PERSONAL INJURY CLAIMS OR ADJUSTMENT
25 OF CLAIMS?

26 MS. OSBORNE: NO. MINE WAS HOTEL RESERVATIONS AND TRAVEL
27 ONLY.

28 MR. BARENS: YOU SAY THAT YOU HAD NO FORMAL EDUCATION

1 SUBSEQUENT TO HIGH SCHOOL?

2 MS. OSBORNE: THAT'S RIGHT.

3 MR. BARENS: AND NO SPECIALIZED TRAINING IN ANY AREA
4 BEYOND THAT POINT?

5 MS. OSBORNE: NO.

6 MR. BARENS: WHAT DO YOU THINK HAPPENED TO THE GUY IN
7 THE BOAT?

8 MS. OSBORNE: WELL, HE IS PROBABLY DEAD. BUT IT IS
9 POSSIBLE THAT SOMETHING ELSE COULD HAVE HAPPENED.

10 MR. BARENS: AND WOULD YOU COME TO AN AUTOMATIC
11 CONCLUSION IF I TELL YOU THAT THE GUY IS NOT ON THE BOAT ANY
12 MORE, THAT THE GUY HAS NOT BEEN HEARD FROM FOR A WHILE, DO
13 YOU AUTOMATICALLY THINK THAT HE IS DEAD? OR, WOULD YOU WANT
14 TO AT LEAST --

15 MS. OSBORNE: WELL, I WOULD WANT TO KNOW MORE BEFORE
16 I COULD MAKE UP MY MIND.

17 MR. BARENS: YOU WOULD WANT TO LISTEN TO SOME OF THE
18 EVIDENCE?

19 MS. OSBORNE: THAT'S RIGHT.

20 MR. BARENS: ONE OF THE THINGS THAT IS OF CONCERN TO
21 ALL OF US IS WHAT DO WE DO IF WE HAVE TWO EQUALLY REASONABLE
22 EXPLANATIONS FOR CONDUCT. YOU REMEMBER MR. WAPNER INTRODUCED
23 AN EXAMPLE OF THAT, A ROBBERY THAT OCCURRED AND FIVE PRIESTS
24 EITHER SEE THE ROBBERY OR -- STRIKE THAT.

25 THERE IS A ROBBERY THAT OCCURS WHERE NO ONE GETS
26 TO SEE THE ROBBER.

27 AND HE RUNS AWAY. AND ANOTHER INDIVIDUAL IS FOUND
28 WITH THE VICTIM'S WALLET IN HIS POCKET. DO YOU REMEMBER THAT?

1 MS. OSBORNE: UH-HUH.

2 MR. BARENS: AND THE QUESTION WAS POSED, WELL, DO YOU
3 THINK THAT THERE IS A REASONABLE LIKELIHOOD THAT THAT GUY
4 IS GUILTY? WHAT WOULD YOU SAY TO THAT?

5 MS. OSBORNE: WELL, IT WOULD DEPEND ON THE TIMING, I
6 WOULD THINK. DID HE HAVE TIME TO DROP IT AND SOMEBODY ELSE
7 PICK IT UP?

8 MR. BARENS: LET'S SAY THAT AN HOUR LATER, THIS FELLOW
9 IS APPREHENDED. HE HAS GOT THIS GUY'S WALLET IN HIS POCKET
10 AND THE MONEY IN THERE AND EVERYTHING ELSE. WHAT WOULD YOU
11 THINK AT THAT POINT?

12 MS. OSBORNE: IT IS POSSIBLE.

13 MR. BARENS: POSSIBLE? WELL, WHAT WE KNOW UNDER THE
14 LAW IS THAT WE CAN'T JUST DEAL WITH POSSIBILITIES, OF COURSE.
15 EVENTUALLY, WE HAVE TO COME TO CONCLUSIONS BASED ON WHAT IS
16 BEYOND A REASONABLE DOUBT.

17 CAN YOU REALLY SAY BECAUSE YOU NOW KNOW WHAT I
18 AM GOING TO SAY TO YOU, MRS. OSBORNE, I WILL SAY TO YOU LISTEN,
19 THE GUY TESTIFIED THAT HE FOUND THE WALLET ON THE STREET AND
20 PICKED IT UP AND PUT IT IN HIS POCKET.

21 I AM ALSO GOING TO SAY TO YOU LISTEN, THERE IS
22 A -- YOU ARE A REASONABLE WOMAN. IS IT REASONABLE TO YOU
23 THAT DURING THE FLIGHT, A ROBBER COULD DROP THE OBJECT OF
24 WHAT HE WAS TRYING TO STEAL?

25 MS. OSBORNE: YES. IT IS POSSIBLE.

26 MR. BARENS: IT IS GOING TO END UP IN SOMEBODY ELSE'S
27 POCKET?

28 MS. OSBORNE: YES.

1 MR. BARENS: WELL, WHAT I AM REALLY TRYING TO ASK YOU
2 NOW IS, YOU HAVE GOT TWO POSSIBILITIES HERE. DO YOU THINK
3 THAT THEY BOTH COULD BE PRETTY CLOSE TO A DEAD HEAT AS FAR
4 AS HOW REASONABLE THEY ARE?

5 MS. OSBORNE: YES.

6 MR. BARENS: WHAT ARE WE GOING TO DO? I AM NOT GOING
7 TO ASK YOU NOW TO GET INTO WILD SPECULATION. I HAVE NOT GIVEN
8 YOU SOME WILD, COCK-AND-BULL STORY OF SOME KIND ABOUT THE
9 ROBBERY THAT HE THEN GAVE IT TO ANOTHER GUY WHO ENDED UP GIVING
10 IT TO A GUY WHO IS ARRESTED AND THIS AND THAT. I AM NOT GIVING
11 YOU ONE OF THOSE.

12 I AM TELLING YOU STRAIGHT OUT, SOMETHING THAT
13 LOOKS REASONABLE TO ME. DO YOU THINK IT SOUNDS REASONABLE
14 TO YOU? THAT IS, THE EXPLANATION I GAVE YOU?

15 MS. OSBORNE: YES.
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1 MR. BARENS: WHAT DO YOU DO IF YOU HAVE -- WHEN YOU
2 GO TO RETIRE AND DELIBERATE THIS CASE, IF YOU HAVE TWO
3 REASONABLE EXPLANATIONS FOR THE SAME EVENT? WHAT DO YOU THINK
4 IT IS YOUR DUTY TO DO SO FAR AS BEING A JUROR ON THIS CASE?

5 MS. OSBORNE: WELL, IT WOULD BE NOT GUILTY, I WOULD
6 IMAGINE IF WE COULDN'T BE MORE SURE OF ONE FACT THAN THE OTHER.

7 MR. BARENS: IT IS NOT BEYOND A REASONABLE DOUBT?

8 MS. OSBORNE: THAT'S RIGHT.

9 MR. BARENS: NOW, YOU KNOW IT IS HARD FOR ME TO
10 DISCRIMINATE BETWEEN ALL OF THE THINGS THAT ARE POSSIBLE IN
11 THIS WORLD SOMETIMES AND THINGS THAT ARE REASONABLE.

12 DO YOU THINK THE LAW REALLY TELLS YOU THE ANSWER,
13 THE DIFFERENCE BETWEEN WHAT IS POSSIBLE AND WHAT IS REASONABLE?

14 MS. OSBORNE: I DON'T JUST QUITE UNDERSTAND YOU.

15 MR. BARENS: YOU DON'T? THAT IS BECAUSE THE ANSWER
16 DOESN'T EXIST. IT IS ALL IN WHATEVER YOU THINK SOMETHING
17 IS. DO YOU UNDERSTAND THAT YOU ARE THE SOLE ARBITER OR
18 DECIDER OF THAT?

19 MS. OSBORNE: YES.

20 MR. BARENS: THERE ARE CERTAIN THINGS I AM SURE THAT
21 YOU AND I COULD CLEARLY UNDERSTAND EXIST ONLY AS POSSIBILITIES
22 AND AREN'T REASONABLE.

23 I DON'T BELIEVE THE GUY THAT FELL OFF THE BOAT
24 IS PICKED UP BY A HELICOPTER. I DON'T GUESS THERE IS SOME
25 DEUS EX MACHINA THAT COMES TO PICK HIM UP AND JUST DROPPED
26 HIM THERE.

27 IT IS NOT REASONABLE UNDER ANY STRETCH OF THE
28 IMAGINATION, UNLESS OF COURSE, THERE WAS EVIDENCE THAT IT

1 WAS PREARRANGED. WOULD YOU NOT AGREE WITH THAT?

2 MS. OSBORNE: THAT'S RIGHT.

3 MR. BARENS: WHAT I AM SAYING IS, WOULD YOU BE WILLING
4 TO UNDERSTAND THAT AS A JUROR, THAT BEFORE WE COULD EVER GET
5 TO AN AUTOMATIC THING, HE IS OFF THE BOAT AND HE IS DEAD,
6 THE HELICOPTER IS ABSURD. IT IS ABSURD TO ME AND IT WAS WHEN
7 I FIRST HEARD IT.

8 BUT, WOULD YOU LISTEN TO AND CONSIDER ALL OF THE
9 EVIDENCE BEFORE WE START SAYING BOY, THAT IS JUST NOT LIKELY
10 AND THAT IS NOT REASONABLE?

11 MS. OSBORNE: YES.

12 MR. BARENS: IS THAT TRUE?

13 MS. OSBORNE: UH-HUH.

14 MR. BARENS: A LOT OF THINGS THAT AT FIRST BLUSH DON'T
15 SEEM REASONABLE OR POSSIBLE, TURN OUT TO BE THE ANSWER. DID
16 YOU EVER READ SHERLOCK HOLMES BOOKS?

17 MS. OSBORNE: NO.

18 MR. BARENS: DID YOU EVER READ ANY MURDER MYSTERY BOOKS?

19 MS. OSBORNE: A FEW.

20 MR. BARENS: HAVE YOU EVER SEEN MURDER MYSTERIES ON
21 TV?

22 MS. OSBORNE: YES.

23 MR. BARENS: WELL, ISN'T IT YOUR EXPERIENCE THAT A LOT
24 OF THE TIME, THE LEAST LIKELY GUY TO HAVE COMMITTED THE CRIME
25 TURNED OUT TO BE HIM?

26 MS. OSBORNE: YES.

27 MR. BARENS: AND THE GUY WHO REALLY LOOKED LIKE IT DID
28 IT, TURNED OUT INNOCENT AS THE DRIVEN SNOW, BUT YOU COULDN'T

1 TELL THAT UNTIL THE END OF THE PROGRAM?

2 MS. OSBORNE: THAT'S RIGHT.

3 MR. BARENS: UNTIL ALL OF THE EVIDENCE HAD BEEN ADDUCED?

4 MS. OSBORNE: YES.

5 MR. BARENS: WELL, I SUBMIT TO YOU THAT IT IS THE SAME
6 THING ON THE BOAT, ISN'T IT? WE JUST SAY THAT HE IS OFF
7 THE BOAT, HE IS DEAD, WITHOUT KNOWING ALL OF THE RELEVANT
8 FACTORS ABOUT THE ALLEGED VICTIM, THE CIRCUMSTANCES, THE
9 CIRCUMSTANCES ABOUT THE GUY REMAINING ON THE BOAT. HOW CAN
10 YOU TELL?

11 MS. OSBORNE: I CAN'T.

12 MR. BARENS: YOU CAN'T TELL. SO, WOULD YOU LISTEN TO
13 ALL OF THE EVIDENCE BEFORE COMING TO A CONCLUSION?

14 MS. OSBORNE: YES.

15 MR. BARENS: OKAY. I ASSURE YOU THAT I WON'T GIVE YOU
16 ANY WILD SPECULATION AS WE GO ALONG. WHAT DO YOU LIKE TO
17 DO IN YOUR SPARE TIME?

18 MS. OSBORNE: I PAINT. I PAINT IN OILS.

19 MR. BARENS: ANYTHING ELSE?

20 MS. OSBORNE: READ. TELEVISION.

21 MR. BARENS: ANY PARTICULAR TYPE OF THING YOU LIKE TO
22 READ?

23 MS. OSBORNE: MOSTLY BIOGRAPHIES.

24 MR. BARENS: ANY PARTICULAR TYPE OF BIOGRAPHIES?

25 MS. OSBORNE: NO, NOTHING IN PARTICULAR.

26 MR. BARENS: I THOUGHT THAT MAYBE YOU LIKED TO READ
27 ABOUT GREAT DEFENSE LAWYERS AND THEIR LIVES IN COURT OR
28 SOMETHING?

1 MS. OSBORNE: NO.

2 MR. BARENS: OKAY. WHAT DID YOU SAY YOUR HUSBAND DID?

3 MS. OSBORNE: HE WAS A HOUSE PAINTER.

4 MR. BARENS: AND DID HE HAVE ANY OTHER OCCUPATIONS
5 ASIDE FROM THAT OR WAS THAT A LIFETIME --

6 MS. OSBORNE: THAT IS ALL.

7 MR. BARENS: AND ARE YOU ORIGINALLY FROM THIS AREA?

8 MS. OSBORNE: NO. I AM FROM CANADA.

9 MR. BARENS: WHAT PART?

10 MS. OSBORNE: TORONTO.

11 MR. BARENS: HOW LONG HAVE YOU BEEN IN SOUTHERN CALIFORNIA?

12 MS. OSBORNE: THIRTY YEARS.

13 MR. BARENS: DO YOU READ ANY BOOKS ON PHILOSOPHY OR
14 HAVE ANY INTEREST IN THAT AREA?

15 MS. OSBORNE: NO.

16 MR. BARENS: DO YOU REMEMBER THE LAST MOVIE THAT YOU
17 SAW?

18 MS. OSBORNE: "AMADEUS."

19 MR. BARENS: AND YOU DON'T GO TO MOVIES TOO OFTEN, HEY?

20 MS. OSBORNE: NO.

21 MR. BARENS: DO YOU BELONG TO ANY SOCIAL CLUBS OR
22 ORGANIZATIONS?

23 MS. OSBORNE: NO.

24 MR. BARENS: HOW DO YOU FEEL ABOUT THAT BUSINESS ABOUT
25 THE BILLIONAIRE BOYS CLUB? IS THERE ANY PROBLEM WITH THAT,
26 SOMEBODY WHO MIGHT BELONG TO SOMETHING LIKE THAT?

27 MS. OSBORNE: NO, IT IS JUST A NAME.

28 MR. BARENS: HOW DO YOU FEEL ABOUT THAT PRESUMPTION

1 OF INNOCENCE SO IMPORTANT TO EVERY DEFENDANT? DO YOU THINK
2 THAT IT IS A FAIR THING THAT MR. HUNT SITS THERE PRESUMED
3 INNOCENT?

4 MS. OSBORNE: YES I DO.

5 MR. BARENS: DO YOU THINK THAT BECAUSE HE IS ACCUSED
6 OF SOMETHING -- AND I ASK YOU HONESTLY THAT WELL, HE HAS GOT
7 THE PRESUMPTION OF INNOCENCE. BUT, WE WOULDN'T BE HERE UNLESS
8 THERE WAS SOME FIRE. WE WOULDN'T BE HERE AT ALL UNLESS HE
9 HAD DONE SOMETHING WRONG. WHAT DO YOU THINK ABOUT THAT
10 NECESSARILY, MISS OSBORNE?

11 MS. OSBORNE: WELL, IT HAS TO BE PROVED FIRST.

12 MR. BARENS: DO YOU THINK THAT THERE IS NECESSARILY
13 SOMETHING TO BE PROVED OR WILL BE PROVEN ABOUT MY CLIENT
14 BECAUSE HE IS CHARGED WITH COMMITTING A MURDER?

15 MS. OSBORNE: I DON'T KNOW UNTIL I HEAR ALL OF THE
16 EVIDENCE.

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7-1

1 MR. BARENS: DO YOU HAVE ANY BELIEF IN YOUR HEART THAT
2 JUST BECAUSE WE ARE HERE, HE MUST HAVE DONE SOMETHING?

3 WHAT WE REALLY DO IN THIS PROCESS IS WE ALL COME
4 IN HERE AND WE ALL GO THROUGH THIS FORMALITY AND WE JUST WAIT
5 TO BE GIVEN SOMETHING TO CONVICT WITH; DO YOU THINK THAT IS
6 WHAT THE PROCESS IS ABOUT?

7 MS. OSBORNE: WELL, I FEEL THAT THE PROSECUTOR MUST HAVE
8 SOMETHING TO MAKE A CASE AND THEN NOW WE HAVE GOT TO DECIDE
9 WHETHER IT IS SUFFICIENT OR NOT.

10 MR. BARENS: RIGHT, THAT IS ACTUALLY EXACTLY WHAT IT IS
11 ABOUT: WHETHER OR NOT THE GOVERNMENT COMES ALONG AND PROVES
12 THEIR BURDEN, ESTABLISHES THEIR BURDEN OF PROOF TO YOUR
13 SATISFACTION BEYOND A REASONABLE DOUBT AND THAT IS PRECISELY
14 THE ANSWER ONE WOULD HOPE TO HEAR.

15 AND WE WOULD HOPE THAT YOU AS A JUROR ARE A PERSON
16 WHO IS TRULY NEUTRAL WHEN YOU ARE GOING TO LISTEN TO THAT
17 EVIDENCE AND LISTEN TO BOTH SIDES OF THE EVIDENCE BEFORE
18 COMING TO A CONCLUSION; IS THAT YOUR UNDERSTANDING --

19 MS. OSBORNE: I UNDERSTAND.

20 MR. BARENS: -- OF THE PROCEEDING?

21 MS. OSBORNE: YES.

22 MR. BARENS: HOW DO YOU FEEL ABOUT THE FIFTH
23 AMENDMENT, THE RIGHT OF ONE NOT TO TESTIFY?

24 MS. OSBORNE: WELL, I THINK IT IS SOMETHING YOU HAVE TO
25 HAVE.

26 MR. BARENS: DO YOU THINK IT IS FAIR THAT IT IS PART OF
27 OUR SYSTEM OR IS IT SOMETHING WE HAVE TO HAVE BECAUSE IT IS
28 THERE ANYHOW?

17-2

1 MS. OSBORNE: NO. I THINK IT IS FAIR.

2 MR. BARENS: DO YOU THINK IT HELPS PROTECT PEOPLE THAT
3 ARE TRULY INNOCENT?

4 MS. OSBORNE: I DO.

5 MR. BARENS: IS IT BELIEVABLE TO YOU THAT PEOPLE ARE PUT
6 ON TRIAL IN THIS COUNTRY AND ARE ACQUITTED AT THOSE TRIALS
7 BECAUSE THEY ARE TRULY INNOCENT?

8 MS. OSBORNE: OH, YES.

9 MR. BARENS: DO YOU THINK THAT PERHAPS SOMETIMES THE
10 GOVERNMENT CAN MAKE A MISTAKE WHEN IT GOES AFTER SOMEBODY?

11 MS. OSBORNE: COULD BE.

12 MR. BARENS: DO YOU THINK IT IS MORE LIKELY THAN NOT THAT
13 THE GOVERNMENT IS USUALLY RIGHT?

14 MS. OSBORNE: I DON'T KNOW.

15 MR. BARENS: SO YOU DON'T HAVE ANY OPINION ON THAT?

16 MS. OSBORNE: I DON'T.

17 MR. BARENS: YOU KNOW, A LOT OF US FEEL THAT THE GOVERNMENT,
18 BECAUSE IT IS A PRODUCT OF ALL OF THE RESOURCES IT HAS AND THE
19 INVESTIGATION MATERIALS IT HAS AND SUPPOSEDLY IT HAS NO AX
20 TO GRIND BECAUSE THE GOVERNMENT LIKES TO SAY THEY ARE A PUBLIC
21 SERVANT, WHATEVER THAT IS, THAT THEY ARE FAIR-MINDED AND SO
22 IF THEY GO AFTER SOMEBODY, THEY ARE HONORABLE AND THEY ARE
23 RIGHT; DO YOU HAVE THAT KIND OF A VIEW OF THE GOVERNMENT?

24 MS. OSBORNE: WOULD YOU GIVE ME THAT AGAIN?

25 MR. BARENS: WELL, THAT WILL BE TOUGH TO DO.

26 MS. OSBORNE: THE LAST --

27 MR. BARENS: DO YOU HAVE A VIEW OF THE GOVERNMENT
28 THAT BECAUSE THEY ARE THE GOVERNMENT, JUST BECAUSE OF THE

1 GENERIC NATURE OF THE GOVERNMENT, BECAUSE ALLEGEDLY THEY
2 REPRESENT THEMSELVES AS PUBLIC SERVANTS AND THEY HAVE NO
3 ALLEGED AXES TO GRIND, DO YOU FEEL THEY WOULD BE MORE LIKELY
4 TO BE RIGHT WHEN THEY WENT TO PROSECUTE SOMEBODY THAN NOT
5 RIGHT?

6 MS. OSBORNE: NOT NECESSARILY.

7 MR. BARENS: DO YOU UNDERSTAND THAT THE PEOPLE THAT WORK
8 IN THE GOVERNMENT'S PROSECUTION OFFICE HAVE A JOB TO GET
9 CONVICTIONS?

10 MS. OSBORNE: YES.

11 MR. BARENS: IT IS THEIR JOB.

12 MS. OSBORNE: YES.

13 MR. BARENS: THAT IS THEIR MOTIVATION IN LIFE?

14 MR. WAPNER: I AM GOING TO OBJECT TO THAT. I DON'T THINK
15 THAT IS A PROPER CHARACTERIZATION.

16 THE COURT: I WILL SUSTAIN THE OBJECTION.

17 MR. WAPNER: THANK YOU.

18 MR. BARENS: DO YOU UNDERSTAND THAT THE ONLY ONE IN THE
19 COURTROOM THAT IS SOLELY INTERESTED IN THE PURSUIT OF JUSTICE
20 THAT WE CAN ALL AGREE UPON IS THE JURY?

21 MR. WAPNER: I AM GOING TO OBJECT TO THAT, TOO. I ASSUME
22 MR. BARENS IS AND I CERTAINLY AM.

23 MR. BARENS: I AM SURE WE ALL ARE, BUT I SAID UPON WHICH
24 WE COULD ALL AGREE THAT WAS IN THE PURSUIT OF JUSTICE. OUR
25 OPINIONS OF JUSTICE MIGHT DIFFER.

26 THE COURT: DID YOU INCLUDE THE JUDGE, TOO?

27 MR. BARENS: ABSOLUTELY. I WILL AMEND WITH THE JUDGE.

28 I AM TALKING ABOUT THE DELIBERATION PROCESS BECAUSE, WELL, YOUR

7-4

1 HONOR IS GOING TO STAY OUT OF THAT.

2 WHAT I AM SAYING IS, WE COULD AGREE THAT THE JURY
3 ULTIMATELY HAS THE RESPONSIBILITY TO EFFECT JUSTICE.

4 MS. OSBORNE: YES.

5 MR. BARENS: AND THE ONE WITH THE SOLE MOTIVATION THAT
6 WE COULD ALL AGREE UPON FOR JUSTICE, OTHER THAN HIS HONOR,
7 IS THE JURY.

8 MS. OSBORNE: YES, I KNOW.

9 MR. BARENS: YOU HAVE NEVER HAD JURY EXPERIENCE BEFORE,
10 HAVE YOU?

11 MS. OSBORNE: YES, I HAVE, TWICE.

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1 MR. BARENS: THOSE WERE ON CRIMINAL OR CIVIL JURIES?

2 MS. OSBORNE: BOTH CRIMINAL.

3 MR. BARENS: WHAT SORT OF CASES DID THOSE INVOLVE?

4 MS. OSBORNE: ONE WAS A RAPE CASE AND ONE WAS ATTEMPTED
5 MURDER.

6 MR. BARENS: DID THE JURIES REACH VERDICTS IN THOSE
7 TWO CASES?

8 MS. OSBORNE: IN THE RAPE CASE, YES, THEY DID.

9 IN THE ATTEMPTED MURDER CASE, IT WAS STOPPED AFTER
10 ABOUT SIX DAYS OF TESTIMONY FOR A GUILTY PLEA.

11 MR. BARENS: ON THE CASE WHERE A VERDICT WAS REACHED,
12 DID YOU HAVE THE SAME OPINION ABOUT THE GUILT OR INNOCENCE OF
13 THE DEFENDANT IN THAT CASE FROM THE TIME THE TESTIMONY
14 CONCLUDED AS YOU DID WHEN THE ACTUAL FINAL VOTE WAS TAKEN?

15 MS. OSBORNE: YES, I DID.

16 MR. BARENS: DID YOU HAVE THE SAME OPINION FROM THE START
17 OF THE TRIAL UNTIL THE END OF THE TRIAL OR WAS YOUR OPINION
18 SOMEHOW SHAPED, FORMED OR MODIFIED DURING THAT PROCESS?

19 MS. OSBORNE: DURING THE PROCESS.

20 MR. BARENS: DID IT CHANGE MORE THAN ONCE DURING THE
21 PROCESS OR YOU JUST HAD AN INITIAL IMPRESSION THAT KIND OF
22 STAYED WITH YOU?

23 MS. OSBORNE: NO. I JUST KEPT MY MIND BLANK ABOUT THAT
24 UNTIL TOWARDS THE END.

25 MR. BARENS: WHAT DID YOU SAY, WHAT WAS YOUR IMPRESSION
26 OF THE JURY SYSTEM AFTER THAT PARTICIPATION ON YOUR PART, DID
27 YOU THINK IT WAS PLEASANT WORK AND THAT IT WORKED, HOW DO YOU
28 FEEL ABOUT IT?

1 MS. OSBORNE: YES, THAT WAS.

2 MR. BARENS: DID YOU DEVELOP ANY OPINIONS OR ORIENTATION
3 ABOUT THE DEFENSE LAWYERS AS A RESULT OF WHAT YOU SAW AS FAR
4 AS HOW THEY BEHAVED OR CONDUCTED THEIR DEFENSES IN THOSE TWO
5 CASES?

6 MS. OSBORNE: NO.

7 MR. BARENS: DID YOU THINK THE DEFENSE LAWYERS WERE AS
8 WORTHWHILE PEOPLE AS THE PROSECUTION WAS IN TERMS OF HOW THEY
9 WERE HANDLING THEMSELVES ON A PROFESSIONAL LEVEL OR WHAT THEY
10 WERE DOING PROFESSIONALLY?

11 I DON'T ASK YOU TO COMMENT UPON THEM ON A PERSONAL
12 LEVEL.

13 MS. OSBORNE: WELL, THE ONE THAT HAD GONE TO JURY
14 DELIBERATIONS, THE DEFENSE DIDN'T PUT ON MUCH OF A CASE.

15 MR. BARENS: DID YOU FEEL IN THAT INSTANCE THAT THE
16 DEFENSE SHOULD HAVE DONE SOMETHING?

17 MS. OSBORNE: CAN I GIVE YOU AN EXAMPLE OF WHAT THE CASE
18 WAS ABOUT TO GIVE YOU AN IDEA?

19 MR. BARENS: YES.

20 I DO NOT IN ANY WAY WANT YOU TO TELL ME HOW YOU
21 VOTED OR WHAT YOU BELIEVED.

22 MS. OSBORNE: NO, OKAY.

23 MR. BARENS: NOT WHETHER YOU BELIEVED IT WAS GUILT
24 OR INNOCENCE, HOWEVER.

25 MS. OSBORNE: IT WAS AN 80-YEAR-OLD WOMAN RAPED BY A
26 26-YEAR-OLD MAN AND ALL THE DEFENSE DID WAS TO TRY TO SAY THAT
27 SHE ASKED FOR IT.

28 (LAUGHTER IN THE COURTROOM.)

1 MR. BARENS: WELL, THE PROBLEM I HAVE WITH THAT, UNLESS
2 WE HAVE A FERAL (SIC) OCTOGENERIAN OF SOME TYPE, WHICH INVOLVES
3 ANOTHER TYPE OF LAW WE DEAL WITH, I DON'T SEE HOW THAT IS
4 POSSIBLE AND THAT IS THE PROBLEM.

5 MR. WAPNER: YOU ARE NOT 80 YET.

6 MR. BARENS: I MAY BE IN THE NEXT THREE MONTHS, MR.
7 WAPNER.

8 (LAUGHTER IN THE COURTROOM.)

9 MR. BARENS: I AM NOT EVEN GOING TO LOOK OVER THERE, YOUR
10 HONOR.

11 WHAT I AM SAYING TO YOU IS, OKAY, WE ARE NOT
12 GOING TO GIVE, THE DEFENSE IS NOT GOING TO GIVE YOU THAT.
13 I WON'T BE HERE WITH SOMETHING LIKE THAT.

14 BUT DO YOU UNDERSTAND, ON THE OTHER HAND, THAT I
15 DON'T HAVE AN OBLIGATION TO PROVE WHERE SOMEBODY IS?

16 MS. OSBORNE: YES, I UNDERSTAND THAT.

17 MR. BARENS: THE DEFENDANT CAN SIT THERE AND SAY "THEY
18 DON'T KNOW AND I DON'T KNOW AND THEY CAN'T PROVE ANYTHING
19 BEYOND A REASONABLE DOUBT"; WOULD YOU RESPECT THAT?

20 MS. OSBORNE: YES.

21 MR. BARENS: WOULD YOU BE WILLING TO LISTEN TO THE
22 DEFENDANT AS A WITNESS AND JUDGE HIS TESTIMONY ON WHAT HE SAYS
23 OR WOULD YOU BE REAL CONCERNED THAT HE WOULD SAY ANYTHING TO
24 SAVE HIS HIDE, WHETHER IT BE TRUE OR NOT?

25 MS. OSBORNE: NO. I WOULD BE WILLING TO LISTEN TO IT
26 AND I WOULD HAVE TO COME TO MY OWN JUDGMENT AS TO WHETHER HE
27 WAS TELLING THE TRUTH OR NOT.

28 MR. BARENS: WOULD YOU BE WILLING TO GIVE THE DEFENDANT

7-8

1 THE BENEFIT OF THE DOUBT?

2 MR. WAPNER: REASONABLE DOUBT, YOUR HONOR.

3 MR. BARENS: OF A REASONABLE DOUBT, OF COURSE. THAT IS
4 IMPLICIT.

5 MS. OSBORNE: YES, I WOULD, YES.

6 MR. BARENS: OF A REASONABLE DOUBT?

7 MS. OSBORNE: YES.

8 MR. BARENS: AND IF THERE IS A DOUBT IN YOUR MIND, IF
9 YOU WOULD HESITATE -- AND YOU ARE GOING TO HEAR THAT WORD WHEN
10 WE COME TO DEFINITIONS OF REASONABLE DOUBT -- IF YOU WOULD
11 HESITATE IN MAKING AN IMPORTANT DECISION IN YOUR LIFE, IF YOU
12 HAVE THAT ELEMENT OF HESITATION AS TO WHETHER THE DEFENDANT
13 IS GUILTY OR NOT, YOU MUST FIND FOR THE DEFENDANT.

14 MS. OSBORNE: I UNDERSTAND.

15 MR. BARENS: I PASS FOR CAUSE, YOUR HONOR.

16 THE COURT: ALL RIGHT, MR. WAPNER.

17 MR. WAPNER: THANK YOU.

18 MS. OSBORNE, YOU WILL FORGIVE ME IF MY MEMORY
19 OF THE DEFINITION OF REASONABLE DOUBT DOESN'T INCLUDE THE
20 WORD "HESITATE."

21 IT IS A DIFFICULT SUBJECT TO TALK ABOUT.

22 YOU HEARD THE JUDGE READ THE INSTRUCTION, RIGHT?

23 MS. OSBORNE: YES, I DID.

24 MR. WAPNER: HOW OFTEN IN YOUR DAILY LIFE DO YOU USE THE
25 TERM ABIDING CONVICTION, EVER?

26 MS. OSBORNE: NO.

27 MR. WAPNER: HOW ABOUT MORAL CERTAINTY?

28 MS. OSBORNE: NO, NOT REALLY.

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1 MR. WAPNER: OKAY, WELL THAT IS PART OF THE DEFINITION
2 YOU ARE GOING TO GET AND IT MAY OR MAY NOT BE HELPFUL TO YOU
3 BUT THAT IS THE ONLY ONE YOU ARE GOING TO GET.

4 DID YOU HAVE ANY TROUBLE IN USING THAT REASONABLE
5 DOUBT STANDARD IN THE LAST CRIMINAL CASE THAT YOU SAT ON?

6 MS. OSBORNE: NO.

7 MR. WAPNER: TELL ME ABOUT THE BURGLARY OF YOUR DAUGHTER'S
8 HOME, WHAT HAPPENED?

9 MS. OSBORNE: WELL, SOMEONE BROKE IN WHILE SHE WAS AT
10 WORK AND THEY TOOK BAGS OF THINGS OUT, BUT HE WAS APPREHENDED
11 BECAUSE THE NEIGHBOR CALLED THE POLICE AND HE WAS APPREHENDED
12 WITH THE GOODS RIGHT IN HIS HANDS.

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18A-1
1 MR. WAPNER: DID THE NEIGHBORS SEE THE PERSON GO INTO
2 THE HOUSE?

3 MS. OSBORNE: YES. SHE SAW HIM CLIMB OVER A BLOCK WALL.

4 MR. WAPNER: OKAY. DO YOU KNOW WHETHER THE NEIGHBOR
5 WAS EVER CALLED UPON TO IDENTIFY THE PERSON?

6 MS. OSBORNE: THAT I DON'T KNOW.

7 MR. WAPNER: WAS THE PERSON PROSECUTED?

8 MS. OSBORNE: YES.

9 MR. WAPNER: DID THE CASE GO TO TRIAL OR WAS IT A PLEA
10 OR DO YOU KNOW?

11 MS. OSBORNE: IT WENT TO TRIAL.

12 MR. WAPNER: DID YOUR DAUGHTER HAVE TO TESTIFY?

13 MS. OSBORNE: YES SHE DID.

14 MR. WAPNER: AND DID YOU GO TO THE TRIAL AND WATCH IT?

15 MS. OSBORNE: NO.

16 MR. WAPNER: OKAY. DO YOU KNOW WHEN THE PERSON WAS
17 APPREHENDED IN RELATION TO WHEN HE CAME OUT OF THE HOUSE?

18 MS. OSBORNE: NO, JUST A MATTER OF A FEW MINUTES, I
19 THINK.

20 MR. WAPNER: OKAY. AND --

21 MS. OSBORNE: THE HELICOPTER CAME OVER APPARENTLY AND
22 THE POLICE ARRIVED AND CAUGHT HIM PRACTICALLY IN THE ACT.

23 MR. WAPNER: OKAY. AND ASSUMING THAT THE NEIGHBOR DID
24 NOT ACTUALLY SEE THE FACE OF THE PERSON WHO COMMITTED THE
25 BURGLARY AND COULDN'T SAY THAT THAT WAS THE PERSON WHO WENT
26 IN, DO YOU UNDERSTAND THAT THE BULK OF THAT CASE THAT YOU
27 HAVE DESCRIBED IS CIRCUMSTANTIAL EVIDENCE?

28 MS. OSBORNE: RIGHT.

1 MR. WAPNER: OKAY.

2 MS. OSBORNE: THE WALLET IN THE POCKET.

3 MR. WAPNER: RIGHT.

4 MS. OSBORNE: OKAY.

5 MR. WAPNER: DO YOU HAVE ANY PROBLEM WITH THAT?

6 MS. OSBORNE: NO.

7 MR. WAPNER: THOSE MURDER MYSTERIES THAT MR. BARENS
8 WAS TALKING ABOUT, I ESPECIALLY HATE THE ONES THAT ARE ON
9 TELEVISION BECAUSE YOU FIND OUT AT THE END WHAT HAPPENED,
10 RIGHT?

11 MS. OSBORNE: FIVE MINUTES BEFORE THE PROGRAM IS READY
12 TO END.

13 MR. WAPNER: DID IT EVER OCCUR TO YOU THOUGH, THAT AT
14 THE VERY END WHEN YOU FIND OUT, PERHAPS THEY THROW IN FACTS
15 THAT THEY DIDN'T TELL YOU ABOUT IN THE FIRST 55 MINUTES?

16 MS. OSBORNE: YES.

17 MR. WAPNER: OKAY. IN THIS CASE, ARE YOU WILLING TO
18 LISTEN TO ALL OF THE FACTS?

19 MS. OSBORNE: YES I AM.

20 MR. WAPNER: ALL RIGHT. A TO Z?

21 MS. OSBORNE: RIGHT.

22 MR. WAPNER: AND MAKE A DECISION BASED ON WHAT YOU THINK
23 IS REASONABLE?

24 MS. OSBORNE: YES.

25 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF A THEFT
26 OR ANY KIND OF CON SCHEME?

27 MS. OSBORNE: NO.

28 MR. WAPNER: HOW DO YOU FEEL ABOUT THE EXAMPLE OF THE

1 TWO PEOPLE BEING ROBBED UNDER IDENTICAL CIRCUMSTANCES EXCEPT
2 THAT ONE OF THE VICTIMS WAS A PRIEST AND ONE OF THEM WAS A
3 DRUG DEALER?

4 MS. OSBORNE: THEY SHOULD BOTH BE TREATED THE SAME.

5 MR. WAPNER: WE SHOULDN'T DISCRIMINATE AGAINST PEOPLE,
6 BASED UPON THEIR OCCUPATION OR THE COLOR OF THEIR SKIN OR
7 THEIR BACKGROUND?

8 MS. OSBORNE: NO.

9 MR. WAPNER: IF YOU SIT ON THIS CASE AND YOU LISTEN
10 TO THE WHOLE CASE AND YOU DECIDE THAT THE EVIDENCE PROVES
11 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY BUT
12 YOU DON'T LIKE THE PERSON WHO WAS KILLED, COULD YOU NEVERTHELESS,
13 RENDER A VERDICT OF GUILTY?

14 MS. OSBORNE: YES.

15 MR. WAPNER: DOES THAT OFFEND YOUR SENSIBILITIES AT
16 ALL?

17 MS. OSBORNE: NO.

18 MR. WAPNER: IN DETERMINING WHETHER A PERSON IS TELLING
19 THE TRUTH, WOULD YOU TAKE INTO CONSIDERATION ANY BIAS, INTEREST
20 OR OTHER MOTIVE THAT HE MIGHT HAVE?

21 MS. OSBORNE: YES.

22 MR. WAPNER: DOES THAT INCLUDE THE DEFENDANT AS WELL
23 AS ANY OTHER WITNESS?

24 MS. OSBORNE: YES.

25 MR. WAPNER: AND IF IT APPEARS TO YOU THAT THE DEFENDANT
26 IS NOT TELLING THE TRUTH, WOULD YOU EXAMINE IN YOUR MIND,
27 THE REASONS THAT HE MIGHT NOT BE?

28 MS. OSBORNE: YES.

1 MR. WAPNER: AND IF ONE OF THOSE IN YOUR MIND WAS THAT
2 HE MIGHT BE TRYING TO GET OUT OF A MURDER RAP, WOULD YOU TAKE
3 THAT INTO CONSIDERATION?

4 MS. OSBORNE: YES.

5 MR. WAPNER: DO YOU UNDERSTAND THAT YOU ARE ALLOWED
6 TO TAKE INTO CONSIDERATION THE MOTIVE OF THE DEFENDANT TO
7 TELL OR NOT TELL THE TRUTH, THE SAME AS ANY OTHER WITNESS?

8 MS. OSBORNE: YES.

9 MR. WAPNER: THANK YOU VERY MUCH. I WILL PASS FOR CAUSE,
10 YOUR HONOR.

11 THE COURT: ALL RIGHT. IT IS THE DEFENDANT'S PEREMPTORY.

12 MR. BARENS: THE DEFENDANT WOULD ASK THE COURT TO THANK
13 AND EXCUSE JUROR NUMBER 8, MR. NELSON.

14 THE COURT: THANK YOU, MR. NELSON.

15 (PROSPECTIVE JUROR NELSON EXITED
16 THE COURTROOM.)

17 THE CLERK: CAROLYN GHAEMMAGHAMI, G-H-A-E-M-M-A-G-H-A-M-I.

18 THE COURT: MISS GHAEMMAGHAMI, I THINK YOU TOLD US
19 EARLIER THAT YOU OR SOME MEMBER OF YOUR FAMILY HAS BEEN THE
20 VICTIM OF SOME KIND OF A CRIME?

21 MS. GHAEMMAGHAMI: YES.

22 THE COURT: WHAT WAS THAT?

23 MS. GHAEMMAGHAMI: QUITE A FEW INSTANCES, ACTUALLY.
24 MY HOUSE WAS BROKEN INTO. THE PROPERTY WAS NEVER RECOVERED.
25 MY BROTHER-IN-LAW DISAPPEARED. NO BODY.

26 THE COURT: WHAT DO YOU MEAN? WHAT DO YOU MEAN THAT
27 HE DISAPPEARED?

28 MS. GHAEMMAGHAMI: YES. I DON'T KNOW HOW IT RELATES

1 TO THIS, HERE, BECAUSE IT WAS IN ANOTHER COUNTRY.

2 THE COURT: WHICH COUNTRY?

3 MS. GHAEMMAGHAMI: IRAN.

4 THE COURT: YES?

5 MS. GHAEMMAGHAMI: THE MILITIA CAME FOR HIM OR THE
6 REVOLUTIONARY GUARDS CAME FOR HIM AND EIGHT OTHER PEOPLE.
7 THEY PUT THEM IN A FLATBED TRUCK WITH MACHINE GUNS.

8 HE HAS NEVER BEEN SEEN OR HEARD FROM AGAIN.

9 THE COURT: DO YOU THINK HE WAS EXECUTED?

10 MS. GHAEMMAGHAMI: MY FEELING IS THAT HE WAS EXECUTED,
11 SINCE WE HAVE HEARD FROM OTHER MEMBERS OF THE FAMILY BUT WE
12 HAVE NEVER BEEN ABLE TO FIND OUT ANYTHING ABOUT HIM.

13 THE COURT: ALL RIGHT. COUNSEL WILL ASK YOU A NUMBER
14 OF QUESTIONS ABOUT THAT. DO YOU HAVE ANY OTHER KINDS OF CRIME?

15 MS. GHAEMMAGHAMI: NO.

16 THE COURT: DID YOU ALSO TELL US THAT SOMEBODY CONNECTED
17 WITH YOU IN SOME WAY, HAS BEEN ACCUSED OF SOME KIND OF A CRIME?

18 MS. GHAEMMAGHAMI: YES. BUT I WOULD RATHER SPEAK TO
19 YOU IN PRIVATE ABOUT THAT.

20 THE COURT: UH-HUH. ALL RIGHT. YOU MAY COME UP HERE
21 IF YOU WILL.

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

3 THE COURT: KEEP YOUR VOICE DOWN SO NOBODY CAN HEAR YOU.

4 MS. GHAEMMAGHAMI: MY SON WHO WAS 23 YEARS OLD IS
5 CURRENTLY IN JAIL, CHARGED WITH 12 COUNTS OF BANK ROBBERY, WHICH
6 HE HAS COMMITTED. HE HAS BEEN IN AND OUT OF JAILS SINCE HE
7 WAS 14, MOSTLY IN. MAYBE HE WAS OUT --

8 THE COURT: WHAT ARE THE OTHER CHARGES? THE MOST RECENT
9 WAS BANK ROBBERY. WHAT WAS BEFORE THAT?

10 MS. GHAEMMAGHAMI: HE WOULD STEAL CARS.

11 THE COURT: STEAL CARS?

12 MS. GHAEMMAGHAMI: HE SET FIRES TO SCHOOLS AND THINGS
13 LIKE THAT. HE HAS A MENTAL PROBLEM.

14 PROBABLY THE LONGEST THAT HE HAS BEEN OUT IS SIX
15 MONTHS.

16 THE COURT: HAS BEEN WHAT?

17 MS. GHAEMMAGHAMI: THE LONGEST HE HAS BEEN OUT SINCE HE
18 WAS 14, IS SIX MONTHS.

19 THE COURT: ONLY SIX MONTHS?

20 MS. GHAEMMAGHAMI: IN ANY GIVEN STRETCH.

21 THE COURT: WELL, DO YOU THINK IN ANY OF THOSE CRIMES
22 WHICH YOU ADMIT THAT HE COMMITTED, DO YOU THINK THAT HE WAS
23 UNJUSTLY ACCUSED IN ANY WAY?

24 MS. GHAEMMAGHAMI: NO WAY.

25 THE COURT: YOU THINK HE DID IT?

26 MS. GHAEMMAGHAMI: HE TELLS ME HE DID IT.

27 THE COURT: YES. YOU WOULDN'T HOLD THAT AGAINST EITHER
28 THE PROSECUTION OR THE DEFENSE?

1 MS. GHAEMMAGHAMI: NO.

2 THE COURT: BECAUSE YOU HAVE HAD THESE UNFORTUNATE
3 EXPERIENCES. DID YOU WANT TO ASK ANY QUESTIONS?

4 MR. BARENS: NO, YOUR HONOR. I DO NOT.

5 THE COURT: ANY QUESTIONS?

6 MR. WAPNER: YES. I REALIZE THAT THE REASON YOU TOLD
7 US IS --

8 MS. GHAEMMAGHAMI: I HAVE TO BE FAIR.

9 MR. WAPNER: SO THAT WE CAN BE FAIR ABOUT THIS. AS A
10 RESULT OF THAT, DID YOU EVER HAVE TO GO TO COURT WHEN HE WAS
11 BEING PROSECUTED?

12 MS. GHAEMMAGHAMI: YES.

13 MR. WAPNER: WAS HE PROSECUTED AT ANY TIME BY THE LOS
14 ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE?

15 MS. GHAEMMAGHAMI: YES.

16 MR. WAPNER: HAVE YOU HAD ANY DEALINGS WITH ANY OF THE
17 PROSECUTORS?

18 MS. GHAEMMAGHAMI: NONE.

19 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT ANY OF THE
20 PEOPLE WHO PROSECUTED, THAT IT WAS FAIR OR UNFAIR?

21 MS. GHAEMMAGHAMI: MY FEELINGS ARE JUST THAT I WISH THEY
22 WOULD PUT HIM IN A HOSPITAL.

23 THE COURT: PARDON ME?

24 MS. GHAEMMAGHAMI: I JUST WISH THEY WOULD PUT HIM IN A
25 HOSPITAL OR FIND OUT IF YOU KNOW --

26 THE COURT: IF HE HAS ANY PSYCHIATRIC CARE?

27 MS. GHAEMMAGHAMI: YES. THAT IS MY FEELINGS.

28 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT PEOPLE IN

1 THE DISTRICT ATTORNEY'S OFFICE BEING TOO RIGID, FOR EXAMPLE?

2 MS. GHAEMMAGHAMI: NO.

3 MR. WAPNER: HAVE YOU HIRED LAWYERS AND PAID FOR THEM?

4 MS. GHAEMMAGHAMI: YES, I HAVE.

5 MR. WAPNER: WHAT EXPERIENCES HAVE YOU HAD WITH THOSE
6 LAWYERS EITHER GOOD OR BAD?

7 MS. GHAEMMAGHAMI: I HAVE HAD VERY GOOD EXPERIENCES.

8 MR. WAPNER: COULD YOU TELL ME ABOUT THAT?

9 MS. GHAEMMAGHAMI: GLADYS ROOT WAS HIS LAWYER. I LIKED
10 HER VERY MUCH.

11 MR. WAPNER: WHO ELSE HAVE YOU HIRED TO REPRESENT HIM?

12 MS. GHAEMMAGHAMI: ROBERT SWANSON. BUT NOW I DON'T
13 HAVE ANY NEED TO HIRE ANYBODY.

14 MR. WAPNER: OKAY. AND DO YOU HAVE ANY FEELINGS ABOUT
15 DEFENSE LAWYERS AS A RESULT OF THAT? OBVIOUSLY, YOU HAD A
16 VERY GOOD EXPERIENCE WITH MRS. ROOT?

17 MS. GHAEMMAGHAI: YES.

18 MR. WAPNER: HOW ABOUT THE WHOLE THING, HOW DO YOU THINK
19 THAT WOULD AFFECT YOU IN THIS CASE?

20 MS. GHAEMMAGHAMI: NOTHING, BECAUSE THE FEELING THAT
21 I HAVE FOR HER WAS NOT AS A LAWYER BUT HER AS A PERSON.

22 MRS. ROOT DIED TWO DAYS BEFORE SHE WAS ABLE TO
23 HELP HIM. AND THEN AS A RESULT, HE WENT TO JAIL FOR 16 MONTHS
24 BECAUSE EVERYBODY WAS SO TRAUMATIZED AND EVERYTHING.

25 IF I REMEMBER RIGHT, HE HAS BEEN IN AND OUT SO
26 MANY TIMES THAT IT IS HARD FOR ME TO REMEMBER EVERYTHING --
27 IT SORT OF RUNS TOGETHER BECAUSE HE WOULD BE OUT TWO MONTHS
28 AND HE WOULD GO IN AGAIN.

1 I MEAN, HE WOULD BE IN FOR TWO MONTHS AND BE OUT
2 AND THEN IN AND OUT. IT IS JUST CONTINUOUS.

3 ONE RELATES TO ANOTHER, PROBABLY.

4 MR. WAPNER: HOW OLD IS HE NOW?

5 MS. GHAEMMAGHAMI: TWENTY-THREE. HE WILL BE 24.

6 THE COURT: WHICH PRISON IS HE IN, FEDERAL?

7 MS. GHAEMMAGHAMI: TERMINAL ISLAND.

8 THE COURT: FEDERAL PRISON.

9 MR. WAPNER: AND HAS HE EVER BEEN ABLE TO MAKE BAIL
10 ON ANY OF THE CASES THAT HE HAS HAD?

11 MS. GHAEMMAGHAMI: YES, HE HAS. NOW HE MAKES HIS OWN
12 BAIL. I JUST DON'T HAVE IT ANYMORE. BECAUSE HE HAS COMPLETELY
13 WIPED US OUT.

14 MR. WAPNER: AND DID YOU EVER HAVE INSTANCES WHEN HE
15 MADE BAIL AND THEN COMMITTED OTHER CRIMES?

16 MS. GHAEMMAGHAMI: IMMEDIATELY.

17 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT THE FACT
18 THE DEFENDANT IN THIS CASE IS ON BAIL, THAT AFFECTS YOU ONE
19 WAY OR ANOTHER?

20 MS. GHAEMMAGHAMI: I DON'T THINK THAT HE CAN BE LIKE
21 ANYBODY ELSE EXCEPT ANOTHER SICK PERSON. I JUST CAN'T RELATE
22 HIM TO ANYONE ELSE. I HAVE NEVER SEEN ANYBODY ELSE LIKE THAT.

23 THE COURT: ANYTHING FURTHER?

24 MR. WAPNER: JUST BRIEFLY. WHAT YOU ARE SAYING IS THAT
25 YOU MAKE A DISTINCTION BETWEEN HIM AND ANYBODY ELSE CHARGED
26 WITH A CRIME?

27 MS. GHAEMMAGHAMI: THAT'S RIGHT. HE IS UNUSUAL. HE
28 IS VERY UNUSUAL.

1 MR. WAPNER: THIS IS ONLY SOMEWHAT RELATED. THAT IS,
2 YOU HAVE SAID THAT HE IS BASICALLY ON HIS OWN NOW, AS FAR
3 AS YOU ARE CONCERNED.

4 IS THERE ANYTHING ABOUT ANY UPCOMING TRIALS IN
5 HIS CASE OR ANYTHING THAT WOULD BE IN THE BACK OF YOUR MIND
6 IF YOU WERE ON THIS JURY?

7 MS. GHAEMMAGHAMI: HE HAS A TRIAL COMING UP. I DON'T
8 KNOW WHEN IT IS COMING UP.

9 MR. WAPNER: ARE YOU PLANNING TO GO?

10 MS. GHAEMMAGHAMI: NO. I CAN'T. I CAN'T. I CANNOT DO
11 THAT ANYMORE.

12 I HAVE A JOB TO GO TO.

13 I HAVE A FAMILY THAT I HAVE TO TAKE CARE OF. I
14 CANNOT ANYMORE STRETCH MYSELF EMOTIONALLY FOR HIM, AS MUCH
15 AS I LOVE HIM.

16 MY HUSBAND NOW IS TRYING TO PICK UP THAT END FOR
17 ME.

18 MR. WAPNER: IS YOUR PRESENT HUSBAND THIS BOY'S FATHER?

19 MS. GHAEMMAGHAMI: NO.

20 MR. WAPNER: MAY I HAVE A MOMENT?

21 (PAUSE.)

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY
23 GO BACK.

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

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(THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT:)

THE COURT: MRS. GHAEMMAGHAMI, WHAT DO YOU DO, PLEASE?

MS. GHAEMMAGHAMI: I AM A CUSTOMER SERVICE
REPRESENTATIVE FOR BLUE CROSS.

THE COURT: AND IS THERE A MR. GHAEMMAGHAMI?

MS. GHAEMMAGHAMI: YES.

THE COURT: WHAT DOES HE DO, PLEASE?

MS. GHAEMMAGHAMI: HE IS A SELF-EMPLOYED CONTRACTOR.

THE COURT: YOU MEAN A BUILDING CONTRACTOR?

MS. GHAEMMAGHAMI: YES.

THE COURT: WHAT FORMAL EDUCATION DID YOU HAVE?

MS. GHAEMMAGHAMI: HIGH SCHOOL.

THE COURT: AND YOUR HUSBAND?

MS. GHAEMMAGHAMI: HE IS RATHER WHAT YOU WOULD CALL
A PROFESSIONAL STUDENT.

THE COURT: ALWAYS STUDYING, GOING TO SCHOOL?

MS. GHAEMMAGHAMI: YES.

THE COURT: AND TAKING COURSES?

MS. GHAEMMAGHAMI: ALWAYS.

THE COURT: WHERE DO YOU LIVE?

MS. GHAEMMAGHAMI: I LIVE IN RESEDA.

THE COURT: DID YOU EVER HAVE ANY JURY EXPERIENCE?

MS. GHAEMMAGHAMI: NONE.

THE COURT: ALL RIGHT. DO YOU HAVE ANY OTHER CHILDREN
EXCEPT THE ONE YOU TOLD US ABOUT?

MS. GHAEMMAGHAMI: SIX OTHERS.

THE COURT: SIX OTHERS?

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IN ORDER OF THEIR AGES, HOW OLD ARE THEY?

MS. GHAEMMAGHAMI: ALL RIGHT. I HAVE A 27-YEAR-OLD,
A 26-YEAR-OLD, 23-YEAR-OLD, A 20-YEAR-OLD, A 17-YEAR-OLD,
A 15 AND 14-YEAR-OLD.

THE COURT: WHICH OF THEM ARE GIRLS?

MS. GHAEMMAGHAMI: THE FIRST TWO AND THE LAST THREE.

THE COURT: THE 23-YEAR-OLD IS THE BOY.

ALL RIGHT, THANK YOU VERY MUCH.

LADIES AND GENTLEMEN, WE WILL TAKE A 15-MINUTE
RECESS UNTIL QUARTER AFTER 3:00, A 15-MINUTE RECESS.

(RECESS.)

9A FC

19A-1

1 THE COURT: DID I MISS ANYTHING, PAT?

2 THE BAILIFF: JUDGE, YOU NEVER MISS ANYTHING.

3 THE COURT: I HEARD EVERYBODY LAUGHING AND I JUST
4 WONDERED WHAT IT WAS.

5 ALL RIGHT, STIPULATED THE DEFENDANT IS PRESENT,
6 COUNSEL ARE PRESENT AND THE JURORS ARE PRESENT.

7 YOU MAY EXAMINE MRS. GHAEMMAGHAMI.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 GOOD AFTERNOON, MS. GHAEMMAGHAMI.

10 MS. GHAEMMAGHAMI: GOOD AFTERNOON.

11 MR. BARENS: I SEE HERE, 27, 26, 23, 17, 15 AND 14.

12 MS. GHAEMMAGHAMI, I WILL NOT BE SURPRISED IF
13 YOU TELL ME YOU DO NOT HAVE ANY HOBBIES.

14 (LAUGHTER IN COURTROOM.)

15 MR. BARENS: DO YOU?

16 MS. GHAEMMAGHAMI: YES.

17 MR. BARENS: WHAT POSSIBLY DO YOU HAVE TIME FOR?

18 MS. GHAEMMAGHAMI: READING.

19 MR. BARENS: WHAT DO YOU LIKE TO READ?

20 MS. GHAEMMAGHAMI: I LIKE HISTORICAL BOOKS AND --

21 MR. BARENS: I AM SORRY. I DIDN'T QUITE HEAR YOU.

22 MS. GHAEMMAGHAMI: HISTORICAL BOOKS AND, ACTUALLY,
23 ANYTHING, INCLUDING REFERENCE MANUALS. I JUST LIKE TO READ.

24 MR. BARENS: DO YOU NORMALLY READ FICTION OR NONFICTION?

25 MS. GHAEMMAGHAMI: NONFICTION.

26 MR. BARENS: WERE YOU BORN IN IRAN?

27 MS. GHAEMMAGHAMI: NO.

28 MR. BARENS: WHERE WERE YOU BORN?

1 MS. GHAEMMAGHAMI: CHARLOTTE, NORTH CAROLINA.

2 MR. BARENS: DID YOU LIVE IN IRAN?

3 MS. GHAEMMAGHAMI: YES.

4 MR. BARENS: AND HOW LONG DID YOU LIVE THERE?

5 MS. GHAEMMAGHAMI: THREE YEARS.

6 MR. BARENS: AND THIS WOULD HAVE BEEN IN THE 1970'S?

7 MS. GHAEMMAGHAMI: CORRECT.

8 MR. BARENS: AND YOU WERE MARRIED DURING THAT THREE
9 YEARS YOU WERE THERE?

10 MS. GHAEMMAGHAMI: CORRECT.

11 MR. BARENS: TO YOUR PRESENT HUSBAND?

12 MS. GHAEMMAGHAMI: YES.

13 MR. BARENS: AND WERE YOU A HOUSEWIFE IN IRAN AT THAT
14 TIME?

15 MS. GHAEMMAGHAMI: YES.

16 MR. BARENS: AND IT WAS YOUR BROTHER THAT WAS, LET'S
17 SAY, ABDUCTED BY THE GOVERNMENT?

18 MS. GHAEMMAGHAMI: BROTHER-IN-LAW.

19 MR. BARENS: YOUR BROTHER-IN-LAW THAT WAS ABDUCTED BY
20 THE GOVERNMENT.

21 WERE YOU THERE AFTER THE FALL OF THE SHAH OR
22 BEFORE OR DURING?

23 MS. GHAEMMAGHAMI: DURING.

24 MR. BARENS: SO YOU WERE THERE ON BOTH SIDES OF THAT
25 ACTIVITY?

26 MS. GHAEMMAGHAMI: I THINK HE LEFT ON THE PLANE BEFORE
27 MINE. IT WAS LIKE ONE PLANE WE HAD --> HE LEFT THE PLANE
28 BEFORE MY PLANE.

1 MR. BARENS: YOU SAID YOU WERE FAMILIAR WITH THE
2 EXCESSES OF THE GOVERNMENT THERE AND I SUPPOSE ON BOTH SIDES,
3 THE REVOLUTIONARY PEOPLE AND THE GOVERNMENT IN POWER?

4 MS. GHAEMMAGHAMI: YES.

5 MR. BARENS: DO YOU UNDERSTAND THAT THE BILL OF RIGHTS
6 IN THIS COUNTRY WAS ESTABLISHED AND PROMULGATED TO PRE-EMPT
7 AND MAKE THOSE TYPES OF ABUSES ALMOST IMPOSSIBLE AS WE
8 POSSIBLY COULD LEGALLY?

9 MS. GHAEMMAGHAMI: YES, I DO.

10 MR. BARENS: AND THAT IS WHAT THE BILL OF RIGHTS IS
11 ALL ABOUT, IS TO AVOID THOSE TYPES OF ABUSES BY THE GOVERNMENT.

12 MS. GHAEMMAGHAMI: YES.

13 MR. BARENS: AND DO YOU UNDERSTAND THAT FUNDAMENTAL
14 IN THOSE TYPES OF BELIEF SYSTEMS IS THE BELIEF THAT A DEFENDANT
15 IS INNOCENT UNTIL PROVEN GUILTY?

16 MS. GHAEMMAGHAMI: YES.

17 MR. BARENS: AND DO YOU FIND THAT IS A REASONABLE AND
18 WORTHWHILE ASPECT OF OUR LEGAL SYSTEM?

19 MS. GHAEMMAGHAMI: I SURE DO.

20 MR. BARENS: DO YOU FIND THAT THE MERE FACT THAT A PERSON
21 IS ACCUSED OF A CRIME DOES NOT NECESSARILY MEAN THAT HE DID
22 ANYTHING?

23 MS. GHAEMMAGHAMI: YES.

24 MR. BARENS: DO YOU FEEL IT IS MORE LIKELY THAT THEY
25 DID SOMETHING BECAUSE THEY ARE ACCUSED OF A CRIME OR ARE YOU
26 TOTALLY NEUTRAL ON THAT?

27 MS. GHAEMMAGHAMI: I AM NEUTRAL. I FEEL YOU HAVE TO
28 PROVE IT.

1 MR. BARENS: YOU UNDERSTAND THAT IN PROVING IT, IT HAS
2 TO BE BEYOND A REASONABLE DOUBT. WE HAVE SPENT HOURS TALKING
3 ABOUT THAT BUT IT REMAINS AS IMPORTANT AT THIS TIME AS IT
4 EVER HAS.

5 MS. GHAEMMAGHAMI: YES.

6 MR. BARENS: AND WHAT DO YOU THINK HAPPENED TO THE GUY
7 ON THE BOAT?

8 MS. GHAEMMAGHAMI: REASONABLY?

9 MR. BARENS: REASONABLY.

10 MS. GHAEMMAGHAMI: WITHOUT ANY ADDITIONAL PROOF THAT
11 HAS NOT BEEN SUPPLIED, I WOULD SAY THAT HE HAS TO BE DEAD.

12 MR. BARENS: HAS TO HAVE DROWNED?

13 MS. GHAEMMAGHAMI: YES.

14 MR. BARENS: NOW, WOULD YOU FEEL -- ALTHOUGH I HAVE
15 GIVEN YOU NOW, OR AT LEAST MR. WAPNER HAS PROVIDED US WITH
16 THAT HE IS ON THE BOAT, HE IS NOT ON THE BOAT AND THE
17 CONCLUSION BEING THAT HE IS DEAD; IS THAT CORRECT?

18 MS. GHAEMMAGHAMI: RIGHT.

19 MR. BARENS: OKAY. ARE YOU SENSITIVE TO THE POINT I
20 HAVE BEEN TRYING TO MAKE, WHICH IS THAT WE DON'T HAVE AS A
21 GIVEN IN THIS CASE, BY THE FACT THAT SOMEONE IS ACCUSED OF
22 A MURDER, WE DON'T HAVE AS A GIVEN THAT A MURDER OCCURRED?

23 MS. GHAEMMAGHAMI: YES.

24 MR. BARENS: IT IS NOT THAT THE GUY IS NOT ON THE BOAT
25 ANY MORE.

26 IT IS A DIFFERENT TYPE OF PROBLEM THAT WE HAVE
27 HERE, A MORE COMPLICATED PROBLEM, A PROBLEM REQUIRING MORE
28 FACTS TO MAKE A DECISION ABOUT; DO YOU UNDERSTAND THAT?

1 MS. GHAEMMAGHAMI: YES.

2 MR. BARENS: HOW DO YOU FEEL ABOUT THE SITUATION WHERE
3 THE GUY IS FOUND WITH THE WALLET IN HIS POCKET THAT HAS THIS
4 MONEY IN IT THAT WAS ROBBED -- AND I AM TELLING YOU THAT THE
5 GUY DIDN'T ROB THE VICTIM BUT, RATHER, FOUND THE WALLET AND
6 PICKED IT UP AND PUT IT IN HIS POCKET; DOES THAT SEEM LIKE
7 A REASONABLE ALTERNATIVE TO YOU?

8 THE COURT: NOW BEFORE YOU GO ANY FURTHER, JUST LET
9 ME TELL YOU WHAT THE LAW IS ON THAT SUBJECT:

10 "THE CONSCIOUS POSSESSION OF RECENTLY
11 STOLEN PROPERTY, OR PROPERTY WHICH HAS BEEN ROBBED
12 FROM SOMEBODY, IS NOT OF ITSELF SUFFICIENT TO
13 PERMIT AN INFERENCE THAT THE DEFENDANT IS GUILTY
14 OF THE CRIME OF ROBBERY. BEFORE GUILT MAY BE
15 INFERRED, THERE MUST BE CORROBORATING EVIDENCE
16 TENDING TO PROVE THE DEFENDANT'S GUILT. HOWEVER,
17 THIS CORROBORATING EVIDENCE NEED ONLY BE SLIGHT AND
18 NEED NOT IN AND OF ITSELF BE SUFFICIENT TO WARRANT
19 AN INFERENCE OF GUILT."

20 DO YOU UNDERSTAND THAT THAT MEANS IT IS A STRONG
21 CIRCUMSTANCE THAT HE OBTAINED IT FROM THE ROBBERY BUT IT IS
22 NOT SUFFICIENT TO CONVICT HIM OF THE ROBBERY? THAT, TOGETHER
23 WITH SLIGHT CORROBORATING EVIDENCE, WOULD BE SUFFICIENT TO
24 DO SO. THAT IS THE LAW IN THIS STATE.

25 GO AHEAD.

26 MR. BARENS: THANK YOU. WE ARE ALL BETTER OFF FOR THAT.

27 THE POINT IS, EVEN WITH THAT DEFENDANT WITH THAT
28 SLIGHT CORROBORATION, WE STILL HAVE TO BELIEVE EVERYTHING

1 BEYOND A REASONABLE DOUBT, DON'T WE?

2 MS. GHAEMMAGHAMI: YES, WE DO.

3 MR. BARENS: NOW WHAT I WAS ABOUT TO ASK YOU,
4 MS. GHAEMMAGHAMI, IS, DO YOU FIND THE SCENARIO I GAVE YOU
5 UNREASONABLE?

6 MS. GHAEMMAGHAMI: I WOULD LIKE TO HEAR THE FULL
7 SCENARIO AGAIN.

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1 MR. BARENS: SURE. A ROBBERY OCCURS. A GENTLEMAN OR
2 AN INDIVIDUAL'S WALLET IS STOLEN FROM THEIR PERSON BY THE
3 PERPETRATOR OF THE CRIME. THE PERPETRATOR RUNS OFF INTO THE
4 NIGHT.

5 AN HOUR LATER, ANOTHER PERSON IS APPREHENDED BY
6 THE POLICE. THIS OTHER PERSON HAS THE WALLET WITH THE MONEY
7 IN IT.

8 THE DEFENDANT HAS SAID THAT I HAD \$500 IN MY WALLET.
9 SORRY, THE VICTIM SAID THAT I HAD \$500 IN MY WALLET.

10 THERE WAS \$500 IN THE WALLET WHEN THE PERSON WAS
11 APPREHENDED.

12 THE COURT: PARDON ME. DID YOU SAY THAT ANOTHER PERSON
13 IS PICKED UP?

14 MR. BARENS: I SAID -- NO. I SAID A PERSON IS PICKED
15 UP.

16 THE COURT: I THOUGHT YOU SAID THAT ANOTHER PERSON, OTHER
17 THAN THE ONE THAT DID THE ROBBERY --

18 MR. BARENS: NO. WELL, I AM NOW GOING TO TELL HER THAT
19 IT IS ANOTHER PERSON, YOUR HONOR, BECAUSE I AM REPRESENTING
20 THAT OTHER PERSON.

21 THE COURT: JUST STATE IT AGAIN.

22 MR. BARENS: WELL, A ROBBERY OCCURS. A PERSON STEALS
23 THE VICTIM'S WALLET. THE VICTIM SAYS THAT THERE WAS \$500 IN
24 THE WALLET.

25 THE PERSON RUNS OFF INTO THE NIGHT. NOW, A PERSON --
26 I HAVE NOT SAID "ANOTHER" YET BUT A PERSON IS LOCATED THAT
27 HAS THE WALLET IN HIS POCKET WITH \$500 IN IT.

28 THAT PERSON COMES TO COURT AND SAYS THAT HE DIDN'T STEAL

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1 THE WALLET. I FOUND THE WALLET.

2 THE PERSON CANNOT BE IDENTIFIED BY THE VICTIM.

3 I AM NOT SURE IF THAT IS THE PERSON WHO TOOK MY WALLET.

4 NOW, ALL WE HAVE GOT AT THIS POINT, IS THAT THE
5 PERSON IS FOUND WITH THE WALLET IN HIS POCKET. AND HE IS
6 SAYING THAT HE DIDN'T DO IT. I DIDN'T STEAL IT. I FOUND IT.

7 NOW, I AM ASKING YOU, IS THAT UNREASONABLE TO YOU
8 WHEN THE PERSON SAYS THAT? DOES THAT STRIKE YOU AS TOTALLY
9 UNREASONABLE?

10 MS. GHAEMMAGHAMI: TO SAY THAT HE DIDN'T STEAL IT?

11 MR. BARENS: UH-HUH. THE GUY COMES ALONG AND HE SAYS
12 THAT HE WAS WALKING DOWN THE STREET AND HE FOUND THE WALLET.

13 I PICKED IT UP. I PUT IT IN MY POCKET.

14 MS. GHAEMMAGHAMI: I DON'T THINK IT IS UNREASONABLE.

15 MR. BARENS: WOULDN'T YOU STILL NEED SOME MORE FACTS,
16 INCLUDING EVEN THE SLIGHTEST EVIDENCE? WOULDN'T YOU NEED TO
17 KNOW MORE FACTS BEFORE YOU COULD COME TO A CONCLUSION BEYOND
18 A REASONABLE DOUBT? IN OTHER WORDS, IF YOU WERE GOING TO
19 CONVICT THAT GUY AND SEND HIM TO JAIL FOR ROBBERY, WOULDN'T
20 YOU NEED TO HAVE MORE FACTS THAN JUST SIMPLY THE FACT THAT
21 HE IS ACCUSED OF IT AND SHOWS UP WITH THE WALLET IN THE POCKET?
22 AS THE JUDGE READ FROM THE LAW, THAT IS NOT SUFFICIENT TO MAKE
23 A CONVICTION.

24 MS. GHAEMMAGHAMI: I WOULD NEED TO HAVE MORE INFORMATION.

25 MR. BARENS: OKAY. WHAT I AM TRYING TO ELICIT FROM YOU
26 IS AN UNDERSTANDING THAT YOU WILL LISTEN TO ALL OF THE FACTS
27 AND UNDERSTAND ALL OF THE FACTS THAT THE PEOPLE, THE GOVERNMENT
28 NEEDS, TO PROVE THEIR CASE, BEFORE IT MUST BE ESTABLISHED.

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1 WE CAN'T DO IT MERELY ON A LIKELY BASIS. WE CAN'T
2 DO IT ON A PROBABLY BASIS.

3 BUT IT HAS TO BE BY BEYOND A REASONABLE DOUBT.
4 DO YOU UNDERSTAND THAT?

5 MS. GHAEMMAGHAMI: YES, I DO.

6 MR. BARENS: WOULD YOU BEFORE YOU DETERMINED WHAT WAS
7 REASONABLE, BE WILLING TO CONSIDER ALL OF THE POSSIBILITIES
8 THAT COULD HAVE HAPPENED?

9 MS. GHAEMMAGHAMI: YES.

10 MR. BARENS: BECAUSE WHAT WE ASK YOU TO DO IN THIS
11 COURTROOM, IS BE WILLING TO CONSIDER THE EVIDENCE. WE DON'T
12 ASK YOU NECESSARILY HOW YOU ARE GOING TO SAY IT IS. ALL RIGHT?

13 WILL YOU BE WILLING TO CONSIDER ALL OF THE
14 EVIDENCE PRODUCED BY BOTH SIDES?

15 MS. GHAEMMAGHAMI: YES, I WOULD.

16 MR. BARENS: NOW, HAVE YOU BEEN CONTINUOUSLY A HOUSEWIFE
17 OVER THE YEARS OR HAVE YOU WORKED ON AND OFF OVER THE YEARS?

18 MS. GHAEMMAGHAMI: I WORKED ON AND OFF.

19 MR. BARENS: WHAT OTHER TYPES OF EMPLOYMENT THAT YOU
20 HAVE HAD, MA'AM?

21 MS. GHAEMMAGHAMI: I HAVE BEEN A SECRETARY. I HAVE BEEN
22 A BOOKKEEPER FOR A COMPUTER FIRM. I HAVE BEEN A RECEPTIONIST
23 AND NOW A CUSTOMER REPRESENTATIVE.

24 MR. BARENS: DID YOU GO TO COLLEGE?

25 MS. GHAEMMAGHAMI: NO, SIR.

26 MR. BARENS: AND HAVE YOU HAD ANY SPECIALIZED TRAINING
27 AFTER HIGH SCHOOL?

28 MS. GHAEMMAGHAMI: CUSTOMER SERVICE TRAINING.

1 MR. BARENS: YOU HAVE NEVER DONE ANY WORK WITH ANY ASPECT
2 OF LAW ENFORCEMENT?

3 MS. GHAEMMAGHAMI: NONE.

4 MR. BARENS: OR FOR THE LEGAL PROFESSION?

5 MS. GHAEMMAGHAMI: NONE.

6 MR. BARENS: DO YOU RECALL THE LAST MOVIE YOU SAW?

7 MS. GHAEMMAGHAMI: TOP GUN.
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1 MR. BARENS: AND HOW DO YOU FEEL ABOUT A DEFENDANT
2 TESTIFYING? DO YOU FEEL A DEFENDANT IN TESTIFYING, WOULD YOU
3 BE SAYING TO YOURSELF THAT YOU HAVE TO REALLY LOOK AT THIS
4 GUY'S STATEMENTS WITH A LOT OF SKEPTICISM BECAUSE AFTER ALL,
5 HE IS THE GUY ON TRIAL?

6 OR, WOULD YOU GIVE HIM THE BENEFIT OF LISTENING
7 TO HIS TESTIMONY OPENMINDLY?

8 MS. GHAEMMAGHAMI: OPENMINDLY.

9 MR. BARENS: DO YOU THINK YOU WOULD BE ABLE TO DO THAT?

10 MS. GHAEMMAGHAMI: YES, I DO.

11 MR. BARENS: HOW DO YOU FEEL ABOUT THE CONCEPT THAT GIVEN
12 EQUAL CIRCUMSTANCES, EQUALLY BELIEVABLE EXPLANATIONS AS TO
13 THE SAME CIRCUMSTANCES OR A CLOSE CALL, THAT IF THERE WAS
14 A CLOSE CALL IN YOUR MIND OR HESITATION IN YOUR MIND, THAT
15 THE BENEFIT OF THE REASONABLE DOUBT IN THAT INSTANCE GOES WITH
16 THE DEFENDANT?

17 MS. GHAEMMAGHAMI: I THINK THAT IS THE WAY IT SHOULD
18 BE.

19 MR. BARENS: THAT THE PEOPLE STILL HAVE THE OBLIGATION
20 TO PROVE BEYOND A REASONABLE DOUBT?

21 MS. GHAEMMAGHAMI: YES.

22 MR. BARENS: I PASS FOR CAUSE. THANK YOU VERY MUCH.

23 MR. WAPNER: GOOD AFTERNOON, MS. GHAEMMAGHAMI.

24 MS. GHAEMMAGHAMI: GOOD AFTERNOON.

25 MR. WAPNER: TELL ME ABOUT THE OTHER PEOPLE IN THE
26 FAMILY IN IRAN THAT YOU DID HEAR FROM. YOU MENTIONED IN
27 MAKING THE STATEMENT ABOUT YOUR BROTHER-IN-LAW WHO HAD
28 DISAPPEARED, THAT YOU INFERRED THAT HE WAS DEAD, RIGHT?

1 MS. GHAEMMAGHAMI: RIGHT.

2 MR. WAPNER: AND I THOUGHT I HEARD YOU SAY THAT PART
3 OF THE REASON THAT YOU BELIEVED THAT WAS THERE WERE PEOPLE
4 OVER THERE THAT YOU HAD HEARD FROM. DID I HEAR THAT CORRECTLY?

5 MS. GHAEMMAGHAMI: YES. IT IS VERY DIFFICULT TO EXPLAIN
6 IT. MY HUSBAND'S FAMILY HAS BEEN IN THE SITUATION OF POWER
7 FOR TWO OR THREE HUNDRED YEARS.

8 AND YOU HAVE TO THINK OF THE COUNTRY AS IT IS AND
9 HOW THEY THINK. EVEN THOUGH MY HUSBAND IS AS POOR AS A CHURCH
10 MOUSE, THEY STILL FEEL THAT HE HAD SOME INFLUENCE.

11 AND HIS BROTHER WHO WAS A LAWYER, WAS THE LAWYER
12 FOR THE BAHAI FOUNDATION AND THAT WAS ONE REASON THAT HE WAS
13 KIDNAPPED.

14 NOW, THERE ARE OTHER MEMBERS OF THE FAMILY WHO
15 BELONG TO THE MOJAHADEEN, WHO SAY THAT THEY WORK TO PUT THE
16 IDEA OF FREEDOM ACROSS TO THE PEOPLE, THE MASSES.

17 NOW, I HAD A 15-YEAR-OLD -- MY HUSBAND HAD A
18 15-YEAR-OLD COUSIN. SHE WAS ALSO KILLED FOR PASSING OUT
19 LEAFLETS. HIS OTHER COUSIN WAS KILLED BECAUSE HE WAS THE HEAD
20 OF THE WORLD HEALTH ORGANIZATION AND THINGS LIKE THAT.

21 WE FOUND OUT THAT THEY HAD PEOPLE INCARCERATED
22 AND WE WOULD BE ABLE TO SEND PACKAGES OR TRY TO PAY THE
23 GOVERNMENT TO RELEASE THEM.

24 MR. WAPNER: THOSE ARE THE PEOPLE WHO WERE ULTIMATELY
25 KILLED?

26 MS. GHAEMMAGHAMI: YES.

27 MR. WAPNER: AND WHICH ONES -- YOU ARE RIGHT. IT IS
28 VERY COMPLICATED. I WAS TRYING VERY HARD TO FOLLOW ALL OF

1 IT.

2 THE ONES THAT WERE INCARCERATED, YOU BELIEVED YOU
3 WERE GOING TO BE ABLE TO SEND PACKAGES TO?

4 MS. GHAEMMAGHAMI: YES.

5 MR. WAPNER: YOU ULTIMATELY FOUND OUT THAT THEY HAD BEEN
6 KILLED?

7 MS. GHAEMMAGHAMI: NO. THEY TOLD US THAT THEY HAD BEEN
8 KILLED AND ALSO SENT US A BILL FOR THE BULLETS.

9 MR. WAPNER: AFTER THEY TOLD YOU THEY HAD BEEN KILLED,
10 DID YOU EVER SEE THE BODIES OF EITHER OF THEM?

11 MS. GHAEMMAGHAMI: NO. I WAS HERE WHEN THAT HAPPENED.

12 MR. WAPNER: AND WERE YOU IN IRAN WHEN THE BROTHER-IN-LAW
13 WAS TAKEN?

14 MS. GHAEMMAGHAMI: NO. I WAS NOT.

15 MR. WAPNER: THE CIRCUMSTANCES SURROUNDING HIS ABDUCTION,
16 I ASSUME YOU GOT THOSE FROM SOMEBODY ELSE WHO WAS PRESENT?

17 MS. GHAEMMAGHAMI: YES, EYEWITNESSES. AND I ALSO READ
18 IT IN THE L.A. TIMES.

19 MR. WAPNER: DO YOU THINK THAT EXPERIENCE IS GOING TO
20 MAKE YOU MORE SYMPATHETIC TOWARD THE PROSECUTION IN THIS CASE?

21 MS. GHAEMMAGHAMI: MORE SYMPATHETIC TOWARD THE
22 PROSECUTION?

23 MR. WAPNER: I DON'T KNOW IF IT WILL OR NOT. I AM ASKING
24 YOU.

25 MS. GHAEMMAGHAMI: NO. I THINK THAT THESE EXPERIENCES
26 THAT HAVE MADE ME A MORE BROADMINDED INDIVIDUAL.

27 MR. WAPNER: LET ME ASK YOU THE OTHER SIDE OF THAT COIN.
28 DO YOU THINK THESE EXPERIENCES ARE GOING TO MAKE YOU LESS

1 SYMPATHETIC TO THE PROSECUTION?

2 MS. GHAEMMAGHAMI: NO.

3 MR. WAPNER: OBVIOUSLY, THERE IS AN INCREDIBLE DIFFERENCE
4 BETWEEN THE GOVERNMENT IN IRAN AND THE GOVERNMENT OF THE UNITED
5 STATES. NOTWITHSTANDING THAT, DO YOU HAVE ANY FEELINGS ABOUT
6 THE GOVERNMENT IN THIS COUNTRY AS A RESULT OF WHAT HAPPENED
7 OVER THERE?

8 MS. GHAEMMAGHAMI: I THINK IT IS WORTH FIGHTING FOR.

9 MR. WAPNER: IS YOUR HUSBAND STILL INVOLVED -- MAYBE
10 I SHOULDN'T ASK IT THAT WAY.

11 IS YOUR HUSBAND INVOLVED AT ALL IN TRYING TO OVER-
12 THROW THE PRESENT GOVERNMENT IN IRAN?

13 MS. GHAEMMAGHAMI: NO.

14 MR. WAPNER: MAY I HAVE A MOMENT?

15 (BRIEF PAUSE.)

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

3 MR. WAPNER: YOUR HONOR, IN THIS CASE, IF WE GET TO
4 THE PENALTY PHASE, WE MAY HAVE SOME EVIDENCE ABOUT A MAN NAMED
5 ESLAMINIA.

6 THE COURT: YES.

7 MR. WAPNER: AND THE COURT KNOWS WHAT I AM REFERRING
8 TO.

9 THE COURT: YES.

10 MR. WAPNER: I THINK BASED ON THIS WOMAN'S BACKGROUND,
11 IT IS APPROPRIATE TO INQUIRE OF HER WHETHER SHE OR HER FAMILY
12 KNOWS THIS PERSON OR KNEW HIM. I AM WILLING TO DO THAT AT
13 THE BENCH SO AS NOT TO PREJUDICE --

14 THE COURT: THAT IS ALL RIGHT. YOU CAN DO IT FROM HERE.
15 THEY WON'T KNOW ANYTHING ABOUT IT, WILL THEY?

16 MR. BARENS: NO, NO, YOUR HONOR. I ABSOLUTELY WOULD
17 BE OPPOSED TO THAT. I AM ABSOLUTELY VIGOROUSLY OPPOSED TO
18 THAT. THAT FUNDAMENTALLY CORRUPTS OUR POSITION IF THERE IS
19 THE LEAST POSSIBILITY IT COULD HARM THE DEFENSE. IT WOULD
20 HARM ME IRREPARABLY, YOUR HONOR.

21 THE COURT: HOW COULD ASKING ABOUT A MAN HARM YOU,
22 WITHOUT KNOWING WHO HE IS OR WHAT HE IS?

23 MR. BARENS: YOUR HONOR, THESE PEOPLE READ ARTICLES
24 UP NORTH. PLEASE, YOUR HONOR.

25 THE COURT: WHAT DO YOU WANT ME TO DO, CALL HER UP TO
26 THE BENCH AND ASK HER, IS THAT WHAT YOU WANT ME TO DO?

27 MR. WAPNER: I WAS GOING TO SUGGEST WE DO IT AFTER I
28 AM FINISHED. WHY DON'T WE WAIT UNTIL AFTER I AM THROUGH?

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1 MR. BARENS: COULD WE HAVE AN UNDERSTANDING THAT IF
2 SHE HAS AN AFFIRMATIVE ANSWER TO THAT QUESTION, THAT ALTHOUGH
3 THAT MAY NOT CAUSE HER TO BE REMOVED FOR CAUSE BY EITHER THE
4 PROSECUTION OR THE DEFENSE, THAT YOUR HONOR WOULD INSTRUCT
5 HER NOT TO DISCUSS ANYTHING SHE KNEW ABOUT MR. ESLAMINIA WITH
6 ANY JUROR?

7 THE COURT: OH, ABSOLUTELY, ABSOLUTELY.

8 MR. BARENS: YOU WOULD DO THAT IN PRIVATE WITH HER?

9 THE COURT: OH, ABSOLUTELY.

10 MR. BARENS: IS THAT AGREEABLE?

11 THE COURT: IF SHE SAYS SHE DOESN'T KNOW THE GUY AND
12 NEVER HEARD OF HIM, THAT IS ONE THING.

13 MR. BARENS: THAT, I DON'T CARE ABOUT.

14 THE COURT: I TELL YOU WHAT LET'S DO, WE WILL GO THROUGH
15 TO THE ADJOURNMENT HOUR AND I WILL ^{HAVE}/HER STAY, ALL RIGHT?
16 AND THEN AFTER ALL OF THE OTHER JURORS HAVE GONE, THEN YOU
17 ASK THAT ONE QUESTION OR I WILL ASK THE QUESTION. YOU DON'T
18 HAVE TO IF YOU DON'T WANT TO.

19 MR. WAPNER: THAT IS FINE. THANK YOU.

20 MR. BARENS: COULD WE TERMINATE THEN AT 4:15 FOR THAT
21 PURPOSE?

22 THE COURT: ALL RIGHT.

23 MR. BARENS: THANK YOU.

24 THE COURT: IS THAT REZA ESLAMINIA AND HADAYET IS THE
25 NAME OF THE FATHER?

26 MR. BARENS: YES, YOUR HONOR.

27 MR. WAPNER: IT WOULD BE APPROPRIATE TO ASK ABOUT EITHER
28 ONE.

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1 THE COURT: YES, I WILL.

2 MR. BARENS: HE IS REFERRED TO AS "REZA, THE INFAMOUS."

3 THE COURT: REZA AND HADAYET.

4 MR. BARENS: HADAYET IS THE FATHER.

5 THE COURT: ESLAMINIA.

6 MR. BARENS: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT.

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

3 THE COURT: ALL RIGHT.

4 MR. WAPNER: LET'S CHANGE THE SUBJECT FOR A MINUTE AND
5 TALK ABOUT THE MAN WITH THE WALLET.

6 TELL ME WHAT FACTS WOULD YOU WANT TO KNOW FROM
7 THE ORIGINAL HYPOTHETICAL OR ANY OF THEM, EVEN THE ONE
8 MR. BARENS POSED TO YOU, WHAT ARE THE FACTS THAT MIGHT BE
9 IMPORTANT TO YOU?

10 MS. GHAEMMAGHAMI: ALL RIGHT, ONE OF THE THINGS THAT
11 WOULD BE IMPORTANT IS THE TIME LAPSE FROM THE ACTUAL THEFT,
12 THE PROXIMITY OF THE MAN WITH THE WALLET, WHAT HE HAS TO SAY
13 TO DEFEND HIMSELF, WERE THERE ANY OTHER WITNESSES OR ANYTHING
14 LIKE THAT.

15 MR. WAPNER: WOULD IT BE IMPORTANT HOW THE VICTIM OF
16 THE ROBBERY DESCRIBED THE PERSON?

17 MS. GHAEMMAGHAMI: VERY IMPORTANT.

18 MR. WAPNER: AND WHEN I SAY THAT, I ASSUMED IN THE
19 ORIGINAL HYPOTHETICAL THAT HE COULDN'T IDENTIFY HIM POSITIVELY.

20 MS. GHAEMMAGHAMI: THAT'S RIGHT.

21 MR. WAPNER: BUT, FOR EXAMPLE, IF THE PERSON WHO WAS
22 ROBBED SAYS, "THE PERSON WHO ROBBED ME WAS A MAN ABOUT SIX
23 FEET THREE AND WEIGHED 225 POUNDS" AND THE POLICE STOP A MAN
24 WHO IS FIVE-FIVE AND WEIGHS A HUNDRED AND TWENTY POUNDS, IT
25 IS NOT LIKELY IT IS THE SAME PERSON, RIGHT?

26 MS. GHAMMAGHAMI: THAT IS CORRECT.

27 MR. WAPNER: SO THOSE WOULD BE MORE FACTS TO KNOW.

28 MS. GHAEMMAGHAMI: VERY IMPORTANT.

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1 MR. WAPNER: ASSUMING THAT YOU WERE IN CHARGE OF THE
2 PROSECUTION, YOU WOULDN'T WANT TO TRY AN -- MAYBE THAT IS
3 NOT THE RIGHT PLACE TO PUT YOU --

4 BUT IF YOU WERE ON THAT JURY AND YOU COULD CONTROL
5 THE SITUATION, YOU WOULD WANT TO GET AS MANY FACTS AS YOU
6 COULD POSSIBLY GET BEFORE MAKING UP YOUR MIND, RIGHT?

7 MS. GHAEMMAGHAMI: YES, I WOULD.

8 MR. WAPNER: DO YOU UNDERSTAND THAT THE WHOLE PURPOSE
9 OF ASKING THAT QUESTION WAS NOT TO GET A RIGHT ANSWER OR A
10 WRONG ANSWER BUT TO TRY AND SEE INTO YOUR MIND TO FIGURE OUT
11 WHAT YOU THOUGHT WAS REASONABLE AND IMPORTANT?

12 MS. GHAEMMAGHAMI: YES.

13 MR. WAPNER: TELL ME WHAT YOU DO AS A CUSTOMER SERVICE
14 REPRESENTATIVE FOR BLUE CROSS.

15 MS. GHAEMMAGHAMI: I TAKE A LOT OF NONSENSE.

16 PEOPLE CALL IN WITH A COMPLAINT USUALLY THAT THEIR
17 CLAIM HAS EITHER BEEN IGNORED, ACCORDING TO THEM, OR NOT
18 PROCESSED CORRECTLY AND THEY ASK ME TO SPEED UP THE PROCESS
19 OR FIND OUT WHAT IS WRONG.

20 MR. WAPNER: ALL DAY LONG YOU LISTEN TO THESE PEOPLE?

21 MS. GHAEMMAGHAMI: ABOUT A HUNDRED CALLS A DAY.

22 MR. WAPNER: THIS JURY STUFF MUST BE A PIECE OF CAKE
23 FOR YOU.

24 MS. GHAEMMAGHAMI: IT IS QUIET.

25 MR. WAPNER: DO YOU HAVE TO DO ANY LISTENING TO THOSE
26 PEOPLE TO SORT OUT THE ONES WHO SEEM TO BE GIVING YOU A
27 REASONABLE STORY FROM THE ONES WHO SEEM TO BE KIND OF QUACKS
28 OR KOOKS OR SOMETHING LIKE THAT?

1 MS. GHAEMMAGHAMI: I TRY NOT TO LISTEN TO THAT.

2 ALL I WANT ARE THE FACTS, THE PROOF.

3 MR. WAPNER: WHEN YOU GET THE FACTS, WHAT DO YOU HAVE
4 TO DO? DO YOU HAVE TO MAKE ANY DECISIONS ONCE YOU GET ALL
5 OF THE FACTS FROM THEM?

6 MS. GHAEMMAGHAMI: ACTUALLY NOT.

7 WE JUST GO BY POLICY PROCEDURE. IF THEY ARE ABLE
8 TO SUPPLY ALL OF THE FACTS TO SUPPORT THEIR CLAIM, THEN IT
9 IS GOING TO BE PAID.

10 MR. WAPNER: PLEASE FORGIVE ME IF YOU ANSWERED THIS
11 QUESTION: HAVE YOU SERVED ON A JURY BEFORE?

12 MS. GHAEMMAGHAMI: NO, I HAVE NOT.

13 MR. WAPNER: THANK YOU.

14 DID YOU HAVE ANY FEELINGS ABOUT CIRCUMSTANTIAL
15 EVIDENCE GENERALLY BEFORE YOU CAME TO SIT ON THIS CASE?

16 MS. GHAEMMAGHAMI: I DIDN'T UNDERSTAND IT AS WELL AS
17 I HAVE SINCE COME TO UNDERSTAND IT.

18 MR. WAPNER: DO YOU HAVE ANY PROBLEM WITH THE IDEA THAT
19 A PROSECUTION CAN BE BASED PARTLY OR WHOLLY ON CIRCUMSTANTIAL
20 EVIDENCE?

21 MS. GHAEMMAGHAMI: I DON'T HAVE ANY PROBLEM AT ALL WITH
22 IT.

23 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF A THEFT
24 OR ANY KIND OF A CON SCHEME?

25 MS. GHAEMMAGHAMI: SOMEONE BROKE INTO MY HOME.

26 MR. WAPNER: AND WAS THAT PERSON EVER APPREHENDED?

27 MS. GHAEMMAGHAMI: NO.

28 MR. WAPNER: THE PROPERTY WAS NEVER RECOVERED?

1 MS. GHAEMMAGHAMI: NO.

2 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT THE POLICE
3 AS A RESULT OF THAT?

4 MS. GHAEMMAGHAMI: I ACTUALLY ASKED THEM NOT TO BOTHER
5 ANY MORE.

6 MR. WAPNER: NOT TO BOTHER THEM ANY MORE, MEANING THIS
7 HAD HAPPENED BEFORE OR WHAT?

8 MS. GHAEMMAGHAMI: WELL, I FOUND OUT WHO IT WAS.

9 MR. WAPNER: HOW DID YOU FIND OUT WHO IT WAS?

10 MS. GHAEMMAGHAMI: JUST, WELL, YOU WOULD HAVE TO
11 UNDERSTAND WHAT WAS GONE FROM MY HOME, WHICH WAS AN ANTIQUE
12 SAMOVAR. I BELONG TO THE MINI-U.N. AND I HAD STUDENTS AT MY
13 HOME AND IT HAD BEEN ADMIRERD QUITE A BIT BY ONE PERSON AND
14 SOME OF THE STUDENTS CALLED ME AND LET ME KNOW THAT SO AND
15 SO HAD IT AND I THOUGHT TO MYSELF, KNOWING THIS PERSON, THEY
16 MUST BE IN DIRE NEED IN ORDER TO TAKE THIS, SO IT AT LEAST
17 WILL HELP THEM MORE THAN BE SITTING ON MY MANTEL SO I JUST
18 WOULDN'T BOTHER.

19 MR. WAPNER: THAT IS A VERY HUMANITARIAN AND COMMENDABLE
20 GESTURE.

21 IF YOU ARE A JUROR IN THIS CASE, ONE OF THE THINGS
22 THAT I AM SURE YOU REALIZE FROM THE QUESTIONING WE DID OF YOU
23 MAYBE A FEW WEEKS AGO, IS THAT IN DETERMINING GUILT OR INNOCENCE
24 YOU CAN'T TAKE INTO CONSIDERATION WHAT MIGHT HAPPEN TO THE
25 PERSON.

26 MS. GHAEMMAGHAMI: I KNOW THAT.

27 MR. WAPNER: DO YOU THINK THAT IS FAIR?

28 MS. GHAEMMAGHAMI: I THINK THAT IS FAIR.

1 MR. WAPNER: DID YOU HEAR THE EXAMPLE THAT I USED WITH,
2 I THINK IT WAS MR. HUBBARD ABOUT THE SPORTS AND THE BASKETBALL
3 AND THE REFEREE?

4 MS. GHAEMMAGHAMI: YES, I DID.

5 MR. WAPNER: DID YOU FOLLOW THAT AT ALL?

6 MS. GHAEMMAGHAMI: YES, I DID.

7 MR. WAPNER: AND DO YOU THINK IT IS REASONABLE TO MAKE
8 A DECISION BASED ON THE FACTS THAT YOU HAVE IN FRONT OF YOU,
9 WITHOUT THINKING ABOUT WHAT THE CONSEQUENCES OF YOUR DECISION
10 MIGHT BE?

11 MS. GHAEMMAGHAMI: YES, I DO.

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1 MR. WAPNER: CAN YOU MAKE A DECISION IN THIS CASE WITH-
2 OUT THINKING ABOUT THE FACT THAT IF YOU FIND MR. HUNT GUILTY,
3 FOR EXAMPLE, THAT HE MIGHT GO TO PRISON OR SOMETHING ELSE?

4 MS. GHAEMMAGHAMI: YES. I THINK I CAN.

5 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT THAT?

6 MS. GHAEMMAGHAMI: NO.

7 MR. WAPNER: DO YOU TALK TO YOUR DAUGHTERS?

8 MS. GHAEMMAGHAMI: I HAVE THREE THAT LIVE AT HOME NOW.
9 ONE I TALK TO ABOUT EVERY SIX MONTHS. SHE LIVES IN NORTH
10 CAROLINA.

11 THE OTHER ONE, SHE LIVES IN OAKLAND. SHE TALKS
12 TO ME MAYBE EVERY DAY AND THEN MAYBE THREE WEEKS WILL PASS
13 BEFORE I HEAR FROM HER.

14 MR. WAPNER: AND YOUR SONS, HOW OFTEN DO YOU TALK TO
15 THEM?

16 MS. GHAEMMAGHAMI: THE OTHER SON LIVES AT HOME. I SEE
17 HIM WHEN HIS GIRLFRIEND LETS ME.

18 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

19 MS. GHAEMMAGHAMI: NO.

20 MR. WAPNER: WHEN THEY WERE LIVING, WERE YOU CLOSE TO
21 THEM?

22 MS. GHAEMMAGHAMI: VERY CLOSE. I WAS A CHILD WHEN THEY
23 DIED.

24 MR. WAPNER: IF IT TURNS OUT THAT YOU HEAR ALL OF THE
25 EVIDENCE IN THIS CASE, YOU DECIDE THAT THE FACTS PROVE THE
26 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT BUT YOU ALSO DECIDE
27 THAT YOU DON'T LIKE THE VICTIM, THE PERSON WHO WAS KILLED,
28 WOULD YOU HAVE ANY DIFFICULTY IN FINDING THE DEFENDANT GUILTY?

1 MS. GHAEMMAGHAMI: NO.

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

4 THE COURT: ALL RIGHT. IT IS THE PEOPLE'S PEREMPTORY.

5 MR. WAPNER: MAY I HAVE JUST A MOMENT, PLEASE?

6 THE COURT: YES.

7 (PAUSE.)

8 MR. WAPNER: WE THANK AND ASK THE COURT TO EXCUSE MRS.
9 MONROE, JUROR NUMBER 9.

10 THE COURT: ALL RIGHT. THANK YOU, MRS. MONROE.

11 (PROSPECTIVE JUROR MONROE EXITS THE
12 COURTROOM.)

13 THE CLERK: JOHN BERSINGER, B-E-R-S-I-N-G-E-R.

14 THE COURT: MR. BERSINGER, I THINK YOU TOLD US WEEKS
15 AND WEEKS AGO, ISN'T IT SOMETHING LIKE THAT -- THAT YOU OR
16 SOME MEMBER OF YOUR FAMILY HAS BEEN A VICTIM OF SOME KIND OF
17 CRIME? WHAT WAS THAT?

18 MR. BERSINGER: YES. TWELVE YEARS AGO, OUR HOME WAS
19 BROKEN INTO HERE IN SANTA MONICA AND BURGLARIZED. NOTHING
20 WAS EVER RECOVERED. NOR WERE THE PEOPLE APPREHENDED.

21 THE COURT: ALL RIGHT. YOU MADE A REPORT TO THE POLICE,
22 THOUGH?

23 MR. BERSINGER: YES.

24 THE COURT: WERE YOU SATISFIED THAT THEY DID THE BEST
25 THEY COULD DO?

26 MR. BERSINGER: YES.

27 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
28 SAME GENERAL QUESTIONS THAT WERE ASKED OF THE OTHER JURORS,

1 WOULD YOUR ANSWERS IN ANY WAY BE ANY DIFFERENT OR WOULD THEY
2 BE SUBSTANTIALLY THE SAME?

3 MR. BERSINGER: SUBSTANTIALLY THE SAME.

4 THE COURT: I THINK THE QUESTION THAT I JUST ASKED YOU
5 IS ACADEMIC BECAUSE COUNSEL SEEM TO BE ASKING THE SAME
6 QUESTIONS, ANYWAY.

7 NOT OF COURSE, THAT THEY ARE NOT ENTITLED TO DO
8 THAT. THEY ARE PERMITTED TO DO IT. BUT IT SEEMS THAT WHEN
9 GENERAL QUESTIONS HAVE BEEN ASKED IN THE SAME WAY, THAT IS
10 WHY I ASK YOU WHETHER OR NOT YOUR ANSWERS TO THOSE GENERAL
11 QUESTIONS WOULD BE THE SAME. YOU WOULD IMAGINE THAT THERE
12 WOULD BE NO REASON FOR ASKING THEM AGAIN. WOULD YOU? RIGHT?

13 MR. BERSINGER: RIGHT.

14 MR. WAPNER: WAS THAT A HINT?

15 THE COURT: I WILL MAKE IT AS BROAD AS I CAN. ALL RIGHT.

16 MR. BERSINGER, HAVE YOU EVER SERVED ON A JURY?

17 MR. BERSINGER: YES. I SERVED AS AN ALTERNATE JUROR
18 ON A MURDER CASE HERE IN SANTA MONICA.

19 THE COURT: YOU HAD OCCASION THEN, TO ENGAGE IN THE
20 DELIBERATIONS OF THE JURY?

21 MR. BERSINGER: NO.

22 THE COURT: ALL RIGHT. HOW LONG AGO WAS IT?

23 MR. BERSINGER: JUST OVER TWO YEARS.

24 THE COURT: AND WAS THAT HERE IN SANTA MONICA?

25 MR. BERSINGER: YES.

26 THE COURT: DO YOU KNOW THE NAME OF THE CASE?

27 MR. BERSINGER: IT WAS THE CLARK CASE.

28 THE COURT: I DON'T KNOW WHERE THAT WAS.

1 MR. BERSINGER: IT WAS A VERY HIGH PUBLICITY TYPE OF
2 CASE.

3 THE COURT: YES. I UNDERSTAND.

4 YOU WERE AN ALTERNATE IN THE CASE. DID YOU FORM
5 ANY IMPRESSION OR REACTION IN ANY WAY THAT WOULD INTERFERE
6 WITH YOUR BEING A REGULAR JUROR IN THIS CASE?

7 MR. BERSINGER: NO.
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1 THE COURT: OKAY. ALL RIGHT. WHAT DO YOU DO, PLEASE,
2 MR. BERSINGER?

3 MR. BERSINGER: WELL, I AM RETIRED FROM CONVENTIONAL
4 EMPLOYMENT.

5 HOWEVER, I THINK I AM BUSIER NOW THAN I HAVE BEEN
6 FOR A LONG TIME, LOOKING AFTER MY OWN BUSINESS AFFAIRS.

7 THE COURT: THAT IS THE MOST DESIRABLE THING FOR A MAN
8 WHO IS RETIRED, DON'T YOU THINK?

9 ALL RIGHT. AND WHAT IS IT THAT YOU DO, WHERE YOU
10 DO SO MUCH?

11 MR. BERSINGER: WELL, I HAVE INVESTMENTS THAT I LOOK
12 AFTER, APARTMENTS AND ONE THING AND ANOTHER.

13 THE COURT: WHAT WAS YOUR BUSINESS BEFORE YOU RETIRED?

14 MR. BERSINGER: I WAS IN THE MORTGAGE BUSINESS FOR 30
15 YEARS.

16 THE COURT: A COMPANY OR ON YOUR OWN?

17 MR. BERSINGER: I HAD MY OWN COMPANY AND SOLD IT AND
18 WENT TO WORK FOR THE COMPANY THAT BOUGHT IT.

19 THE COURT: VERY GOOD. WHAT WAS THE NAME OF THE COMPANY?

20 MR. BERSINGER: WELL, THE NAME OF THE COMPANY I HAD WAS
21 MY OWN NAME. I SOLD IT TO WESTERN MORTGAGE CORPORATION, WHICH
22 IS NOW GENSTAR MORTGAGE CORPORATION.

23 THE COURT: WHAT FORMAL EDUCATION DID YOU HAVE?

24 MR. BERSINGER: I HAD THREE YEARS AT U.S.C.

25 THE COURT: AND I THINK THE LADY THAT WAS SITTING IN
26 YOUR SEAT ALSO WENT TO U.C.L.A.

27 MR. BERSINGER: THAT'S WHERE MY WIFE WENT.

28 THE COURT: ALL RIGHT. IN TALKING ABOUT YOUR WIFE,

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1 DOES SHE PURSUE ANY EMPLOYMENT OUTSIDE THE HOME?

2 MR. BERSINGER: SHE DIDN'T WORK FOR THE FIRST 40 YEARS
3 OF OUR MARRIAGE.

4 BUT FIVE YEARS AGO, SHE WENT TO WORK AS A PART-TIME
5 SALESLADY AT THE BROADWAY DEPARTMENT STORE HERE IN SANTA MONICA.

6 THE COURT: JUST TO KEEP BUSY, IS THAT RIGHT?

7 MR. BERSINGER: YES.

8 THE COURT: THAT IS VERY NICE. WHERE DO YOU LIVE AGAIN?

9 MR. BERSINGER: SANTA MONICA.

10 THE COURT: ALL RIGHT. I THINK THAT YOU HAVE NEVER BEEN
11 THE VICTIM OF ANY KIND OF A ROBBERY OR ANY KIND OF THEFT?

12 MR. BERSINGER: NO.

13 THE COURT: YOU MAY INQUIRE.

14 MR. BARENS: I WOULD LIKE TO TALK A LITTLE BIT ABOUT
15 YOUR EXPERIENCE IN YOUR SERVICE AS AN ALTERNATE ON THAT OTHER
16 MURDER CASE. IT GOES RIGHT INTO THE SAME NEXUS THAT WE ARE
17 OBVIOUSLY DEALING WITH HERE.

18 YOU SAY IT WAS TWO YEARS AGO?

19 MR. BERSINGER: YES, SIR, OVER TWO.

20 MR. BARENS: COULD YOU TELL ME A LITTLE BIT ABOUT THE
21 DEFENDANT THAT WAS ACCUSED? I DON'T WANT TO INQUIRE INTO
22 WHETHER YOU FELT HE WAS GUILTY OR INNOCENT, SIR, BECAUSE IT
23 WOULDN'T BE APPROPRIATE.

24 BUT, HE WAS ACCUSED OF KILLING SOMEONE. AND WAS
25 THAT A CASE WHERE THERE WAS A BODY OF SOMEONE THAT WAS LOCATED?

26 MR. BERSINGER: YES. IT WAS THE PENALTY PHASE OF THE
27 CASE AND THE DEFENDANT ACTED AS HIS OWN COUNSEL.

28 IT WAS A MURDER CASE WITH SPECIAL CIRCUMSTANCES

1 OF KIDNAPPING AND ARSON.

2 MR. BARENS: RIGHT. BY THE TIME YOU SAW THAT CASE, THERE
3 HAD ALREADY BEEN A PLEA MADE OR WAS THERE A GUILTY VERDICT
4 FOUND?

5 MR. BERSINGER: THERE WAS A GUILTY VERDICT FOUND.

6 MR. BARENS: WERE YOU A PARTICIPANT DURING THE GUILT
7 PHASE OF THE TRIAL?

8 THE COURT: NO. HE SAID HE WAS AN ALTERNATE.

9 MR. BARENS: I REALIZE THAT. BUT HE COULD HAVE BEEN
10 AN ALTERNATE IN EITHER PART, YOUR HONOR.

11 THE COURT: WELL, ON BOTH PARTS, WEREN'T YOU AN ALTERNATE?
12 WEREN'T YOU AN ALTERNATE ON BOTH THE GUILT PHASE AND THE
13 PENALTY PHASE?

14 MR. BERSINGER: NO, SIR, JUST THE PENALTY PHASE.

15 THE COURT: THERE WAS A SEPARATE TRIAL OF THE CASE WITH
16 A DIFFERENT JURY?

17 MR. BERSINGER: YES.

18 THE COURT: I SEE.

19 MR. BARENS: THAT IS WHAT HAD ME CONFUSED FOR A MOMENT,
20 YOUR HONOR.

21 THE COURT: SURE.

22 MR. BARENS: SO, DID YOU BY ANY CHANCE, WATCH THE GUILT
23 PHASE OF THE TRIAL JUST OUT OF CURIOSITY?

24 MR. BERSINGER: NO, I DIDN'T.

25 MR. BARENS: SO YOU HAD NOT SEEN THE GUILT PHASE AT ALL?
26 THE GUILTY VERDICT HAD BEEN RENDERED AND YOU WERE AN ALTERNATE
27 DURING THE PENALTY PHASE THAT HIS HONOR DESCRIBED TO ALL OF
28 US BEFORE WE COMMENCED?

1 AND WAS THERE ACTUALLY EVIDENCE PRESENTED BY BOTH
2 SIDES DURING THE PENALTY PHASE?

3 MR. BERSINGER: AS FAR AS WE COULD TELL, THEY WENT
4 THROUGH THE ENTIRE PROCEDURE AGAIN WITH ALL OF THE WITNESSES.

5 MR. BARENS: INDEED.

6 MR. BERSINGER: YES. IT WAS A VERY LENGTHY AFFAIR.

7 MR. BARENS: HOW DID YOU FEEL ABOUT THE JURY PROCESS
8 AND THE WAY IT WORKED AS A RESULT OF THAT EXPERIENCE?

9 MR. BERSINGER: WELL, I THINK ASIDE FROM IT BEING RATHER
10 PONDEROUS AND SOMEWHAT WASTEFUL OF TIME AND MONEY, I AM VERY
11 MUCH IN FAVOR OF IT.

12 I THINK THAT IT ACCOMPLISHES ITS PURPOSE BUT IT
13 SEEMS THAT IT MIGHT BE DONE IN A BIT MORE EXPEDITIOUS OF A
14 MANNER.

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1 MR. BARENS: I AM CERTAINLY NOT GOING TO DISAGREE WITH
2 THAT. HOWEVER, I WOULD INQUIRE IF YOU FELT THAT ONE SIDE OR
3 THE OTHER WAS MORE RESPONSIBLE FOR WHAT APPEARED TO BE AN
4 INEFFICIENT OPERATION OR INEFFICIENT PROCEEDINGS?

5 MR. BERSINGER: NO. I WOULD SAY NOT.

6 MR. BARENS: YOU DIDN'T THINK THAT THE DEFENSE WAS
7 STALLING OR THE PROSECUTION WAS NOT DOING THEIR JOB? YOU JUST
8 FELT THE INHERENT NATURE OF THE SITUATION WAS SOMEWHAT NOT
9 AS EFFICIENT PERHAPS AS PRIVATE INDUSTRY OPERATES?

10 THE COURT: I THINK HE TOLD US THAT THE DEFENDANT WAS
11 IN PRO PER.

12 MR. BARENS: I WAS GOING TO GET TO THAT. STILL, HE COULD
13 HAVE BEEN DRAGGING HIS FEET I BELIEVE, YOUR HONOR.

14 THE COURT: THE SITUATIONS ARE NOT COMPARABLE.

15 MR. BARENS: OKAY. DID YOU MENTION THAT MR. CLARK ACTED
16 AS HIS OWN COUNSEL? HOW DID THAT STRIKE YOU? DO YOU THINK
17 THAT IT WAS FAIR THAT HE GOT A FAIR TRIAL OR WOULD HE HAVE
18 BEEN BETTER ADVISED TO GET A LAWYER?

19 MR. BERSINGER: HE WAS A VERY BRIGHT, ARTICULATE MAN.
20 HE PRESENTED MANY ASPECTS OF HIS DEFENSE I THOUGHT, QUITE WELL.

21 BUT, HE SEEMED TO ACQUIESCE IN THE ACCEPTANCE OF
22 HIS GUILT VERY EASILY. I THINK IT SURPRISED SOME OF US.

23 WHEN IT CAME TO EVALUATING THE MITIGATING
24 CIRCUMSTANCES, HIS ONLY MITIGATING CIRCUMSTANCE BY HIS OWN
25 ADMISSION, WAS HIS EMOTIONAL FRAME OF MIND AT THE TIME.

26 MR. BARENS: SURE. YOU UNDERSTAND DO YOU, MR. BERSINGER,
27 THAT HERE, AT THIS STAGE OF THE PROCEEDINGS, WE HAVE AN
28 ABSOLUTELY FUNDAMENTALLY DIFFERENT SITUATION. THERE, YOU HAVE

1 A GIVEN, THAT AN INDIVIDUAL IS CONVICTED OF A MURDER.

2 HERE, WE HAVE A DEFENDANT WHO IS ACCUSED OF MURDER,
3 WHO IS SAYING NOT GUILTY. WE DON'T HAVE ANYTHING ESTABLISHED
4 AS A GIVEN IN THIS CASE, EXCEPT THAT WE ARE HERE TRYING TO
5 FIND OUT WHAT THE TRUTH IS AND WHAT THE RIGHT THING TO DO IS.
6 DO YOU UNDERSTAND THAT?

7 MR. BERSINGER: YES.

8 MR. BARENS: THERE, YOU WERE EXPOSED TO A DEFENDANT WHO
9 ACTUALLY NOT ONLY TESTIFIED BUT REPRESENTED HIMSELF. COULD
10 YOU UNDERSTAND THAT IN AN ANALOGOUS SITUATION -- IT IS ONLY
11 ANALOGOUS IN THE SENSE THAT IT IS A MURDER TRIAL AND THAT THIS
12 DEFENDANT MIGHT NOT TESTIFY AT ALL?

13 MR. BERSINGER: YES.

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1 MR. BARENS: WOULD THAT MAKE YOU IN ANY WAY, TRUTHFULLY,
2 MORE LIKELY TO THINK HE WAS GUILTY?

3 MR. BERSINGER: THE DEFENDANT, AS I UNDERSTAND IT, HAS
4 ALREADY ENTERED A PLEA OF NOT GUILTY?

5 MR. BARENS: THAT WOULD BE SO OR I WOULDN'T BE HERE,
6 SIR.

7 MR. BERSINGER: YES.

8 NO, THEN IT WOULDN'T INFLUENCE ME.

9 MR. BARENS: IN OTHER WORDS, THE PROOF WOULD HAVE TO
10 BE MADE FROM WHAT YOU OBSERVE AND THE FACT THAT THE DEFENDANT
11 HAS A CONSTITUTIONAL RIGHT NOT TO TESTIFY WOULD NOT BOTHER
12 YOU?

13 MR. BERSINGER: NO.

14 MR. BARENS: CONVERSELY, IF THE DEFENDANT TESTIFIES,
15 WOULD YOU UNDERSTAND THAT HE COULD BE TELLING THE TRUTH,
16 IRRESPECTIVE OF WHAT SORT OF PENALTY HE WOULD BE FACING IF
17 HE WAS UNSUCCESSFUL?

18 MR. BERSINGER: YES, HE COULD BE.

19 MR. BARENS: WOULD YOU DOUBT IT?

20 THE COURT: WELL, HOW CAN HE ANSWER THAT UNLESS HE HEARS
21 THE TESTIMONY?

22 MR. BARENS: I AM ASKING IF HE WOULD BE PREDISPOSED TO
23 THINK THE DEFENDANT --

24 THE COURT: WELL, ASK THE QUESTION THAT WAY. THAT IS
25 THE PROPER WAY TO ASK IT.

26 MR. BARENS: I WAS TRYING TO SHORTCUT IT, YOUR HONOR.

27 WOULD YOU BE PREDISPOSED TO BELIEVE THAT A
28 DEFENDANT IN TESTIFYING WOULD BE MORE LIKELY NOT TO BE FULLY

23-2
1 TRUTHFUL WHEN TESTIFYING?

2 MR. BERSINGER: NO.

3 MR. BARENS: DO YOU FEEL COMFORTABLE WITH THAT?

4 MR. BERSINGER: THERE IS, OF COURSE, THE OBVIOUS
5 RESERVATION: WHEN ONE'S PERSONAL FUTURE IS AT STAKE. BUT I
6 SIMPLY FEEL THAT I COULD GIVE FAIR CONSIDERATION TO THE
7 TESTIMONY.

8 MR. BARENS: CAN YOU UNDERSTAND THAT IF JOE HUNT WERE
9 TO TESTIFY IN THIS CASE THAT THE CONTEXT IN WHICH HE WOULD
10 BE TESTIFYING WOULD NOT AT ALL BE LIKE THE CONTEXT IN WHICH
11 MR. CLARK WAS TESTIFYING?

12 DO YOU UNDERSTAND THAT IT IS AS HUGE A DIFFERENCE
13 AS I COULD MAKE AT THIS POINT IN TIME, THAT THERE, YOU HAVE
14 GOT MR. CLARK WITH HIS GUILT BEING ESTABLISHED AND TESTIFYING,
15 TALKING ABOUT WHETHER OR NOT HE IS GOING TO GET THE DEATH
16 PENALTY OR NOT. AND WHEREAS HERE, YOU HAVE MR. HUNT ADDRESSING
17 YOU CONCERNING WHETHER OR NOT HE IS GUILTY OF SOMETHING IN
18 THE FIRST INSTANCE.

19 DO YOU SEE THE DIFFERENCE?

20 MR. BERSINGER: YES, SIR, I DO.

21 MR. BARENS: AND DO YOU THINK YOU WOULD BE ABLE TO PUT
22 THE EXPERIENCE YOU HAD WITH MR. CLARK AS A WITNESS TOTALLY
23 OUT OF YOUR MIND AND LISTEN TO MR. HUNT AS A WITNESS WITHOUT
24 ANY BIAS OR RESERVATION AS A RESULT OF ANYTHING THAT HAPPENED
25 TO YOU IN THE CLARK TRIAL?

26 MR. BERSINGER: YES, I COULD.

27 MR. BARENS: HOW DO YOU FEEL ABOUT THE POSSIBILITY OF
28 BEING A JUROR IN THIS CASE, AFTER HAVING GONE THROUGH THE

3-3
1 CLARK TRIAL, THE CLARK PENALTY PHASE TRIAL?

2 MR. BERSINGER: MY ONLY RESERVATION ABOUT BEING A JUROR
3 IN THIS CASE IS THE LENGTH OF TIME THAT IS FORESEEN FOR THE
4 CASE THAT IT WILL TAKE.

5 MR. BARENS: DO YOU THINK THAT WOULD IN ANY WAY CAUSE
6 YOU, IF YOU WERE A JUROR, TO HURRY UP IN YOUR DELIBERATIONS
7 OR ENCOURAGE THE OTHER JURORS TO HURRY UP IN COMING TO A
8 CONCLUSION, RATHER THAN CONSIDERING ALL OF THE EVIDENCE TO
9 THE FULLEST BEFORE MAKING A CONCLUSION?

10 MR. BERSINGER: NO, I COULDN'T DO THAT. I WOULDN'T.

11 MR. BARENS: IRRESPECTIVE OF ANY PERSONAL CONCERNS YOU
12 MIGHT HAVE, YOU WOULD BE WILLING TO JUST SEE IT THROUGH TO
13 THE END BASED ON WHAT ARE FAIR CONSIDERATIONS?

14 (MR. BERSINGER NODS HIS HEAD UP AND DOWN.)

15 MR. BARENS: DID YOU EVER HAVE ANY JURY EXPERIENCE OTHER
16 THAN THE CLARK CASE? I THINK YOU MENTIONED ANOTHER ONE.

17 MR. BERSINGER: NO. I WAS CALLED TO JURY SERVICE ONCE
18 BEFORE BUT I WAS NOT SELECTED FOR A JURY PANEL.

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23A-1
1 MR. BARENS: HAVE YOU EVER SPENT ANY TIME WATCHING ANY
2 TRIAL?

3 MR. BERSINGER: WATCHING?

4 MR. BARENS: HAVE YOU EVER WATCHED ANY TRIALS JUST AS
5 AN OBSERVER, COURTROOM OBSERVER?

6 MR. BERSINGER: NOT FOR MANY YEARS. I THINK I DID IN
7 SCHOOL ONE TIME MANY, MANY YEARS AGO BUT IT HAS BEEN A LONG
8 TIME.

9 MR. BARENS: ALL RIGHT, SIR. WHAT DID YOU STUDY AT USC?

10 MR. BERSINGER: I STUDIED BUSINESS.

11 MR. BARENS: BUSINESS ADMINISTRATION?

12 MR. BERSINGER: YES.

13 I SHOULD MENTION THE REASON I DIDN'T FINISH THERE.
14 AT THE TIME I WAS GOING TO SCHOOL, IT WAS RIGHT AFTER WORLD
15 WAR II, I WENT ON THE GI BILL AND THEY HAD AN ARRANGEMENT WHERE
16 YOU COULD BE ADMITTED TO LAW SCHOOL ON COMPLETION OF THREE
17 YEARS OF UNDERGRADUATE WORK IF YOU HAD DONE SUCH AND SUCH AND
18 THAT SOUNDED RATHER ATTRACTIVE AT THE TIME AND I DID IT, AND
19 I WAS IN LAW SCHOOL ABOUT 30 DAYS AND I FEEL ASLEEP A COUPLE
20 OF TIMES IN THE LIBRARY AND I FIGURED THIS CAN'T BE FOR ME.

21 MR. BARENS: I COULD ASSURE YOU THAT YOU HAD SOME OF
22 THE SAME PROFESSORS AT USC THAT I DID. THEY COULD STILL BE
23 THERE.

24 OKAY, SO YOU HAD AN ABBREVIATED EXPERIENCE IN LAW
25 SCHOOL. YOU NEVER WENT BACK TO LAW SCHOOL AFTER THAT, SIR?

26 MR. BERSINGER: NO.

27 MR. BARENS: HOW LONG HAVE YOU BEEN RETIRED?

28 MR. BERSINGER: FROM CONVENTIONAL EMPLOYMENT, SEVEN YEARS.

23A-2
1 MR. BARENS: DURING THE PERIOD OF TIME YOU WERE IN THE
2 MORTGAGE BUSINESS, DID YOU HAVE A LOT OF CONTACTS WITH LAWYERS?

3 MR. BERSINGER: YES, AS YOU MIGHT SUSPECT, PRIMARILY
4 IN DRAWING OF DOCUMENTS AND SOMETIMES IN LITIGATION.

5 MR. BARENS: PRETTY ROUTINE THAT WE MIGHT HAVE
6 LITIGATION COEFFICIENT TO THE MORTGAGE BUSINESS AND REAL
7 ESTATE TRANSACTIONS IN GENERAL, SIR.

8 WERE YOU EVER A WITNESS AS A RESULT OF THOSE
9 ACTIVITIES?

10 MR. BERSINGER: YES.

11 MR. BARENS: WERE YOU A WITNESS ON MANY OCCASIONS?

12 MR. BERSINGER: NO.

13 OVER THE YEARS, I WOULD SAY PERHAPS NOT MORE THAN
14 HALF DOZEN TIMES. USUALLY, AS A SO-CALLED EXPERT WITNESS
15 RELATIVE TO THE VALUATION OF THE PROPERTY.

16 MR. BARENS: WERE YOU NORMALLY CALLED BY THE PLAINTIFF
17 OR DEFENDANT AS AN EXPERT, SIR?

18 MR. BERSINGER: OH, I REALLY DON'T RECALL. I THINK I
19 HAVE BEEN CALLED BY EACH AT DIFFERENT TIMES.

20 I HAVE TO THINK BACK ABOUT WHO WAS THE PLAINTIFF
21 AND WHO WAS THE DEFENDANT.

22 I THINK IN MOST CASES, I WAS CALLED BY THE
23 DEFENDANT.

24 MR. BARENS: SIR, WHEN YOU WERE CALLED AS A WITNESS,
25 WAS IT BASICALLY WHERE YOU WERE HAVING TO GIVE TESTIMONY AS
26 TO YOUR EXPERT OPINION CONCERNING THE EVALUATION OF A PIECE
27 OF PROPERTY?

28 MR. BERSINGER: PRIMARILY, YES.

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1 MR. BARENS: AND PREFATORY THERETO, YOU WOULD ENGAGE
2 IN CERTAIN ACTIVITIES IN ESTABLISHING THE VALUE OF THAT
3 PROPERTY?

4 MR. BERSINGER: YES.

5 WE HAD USUALLY GONE THROUGH THAT BEFORE IN
6 PROCESSING OUR PAPERS AND ARRANGING THE FINANCING FOR THE
7 PROJECT.

8 MR. BARENS: SO WOULD YOU ACTUALLY BE TESTIFYING ABOUT
9 THE VALUE YOU FORMED ON A PIECE OF PROPERTY OR THE EVALUATION
10 YOU FORMED ON A PIECE OF PROPERTY AT SOME TIME CONSIDERABLY
11 PRIOR TO THE TIME YOU WERE ACTUALLY TESTIFYING IN THE
12 COURTROOM?

13 MR. BERSINGER: YES.

14 MR. BARENS: AND YOU WOULD, THEREFORE, BE REFERRING TO
15 CERTAIN NOTES AND DOCUMENTATION YOU HAD GENERATED AT THAT
16 EARLIER DATE?

17 MR. BERSINGER: YES.

18 MR. BARENS: NOW, YOU WERE CROSS-EXAMINED BY LAWYERS
19 DURING THAT PROCESS?

20 MR. BERSINGER: YES.

21 MR. BARENS: NOW, WOULDN'T IT BE FAIR --

22 MR. BERSINGER: PARDON ME. I SHOULD CORRECT THAT.

23 AS I RECALL, I THINK IN EVERY CASE A DEPOSITION
24 WAS TAKEN.

25 MR. BARENS: A DEPOSITION?

26 MR. BERSINGER: YES.

27 I DON'T RECALL BEING IN A COURTROOM ON THE
28 WITNESS STAND.

1 MR. BARENS: DID YOU TESTIFY IN THE COURTROOM?

2 MR. BERSINGER: I DON'T RECALL DOING THAT.

3 IT SEEMS TO ME WE HAD -- I REMEMBER A NUMBER OF
4 OCCASIONS WHERE WE WOULD MEET IN AN OFFICE AND A DEPOSITION
5 WOULD BE TAKEN. OF COURSE, THERE WOULD BE ATTORNEYS PRESENT.

6 MR. BARENS: WERE YOU AWARE OF THE FACT THAT THE OTHER
7 SIDE IN THOSE LITIGATION INSTANCES WOULD HAVE ANOTHER EXPERT
8 WHOSE VIEW MIGHT DIFFER FROM YOUR OWN?

9 MR. BERSINGER: YES, SIR.

10 MR. BARENS: AND DID YOU EVER HAVE AN OCCASION WHERE
11 COUNSEL FOR SOME OTHER SOURCE WOULD PROVIDE YOU WITH A
12 WRITTEN SUMMARY OF THE OTHER PERSON'S EVALUATION AND
13 CONCLUSIONS TO COMPARE WITH YOUR OWN?

14 MR. BERSINGER: I REMEMBER GETTING THE VERY VOLUMINOUS
15 PAPERS OF THE DEPOSITION THAT I PARTICIPATED IN BUT I DON'T
16 RECALL SEEING CONFLICTING INFORMATION ON THE EVALUATION, NO.

17 MR. BARENS: DID ANYONE EVER DISCUSS WITH YOU THE FACT
18 THAT SOMEONE DISAGREED WITH YOUR EVALUATION OR THAT ANOTHER
19 EXPERT HAD A DIFFERING VALUE THAN YOU DID, SIR?

20 MR. BERSINGER: YES.

21 MR. BARENS: WOULD YOU BELIEVE FROM THAT EXPERIENCE YOU
22 HAD THAT THERE IS TRUTH IN THE STATEMENT THAT REASONABLE MINDS
23 CAN DIFFER?

24 MR. BERSINGER: ABSOLUTELY.

25 MR. BARENS: WOULDN'T IT BE A TRUTHFUL STATEMENT FROM
26 A MAN WHO HAS SPENT A MAJORITY OF YOUR ADULT LIFE INVOLVED
27 IN THE REAL ESTATE BUSINESS WHERE AN EVALUATION IS, I GUESS,
28 THE BENCHMARK ISSUE ON ANY TYPE OF ACTIVITY, THAT REASONABLE

1 MINDS CAN DIFFER?

2 MR. BERSINGER: YES.

3 MR. BARENS: THAT TWO PEOPLE COULD HAVE CONSIDERABLY,
4 IN SOME INSTANCES BY HUNDREDS OF THOUSANDS, IF NOT MILLIONS
5 OF DOLLARS, DIFFERENCES OF OPINIONS ABOUT THE SAME PIECE OF
6 REAL ESTATE THAT THEY CAN BOTH SEE AND STAND AND WALK ON AND
7 TOUCH AND EXAMINE AND EXPLORE, THAT TWO PEOPLE COULD COME TO
8 VERY, VERY DIFFERENT CONCLUSIONS ABOUT THE EVALUATION AND BOTH
9 OF THEM BE REASONABLE IN THEIR APPROACH; IS THAT A FAIR
10 STATEMENT?

11 MR. BERSINGER: YES, USUALLY, THEY ARE WITHIN A RANGE
12 BUT THERE CERTAINLY CAN BE WIDE DIFFERENCES, YES.

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1 MR. BARENS: AND COULD YOU SAY FROM THAT THAT THERE ARE
2 TWO PEOPLE BOTH TRYING TO ACT AS EXPERT EVALUATORS WHO ARE
3 BOTH REASONABLE IN THEIR APPROACHES?

4 MR. BERSINGER: YES.

5 MR. BARENS: LOOKING AT THE SAME UNDERLYING CORPUS, SO
6 TO SPEAK, IN THE INSTANCE OF BEING A REAL ESTATE PROPERTY?

7 MR. BERSINGER: YES.

8 MR. BARENS: AND HERE, THEY COME TO DIFFERENT CONCLUSIONS?

9 MR. BERSINGER: YES.

10 MR. BARENS: NOW, IF YOU CAME TO A SIMILAR SITUATION
11 IN THIS CASE WHERE BOTH SIDES APPEARED TO YOU TO HAVE A
12 REASONABLE PROPOSITION ON BOTH SIDES AND YOU CAME TO
13 REASONABLE CONCLUSIONS, WHAT DO YOU THINK YOUR OBLIGATION AS
14 A JUROR IS AS FAR AS HOW YOU VOTE WHEN BOTH SIDES HAVE
15 CONVINCED YOU THAT THEY ARE REASONABLE?

16 MR. BERSINGER: I WOULD STILL HAVE THE PRESUMPTION IN
17 FAVOR OF THE DEFENDANT.

18 MR. BARENS: PRESUMPTION OF INNOCENCE?

19 MR. BERSINGER: YES.

20 MR. BARENS: BECAUSE IN THAT INSTANCE, THE PEOPLE WOULD
21 NOT HAVE PROVED THEIR CASE BEYOND A REASONABLE DOUBT?

22 MR. BERSINGER: YES.

23 MR. BARENS: OKAY. YOU UNDERSTAND THAT THIS ACTIVITY
24 IS TOTALLY DIFFERENT THAN ANYTHING YOU DID IN FINDING A
25 VALUATION IN REAL ESTATE?

26 MR. BERSINGER: YES.

27 MR. BARENS: AND THAT THE STANDARD OF PROOF YOU SEE
28 THERE -- THERE IS A STANDARD OF VALUATION WHICH IS NOT SUBJECT

4-2
1 TO PROOF. DO YOU UNDERSTAND WHAT I MEAN BY THAT?

2 MR. BERSINGER: YES.

3 MR. BARENS: I MIGHT BE ABLE TO PROVE IT OUT BY SETTING
4 A MATHEMATICAL FORMULA, WHAT THE PROPERTY SHOULD RETURN BASED
5 ON ITS PROFILE AND ITS INCOME AND ITS CAP VALUE AND ALL THAT
6 SORT OF THING.

7 BUT, IT WOULDN'T BE SUBJECT TO PROOF IN ANY OTHER
8 EMPIRICAL, DEFINITIVE DEGREE OF BLACK AND WHITE, THAT TYPE
9 OF MANNER?

10 MR. BERSINGER: YES.

11 MR. BARENS: YOU UNDERSTAND WHAT WE DO HERE IS DIFFERENT
12 THAN THAT KIND OF EVALUATION? SOMETIMES IT IS THE BEST
13 GUESSTIMATE WHEN YOU ARE EVALUATING PROPERTY. WE DON'T WANT
14 THAT HERE. IT IS BEYOND A REASONABLE DOUBT.

15 DID YOU SAY THAT YOU HAD CHILDREN, MR. BERSINGER?

16 MR. BERSINGER: I HAVE FOUR CHILDREN, YES.

17 MR. BARENS: WHAT ARE THEIR AGES, SIR?

18 MR. BERSINGER: MY DAUGHTER IS THE OLDEST. SHE IS 43.
19 I HAVE THREE SONS THAT ARE 39, 34 AND 25.

20 MR. BARENS: WHAT DOES YOUR DAUGHTER DO, SIR?

21 MR. BERSINGER: MY DAUGHTER LIVES IN SACRAMENTO. SHE
22 IS THE DEPUTY DIRECTOR OF THE DEPARTMENT OF PERSONNEL FOR THE
23 STATE OF CALIFORNIA.

24 MR. BARENS: THANK YOU. I THINK THAT --

25 MR. BERSINGER: I HOPE I GOT THAT RIGHT.

26 MR. BARENS: THANK YOU. IF WE COULD, YOUR HONOR?

27 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE WILL
28 TAKE OUR ADJOURNMENT AT THIS TIME UNTIL THE USUAL TIME OF

24-3
1 10:30 TOMORROW MORNING.

2 PLEASE APPEAR IN THE JURY ASSEMBLY ROOM. WE'LL
3 BE READY FOR YOU AND WE WILL ASK YOU TO COME OVER.

4 MS. GHAEMMAGHAMI, I THINK THERE ARE A COUPLE OF
5 QUESTIONS THEY WANT TO ASK OF YOU. PLEASE STAY.

6 MS. GHAEMMAGHAMI: OKAY.

7 (ALL PROSPECTIVE JURORS EXCEPT MS.
8 GHAEMMAGHAMI EXIT THE COURTROOM.)

9 THE COURT: ALL RIGHT. THE RECORD WILL INDICATE THE
10 REST OF THE JURORS HAVE LEFT THE COURTROOM.

11 THE REASON I KEPT YOU OVER IS TO ASK YOU A COUPLE
12 OF QUESTIONS.

13 DO YOU KNOW AN IRANIAN WHO IS NAMED HEDYAT,
14 H-E-D-Y-A-T, ESLAMINIA?

15 MS. GHAEMMAGHAMI: NO.

16 THE COURT: THAT IS E-S-L-A-M-I-N-I-A?

17 MS. GHAEMMAGHAMI: NO. THAT IS NOT FAMILIAR AT ALL.

18 THE COURT: OR REZA, R-E-Z-A?

19 MS. GHAEMMAGHAMI: NO.

20 THE COURT: ESLAMINIA?

21 MS. GHAEMMAGHAMI: NO.

22 THE COURT: ALL RIGHT. THAT IS ALL I WANTED TO ASK YOU.
23 THANK YOU VERY MUCH.

24 (PROSPECTIVE JUROR GHAEMMAGHAMI ENTERS
25 THE COURTROOM.)

26 MR. BARENS: WE ARE SATISFIED, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 (AT 4:17 P.M. AN ADJOURNMENT WAS TAKEN UNTIL
29 DECEMBER 18, 1986, AT 10:30 A.M.)