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COURT OF APPEAL OF THE STATE OF CALIFORNIA
 SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFF-RESPONDENT,)	
)	SUPERIOR COURT
VS.)	NO. A-090435
)	
JOE HUNT, AKA JOSEPH HUNT,)	
AKA JOSEPH HENRY GAMSKY,)	
)	
DEFENDANT-APPELLANT.)	

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 26 OF 101
 (PAGES 3622 TO 3891, 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

MONDAY, DECEMBER 22, 1986

VOLUME 26

(PAGES 3672 TO 3841, 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

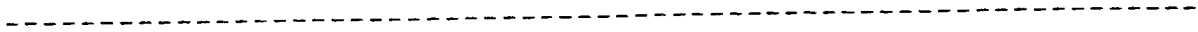
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MONDAY, DECEMBER 22, 1986 VOLUME 26 PAGES 3672 TO 3841

A.M. 3672

P.M. 3729



PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 3672

1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 22, 1986; 10:42 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

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

7 GOOD MORNING, LADIES AND GENTLEMEN.

8 I THINK WE LEFT OFF WITH MRS. BLEVINS.

9 MR. WAPNER: THANK YOU, YOUR HONOR.

10 GOOD MORNING, MRS. BLEVINS.

11 MS. BLEVINS: GOOD MORNING.

12 MR. WAPNER: I DON'T KNOW IF WE EVER GOT DURING THIS
13 WHOLE PROCESS WHERE YOU LIVE.

14 MS. BLEVINS: IN TORRANCE.

15 MR. WAPNER: THANK YOU.

16 HOW MANY YEARS HAVE YOU BEEN AT GARDENA HIGH
17 SCHOOL?

18 MS. BLEVINS: WELL, I AM NOT THERE NOW.

19 I HAD BEEN THERE NINE YEARS.

20 MR. WAPNER: WHEN DID YOU RETIRE?

21 MS. BLEVINS: 1979.

22 MR. WAPNER: DID YOU HAVE MUCH DIRECT CONTACT WITH THE
23 TORRANCE -- EXCUSE ME -- THE GARDENA POLICE DEPARTMENT WHILE
24 YOU WERE WORKING THERE?

25 MS. BLEVINS: AND THE L.A. SHERIFFS.

26 MR. WAPNER: WERE THEY ON CAMPUS FAIRLY FREQUENTLY?

27 MS. BLEVINS: WE HAD SECURITY OFFICERS ON CAMPUS, WHICH
28 WERE SCHOOL DISTRICT EMPLOYEES, AT ALL TIMES, AND THEN ONLY

1 WHEN THERE WAS A NEED THAT ANY OF THE POLICE DEPARTMENT WOULD
2 COME ON OR THE SHERIFF'S DEPARTMENT WOULD COME ON CAMPUS.

3 MR. WAPNER: DID YOU RECOGNIZE THE NAMES OF ANY OF THE
4 POLICE OFFICERS THAT I READ OFF?

5 MS. BLEVINS: NO.

6 MR. WAPNER: HAVE YOU HAD ANY EXPERIENCES WITH LAW
7 ENFORCEMENT THAT LEFT SUCH A BAD TASTE IN YOUR MOUTH THAT YOU
8 WOULD HOLD IT AGAINST A POLICE OFFICER BECAUSE OF THAT?

9 MS. BLEVINS: NO.

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1 MR. WAPNER: AS A RESULT OF THE INCIDENT WHEN YOUR
2 HUSBAND WAS ARRESTED IN YOUR HOME, HOW DO YOU FEEL ABOUT
3 POLICE OFFICERS SINCE THAT HAPPENED?

4 MS. BLEVINS: IN GENERAL, I FEEL FINE. I WAS, OF COURSE,
5 DISPLEASED WITH THAT PARTICULAR INCIDENT BUT THAT DOESN'T
6 INFLUENCE ME ON OTHER POLICE OFFICERS.

7 MR. WAPNER: YOU MENTIONED THAT YOU WERE INVOLVED OR
8 ARE INVOLVED IN SOME LITIGATION REGARDING SOME INVESTMENTS?

9 MS. BLEVINS: THERE IS SOME LITIGATION AND I DON'T
10 KNOW EXACTLY WHAT THE STATUS IS OF IT. IT IS AN INVESTMENT
11 THAT I HAVE, YES.

12 MR. WAPNER: CAN YOU EXPLAIN TO ME A LITTLE BIT MORE?

13 MS. BLEVINS: WELL, I WISH I COULD. I AM A MEMBER OF
14 A LIMITED PARTNERSHIP. AND THERE IS SOME LITIGATION I BELIEVE
15 THROUGH THE STATE AGAINST THE GENERAL PARTNER, THAT PERHAPS
16 THE GENERAL PARTNER HAS NOT FULFILLED HIS RESPONSIBILITY.

17 MR. WAPNER: IT AFFECTS YOU ONLY TO THE EXTENT OF --

18 MS. BLEVINS: IT AFFECTS ME TO THE EXTENT OF MY
19 INVESTMENT IF INDEED, HE HAS NOT HANDLED THE FUNDS CORRECTLY.

20 MR. WAPNER: OTHER THAN THE POSSIBILITY THAT THERE WERE
21 SOME SHADY DEALINGS IN THAT CASE, HAVE YOU EVER BEEN THE
22 VICTIM OF ANY KIND OF THEFT OR CON SCHEME?

23 MS. BLEVINS: THE ONLY THEFT WAS THE BURGLARY THEFT,
24 BUT NO CON SCHEME.

25 MR. WAPNER: THERE WAS A BURGLARY OF YOUR HOME?

26 MS. BLEVINS: YES.

27 MR. WAPNER: DID YOU EVER HAVE TO GO TO COURT TO
28 JUVENILE COURT TO TESTIFY IN THAT CASE?

1 MS. BLEVINS: NO.

2 MR. WAPNER: DO YOU KNOW WHAT HAPPENED TO THE JUVENILE
3 WHO BURGLED YOUR HOME?

4 MS. BLEVINS: ONLY BY HEARSAY.

5 MR. WAPNER: AND WHAT WAS THE HEARSAY?

6 MS. BLEVINS: THE HEARSAY WAS THAT HE I BELIEVE, WAS
7 HANDLED THROUGH THE JUVENILE SYSTEM.

8 MR. WAPNER: AND HOW DID YOU FEEL ABOUT HOW THAT WAS
9 HANDLED, EVEN THOUGH YOU ONLY KNOW ABOUT IT THROUGH HEARSAY?

10 MS. BLEVINS: WELL, I DIDN'T HAVE ANY PARTICULAR
11 REACTION TO IT OTHER THAN THAT IT WAS A KID THAT HAD DONE
12 SOMETHING.

13 MR. WAPNER: WAS IT A KID THAT YOU KNEW FROM THE
14 NEIGHBORHOOD OR SOMETHING?

15 MS. BLEVINS: I DIDN'T. I BELIEVE MY DAUGHTER DID.

16 MR. WAPNER: WHAT IS THE NURTURING COMMITTEE IN YOUR
17 CHURCH?

18 MS. BLEVINS: IT IS A COMBINATION COMMITTEE THAT HAS
19 BEEN ESTABLISHED TO PROVIDE PROGRAMS FOR THE MEMBERSHIP OF
20 THE CHURCH, TO GIVE THEM EDUCATION, TO GIVE THEM SPIRITUAL
21 GUIDANCE, TO GIVE THEM T.L.C. OR WHATEVER.

22 MR. WAPNER: IS THIS FOR THE MEMBERSHIP OR IS IT DESIGNED
23 FOR MEMBERS OF THE CONGREGATION WHO HAVE SPECIFIC FAMILY
24 PROBLEMS OR ARE BEREAVED BECAUSE OF THE LOSS OF A LOVED ONE
25 OR IS IT JUST IN BETWEEN?

26 MS. BLEVINS: BOTH.

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1 MR. WAPNER: AND ARE YOU ACTIVE IN THE WORK, JUST IN
2 THE PLANNING PART OF THE COMMITTEE OR DO YOU ACTUALLY GO AND
3 MEET WITH MEMBERS OF THE CONGREGATION AND CARRY OUT THE WORK
4 WITH THE COMMITTEE?

5 MS. BLEVINS: I HEAD THE COMMITTEE SO I AM INVOLVED IN
6 THE PLANNING OF IT AND I DO ACTIVELY PARTICIPATE.

7 MR. WAPNER: HAVE YOU EVER BEEN IN DISCUSSIONS WITH
8 FRIENDS OR RELATIVES ON ANY TOPICS YOU CONSIDER SERIOUS?

9 MS. BLEVINS: YES.

10 MR. WAPNER: DO YOU EVER CHANGE YOUR MIND?

11 MS. BLEVINS: YES.

12 MR. WAPNER: DO YOU THINK, IF YOU ARE ON THE JURY, THAT
13 YOU CAN EXPRESS YOUR VIEWS TO THE OTHER 11 PEOPLE?

14 MS. BLEVINS: YES.

15 MR. WAPNER: DO YOU THINK YOU CAN LISTEN TO THE VIEWS
16 OF THE OTHER 11 PEOPLE?

17 MS. BLEVINS: YES.

18 MR. WAPNER: IF YOU INITIALLY TAKE A POSITION AND THEN
19 DECIDE AT SOME POINT LATER THAT THAT POSITION WAS WRONG, ARE
20 YOU CAPABLE OF CHANGING YOUR MIND?

21 MS. BLEVINS: YES.

22 MR. WAPNER: AND THE OTHER SIDE OF THAT COIN IS, IF YOU
23 ARE CONVINCED THAT YOUR INITIAL POSITION WAS RIGHT, ARE YOU
24 CAPABLE OF HOLDING FIRM TO THAT?

25 MS. BLEVINS: YES.

26 MR. WAPNER: THANK YOU. PASS FOR CAUSE, YOUR HONOR.

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

28 MR. WAPNER: WE WOULD THANK AND ASK THE COURT TO EXCUSE

1 JUROR NUMBER 12, MRS. HADLOCK. THANK YOU.

2 THE COURT: ALL RIGHT, THANK YOU, MRS. HADLOCK.

3 THE CLERK: KATHERINE WEINGARTEN, W-E-I-N-G-A-R-T-E-N.

4 IS THAT MISS?

5 MS. WEINGARTEN: YES.

6 THE CLERK: THAT IS KATHERINE WITH A K?

7 MS. WEINGARTEN: UH-HUH.

8 THE COURT: ALL RIGHT, MISS WEINGARTEN, I NOTICE THAT
9 YOU WERE VERY ATTENTIVE ALL THROUGH THE QUESTIONING. IF THE
10 SAME GENERAL QUESTIONS WERE ASKED OF YOU, WOULD YOUR ANSWERS
11 BE ANY DIFFERENT OR WOULD THEY BE SUBSTANTIALLY THE SAME?

12 MS. WEINGARTEN: SUBSTANTIALLY THE SAME.

13 THE COURT: WHAT DO YOU DO, PLEASE?

14 MS. WEINGARTEN: I AM A UNITED AIRLINES FLIGHT ATTENDANT.

15 THE COURT: UNITED AIRLINES WHAT?

16 MS. WEINGARTEN: FLIGHT ATTENDANT, STEWARDESS.

17 THE COURT: AND WHERE DO YOU LIVE?

18 MS. WEINGARTEN: I LIVE IN TORRANCE.

19 THE COURT: HAVE YOU EVER SERVED AS A JUROR ON A CRIMINAL
20 CASE BEFORE?

21 MS. WEINGARTEN: NO, I HAVE NOT.

22 THE COURT: AND YOU HAVE NEVER BEEN THE VICTIM OF ANY
23 KIND OF A CRIME, HAVE YOU?

24 MS. GARDEN: NO.

25 THE COURT: I GUESS THAT IS ABOUT ALL THE QUESTIONS I
26 THINK I HAVE.

27 MR. BARENS: GOOD MORNING, MS. WEINGARTEN.

28 MS. WEINGARTEN: GOOD MORNING, MR. BARENS.

1 MR. BARENS: MISS WEINGARTEN, HOW DO YOU FEEL ABOUT
2 THE PRESUMPTION OF INNOCENCE THAT THE DEFENDANT HAS AS HE SITS
3 IN THIS COURTROOM PRIOR TO TRIAL?

4 MS. WEINGARTEN: I FEEL THAT IT APPLIES.

5 MR. BARENS: DO YOU THINK THAT IT IS APPROPRIATE?

6 MS. WEINGARTEN: YES, I DO.

7 MR. BARENS: IS THAT SOMETHING YOU WERE FAMILIAR WITH
8 BEFORE HIS HONOR EXPLAINED THAT TO YOU AND BEFORE THE
9 LAWYERS STARTED TALKING ABOUT IT?

10 MS. WEINGARTEN: I WAS SOMEWHAT FAMILIAR WITH IT BUT
11 HIS HONOR MADE IT MORE UNDERSTANDABLE AND SO HAS COUNSEL.

12 MR. BARENS: AND YOU UNDERSTAND THAT THAT APPLIES NOT
13 ONLY JUST NOW BUT IF YOU ARE A JUROR, THROUGHOUT THE ENTIRE
14 PROCESS OF THE TRIAL UNTIL YOU ACTUALLY GO BACK AND DELIBERATE
15 AND UNTIL YOU REACH A CONCLUSION?

16 MS. WEINGARTEN: YES, I DO.

17 THE COURT: THAT INCLUDES THROUGH THE DELIBERATIONS,
18 TOO, IN THE JURY ROOM.

19 MR. BARENS: QUITE SO, YOUR HONOR, INCLUDING THE
20 DELIBERATION PROCESS IS WHAT I MEANT TO POINT OUT TO YOU.

21 HOW DO YOU FEEL, IF THE DEFENDANT WERE TO
22 TESTIFY AS A WITNESS, DO YOU THINK HE WOULD BE LIKELY TO BE
23 LESS TRUTHFUL BECAUSE HE IS ON TRIAL HERE FOR HIS LIFE OR DO
24 YOU THINK YOU COULD MEASURE HIM AS YOU WOULD ANY OTHER
25 WITNESS?

26 MS. WEINGARTEN: YES, I WOULD.

27 MR. BARENS: YOU COULD?

28 MS. WEINGARTEN: MEASURE HIM AS ANY OTHER.

1 MR. BARENS: DO YOU FEEL COMFORTABLE ABOUT THAT?

2 MS. WEINGARTEN: YES, I DO.

3 MR. BARENS: YOU HAVE NEVER HAD ANY JURY SERVICE,
4 EITHER CIVIL OR CRIMINAL, BEFORE?

5 MS. WEINGARTEN: NO.

6 MR. BARENS: AND HAVE YOU FOUND THIS PROCESS TO BE
7 SURPRISING SO FAR OR IS IT ABOUT WHAT YOU ANTICIPATED; HOW
8 DO YOU FEEL ABOUT WHAT YOU HAVE SEEN SO FAR?

9 MS. WEINGARTEN: IT IS SLOW, A LOT SLOWER THAN I
10 ASSUMED BUT IT IS WHAT I EXPECTED BASICALLY.

11 MR. BARENS: ALL RIGHT, LET ME ASK YOU THIS: IT IS
12 MONDAY, RONALD REAGAN IS PRESIDENT OF THE UNITED STATES AND
13 THE CUBS ARE GOING TO WIN THE WORLD SERIES NEXT YEAR.

14 A JUROR IN AUDIENCE: I OBJECT, YOUR HONOR.

15 (LAUGHTER IN THE COURTROOM.)
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1 MR. BARENS: ONE LIVES IN HOPE. BUT I HAVE ARBITRARILY
2 PICKED THE CUBS, OBVIOUSLY. DOES THAT STATEMENT MAKE SENSE
3 TO YOU?

4 MS. WEINGARTEN: SURE.

5 MR. BARENS: THE FIRST TWO THINGS I SAID TO YOU ARE
6 THINGS THAT WE KNOW ARE ABSOLUTELY TRUE.

7 MS. WEINGARTEN: RIGHT.

8 MR. BARENS: THE THIRD STATEMENT IS A MAYBE OR WHAT
9 WE HAVE BEEN CALLING A POSSIBILITY, ISN'T IT?

10 MS. WEINGARTEN: UH-HUH.

11 MR. BARENS: NOW, WHAT YOU SEE DURING TESTIMONY ARE
12 STATEMENTS MADE BY THE PARTIES. AND THEN WE HAVE TO ASSUME
13 OR MAKE A DEDUCTION OR MAKE A CONCLUSION ABOUT WHETHER THE
14 FACTS THAT WE HEARD IN THE TESTIMONY SUPPORT THE THIRD THING.
15 DO YOU UNDERSTAND THAT CONCEPT?

16 MS. WEINGARTEN: UH-HUH.

17 MR. BARENS: AND YOU HAVE EITHER DIRECT EVIDENCE OR
18 CIRCUMSTANTIAL EVIDENCE TO SUPPORT THE PROPOSITION THAT EACH
19 SIDE IS CONTENDING. DID YOU UNDERSTAND THE DIFFERENCE BETWEEN
20 DIRECT AND SUBSTANTIAL FROM ALL OF THE EXAMPLES WE HAVE BEEN
21 THROUGH?

22 MS. WEINGARTEN: YES I DID.

23 MR. BARENS: OKAY. IF YOU GET THE FACTS LIKE WHAT DAY
24 OF THE WEEK IT IS, WHO THE PRESIDENT IS, THAT IS OBVIOUSLY
25 DIFFERENT FACTS. AND WE COME TO MAKE OUR CONCLUSION ABOUT
26 WHAT HAS BEEN ESTABLISHED BEYOND A REASONABLE DOUBT.

27 WHAT DO YOU THINK HAPPENS TO JOE HUNT IF THE FACTS
28 DON'T TELL YOU MUCH EITHER WAY OR IF THE FACTS END IN A TIE?
29 THERE ARE FACTS THAT LOOK LIKE GUILT.

1 THERE ARE FACTS THAT LOOK LIKE INNOCENCE. WHAT HAPPENS?

2 MS. WEINGARTEN: JOE HUNT WOULD PRESUMABLY BE INNOCENT.

3 MR. BARENS: OKAY. BECAUSE THE PEOPLE HAVE A BURDEN
4 OF PROOF BEYOND A REASONABLE DOUBT?

5 MS. WEINGARTEN: RIGHT.

6 MR. BARENS: DOES THAT SEEM FAIR TO YOU THAT THE PEOPLE
7 HAVE TO PROVE THEIR CASE?

8 MS. WEINGARTEN: YES IT DOES.

9 MR. BARENS: OKAY. DO YOU THINK IT IS FAIR THAT IF
10 THERE IS NO BODY SHOWN IN THIS CASE THAT THE DEFENDANT DOES
11 NOT HAVE TO EXPLAIN TO YOU WHERE THE ALLEGED VICTIM IS?

12 MS. WEINGARTEN: YES I DO.

13 MR. BARENS: OKAY. HAVE YOU FOLLOWED PRETTY MUCH THAT
14 THE DEFENDANT HAS BEEN TRYING TO POINT OUT THAT ALTHOUGH THE
15 GOVERNMENT TALKS ABOUT WHETHER OR NOT SOMEONE WAS KILLED OR
16 IF HE IS KILLED IF IT IS A MURDER, THAT THE DEFENSE IS ASKING
17 THE JURORS TO LOOK AT WHETHER A CRIME TOOK PLACE TO BEGIN
18 WITH?

19 MS. WEINGARTEN: UH-HUH.

20 MR. BARENS: DO YOU UNDERSTAND THE DIFFERENCE BETWEEN
21 TRYING TO FIGURE OUT WHETHER THERE IS A MURDER OR THAT THE
22 DEFENSE WOULD CONTEND, WHETHER SOMEONE IS JUST MISSING?

23 MS. WEINGARTEN: YES I DO.

24 MR. BARENS: OR LEFT VOLUNTARILY?

25 MS. WEINGARTEN: YES.

26 MR. BARENS: OKAY. DOES ALL THAT SEEM FAIR TO YOU OR
27 DO YOU HAVE ANY QUESTIONS ABOUT ANY OF THOSE CONCEPTS?

28 MS. WEINGARTEN: NO. IT SEEMS FAIR TO ME AND I UNDERSTAND

1 EVERYTHING THAT HAS BEEN GOING ON HERE, THE POINTS THAT WERE
2 BEING MADE.

3 MR. BARENS: NOW, MS. WEINGARTEN, YOU UNDERSTAND THAT
4 IN MAKING A DECISION ON WHETHER SOMETHING IS PROVEN BEYOND
5 A REASONABLE DOUBT, IT IS NOT A MORE LIKELY DECISION?

6 MS. WEINGARTEN: YES I DO.

7 MR. BARENS: IT IS NOT LIKE ONE OF THOSE DECISIONS WHERE
8 YOU ARE WAITING FOR ONE OF THE PASSENGERS ON A FLIGHT TO
9 DECIDE WHAT THEY WANT FOR DINNER?

10 MS. WEINGARTEN: I UNDERSTAND.

11 MR. BARENS: AND THIS IS A MUCH MORE SERIOUS DECISION?

12 MS. WEINGARTEN: I UNDERSTAND.

13 MR. BARENS: IT RISES TO A HIGHER LEVEL OF PROOF?

14 MS. WEINGARTEN: UH-HUH.

15 MR. BARENS: NOW, YOU SAY THAT YOU ARE CURRENTLY EMPLOYED
16 AS A STEWARDESS?

17 MS. WEINGARTEN: UH-HUH.

18 MR. BARENS: AND IS UNITED AIRLINES YOUR ONLY EMPLOYER
19 IN THAT CAPACITY?

20 MS. WEINGARTEN: YES. IT HAS BEEN.

21 MR. BARENS: DID YOU HAVE EMPLOYMENT PRIOR TO THAT?

22 MS. WEINGARTEN: YES I DID.

23 MR. BARENS: WHERE DID YOU WORK?

24 MS. WEINGARTEN: I WORKED FOR A DESIGNER AS A FASHION
25 COORDINATOR.

26 MR. BARENS: HOW LONG DID YOU DO THAT?

27 MS. WEINGARTEN: ALMOST TWO YEARS.

28 MR. BARENS: WAS THAT HERE IN LOS ANGELES?

1 MS. WEINGARTEN: YES IT WAS.

2 MR. BARENS: AND WAS THAT IN THE MART, DOWNTOWN?

3 MS. WEINGARTEN: NO, BEVERLY HILLS.

4 MR. BARENS: YOU WORKED RETAIL OR WHOLESALE?

5 MS. WEINGARTEN: RETAIL.

6 MR. BARENS: AND WHAT STORE DID YOU WORK IN?

7 MS. WEINGARTEN: NICOLE OF CALIFORNIA.

8 MR. BARENS: DID YOU HAVE ANY EMPLOYMENT PRIOR TO THAT?

9 MS. WEINGARTEN: YES I DID.

10 MR. BARENS: WHAT DID YOU DO?

11 MS. WEINGARTEN: ALL KINDS. WHEN I WAS YOUNGER IN
12 SCHOOL, I WORKED IN A MEN'S SHOE STORE. I WORKED IN CLOTHING
13 STORES. I WORKED FOR MY BROTHER-IN-LAW.

14 I MEAN, IT WAS NOT FOR A LONG TIME, JUST FOR LIKE
15 MONTHS AT A TIME.

16 THEN I WORKED FOR NICOLE. THEN I HAVE BEEN WITH
17 UNITED AIRLINES FOUR AND A HALF YEARS.

18 MR. BARENS: DO YOU FLY A PARTICULAR ROUTE OR AREA OF
19 SERVICE?

20 MS. WEINGARTEN: WHEN I WAS BASED IN CHICAGO, I FLEW
21 CHICAGO/LOS ANGELES. BUT NOW I AM A RESERVE IN L.A. SO I
22 GO EVERYWHERE DOMESTIC.

23 MR. BARENS: IN THE CONTINENTAL UNITED STATES?

24 MS. WEINGARTEN: YES.

25 MR. BARENS: AND WHERE DID YOU GO TO SCHOOL? WHAT WAS
26 THE HIGHEST LEVEL THAT YOU WENT OF FORMAL EDUCATION?

27 MS. WEINGARTEN: TWO YEARS AT EL CAMINO JUNIOR COLLEGE
28 IN TORRANCE.

1 MR. BARENS: WHERE DID YOU GO TO HIGH SCHOOL?

2 MS. WEINGARTEN: WEST TORRANCE HIGH SCHOOL.

3 MR. BARENS: WHEN YOU WERE AT EL CAMINO, WERE YOU
4 STUDYING IN ANY AREA IN PARTICULAR?

5 MS. WEINGARTEN: FOREIGN LANGUAGE.

6 MR. BARENS: WHAT FOREIGN LANGUAGE WAS THAT?

7 MS. WEINGARTEN: SPANISH AND SIGN LANGUAGE.

8 MR. BARENS: SIGN LANGUAGE?

9 MS. WEINGARTEN: UH-HUH.

10 MR. BARENS: WAS THERE A PARTICULAR REASON YOU WERE
11 LEARNING SIGN LANGUAGE?

12 MS. WEINGARTEN: I WAS AT MAGIC MOUNTAIN AND I SAW A
13 GROUP OF LITTLE KIDS WHO COULD ONLY RELATE TO THEMSELVES.
14 I THOUGHT IT WOULD BE NEAT IF OTHER PEOPLE IN THE COMMUNITY
15 COULD LEARN IT AND RELATE TO THOSE CHILDREN, AS WELL. SO
16 THAT IS WHY I TOOK IT.

17 MR. BARENS: WELL, THAT IS COMMENDABLE, INDEED. DO
18 YOU USE THAT IN ANY OF YOUR FLIGHT ACTIVITIES FROM TIME TO
19 TIME?

20 MS. WEINGARTEN: YES I DO. I HAVE USED IT MORE THAN
21 THE SPANISH, BELIEVE IT OR NOT.

22 MR. BARENS: REALLY?

23 MS. WEINGARTEN: YES.

24 MR. BARENS: SO, DID YOU TAKE ANY PHILOSOPHY COURSES
25 AT EL CAMINO?

26 MS. WEINGARTEN: NO.

27 MR. BARENS: DID YOU TAKE ANY ACCOUNTING COURSES?

28 MS. WEINGARTEN: NO I DID NOT.

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

2 MS. WEINGARTEN: "SMART WOMEN, FOOLISH CHOICES."

3 MR. BARENS: "SMART WOMEN, FOOLISH CHOICES"?

4 MS. WEINGARTEN: I HATE TO ADMIT IT.

5 MR. BARENS: I DON'T KNOW. I AM NOT FAMILIAR WITH THAT
6 AT ALL. WAS THAT A ROMANCE NOVEL?

7 MS. WEINGARTEN: NO. IT IS HOW TO DEAL WITH YOUR
8 BOYFRIENDS, BASICALLY. ONE OF MY FELLOW FLIGHT PARTNERS SAID
9 TO ME THAT IF I SAW THE BOOK I SHOULD PICK IT UP AND READ
10 IT. SO I SAW IT AND PICKED IT UP AND READ IT.

11 MR. BARENS: ALL RIGHT. WHAT HAVE YOU READ BEFORE THAT?

12 MS. WEINGARTEN: I THINK IT WAS "PET CEMETARY" BY
13 STEPHEN KING.

14 MR. BARENS: WHAT WAS THE LAST MOVIE YOU SAW?

15 MS. WEINGARTEN: "HEARTBREAK RIDGE."

16 MR. BARENS: WAS THAT SOMETHING YOU CHOSE TO SEE OR
17 YOU WENT --

18 MS. WEINGARTEN: MY BOYFRIEND CHOSE TO SEE IT.

19 MR. BARENS: DO YOU HAVE ANY HOBBIES OR PERSONAL
20 INTERESTS?

21 MS. WEINGARTEN: I COACH LITTLE GIRLS SOCCER. RIGHT
22 NOW I HAVE TWO OF THEM. I COACH A REGIONAL TEAM AND AN ALL
23 STAR TEAM.

24 I HAVE A DARKROOM. I DO PHOTOGRAPHY. I PLAY
25 SOCCER MYSELF. I HAVE PLAYED FOR 12 YEARS. THAT IS ABOUT
26 IT.

27 MR. BARENS: WHAT AGE GIRLS DO YOU TEACH?

28 MS. WEINGARTEN: 10 TO 12 YEARS OLD.

1 MR. BARENS: ARE YOU AYSO IN THAT ACTIVITY?

2 MS. WEINGARTEN: YES.

3 MR. BARENS: DO YOU PLAY IN THE BEVERLY HILLS LEAGUE?

4 MS. WEINGARTEN: NO. WE GO OUT OF THE REGION.

5 MR. BARENS: SO YOU WON'T HAVE ANY PREJUDICES HERE ABOUT
6 THAT?

7 MS. WEINGARTEN: NO.

8 MR. BARENS: HOW LONG HAVE YOU BEEN INVOLVED WITH AYSO?

9 MS. WEINGARTEN: 12 YEARS.

10 MR. BARENS: OKAY. AND HOW ABOUT THIS BILLIONAIRE BOYS
11 CLUB BUSINESS? IF YOU HEAR THAT MR. HUNT WAS A MEMBER OF
12 THE BILLIONAIRE BOYS CLUB, DOES THAT MAKE YOU HAVE ANY
13 CONCERN OR SUSPICION ABOUT HIM?

14 MS. WEINGARTEN: NO.

15 MR. BARENS: YOU WOULDN'T MEASURE HIM, BASED ON ANYTHING
16 THAT MIGHT SUGGEST TO YOU IMPLICITLY?

17 MS. WEINGARTEN: NO.

18 MR. BARENS: OKAY. AND WHAT HAPPENS IF THE PLANE IS
19 SUPPOSED TO TAKE OFF AND THERE IS SOME SORT OF MECHANICAL
20 PROBLEM? WHAT DO YOU KNOW ABOUT THE DECISION-MAKING PROCESS?
21 DO THEY WAIT? DO THEY STOP OVER OCCASIONALLY? DO THEY LOOK
22 FOR SOME REASONABLE DOUBT DECISION OR HOW IS THAT MADE?

23 MS. WEINGARTEN: WELL, IF THERE IS MECHANICAL BEFORE
24 WE TAKE OFF, WE DON'T TAKE OFF. BUT, THAT IS ALL THERE IS
25 TO IT.

26 WE NOTIFY THE COCKPIT AND THE COCKPIT TAKES CARE
27 OF IT FROM THERE.

28 MR. BARENS: IN OTHER WORDS, IF THERE IS ANY DOUBT IN

1 THAT SITUATION, YOU DON'T PROCEED?

2 MS. WEINGARTEN: RIGHT.

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1 MR. BARENS: IT IS A STANDARD WHERE ONE MIGHT SAY IF
2 YOU HESITATE, IF IT WOULD CAUSE YOU TO HESITATE ON WHETHER
3 YOU SHOULD PROCEED OR NOT, THAT YOU DON'T GO?

4 MS. WEINGARTEN: RIGHT.

5 MR. BARENS: THAT IS A FAIR STATEMENT?

6 MS. WEINGARTEN: YEAH.

7 MR. BARENS: OKAY, YOU ARE GOING TO HEAR LATER IN THE
8 INSTRUCTIONS YOU RECEIVE ABOUT WHAT IS BEYOND A REASONABLE
9 DOUBT AND YOU ARE GOING TO HEAR THAT WORD HESITATE; THAT
10 THE STANDARD IS WHAT WOULD MAKE A MAN, A REASONABLE PERSON,
11 MAN OR WOMAN, HESITATE IN DOING SOMETHING IF THEY KNEW --

12 MR. WAPNER: I AM GOING TO OBJECT TO THAT. I DON'T
13 THINK THAT IS WHAT THE INSTRUCTION SAYS, ALTHOUGH THAT IS MR.
14 BARENS' INTERPRETATION OF WHAT IT SAYS.

15 THE COURT: I MAY AS WELL TELL YOU THIS NOW: ANYTHING
16 THAT COUNSEL SAY, EITHER ONE OF THEM AS TO WHAT THE LAW IS,
17 YOU TAKE THAT WITH A GRAIN OF SALT.

18 THE ONLY INSTRUCTION YOU WILL TAKE AS GOSPEL
19 IS WHEN I GIVE THAT TO YOU AT THE CONCLUSION OF THE CASE,
20 ALL RIGHT?

21 MS. WEINGARTEN: OKAY.

22 MR. BARENS: EVEN WITH THAT GRAIN OF SALT, WE WON'T HAVE
23 THAT WORD HESITATE IN THE INSTRUCTION.

24 WHAT I AM TALKING TO YOU ABOUT, MRS. WEINGARTEN,
25 IS HESITATE. IF YOU COME TO A CONCLUSION IN THIS CASE AND
26 YOU ARE PONDERING A DECISION AS TO WHETHER OR NOT THE PEOPLE,
27 THE GOVERNMENT HAS ESTABLISHED PROOF BEYOND A REASONABLE DOUBT,
28 IT IS MORE AKIN TO THAT DECISION YOU MAKE ON WHETHER YOU GO

1 OR DON'T GO ON THAT AIRPLANE THAN PERHAPS ANY OTHER DECISION
2 YOU MAKE IN LIFE; CAN YOU RELATE TO THAT?

3 MS. WEINGARTEN: YES, I CAN.

4 MR. BARENS: AND IT IS EQUALLY SERIOUS, SEEING AS A
5 LIFE IS ON THE LINE IN BOTH INSTANCES; ISN'T THAT TRUE?

6 MS. WEINGARTEN: YES.

7 MR. BARENS: NOW, ASIDE FROM YOUR PLAYING SOCCER, DO
8 YOU ATTEND ANY SORT OF SCHOOL OR EDUCATIONAL CLASSES AT THIS
9 TIME?

10 MS. WEINGARTEN: NO, I DO NOT.

11 MR. BARENS: ARE YOU INTENDING TO?

12 MS. WEINGARTEN: IN THE FUTURE BUT NOT NOW.

13 MR. BARENS: I SEE.

14 DO YOU HAVE PLANS TO CHANGE YOUR PROFESSION FROM
15 BEING A STEWARDESS TO SOMETHING ELSE OR ARE YOU PLANNING FOR
16 ANYTHING ELSE?

17 MS. WEINGARTEN: I WILL NEVER CHANGE FROM BEING A
18 STEWARDESS, BUT I AM SURE THERE ARE OTHER THINGS THAT I WILL
19 GO INTO.

20 MR. BARENS: DO YOU HAVE, NOT TO BE TOO PERSONAL, DO
21 YOU HAVE A REGULAR BOYFRIEND?

22 MS. WEINGARTEN: YES, I DO.

23 MR. BARENS: WHAT DOES HE DO?

24 MS. WEINGARTEN: HE SELLS MAIN FRAME COMPUTERS FOR NCR.

25 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

26 MS. WEINGARTEN: NO, I HAVE NOT.

27 MR. BARENS: HAVE YOU EVER HAD ANY CONTACT WITH LAW
28 ENFORCEMENT EITHER GOOD OR BAD THAT MIGHT AFFECT YOU?

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1 MS. WEINGARTEN: JUST SPEEDING TICKETS BUT --

2 MR. BARENS: DID YOU EVER TAKE ANY OF THOSE TO COURT
3 WHERE YOU ACTUALLY TRIED THE CASE?

4 MS. WEINGARTEN: NO.

5 MR. BARENS: IS THIS YOUR VERY FIRST EXPERIENCE WHATSOEVER
6 EVER IN A COURTROOM SETTING?

7 MS. WEINGARTEN: YES, IT IS.

8 MR. BARENS: THANK YOU VERY MUCH.

9 MS. WEINGARTEN: YOU ARE WELCOME.

10 MR. BARENS: PASS FOR CAUSE, YOUR HONOR.

11 THE COURT: MR. WAPNER.

12 MR. WAPNER: THANK YOU, YOUR HONOR.

13 THE COURT: YOU ARE WELCOME.

14 MR. WAPNER: GOOD MORNING, MS. WEINGARTEN.

15 MS. WEINGARTEN: GOOD MORNING, MR. WAPNER.

16 MR. WAPNER: YOU HAVE HEARD OVER THE LAST WEEK AND A
17 HALF OR SO THE DEFENSE TELL YOU THAT THEY ARE NOT REQUIRED
18 TO PROVE ANYTHING; HAVE YOU HEARD THAT?

19 MS. WEINGARTEN: THAT'S CORRECT.

20 MR. WAPNER: DO YOU ACCEPT THAT?

21 MS. WEINGARTEN: YES, I DO.

22 MR. WAPNER: OKAY, AND THAT IS BECAUSE IT IS THE BURDEN
23 OF THE PEOPLE TO PROVE THE CASE BEYOND A REASONABLE DOUBT,
24 RIGHT?

25 MS. WEINGARTEN: RIGHT.

26 MR. WAPNER: OKAY, AT THE END OF THE CASE BEFORE THE
27 JURY GOES IN TO DELIBERATE, WE WILL HAVE WHAT WE CALL ARGUMENT
28 IN THE CASE AND THAT IS WHERE THE LAWYERS STAND UP AND EACH

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1 GIVE YOU THEIR THEORIES ABOUT WHAT THE EVIDENCE HAS PROVED;
2 DO YOU UNDERSTAND THAT?

3 MS. WEINGARTEN: YES, I DO.

4 MR. WAPNER: THE PEOPLE WILL OBVIOUSLY ARGUE ONE THING
5 TO YOU AND THE DEFENSE WILL ARGUE SOMETHING ELSE.

6 EVEN THOUGH THE DEFENSE IS NOT REQUIRED TO PROVE
7 ANYTHING, WILL YOU, IN LISTENING TO MR. BARENS SUGGEST TO YOU
8 WHAT HAS BEEN PROVED OR NOT PROVED BY THE EVIDENCE, REQUIRE
9 HIM TO HAVE EVIDENCE TO BACK UP WHAT HE HAS BEEN SAYING?

10 MS. WEINGARTEN: YES.

11 MR. BARENS: IN OTHER WORDS, THE LAW DOESN'T REQUIRE
12 THE DEFENSE TO PUT ON ANY EVIDENCE OR CALL ANY WITNESSES, YOU
13 UNDERSTAND THAT?

14 MS. WEINGARTEN: YES, I DO.

15 MR. WAPNER: BUT IF THEY CHOOSE TO DO SO AND THEN ARGUE
16 CERTAIN THEORIES TO YOU, THAT CAN'T JUST BE SPECULATION; DO
17 YOU UNDERSTAND THAT?

18 MS. WEINGARTEN: YES.

19 MR. WAPNER: ALL RIGHT, IN ANALYZING ANY WITNESSES THAT
20 MAY BE CALLED BY THE DEFENSE, CAN YOU USE THE SAME STANDARD
21 IN JUDGING THEIR CREDIBILITY THAT YOU APPLY TO ALL WITNESSES?

22 MS. WEINGARTEN: YES, I WILL.

23 MR. WAPNER: DO YOU UNDERSTAND THAT THAT MEANS THAT WE
24 USE THE SAME SCALE, THE SAME WEIGHT ON THE SCALE FOR EACH?

25 MS. WEINGARTEN: YES, I DO.

26 MR. WAPNER: ALL RIGHT, THAT DOESN'T MEAN THAT EACH
27 WITNESS IS ENTITLED TO THE SAME WEIGHT; DO YOU UNDERSTAND
28 THAT?

1 MS. WEINGARTEN: YES, I DO.

2 MR. WAPNER: DO YOU HAVE A PROBLEM WITH THAT?

3 MS. WEINGARTEN: NO.

4 YOU JUST TALK FAST.

5 MR. WAPNER: WHAT IT MEANS IS, AS I THINK MR. PEIKERT
6 SAID TO US, IF ALL WITNESSES CAME INTO COURT AND TOLD THE TRUTH
7 UNDER OATH WE WOULDN'T NEED COURTS, WOULD WE?

8 MS. WEINGARTEN: THAT IS HIS OPINION.

9 THAT MAY NOT BE MINE BUT --

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1 MR. WAPNER: OKAY, DO YOU THINK THAT EVERYONE WHO
2 TESTIFIES UNDER OATH TELLS THE TRUTH?

3 MS. WEINGARTEN: NO, I DON'T.

4 MR. WAPNER: AND IF YOU ARE CHOSEN AS A JUROR IN THIS
5 CASE, YOUR JOB IS GOING TO BE AS A JUDGE OF THE FACTS; DO YOU
6 UNDERSTAND THAT?

7 MS. WEINGARTEN: YES, I DO.

8 MR. WAPNER: JUDGE RITTENBAND WILL GIVE YOU THE LAW AND
9 YOU WILL BE 12 INDIVIDUAL JUDGES OF THE FACTS; DO YOU UNDER-
10 STAND THAT?

11 MS. WEINGARTEN: YES, I DO.

12 MR. WAPNER: DO YOU THINK YOU ARE CAPABLE OF MAKING AN
13 EVALUATION AS TO WHICH WITNESSES ARE TELLING THE TRUTH AND
14 WHICH ONES AREN'T?

15 MS. WEINGARTEN: YES, I DO.

16 MR. WAPNER: HAVE YOU EVER HAD ANYONE FALL OUT OF ANY
17 OF YOUR PLANES WITHOUT A PARACHUTE?

18 MS. WEINGARTEN: NO.

19 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT, THE DEFENDANT'S PEREMPTORY.

22 MR. BARENS: THANK YOU, YOUR HONOR. THE DEFENSE WOULD
23 ASK YOUR HONOR TO THANK AND EXCUSE JUROR NUMBER 2, MRS.
24 BLEVINS.

25 THE COURT: ALL RIGHT, THANK YOU, MRS. BLEVINS.

26 THE CLERK: JUDITH L. BORNE, B-O-R-N-E.

27 THE COURT: MRS. BORNE, I THINK YOU TOLD US SOMETIME
28 AGO THAT YOU OR SOME MEMBER OF YOUR FAMILY HAVE BEEN THE

1 VICTIM OF SOME CRIME.

2 MS. BORNE: YES, I WAS BURGLARIZED ABOUT 12 YEARS AGO.

3 THE COURT: AND WAS THE BURGLAR EVER CAUGHT?

4 MS. BORNE: NOT TO MY KNOWLEDGE.

5 THE COURT: YOU MADE A COMPLAINT TO THE POLICE?

6 MS. BORNE: YES.

7 THE COURT: ARE YOU SATISFIED WITH THE WAY THE
8 INVESTIGATION WENT DOWN?

9 MS. BORNE: VERY MUCH SO.

10 THE COURT: THAT WON'T IN ANY WAY AFFECT YOU IF YOU ARE
11 A JUROR IN THIS CASE IN DETERMINING THE GUILT OR INNOCENCE
12 OF THE DEFENDANT, WOULD IT?

13 MS. BORNE: NO.

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

18 MS. BORNE: SUBSTANTIALLY THE SAME.

19 THE COURT: HAVE YOU EVER BEEN ON A CRIMINAL JURY BEFORE?

20 MS. BORNE: I WAS ON A TRAFFIC CASE.

21 THE COURT: A TICKET?

22 MS. BORNE: NO. IT WAS A DRIVING UNDER THE INFLUENCE.
23 I BELIEVE THAT IS CIVIL.

24 THE COURT: NO, THAT IS CRIMINAL.

25 MS. BORNE: CRIMINAL?

26 THE COURT: THAT WAS IN MUNICIPAL COURT, WAS IT?

27 MS. BORNE: YES, IT WAS.

28 THE COURT: HOW LONG AGO WAS THAT?

1 MS. BORNE: APPROXIMATELY FOUR YEARS AGO.

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

4 MS. BORNE: NO.

5 IT WAS A HUNG JURY.

6 THE COURT: ALL RIGHT. WHATEVER YOU MIGHT HAVE HEARD
7 IN THAT CASE OR WHATEVER IMPRESSIONS OR REACTIONS YOU GOT,
8 YOU WILL FORGET ABOUT THAT AND BE GUIDED BY WHAT YOU HEAR IN
9 THIS COURT, WILL YOU NOT?

10 MS. BORNE: YES.

11 THE COURT: AND MY INSTRUCTIONS, WOULD YOU NOT?

12 (MS. BORNE NODS HER HEAD UP AND DOWN.)

13 THE COURT: WHERE DO YOU LIVE?

14 MS. BORNE: MARINA DEL REY.

15 THE COURT: NOW, WHAT DO YOU DO?

16 MS. BORNE: I WORK FOR DELTA AIRLINES.

17 THE COURT: YOU HAVE A COMPETITOR HERE.

18 MS. BORNE: YES.

19 THE COURT: IN WHAT CAPACITY ARE YOU EMPLOYED?

20 MS. BORNE: RESERVATIONS-SALES.

21 THE COURT: HOW LONG HAVE YOU BEEN WITH THEM?

22 MS. BORNE: I AM IN MY 24TH YEAR.

23 THE COURT: THAT IS WONDERFUL. THAT SPEAKS VERY WELL
24 FOR THEM AND FOR YOU.

25 MS. BORNE: A GREAT COMPANY.

26 THE COURT: WHAT DOES MR. BORNE DO?

27 MS. BORNE: HE IS A TEACHER.

28 THE COURT: WHERE DOES HE TEACH?

1 MS. BORNE: PALOS VERDES HIGH SCHOOL.

2 THE COURT: HOW LONG HAS HE BEEN THERE?

3 MS. BORNE: 25 YEARS.

4 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

5 MS. BORNE: I HAVE AN ASA FROM ENDICOTT COLLEGE,
6 BEVERLY FARMS, MASSACHUSETTS.

7 THE COURT: AND YOUR HUSBAND?

8 MS. BORNE: HE GRADUATED FROM CAL STATE -- I AM SORRY --
9 I THINK IT IS CALIFORNIA STATE -- WELL, I AM NOT SURE. I AM
10 CONFUSED. HE GOT HIS MASTER'S FROM SC AND HIS UNDERGRADUATE,
11 HE COMPLETED AT, I THINK IT IS CALIFORNIA STATE, LOS ANGELES.

12 THE COURT: ALL RIGHT. YOU THINK HE WOULD LIKE IT IF
13 HE KNOWS YOU CAN'T REMEMBER WHERE HE WENT TO?

14 MS. BORNE: I DIDN'T KNOW HIM THEN.

15 THE COURT: HOW MANY CHILDREN DO YOU HAVE, IF ANY?

16 MS. BORNE: WE DO NOT HAVE ANY CHILDREN.

17 THE COURT: ALL RIGHT, THANK YOU.

18 MR. BARENS: GOOD MORNING, MS. BORNE.

19 MS. BORNE: GOOD MORNING.

20 MR. BARENS: MRS. BORNE, IN YOUR PRIOR EXPERIENCE AS
21 A JUROR, YOU WERE A MEMBER OF THE PANEL THAT COULD NOT REACH
22 A DECISION.

23 I AM NOT ASKING HOW YOU VOTED.

24 I AM JUST SAYING YOU WENT THROUGH THAT PROCESS
25 TOGETHER?

26 MS. BORNE: THAT IS CORRECT.

27 MR. BARENS: AND DO YOU RECALL THE INSTRUCTION THERE
28 WAS SIMILAR TO WHAT YOU HAVE HEARD HERE AS TO PROOF BEYOND

1 A REASONABLE DOUBT?

2 MS. BORNE: YES, SIR.

3 MR. BARENS: AND YOU UNDERSTAND THAT THIS PROCESS, EVEN
4 THOUGH THIS IS A MURDER CASE AS OPPOSED TO THAT BEING A DRUNK
5 DRIVING CASE, THERE ARE SOME SIMILARITIES.

6 MS. BORNE: YES, SIR.

7 MR. BARENS: HOWEVER, WHATEVER INSTRUCTIONS YOU RECEIVED
8 IN THAT CASE, IT IS IMPORTANT FOR YOU TO PUT OUT OF YOUR MIND
9 AND ONLY BE INSTRUCTED BY HIS HONOR RELATIVE TO THIS CASE AND
10 NOT TRY TO REFER BACK IN YOUR MIND TO WHAT YOU MIGHT HAVE
11 HEARD OR WHAT EXPERIENCE YOU DEVELOPED IN THAT CASE?

12 MS. BORNE: YES.

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1 MR. BARENS: DO YOU THINK YOU COULD DO THAT?

2 MS. BORNE: ABSOLUTELY.

3 MR. BARENS: AND EACH OF THE CASES ARE TOTALLY
4 INDEPENDENT AND THE LAW IS RELEVANT AS TO HOW IT IS TO BE
5 APPLIED PARTICULARLY TO EACH CASE?

6 MS. BORNE: YES.

7 MR. BARENS: NOW, HOW DO YOU FEEL ABOUT THE PRESUMPTION
8 OF INNOCENCE THAT MR. HUNT HAS AS HE COMES IN HERE TODAY?

9 MS. BORNE: I AM VERY COMFORTABLE WITH THAT.

10 MR. BARENS: YOU ARE?

11 MS. BORNE: YES.

12 MR. BARENS: YOU ARE COMFORTABLE WITH THE CONCEPT THAT
13 THE DEFENSE HAS NOT GOT TO PROVE ANYTHING BUT RATHER, THE
14 GOVERNMENT HAS THAT SOLE RESPONSIBILITY?

15 MS. BORNE: YES.

16 MR. BARENS: NOW, ALTHOUGH THE DEFENSE DOES NOT HAVE
17 TO PROVE ANYTHING, IT IS LIKELY THAT THE DEFENSE WILL CALL
18 WITNESSES THAT WOULD BE BENEFICIAL, OBVIOUSLY, TO THE
19 DEFENSE.

20 YOU WOULD LOOK AT THOSE PEOPLE AS OPENMINDEDLY,
21 AS DEFENSE WITNESSES AS YOU WOULD A PROSECUTION OR GOVERNMENT
22 WITNESS?

23 MS. BORNE: YES.

24 MR. BARENS: AND YOU WON'T THINK BECAUSE IT WAS SOMEONE
25 THAT MIGHT KNOW MR. HUNT OR MAY HAVE KNOWN THE VICTIM, THAT
26 HE WOULD BE ANY MORE LIKELY TO TELL THE TRUTH OR NOT TELL
27 THE TRUTH THAN A WITNESS FOR THE GOVERNMENT WOULD BE?

28 MS. BORNE: I WOULD HOPE THAT THEY WERE EQUALLY TELLING

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1 THE TRUTH ON EITHER SIDE.

2 MR. BARENS: WOULD YOU THINK JUST GOING IN, BEFORE YOU
3 HAVE HEARD THE FIRST WITNESS, THAT THERE WOULD BE ANYTHING
4 ABOUT WITNESSES FOR THE PROSECUTION OR FOR THE GOVERNMENT
5 THAT WOULD MAKE THEM MORE LIKELY TO TELL THE TRUTH, JUST BECAUSE
6 THEY WERE A WITNESS CALLED BY THE GOVERNMENT?

7 MS. BORNE: SORRY? MORE LIKELY TO TELL THE TRUTH?

8 MR. BARENS: YES.

9 MS. BORNE: I WOULD THINK THAT THEY WOULD BE TELLING
10 THE TRUTH EITHER WAY.

11 MR. BARENS: EITHER WAY? WHAT I AM TRYING TO ASK YOU
12 MS. BORNE, DURING THE TRIAL, THERE ARE TWO GENERALLY DESCRIBED
13 KINDS OF WITNESSES, WITNESSES FOR THE GOVERNMENT OR THE
14 PROSECUTION AND WITNESSES CALLED BY THE DEFENSE, THE DEFENSE
15 WITNESSES.

16 DO YOU THINK THAT BECAUSE A WITNESS IS CALLED
17 BY THE GOVERNMENT, BY THE PEOPLE, THAT THEY WOULD BE MORE
18 LIKELY TO TELL THE TRUTH THAN A WITNESS CALLED BY THE DEFENSE?

19 MS. BORNE: I WOULD THINK THAT THEY WOULD BE LIKELY
20 TO TELL THE TRUTH.

21 MR. BARENS: WHICH WOULD?

22 MS. BORNE: BOTH. I THINK BOTH WITNESSES WOULD TELL
23 THE TRUTH.

24 MR. BARENS: WITNESSES FOR THE GOVERNMENT AND FOR THE
25 DEFENSE?

26 MS. BORNE: AND FOR THE DEFENSE.

27 MR. BARENS: DO YOU UNDERSTAND --

28 THE COURT: YOU MEAN THEY ARE SWORN TO TELL THE TRUTH,

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1 SO YOU PRESUME THAT WHEN THEY SWEAR TO TELL THE TRUTH, THEY
2 WILL TELL THE TRUTH? IS THAT IT?

3 WITNESSES WHEN THEY ARE SWORN, THEY SWEAR TO TELL
4 THE TRUTH AND NOTHING BUT THE TRUTH. AND WHEN THEY SWEAR
5 THAT WAY, YOU ASSUME THAT THEY ARE WILLING TO OBEY THEIR OATH,
6 IS THAT CORRECT?

7 MS. BORNE: I ASSUME THAT. THAT'S CORRECT.

8 MR. BARENS: SO YOU WOULD LISTEN AS CAREFULLY TO A DEFENSE
9 WITNESS AS YOU WOULD A WITNESS FOR THE GOVERNMENT?

10 MS. BORNE: YES.

11 MR. BARENS: NOW, YOU WOULD CONSIDER YOU KNOW, HOW THE
12 JUDGE IS TALKING CONTINUOUSLY AND WE HAVE TOO, OF LOOKING
13 AT ALL OF THE EVIDENCE AND LISTENING TO ALL OF THE EVIDENCE
14 COME IN BEFORE YOU MAKE A DECISION?

15 MS. BORNE: YES.

16 MR. BARENS: DO YOU UNDERSTAND THAT?

17 MS. BORNE: YES.

18 MR. BARENS: DO YOU UNDERSTAND THAT TWO DIFFERENT
19 WITNESSES COULD BE TESTIFYING ABOUT THE SAME THING AND COME
20 TO A DIFFERENT CONCLUSION? IS THAT POSSIBLE IN YOUR MIND?

21 MS. BORNE: WOULD YOU REPEAT THAT?

22 MR. BARENS: SURE. IS IT POSSIBLE IN YOUR MIND THAT
23 TWO DIFFERENT WITNESSES --

24 MS. BORNE: RIGHT.

25 MR. BARENS: -- COULD TESTIFY ABOUT THE SAME EVENT,
26 THE SAME FACTUAL EVENT AND BOTH THINK THEY ARE TELLING THE
27 TRUTH AND BELIEVE THEY ARE TELLING THE TRUTH BUT EACH OF THEM
28 COME TO A RADICALLY DIFFERENT CONCLUSION?

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1 MR. WAPNER: WELL, OBJECTION TO THAT. WITNESSES AREN'T
2 ALLOWED TO MAKE CONCLUSIONS FROM THE EVIDENCE.

3 MR. BARENS: WELL, THEY WOULD HAVE AN IMPRESSION AS
4 TO WHAT THEY ARE TALKING ABOUT.

5 THE COURT: WELL, EVEN THOUGH THEY TESTIFY TO DIFFERENT
6 THINGS AND CONTRADICT EACH OTHER, IS IT CONCEIVABLE IN THEIR
7 OWN MINDS THAT THEY ARE TELLING THE TRUTH?

8 MS. BORNE: YES.

9 THE COURT: IS THAT WHAT YOU WANT TO KNOW?

10 MR. BARENS: YES.

11 THE COURT: ALL RIGHT.
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1 MR. BARENS: AND THAT YOUR JOB AS A JUROR, IS TO MAKE
2 YOUR OWN DECISION ABOUT WHICH ONE OF THEM WAS RIGHT?

3 MS. BORNE: YES.

4 MR. BARENS: NOW, YOU UNDERSTAND THAT TO MAKE A DECISION,
5 YOU DON'T HAVE TO NECESSARILY BELIEVE THAT A WITNESS WAS
6 BEING UNTRUTHFUL WITH YOU, THAT TWO WITNESSES COULD SEE THE
7 SAME THING DIFFERENTLY?

8 MS. BORNE: YES.

9 MR. BARENS: DO YOU REMEMBER WHEN I WAS TALKING WITH
10 MS. HALICK LAST WEEK ABOUT A MOVIE SHE AND I HAD SEEN CALLED
11 "THE GODS MUST BE LAUGHING" -- THAT IS, "THE GODS MUST BE
12 CRAZY"? WE DON'T HAVE CRAZY IN THIS COURTROOM.

13 ACTUALLY, IT STARTS OFF WITH A COKE BOTTLE BEING
14 DROPPED OUT OF AN AIRPLANE ONTO AN AFRICAN PLAIN WHERE IT
15 IS FOUND BY A TRIBESMAN, A BUSHMAN OF SORTS.

16 AND HE OF COURSE -- NOT OF COURSE, BUT HE SOMEWHAT
17 LOGICALLY CONCLUDES THAT THE COKE BOTTLE IS A PRODUCT OF THE
18 GODS.

19 AND WE TALKED WITH MS. HALICK ABOUT HOW IF SHE
20 OR I OR PERHAPS YOURSELF HAD FOUND THE SAME BOTTLE IN THE
21 VERY SAME PLACE, YOU WOULD HAVE CONCLUDED SOMETHING DIFFERENT,
22 OBVIOUSLY.

23 MS. BORNE: YES.

24 MR. BARENS: NOW, IF YOU BOTH CAME TO COURT TO TESTIFY,
25 COULD YOU SEE HOW YOU AND THE BUSHMAN WOULD BOTH BE TELLING
26 THE TRUTH ABOUT YOUR OBSERVATIONS BUT COME TO RADICALLY
27 DIFFERENT CONCLUSIONS ABOUT THE ORIGIN OF THE COKE BOTTLE?
28 DO YOU UNDERSTAND?

1 MS. BORNE: YES.

2 MR. BARENS: NOW, SUPPOSING AS A JUROR, YOU REALLY
3 WEREN'T FAMILIAR WITH COKE BOTTLES. YOU HAD NEVER SEEN ONE
4 AT ALL. AND YOU HEARD THE BUSHMAN TESTIFY AND HE SEEMED LIKE
5 A RIGHTEOUS FELLOW AND YOU HEARD PERHAPS A NEIGHBOR OF YOURS
6 TESTIFY, WHO HAD FOUND THE COKE BOTTLE.

7 SHE SAID THAT SOMEONE OBVIOUSLY DROPPED IT THERE,
8 A TOURIST OR WHATNOT DROPPED IT THERE.

9 YOU WERE EQUALLY CONVINCED BY BOTH VERSIONS.
10 GIVEN THAT TYPE OF SITUATION, WHAT DO YOU DO WHEN IT COMES
11 TO TIME TO VOTE FOR GUILTY OR NOT GUILTY? WHAT MUST YOU DO
12 UNDER THOSE CIRCUMSTANCES? WHAT DO YOU DO?

13 MS. BORNE: I MUST WEIGH WHAT FACTS OF WHAT THEY SAID
14 AND ALSO EVALUATE INFORMATION THAT I HAVE HEARD OF COURSE,
15 AND MAKE A CONCLUSION AS TO WHAT I FEEL OF --

16 MR. BARENS: WHAT DO YOU DO IF BOTH STORIES YOU HEARD
17 WERE EQUALLY BELIEVABLE TO YOU? WHAT HAPPENS TO THE DEFENDANT
18 IN AN INSTANT LIKE WE HAVE BEEN TALKING ABOUT, IN AN INSTANCE
19 WHERE BOTH STORIES WE HEAR COULD BE TRUE? YOU ARE NOT
20 CONVINCED EITHER WAY? THAT IS, AS TO WHICH ONE IS TRUE.

21 THE COURT: HE WANTS TO KNOW WHOM YOU GIVE THE BENEFIT
22 OF THE DOUBT TO, THE REASONABLE DOUBT?

23 MS. BORNE: TO THE DEFENDANT. ABSOLUTELY.

24 THE COURT: RIGHT. THAT IS WHAT MR. BARENS -- WHAT
25 WE HAVE BEEN TALKING ABOUT, THAT CLOSE CALLS GO TO THE
26 DEFENDANT.

27 MS. BORNE: ABSOLUTELY.

28 MR. BARENS: DO YOU UNDERSTAND THAT?

1 MS. BORNE: YES.

2 MR. BARENS: AND THAT IF THE PROOF HAS NOT RISEN TO
3 WHERE YOU ARE SURE OF YOUR DECISION, WHERE YOU ARE SURE THAT
4 YOU ARE CONVINCED BEYOND A REASONABLE DOUBT, WHAT DO YOU DO
5 THEN, MS. BORNE?

6 MS. BORNE: THE DEFENDANT IS INNOCENT.

7 MR. BARENS: RIGHT, BECAUSE THE ALLEGATIONS HAVE NOT
8 BEEN PROVEN AGAINST HIM BEYOND A REASONABLE DOUBT BY THE
9 GOVERNMENT.

10 MS. BORNE: RIGHT.

11 MR. BARENS: RIGHT?

12 MS. BORNE: RIGHT.

13 MR. BARENS: OKAY. WHAT I AM TRYING TO UNDERSCORE TO
14 YOU MS. BORNE, IS THAT IT IS POSSIBLE THAT IF YOU HEAR
15 TESTIMONY THAT SOMEBODY SAYS SOMEBODY IS DEAD, THERE IS NO
16 BODY AND YOU HEAR SOMEBODY COME ALONG AND SAY NO, I THINK
17 I SAW THAT GUY ALIVE AND BOTH STORIES ARE EQUALLY BELIEVABLE
18 TO YOU, THAT YOU HAVE NOT BEEN OVERWHELMED BY THE TESTIMONY
19 ON EITHER ONE OF THOSE, WOULD YOU BE CONVINCED BEYOND A
20 REASONABLE DOUBT?

21 I AM NOT ASKING YOU TO TELL ME NOW, BUT I AM TELLING
22 YOU THAT THAT IS WHAT YOU MUST KEEP IN MIND AS YOU HEAR THE
23 EVIDENCE COME IN, WHETHER YOU HAVE BEEN CONVINCED TO THAT
24 LEVEL. IS THAT TRUE?

25 MS. BORNE: YES.

26 MR. BARENS: OKAY. NOW, WHAT DO YOU DO FOR DELTA
27 AIRLINES AT THIS POINT?

28 MS. BORNE: RIGHT NOW I AM IN RESERVATIONS SALES.

1 MR. BARENS: HAS YOUR FUNCTION WITH THE AIRLINES CHANGED
2 OVER THE LONG PERIOD YOU HAVE BEEN WITH THEM?

3 MS. BORNE: I HAVE BASICALLY BEEN IN THE DEPARTMENT
4 OF RESERVATIONS. BUT OVER THE YEARS, I HAVE DONE VARIOUS
5 DIFFERENT JOB DESCRIPTIONS WITHIN THAT DEPARTMENT.

6 MR. BARENS: AND HAVE ANY OF YOUR FUNCTIONS INVOLVED
7 SECURITY PLANNING?

8 MS. BORNE: NO.

9 MR. BARENS: SO YOU HAVE NOT HAD ANY REAL CONTACT WITH
10 LAW ENFORCEMENT AGENCIES DURING THAT PERIOD OF TIME?

11 MS. BORNE: NONE WHATSOEVER.

12 MR. BARENS: ASIDE FROM YOUR EMPLOYMENT, DO YOU HAVE
13 ANY HOBBIES?

14 MS. BORNE: YES, TRAVELING, BRIDGE, NEEDLEPOINT, READING
15 AND JUST RELAXING.

16 MR. BARENS: OKAY. SOMETIMES IN BRIDGE -- PROBABLY
17 ALL OF THE TIME, WE TRY TO ASSUME OR PREDICT WHAT SOMEBODY
18 ELSE HAS IN THEIR HAND, DON'T WE?

19 MS. BORNE: YES.

20 MR. BARENS: WE TRY TO ANTICIPATE THE WAY THE CARDS
21 ARE GOING TO TURN. DO YOU UNDERSTAND THAT WE DON'T DO THAT
22 IN THIS SETTING. THIS IS NOT LIKE READING A MURDER MYSTERY
23 OR PLAYING A HAND OF BRIDGE.

24 BUT RATHER, WE LISTEN TO THE ACTUAL TESTIMONY
25 THAT WE HEAR AND YOU CAN'T FILL IN THE BLANKS HERE.

26 EITHER THE GOVERNMENT FILLS IN THE BLANKS ON EVERY
27 ISSUE THAT YOU NEED TO SUPPORT THE CONTENTION THAT MR. HUNT
28 COMMITTED A MURDER OR IN FACT, THE ALLEGED VICTIM IS DEAD

1 TO BEGIN WITH OR IT IS NOT PROVEN. DO YOU UNDERSTAND THAT?

2 MS. BORNE: YES I DO.

3 MR. BARENS: YOU CAN'T ASSUME THINGS THAT AREN'T IN
4 EVIDENCE. EITHER IT IS THERE OR IT IS NOT THERE. WE DON'T
5 SPECULATE ABOUT WHAT IS NOT PROVEN AND WHAT IS NOT ESTABLISHED.
6 DO YOU UNDERSTAND THAT?

7 MS. BORNE: YES.

8 MR. BARENS: NOW, ASIDE FROM BRIDGE AND TRAVELING, IS
9 THERE ANYTHING ELSE YOU LIKE TO READ?

10 MS. BORNE: YES.

11 MR. BARENS: WHAT DO YOU LIKE TO READ?

12 MS. BORNE: ALL TYPES OF BOOKS, STARTING WITH FICTION,
13 NONFICTION AND AGATHA CHRISTIE-TYPE BOOKS AND HISTORY BOOKS.

14 MR. BARENS: OKAY. AGAIN, YOU UNDERSTAND THAT THIS
15 HAS NO RELATIONSHIP TO AGATHA CHRISTIE HERE? THIS IS -- WELL,
16 AGATHA CHRISTIE MAKES IT REALLY EASY FOR US, DOESN'T SHE?

17 MS. BORNE: YES. HER SCENARY IS ALWAYS QUITE PALATIAL.

18 MR. BARENS: LOVELY. THIS IS NOT A SITUATION LIKE THAT.
19 IN FACT, ALTHOUGH THIS CASE COULD BE SUBJECT AS YOU UNDERSTAND
20 IT TO A MYSTERY REMAINING AT THE END OF IT, SINCE THERE IS
21 NOT NECESSARILY GOING TO BE AN ANSWER FOR YOU. WOULD YOU
22 BE COMFORTABLE WITH THAT?

23 MS. BORNE: YES.

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1 MR. BARENS: IF THE GOVERNMENT DOESN'T GIVE YOU AN
2 ANSWER AS TO WHAT HAPPENED TO THE ALLEGED VICTIM, DO YOU
3 EXPECT THAT THE DEFENDANT HAS TO?

4 MS. BORNE: NO.

5 MR. BARENS: THE DEFENDANT DOESN'T HAVE TO PROVE ANY-
6 THING.

7 MS. BORNE: NO, HE DOESN'T.

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

9 MS. BORNE: THERE IS A BOOK BY ERIC SEGAL CALLED "THE
10 CLASS."

11 MR. BARENS: ALL RIGHT. THE LAST MOVIE YOU SAW?

12 MS. BORNE: I BELIEVE IT WAS "OUT OF AFRICA."

13 MR. BARENS: ALL RIGHT, NOW ON THAT PRIOR JURY EXPERIENCE
14 YOU HAD, HOW DID YOU FEEL ABOUT THE STEPS YOU TOOK, ~~HOW DO~~
15 YOU FEEL ABOUT THAT PROCESS YOU HAD PARTICIPATED/^{IN}WHEN IT WAS
16 CONCLUDED?

17 MS. BORNE: I FEEL VERY GOOD ABOUT THE SYSTEM.

18 THE PART THAT I WASN'T TOO SURE ABOUT WAS A
19 PARTICULAR JUROR.

20 MR. BARENS: WHAT DO YOU MEAN BY THAT, MA'AM?

21 MS. BORNE: I THINK WHEN IT CAME TO THE DELIBERATING
22 PHASE, I FELT THE PARTICULAR PERSON DIDN'T QUITE UNDERSTAND,
23 EVEN THOUGH WE WENT THROUGH THE WHOLE PROCEDURE WITH THIS
24 PERSON.

25 MR. BARENS: YOU MEAN THE PERSON DIDN'T UNDERSTAND THE
26 FACTS OR DIDN'T UNDERSTAND THE LAW OR HOW DO YOU MEAN THAT?

27 MS. BORNE: I AM SORRY. I BELIEVE THAT THE FACTS WERE
28 CONFUSING TO THIS PERSON TO MAKE A DECISION.

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1 MR. BARENS: AND WAS THE PERSON HAVING A PROBLEM
2 RELATING TO THE SEQUENCE OF THE FACTS OR A PROBLEM WITH
3 INTERPRETING THE FACTS?

4 MS. BORNE: INTERPRETING THE FACTS.

5 MR. BARENS: AND --

6 MS. BORNE: I AM GOING BACK IN MY MEMORY --

7 MR. BARENS: SURE.

8 MS. BORNE: -- WHICH IS A LITTLE VAGUE IN CERTAIN
9 PARTS.

10 WE WENT TWO DAYS, I BELIEVE, JUST GOING OVER AND
11 OVER AND OVER THE FACTS AND AS IT STOOD, IT WAS A HUNG JURY.

12 MR. BARENS: I SEE.

13 WERE YOU FRUSTRATED?

14 MS. BORNE: NO.

15 MR. BARENS: WERE YOU ABLE TO ACCEPT AS A PART OF THIS
16 PROCESS --

17 MS. BORNE: YES.

18 MR. BARENS: -- THAT YOU MAY NOT NECESSARILY COME TO
19 A CONCLUSION?

20 MS. BORNE: UH-HUH. I BASICALLY RESPECT PEOPLE'S
21 INDIVIDUAL THINKING.

22 MR. BARENS: AND YOU REALIZE THAT AS A JUROR, YOU ARE
23 ENTITLED TO YOUR OWN INDIVIDUAL THINKING AS WELL?

24 MS. BORNE: ABSOLUTELY.

25 MR. BARENS: HOW WOULD YOU HAVE FELT IF YOU WERE THE
26 ONLY PERSON ON THE JURY AND 11 OTHER PEOPLE DISAGREED WITH
27 YOU, WOULD YOU BE ABLE TO STAND BY WHAT YOU BELIEVED OR WOULD
28 YOU LOOK TO SOMEONE ELSE TO MAKE A DECISION FOR YOU?

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1 MS. BORNE: I WOULD STAND BY WHAT I BELIEVED IN.

2 I WOULD CERTAINLY LISTEN TO EVERYONE ELSE AT THE
3 SAME TIME.

4 MR. BARENS: AND THAT IS ABSOLUTELY APPROPRIATE THAT
5 YOU DO SO.

6 MS. BORNE: YES.

7 MR. BARENS: BUT IF YOU HAVE YOUR OWN BELIEF, YOU
8 REALIZE THAT YOU ARE TOTALLY ENTITLED TO MAINTAIN THAT NO
9 MATTER WHAT DIFFERENCES YOU HAVE?

10 MS. BORNE: ABSOLUTELY.

11 MR. BARENS: DID YOU HAVE ANY PARTICULAR IMPRESSION ABOUT
12 THE LAWYERS THAT PRESENTED THE DRUNK DRIVER CASE?

13 THERE WAS A DISTRICT ATTORNEY AND THEN THERE WAS
14 A DEFENSE LAWYER?

15 MS. BORNE: YES.

16 NO, I WAS QUITE PLEASED WITH THEIR PRESENTATION.
17 I THOUGHT IT WAS DONE VERY WELL.

18 MR. BARENS: BOTH SIDES?

19 MS. BORNE: YES, YES.

20 MR. BARENS: YOU FELT EQUALLY ABOUT IT, YOU DIDN'T FEEL
21 ONE SIDE WAS THE GOOD GUYS AND ONE SIDE WAS BAD GUYS, DID YOU?

22 MS. BORNE: NO.

23 MR. BARENS: THAT WAS YOUR ONLY EXPERIENCE AT ALL WITHIN
24 A JURY SETTING?

25 MS. BORNE: YES.

26 MR. BARENS: EITHER CIVIL OR CRIMINAL?

27 MS. BORNE: YES.

28 MR. BARENS: HAVE YOU EVER SAT AS AN OBSERVER IN A COURT

1 PROCEEDING?

2 MS. BORNE: NO, SIR.

3 MR. BARENS: YOU SAID YOUR HUSBAND IS EMPLOYED IN THE
4 TEACHING FIELD?

5 MS. BORNE: THAT IS CORRECT.

6 MR. BARENS: AND HE TEACHES WHAT SUBJECT?

7 MS. BORNE: HE TEACHES SPEECH AND HONORS ENGLISH AND
8 ALSO AMERICAN LITERATURE, AND THEN ONE NIGHT A WEEK HE
9 TEACHES A SPEECH COURSE AT TRADE TECHNICAL COLLEGE.

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1 MR. BARENS: IS THAT FOR PEOPLE WITH SPEECH DISABILITIES
2 OF SOME SORT?

3 MS. BORNE: NO.

4 IT IS MAINLY FOR FOREIGNERS.

5 MR. BARENS: ENGLISH AS A SECOND LANGUAGE?

6 MS. BORNE: YES, BUT IT IS NOT ENGLISH AS A SECOND
7 LANGUAGE, IT IS MAINLY SPEECH, PUBLIC SPEAKING.

8 MR. BARENS: DO YOU DISCUSS WITH YOUR HUSBAND MUCH OF
9 THE LITERATURE CLASSES THAT HE TEACHES?

10 MS. BORNE: NO.

7A
11 MR. BARENS: YOU DON'T GET INTO THE BOOKS THAT ARE
12 SELECTED OR THE STUDENTS IN THOSE CLASSES?

13 MS. BORNE: NO.

14 MR. BARENS: DO YOU HAVE ANY BROTHERS OR SISTERS?

15 MS. BORNE: I HAVE A SISTER AND A BROTHER.

16 MR. BARENS: AND DO THEY LIVE LOCALLY?

17 MS. BORNE: NO, THEY DO NOT.

18 MR. BARENS: DO YOU HAVE MUCH CONTACT WITH THEM?

19 MS. BORNE: YES, I DO.

20 MR. BARENS: WHAT DO THEY DO?

21 MS. BORNE: MY BROTHER WORKS FOR IBM, HE IS IN
22 PROGRAMMING AND MY SISTER IS A GUIDANCE, CAREER GUIDANCE
23 COUNSELOR.

24 MR. BARENS: DID YOU GROW UP IN THE LOS ANGELES AREA?

25 MS. BORNE: NO, I DID NOT.

26 MR. BARENS: WHERE DID YOU GROW UP?

27 MS. BORNE: I GREW UP IN MAINE, BAR HARBOR, MAINE.

28 MR. BARENS: AND THEN YOU CAME TO LOS ANGELES AND

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1 FINISHED YOUR PUBLIC SCHOOL EDUCATION?

2 MS. BORNE: NO.

3 MY EDUCATION WAS DONE IN MAINE AND IN MASSACHUSETTS.

4 MR. BARENS: WELL, I SEE. YOU WENT TO ENDICOTT COLLEGE
5 BACK THERE?

6 MS. BORNE: YES.

7 MR. BARENS: DID YOU HAVE A MAJOR AT ENDICOTT?

8 MS. BORNE: YES, BASICALLY LIBERAL ARTS AND MINORED IN
9 RETAILING.

10 MR. BARENS: DID YOU TAKE ANY PHILOSOPHY CLASSES?

11 MS. BORNE: NO.

12 MR. BARENS: AND YOU HAVEN'T SINCE THEN?

13 MS. BORNE: NO.

14 MR. BARENS: DO YOU UNDERSTAND WHEN YOU ARE MAKING A
15 DECISION ABOUT REASONABLE DOUBT THAT WHAT WE ARE TALKING ABOUT
16 IS A SITUATION THAT WOULD BE HOW YOU WOULD REGARD ONE OF THE
17 SERIOUS MATTERS OF YOUR LIFE, FOR INSTANCE, WHETHER OR NOT
18 TO BUY A HOUSE --

19 MS. BORNE: UH-HUH.

20 MR. BARENS: -- WHETHER OR NOT TO ENROLL A CHILD IN A
21 PARTICULAR SCHOOL, A SERIOUS DECISION WHERE IF YOU WOULD
22 HESITATE IN MAKING THAT DECISION, THAT THE INSTRUCTION WILL
23 ADVISE YOU, THAT THE COURT WILL ADVISE YOU THAT IF YOU WOULD
24 HESITATE IN ONE OF THE MOST IMPORTANT AFFAIRS IN YOUR LIFE,
25 THAT THAT WOULD NOT BE BEYOND A REASONABLE DOUBT; DO YOU
26 UNDERSTAND THAT?

27 (WHEREUPON, MRS. BORNE NODS HER HEAD UP
28 AND DOWN.)

1 MR. BARENS: DO YOU HAVE ANY QUESTION ABOUT THAT?

2 MS. BORNE: IF I AM ADVISED?

3 MR. BARENS: YES.

4 MS. BORNE: NO, I UNDERSTAND IT.

5 MR. BARENS: YOU UNDERSTAND IT IS NOT A MORE LIKELY
6 TYPE DECISION.

7 I THANK YOU VERY MUCH.

8 PASS FOR CAUSE, YOUR HONOR.

9 THE COURT: ALL RIGHT, ANY QUESTIONS, MR. WAPNER?

10 MR. WAPNER: THANK YOU, YOUR HONOR.

11 MRS. BORNE, HOW MANY TIMES IN YOUR DAILY LIFE HAVE
12 YOU MADE A DECISION USING THE STANDARD OF ABIDING CONVICTION
13 TO A MORAL CERTAINTY ON THE TRUTH OF THE CHARGE?

14 (NO AUDIBLE REPLY.)

15 MR. WAPNER: RIGHT, YOU DON'T UNDERSTAND THOSE WORDS,
16 RIGHT? THAT IS NOT SOMETHING YOU USE IN YOUR DAILY LIFE?

17 MS. BORNE: NO.

18 MR. WAPNER: OKAY, THE JUDGE HAS ALREADY TOLD YOU, AND
19 I HAVE TOLD YOU SEVERAL TIMES, HE IS THE ULTIMATE AUTHORITY
20 ON THE LAW AND HE IS GOING TO GIVE YOU THE INSTRUCTION WHICH
21 HE ALREADY READ TO YOU ONCE. MR. BARENS AND I OBVIOUSLY HAVE
22 SOME DISAGREEMENT OVER THIS WORD HESITATE.

23 BUT IN ANY EVENT, THE LAW ABOUT REASONABLE DOUBT
24 HAS TO DO WITH AN ABIDING CONVICTION TO A MORAL CERTAINTY AND
25 THERE HAS BEEN ARGUMENT FOR YEARS ABOUT THE MEANING OF THAT
26 AND HOW THAT IS INTERPRETED. IF THE JUDGE GIVES YOU THAT
27 INSTRUCTION, CAN YOU FOLLOW IT OR TRY TO?

28 MS. BORNE: YEAH, I CERTAINLY WILL TRY TO, YES.

8A-1

1 MR. WAPNER: YOU MAY NOT REALIZE IT NOW, BUT THAT WAS
2 THE SAME DEFINITION THAT YOU GOT IN THE DRIVING UNDER THE
3 INFLUENCE CASE. DO YOU REMEMBER THAT?

4 MS. BORNE: I DON'T QUITE REMEMBER THAT, THE WAY IT
5 WAS PRESENTED IN THOSE PARTICULAR WORDS.

6 MR. WAPNER: DO YOU REMEMBER THE WORDS "REASONABLE DOUBT"?

7 MS. BORNE: YES.

8 MR. WAPNER: OKAY. AND WE USE THAT IN ALL CRIMINAL
9 CASES, WHETHER DRIVING UNDER THE INFLUENCE OR MURDER. DOES
10 THAT SEEM FAIR TO YOU?

11 MS. BORNE: YES.

12 MR. WAPNER: WOULD YOU HOLD ME TO A HIGHER STANDARD
13 OF PROOF BECAUSE THIS IS A MURDER CASE?

14 MS. BORNE: NO.

15 MR. WAPNER: DO YOU UNDERSTAND THAT THE PROSECUTION
16 IS REQUIRED TO PROVE ANY CASE BY THE SAME STANDARD OF
17 EVIDENCE, THAT IS BEYOND A REASONABLE DOUBT IN ANY CASE, DRUNK
18 DRIVING OR MURDER?

19 MS. BORNE: YES. I DO UNDERSTAND THAT.

20 MR. WAPNER: ALL RIGHT. YOU ARE NOT GOING TO ELEVATE
21 THAT JUST BECAUSE THIS IS A MURDER CASE?

22 MS. BORNE: NO.

23 MR. WAPNER: I DIDN'T QUITE CATCH YOUR LAST RESPONSE.
24 YOUR BROTHER AND SISTER LIVE IN THE LOS ANGELES AREA?

25 MS. BORNE: NO THEY DO NOT.

26 MR. WAPNER: OKAY. WHERE DO THEY LIVE?

27 MS. BORNE: MY BROTHER LIVES IN CHAPEL HILL, NORTH
28 CAROLINA.

1 MY SISTER LIVES IN YELLOW SPRINGS, OHIO WHICH
2 IS NEAR DAYTON, OHIO.

3 MR. WAPNER: HOW OFTEN DO YOU TALK TO EITHER ONE OF
4 THEM?

5 MS. BORNE: EVERY COUPLE OF MONTHS.

6 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

7 MS. BORNE: MY FATHER IS DECEASED. MY MOTHER IS LIVING.

8 MR. BARENS: WHERE?

9 MS. BORNE: BAR HARBOR, MAINE.

10 MR. BARENS: HOW OFTEN DO YOU TALK TO HER?

11 MS. BORNE: ONCE A MONTH OR ONCE EVERY TWO MONTHS.

12 MR. WAPNER: EXCUSE ME FOR BEING NOSY. BUT THAT IS
13 PART OF WHAT THIS PROCESS IS ALL ABOUT. I DID THAT ALSO WITH
14 MR. LACEY.

15 CAN YOU TELL ME ABOUT THE FACT THAT YOU DON'T
16 HAVE CHILDREN? WAS THAT A CONSCIOUS CHOICE THAT YOU AND YOUR
17 HUSBAND MADE?

18 MS. BORNE: YES IT WAS.

19 MR. WAPNER: ARE YOU ACTIVE IN ANY CHURCH OR CIVIC GROUP
20 OF ANY KIND?

21 MS. BORNE: NO I AM NOT.

22 MR. WAPNER: DO YOU HAVE A REGULAR GROUP THAT YOU PLAY
23 BRIDGE WITH OR IS IT SOMETHING THAT YOU JUST DO OCCASIONALLY?

24 MS. BORNE: OCCASIONALLY.

25 MR. WAPNER: IN THE PREVIOUS CASE THAT YOU SAT ON, THE
26 DRIVING UNDER THE INFLUENCE CASE, WAS THERE A PROBLEM PRETTY
27 MUCH WITH JUST ONE JUROR?

28 MS. BORNE: YES.

1 MR. WAPNER: OTHER THAN THAT PERSON, DID YOU THINK THAT
2 THE REST OF THE JURORS DID A -- MADE A FAIR ATTEMPT TO TRY
3 TO REACH A VERDICT?

4 MS. BORNE: VERY FAIR. VERY FAIR.

5 MR. WAPNER: OTHER THAN THAT ONE PERSON, DID THAT
6 EXPERIENCE SOUR YOU ON THE JURY SYSTEM?

7 MS. BORNE: NOT AT ALL.

8 MR. WAPNER: ARE YOU THE KIND OF A PERSON WHO, ONCE
9 YOU MAKE UP YOUR MIND ABOUT SOMETHING, THAT THERE IS NO WAY
10 ANYONE CHANGES IT?

11 MS. BORNE: NO.

12 MR. WAPNER: ARE YOU WILLING TO DISCUSS YOUR VIEWS WITH
13 11 OTHER PEOPLE?

14 MS. BORNE: YES.

15 MR. WAPNER: AND ARE YOU WILLING TO LISTEN TO THE 11
16 PEOPLE AND WHAT THEY HAVE TO SAY TO YOU?

17 MS. BORNE: YES.

18 MR. WAPNER: IF YOU ARE CONVINCED THAT YOUR ORIGINAL
19 POSITION WAS WRONG, CAN YOU CHANGE YOUR MIND?

20 MS. BORNE: I CAN CHANGE MY MIND IF -- IF I CAN
21 UNDERSTAND THERE WILL BE A REASON WHY I AM CHANGING MY MIND.
22 BUT THERE WOULD HAVE TO BE.

23 MR. WAPNER: RIGHT. I AM NOT ASKING YOU --

24 MS. BORNE: YES. SORRY. I CAN CHANGE MY MIND.

25 MR. WAPNER: I AM NOT ASKING YOU IF YOU ARE GOING TO
26 CHANGE IT JUST FOR THE SAKE OF CHANGING IT.

27 MS. BORNE: NO. NO.

28 MR. WAPNER: BUT, ARE YOU THE KIND OF A PERSON -- LET

1 ME ASK YOU THE QUESTION I HAVE ASKED SEVERAL OTHER PEOPLE.

2 THINK BACK TO ANY SERIOUS DISCUSSION THAT YOU
3 HAVE HAD WITH HOPEFULLY, SOMEONE OTHER THAN YOUR HUSBAND.
4 AND CAN YOU RECALL A TIME WHERE YOU WERE DISCUSSING SOME
5 SERIOUS SUBJECT, WHERE YOU TOOK ONE POSITION AND AT SOME LATER
6 POINT, YOU CHANGED YOUR MIND ABOUT IT?

7 MS. BORNE: YES.

8 MR. WAPNER: WHAT WAS THAT, IF YOU REMEMBER?

9 MS. BORNE: I AM JUST -- I CAN'T THINK OF ANYTHING
10 SPECIFIC. BUT I CAN LOOK BACK AND ON MORE OR LESS DEBATE
11 SUBJECTS OR VARIOUS TOPICS WHERE PERHAPS, I DIDN'T QUITE HAVE
12 ALL OF THE INFORMATION THAT I MIGHT HAVE THOUGHT I HAD. AND
13 NEW FACTS DID LEAD ME TO CHANGE MY MIND.

14 MR. WAPNER: IN THE COURTROOM SETTING, WOULD YOU WANT
15 TO GET AS MANY FACTS AS YOU COULD BEFORE YOU MADE UP YOUR
16 MIND ABOUT SOMETHING?

17 MS. BORNE: ABSOLUTELY, YES.

18 MR. WAPNER: IN THE EXAMPLE MR. BARENS GAVE YOU ABOUT
19 THE BUSHMAN AND THE OTHER PERSON FINDING THE COKE BOTTLE,
20 WOULD YOU WANT TO KNOW AS MUCH AS YOU COULD ABOUT THAT SET
21 OF FACTS?

22 MS. BORNE: YES.

23 MR. WAPNER: DID YOU SEE THAT MOVIE, BY THE WAY?

24 MS. BORNE: PART OF IT.

25 MR. WAPNER: DID YOU WALK OUT?

26 MS. BORNE: WE RENTED IT. I SAW THE BEGINNING PART.

27 MR. WAPNER: YOU SAW THE COKE BOTTLE COME OUT OF THE
28 AIRPLANE?

1 MS. BORNE: YES.

2 MR. WAPNER: WOULD YOU WANT TO KNOW FOR EXAMPLE, ABOUT
3 THE BUSHMEN? WOULD YOU WANT TO KNOW FOR EXAMPLE, THAT HE
4 NEVER LIVED IN THE CITY AND HAD NEVER EVEN SEEN A COKE BOTTLE
5 BEFORE?

6 MS. BORNE: YES.

7 MR. WAPNER: OKAY. SO YOU WOULD WANT TO KNOW IN THAT
8 CASE, IF HE GOT UP ON THE WITNESS STAND AND SAID THAT THE
9 GODS PROVIDED THIS COKE BOTTLE, YOU WOULD WANT TO KNOW ABOUT
10 HIS RELIGIOUS PRACTICES AND THAT KIND OF THING?

11 MS. BORNE: YES.

12 MR. WAPNER: ALL RIGHT. AND DO YOU EXPECT THAT IN THIS
13 CASE, YOU WILL GET TWO PEOPLE OF SUCH DIVERSE BACKGROUNDS
14 COMING AND TELLING YOU THE IDENTICAL THING?

15 MS. BORNE: NO.

16 MR. WAPNER: IN A HYPOTHETICAL, THE ONE MR. BARENS WAS
17 PUTTING TO YOU, I AM NOT SURE EXACTLY WHAT THE QUESTION WAS
18 THAT HE WAS ASKING YOU. BUT IF THE ISSUE IS HOW DID THE COKE
19 BOTTLE GET THERE, IT IS REASONABLE TO ASSUME THAT SOMEONE
20 LEFT IT THERE, RIGHT?

21 MS. BORNE: YES.

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1 MR. WAPNER: IN OTHER WORDS, THE COKE BOTTLE DIDN'T --
2 WELL, COKE DIDN'T JUST BUILD A PLANT ON THE SPOT AND
3 MANUFACTURE IT AND PUT IT THERE, RIGHT?

4 MS. BORNE: CORRECT.

5 MR. WAPNER: OKAY. AND THEN IT WOULD BE UP TO YOU TO
6 DECIDE HOW IT GOT THERE, RIGHT?

7 MS. BORNE: YES.

8 MR. WAPNER: ALL RIGHT. DOES IT SEEM REASONABLE TO YOU
9 THAT THE GODS LEFT IT THERE?

10 MS. BORNE: NO.

11 MR. WAPNER: ALL RIGHT. THE BOTTLE DROPPING OUT OF A
12 PLANE IS ANOTHER WAY OF SOMEONE LEAVING IT THERE, RIGHT?

13 MS. BORNE: YES.

14 MR. WAPNER: WHETHER THEY WALKED ALONG WITH IT AND SET
15 IT DOWN THERE OR DROPPED IT OR WHETHER IT WAS DROPPED OUT OF
16 AN AIRPLANE, RIGHT?

17 MS. BORNE: CORRECT.

18 MR. WAPNER: IN THIS SETTING, IN THE COURTROOM SETTING,
19 WOULD YOU TRY TO GET AS MANY FACTS AS YOU COULD BEFORE YOU
20 MADE A DECISION ON SOMETHING?

21 MS. BORNE: YES.

22 MR. WAPNER: WHEN YOU WERE TRYING TO FIGURE OUT WHAT
23 HAPPENED, WOULD YOU JUST SAY WELL, IT WAS A CLOSE CALL SO I
24 WILL JUST GO FOR THE DEFENDANT? OR, WOULD YOU TRY TO USE YOUR
25 REASON AND COMMON SENSE AND TRY TO LOOK AT ALL OF THE FACTS?

26 MS. BORNE: I WOULD LOOK AT ALL OF THE FACTS.

27 MR. WAPNER: I BELIEVE YOU TOLD US WHEN WE WERE ASKING
28 YOU QUESTIONS ON THE DEATH PENALTY PHASE OF THIS, THAT YOU

1 WANTED TO SERVE ON THIS CASE. COULD YOU TELL ME WHY?

2 MS. BORNE: I WOULD LIKE TO SERVE BECAUSE I FEEL THAT
3 IT IS A CIVIC DUTY. AS A CITIZEN, I WOULD LIKE TO SERVE.

4 I ALSO DO THINK IT WOULD BE AN INTERESTING CASE.
5 AND BASICALLY, I FEEL IT IS MY DUTY IF I HAVE A CHANCE, TO
6 SERVE ON A CASE.

7 MR. WAPNER: OKAY. THANK YOU. DO YOU THINK THAT ALL
8 OF THE WITNESSES TELL THE TRUTH UNDER OATH?

9 MS. BORNE: NO.

10 MR. WAPNER: OKAY. AND IF YOU WERE ASKED TO SIT IN
11 JUDGMENT OF THE PEOPLE AND DECIDE WHETHER THEY WERE TELLING
12 THE TRUTH, DO YOU THINK YOU COULD DO THAT?

13 MS. BORNE: YES. I WOULD CERTAINLY TRY.

14 MR. WAPNER: DID YOU HAVE THE EXPERIENCE IN YOUR LAST
15 CASE WHEN YOU WERE ON THE DIRVING-UNDER-THE-INFLUENCE CASE,
16 OF TRYING TO FIGURE OUT WHO WAS TELLING THE TRUTH AND WHO WAS
17 NOT?

18 MS. BORNE: SOMEWHAT.

19 MR. WAPNER: ALL RIGHT. FOR EXAMPLE, I DON'T KNOW THE
20 FACTS OF THAT DRIVING-UNDER-THE-INFLUENCE CASE. BUT IF YOU
21 HAD FOR EXAMPLE, ONE WITNESS AND LET'S SAY IT IS A CIVILIAN
22 WITNESS WHO SAYS I WATCHED THE DEFENDANT IN THE BAR. I
23 DIDN'T SEE HIM ACTUALLY DRINK OR HOW MUCH HE HAD TO DRINK.

24 BUT I HEARD HIM SLURRING HIS WORDS. I SAW HIM
25 WALKING AROUND AND HE WAS KIND OF STAGGERING. I AT ONE POINT,
26 WALKED BY AND GOT CLOSE ENOUGH TO HIM THAT I COULD SMELL HIS
27 BREATH. HE HAD THE SMELL OF ALCOHOL ON HIS BREATH.

28 THAT CIVILIAN WITNESS SAYS THAT HE FORMED THE

1 OPINION THAT THE PERSON WAS DRUNK. AND THEN THE DEFENDANT
2 GETS -- THE PERSON WHO IS ALLEGEDLY DRINKING GETS ON THE
3 WITNESS STAND AND SAYS, I WAS NOT DRUNK. I DIDN'T STAGGER
4 AROUND. I WAS NOT SLURRING MY SPEECH.

5 OBVIOUSLY, THOSE TWO PEOPLE ARE TELLING YOU ABOUT
6 EXACTLY THE SAME CONDUCT, RIGHT?

7 MS. BORNE: OPPOSITE.

8 MR. WAPNER: ALL RIGHT. THEY ARE DESCRIBING THE SAME
9 THING AT THE SAME TIME BUT DESCRIBING IT DIFFERENTLY?

10 MS. BORNE: YES.

11 MR. WAPNER: RIGHT. COULD YOU MAKE A DECISION IN THAT
12 CASE ABOUT WHO YOU FELT WAS TELLING THE TRUTH?

13 MR. BARENS: OBJECTION. THE BASIS FOR THE HYPOTHETICAL,
14 THE FIRST TWO OF THE THREE OBJECTIVE FACTORS DESCRIBED BY MR.
15 WAPNER ARE SUBJECT TO MANY, MANY DIFFERENT DISABILITIES IN
16 THE TESTIMONY.

17 MR. WAPNER: WELL, THAT IS FOR A JUROR TO DETERMINE.

18 MR. BARENS: I DON'T THINK IT IS A FAIR QUESTION TO PUT
19 TO HER WHEN THE FIRST TWO THINGS HE DESCRIBED ARE CAPABLE OF
20 MANY EXPLANATIONS.

21 THE COURT: I DON'T KNOW WHAT THIS CASE HAS TO DO WITH
22 THAT. ASK A GENERAL QUESTION ABOUT SOMETHING YOU WANT TO MAKE
23 A POINT ON.

24 ASK HER WHETHER OR NOT SHE DOES OR DOES NOT AGREE
25 WITH IT. ALL OF THESE SUPPOSITIOUS CASES WE ARE GOING TO GO
26 THROUGH THE SAME THING WE DID WITH THE GUY GOING OFF THE BOAT.

27 GET ON TO SOMETHING. ALL THESE CASES THAT YOU
28 GIVE ARE LITTLE FAR-FETCHED.

1 MR. WAPNER: DO YOU UNDERSTAND THAT THERE CAN BE TWO
2 WITNESSES WHO COULD DESCRIBE THE SAME EVENT IN RADICALLY
3 DIFFERENT TERMS?

4 MS. BORNE: YES, I DO.

5 MR. WAPNER: AND ARE YOU CAPABLE IN THAT CIRCUMSTANCE,
6 OF TRYING TO FIGURE OUT WHO WAS TELLING THE TRUTH AND WHO WAS
7 NOT?

8 MS. BORNE: YES, I AM.

9 MR. WAPNER: JUST BECAUSE THEY TAKE AN OATH TO TELL THE
10 TRUTH, DOES THAT AUTOMATICALLY MEAN THEY ARE GOING TO BE TELLING
11 THE TRUTH?

12 MS. BORNE: NO.

13 MR. WAPNER: IF IT APPEARS TO YOU THAT A WITNESS IS NOT
14 TELLING THE TRUTH, COULD YOU TAKE INTO CONSIDERATION ANY
15 BIAS THAT THAT WITNESS MIGHT HAVE?

16 MS. BORNE: COULD I TAKE IT INTO CONSIDERATION?

17 MR. WAPNER: THE BIAS OF THAT WITNESS? BIAS OR MOTIVE?

18 MS. BORNE: YES.

19 MR. WAPNER: IN OTHER WORDS, BECAUSE SOMEONE IS, FOR
20 EXAMPLE, A FRIEND OR RELATIVE OF THE DEFENDANT, DOESN'T
21 NECESSARILY MEAN THEY ARE GOING TO LIE, DOES IT?

22 MS. BORNE: RIGHT.

23 MR. WAPNER: ALL RIGHT. AND JUST BECAUSE SOMEONE
24 TESTIFIES FOR THE PROSECUTION, DOESN'T MEAN THEY ARE GOING
25 TO TELL THE TRUTH, RIGHT?

26 MS. BORNE: CORRECT.

27 MR. WAPNER: SO, IF FOR EXAMPLE A WITNESS TESTIFIED FOR
28 THE DEFENSE AND WHAT SHE SAID REALLY DIDN'T MAKE SENSE TO YOU --

1 OR, LET'S JUST SAY ANY WITNESS, FORGET ABOUT WHETHER IT IS
2 FOR THE PROSECUTION OR WHETHER IT IS FOR THE DEFENSE, IF A
3 WITNESS SAYS SOMETHING THAT DOESN'T QUITE RING TRUE TO YOU,
4 WOULD YOU START ASKING QUESTIONS ABOUT WHY THAT WITNESS MIGHT
5 NOT BE TELLING YOU THE WHOLE TRUTH?

6 MS. BORNE: NO.
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1 MR. WAPNER: WHY NOT?

2 MS. BORNE: WELL, WHEN YOU SAY "ASK QUESTIONS" I FEEL
3 THAT THE QUESTION THAT YOU ARE SAYING, IF I COULD GET THE
4 ANSWERS, I MEAN MY APPROACH FROM THIS WOULD BE TO TRY TO GET
5 MORE ANSWERS AND LOOK FOR OTHER ANSWERS.

6 MR. WAPNER: SUCH AS?

7 MS. BORNE: PERHAPS ANOTHER WITNESS OR --

8 MR. WAPNER: OKAY, BUT LET'S SAY FOR THIS PURPOSE --

9 MS. BORNE: UH-HUH.

10 MR. WAPNER: -- THAT THERE WAS ONLY ONE WITNESS WHO
11 GAVE YOU THAT PARTICULAR SET OF FACTS, OKAY?

12 MS. BORNE: I SEE. I UNDERSTAND. OKAY. EXCUSE ME.

13 MR. WAPNER: ALL RIGHT?

14 MS. BORNE: YES.

15 MR. WAPNER: AND THE WITNESS SAYS SOMETHING AND
16 BASED ON YOUR REASON AND YOUR COMMON SENSE, WHATEVER IT IS
17 THAT THEY ARE SAYING DOESN'T MAKE SENSE TO YOU.

18 MS. BORNE: RIGHT.

19 MR. WAPNER: WOULD YOU START ASKING YOURSELF QUESTIONS
20 ABOUT WHY THAT WITNESS MIGHT NOT BE TELLING THE TRUTH?

21 MS. BORNE: YES, I WOULD.

22 MR. WAPNER: WOULD YOU WANT TO KNOW SOMETHING ABOUT
23 THAT PERSON?

24 MS. BORNE: YES.

25 MR. WAPNER: WOULD YOU WANT TO KNOW IF HE HAD SOME KIND
26 OF A REASON NOT TO TELL YOU THE WHOLE TRUTH?

27 MS. BORNE: I WOULD, YES.

28 MR. WAPNER: LET'S GO TO AGATHA CHRISTIE OR PERRY MASON

9-2

1 OR SOMETHING LIKE THAT, AT THE END OF THOSE, OCCASIONALLY
2 YOU WILL GET SOMEONE WHO BREAKS DOWN AND SAYS, "I HAD TO DO
3 IT, I HAD TO DO IT. I LOVED HIM, I JUST COULDN'T STAND TO
4 SEE HIM GO TO JAIL." WOULD YOU WANT TO KNOW THAT, IN MAKING
5 YOUR DELIBERATIONS, WHETHER A PERSON, FOR EXAMPLE, WAS IN
6 LOVE WITH THE DEFENDANT OR ANOTHER PARTY IN THE CASE?

7 MS. BORNE: WOULD I WANT TO KNOW?

8 MR. WAPNER: WELL, WOULD YOU BE MORE LIKELY, DO YOU
9 THINK, TO LIE FOR SOMEONE THAT YOU REALLY CARED ABOUT AS
10 OPPOSED TO SOMEONE YOU DIDN'T EVEN KNOW?

11 MS. BORNE: YES.

12 MR. WAPNER: SO YOU WOULD WANT TO KNOW IF THERE WAS
13 A RELATION BETWEEN THE TWO?

14 MS. BORNE: OH, YES.

15 MR. WAPNER: AND COULD YOU, IF YOU ARE ON THIS JURY,
16 ASK THOSE KINDS OF QUESTIONS?

17 MS. BORNE: YES.

18 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
19 HONOR.

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

21 MR. WAPNER: YES, WE WOULD THANK AND ASK THE COURT TO
22 EXCUSE MS. WEINGARTEN, JUROR NUMBER 12. THANK YOU,
23 MS. WEINGARTEN.

24 THE COURT: THANK YOU, MS. WEINGARTEN.

25 THE CLERK: MRS. JENNIFER P. FURSTENBERG,
26 F-U-R-S-T-E-N-B-E-R-G.

27 IS THAT MRS.?

28 MS. FURSTENBERG: YES.

1 THE COURT: A LONG TIME AGO, YOU TOLD US THAT YOU OR
2 SOME MEMBER OF YOUR FAMILY HAVE BEEN THE VICTIM OF SOME KIND
3 OF A CRIME.

4 MS. FURSTENBERG: YES.

5 THE COURT: WHAT WAS THAT?

6 MS. FURSTENBERG: MY IN-LAWS WERE ASSAULTED IN THEIR
7 SUBTERRANEAN GARAGE AT GUNPOINT.

8 THE COURT: AND ROBBED?

9 MS. FURSTENBERG: ROBBED.

10 AND A FEW MONTHS LATER, THE PERSON WAS SHOT AND
11 KILLED IN AN ATTEMPTED ROBBERY.

12 THE COURT: WHO?

13 MS. FURSTENBERG: THE PERSON THAT ASSAULTED THEM A FEW
14 MONTHS LATER WAS SHOT AND KILLED IN ANOTHER --

15 THE COURT: IN AN ATTEMPTED ROBBERY?

16 MS. FURSTENBERG: -- IN ANOTHER ATTEMPTED ROBBERY.

17 THE COURT: HOW DO YOU KNOW IT WAS THE SAME PERSON?

18 MS. FURSTENBERG: MY IN-LAWS TOLD ME IT WAS.

19 THE COURT: IT WAS SOME KIND OF RETRIBUTION, IS THAT
20 WHAT HAPPENED?

21 WOULD THAT IN ANY WAY INFLUENCE YOU IN DETERMINING
22 THE GUILT OR INNOCENCE OF THIS DEFENDANT --

23 MS. FURSTENBERG: NO.

24 THE COURT: -- BECAUSE YOUR IN-LAWS WERE THE UNFORTUNATE
25 VICTIMS OF SOME CRIME?

26 OTHER THAN THAT, IF I WERE TO ASK YOU THE SAME
27 GENERAL QUESTIONS WHICH WERE ASKED OF THE OTHER JURORS, WOULD
28 YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY BE SUBSTANTIALLY

1 THE SAME?

2 MS. FURSTENBERG: THE SAME.

3 THE COURT: I SEE.

4 WHAT DO YOU DO, PLEASE?

5 MS. FURSTENBERG: RIGHT NOW, I AM A COLLEGE STUDENT AND
6 I AM ASSISTING MY HUSBAND IN HIS BUSINESS.

7 THE COURT: YOU ASSIST YOUR HUSBAND IN HIS BUSINESS?

8 MS. FURSTENBERG: IN HIS BUSINESS. I AM A GOFER, I
9 DO THINGS FOR HIM. I AM A SECRETARY AND --

10 THE COURT: WHATEVER NEEDS TO BE DONE YOU DO IT; IS
11 THAT RIGHT?

12 MS. FURSTENBERG: YES, BECAUSE HE WORKS PART TIME AT
13 HOME AND PART TIME AT HIS OFFICE.

14 THE COURT: WHAT KIND OF BUSINESS IS THAT?

15 MS. FURSTENBERG: CUSTOM SIGN.

16 THE COURT: CUSTOM WHAT?

17 MS. FURSTENBERG: CUSTOM ARCHITECTURAL SIGNS.

18 THE COURT: WHAT IS THAT EXACTLY?

19 MS. FURSTENBERG: WELL, HE IS INVOLVED IN DOING THE
20 PLANNING, THE DESIGNING, THE FABRICATING AND MANUFACTURING
21 OF SIGNS FOR HOSPITALS, HOTELS, RESTAURANTS, SHOPPING CENTERS,
22 THAT SORT OF THING.

23 THE COURT: AND WHAT IS YOUR BACKGROUND EDUCATION-WISE?

24 MS. FURSTENBERG: THREE YEARS OF COLLEGE.

25 THE COURT: WHICH ONE?

26 MS. FURSTENBERG: CAL STATE NORTHRIDGE.

27 THE COURT: AND YOUR HUSBAND?

28 MS. FURSTENBERG: FOUR YEARS AT I.I.T., ILLINOIS

1 INSTITUTE OF TECHNOLOGY.

2 THE COURT: YOU HAVE NO CHILDREN, HAVE YOU?

3 MS. FURSTENBERG: I HAVE A CHILD, 18.

4 THE COURT: YOU HAVE A CHILD 18?

5 MS. FURSTENBERG: UH-HUH.

6 THE COURT: REALLY.

7 AND HAVE YOU EVER HAD ANY JURY EXPERIENCE?

8 MS. FURSTENBERG: NO.

9 THE COURT: WHERE DO YOU LIVE?

10 MS. FURSTENBERG: BEVERLY HILLS.

11 THE COURT: ALL RIGHT.

12 MR. CHIER: MRS. --

13 THE COURT: WELL, I TELL YOU WHAT, JUDGE RADIN IS GIVING
14 A LUNCHEON TODAY FOR THE JUDGES SO I THINK MAYBE I OUGHT TO
15 BE ON TIME SO WE WILL TAKE A RECESS NOW UNTIL 1:45 THIS
16 AFTERNOON. THANK YOU VERY MUCH. I HOPE YOU ALL ENJOY YOUR
17 LUNCH.

18 (THE FOLLOWING PROCEEDINGS WERE HELD
19 WITHOUT THE PRESENCE AND HEARING OF THE
20 JURY:)

21 THE COURT: SO WHAT SHALL I DO ON HALICK? SHE CAN STAY
22 ON AND IF BY ANY CHANCE THE TRIAL ISN'T FINISHED BY THAT TIME,
23 AN ALTERNATE JUROR WILL TAKE HER PLACE.

24 MR. BARENS: THAT IS AGREEABLE WITH THE DEFENSE. THANK
25 YOU, YOUR HONOR.

26 (AT 11:50 A.M. A RECESS WAS TAKEN
27 UNTIL 1:45 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; MONDAY, DECEMBER 22, 1986; 1:53 P.M.
2 DEPARTMENT C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: IT WILL BE STIPULATED THE DEFENDANT IS
6 PRESENT. COUNSEL ARE PRESENT. THE PROSPECTIVE JURORS ARE
7 PRESENT.

8 YOU MAY PROCEED WITH YOUR VOIR DIRE.

9 MR. CHIER: THANK YOU, YOUR HONOR. GOOD AFTERNOON, MS.
10 FURSTENBERG.

11 MS. FURSTENBERG: GOOD AFTERNOON.

12 MR. CHIER: HOW ARE YOU TODAY?

13 MS. FURSTENBERG: FINE.

14 MR. CHIER: ARE YOU NERVOUS?

15 MS. FURSTENBERG: YES.

16 MR. CHIER: HOW COME YOU ARE NERVIIOUS, MS. FURSTENBERG?

17 MS. FURSTENBERG: BECAUSE THIS IS ALL BRAND NEW. I DON'T
18 KNOW IF I AM GOING TO SAY SOMETHING THAT IS STUPID OR THAT
19 MAKES SENSE.

20 MR. CHIER: PLEASE UNDERSTAND THAT THERE ARE NOT STUPID
21 ANSWERS. THERE ARE NO SMART ANSWERS. THERE ARE NO RIGHT
22 ANSWERS. THERE ARE NO WRONG ANSWERS.

23 BASICALLY, JUST TELL US HOW YOU ARE FEELING.

24 MS. FURSTENBERG: OKAY.

25 MR. CHIER: DON'T WORRY ABOUT WHAT HAPPENS AFTER THAT,
26 OKAY?

27 MS. FURSTENBERG: OKAY.

28 MR. CHIER: I WANT TO THANK MR. BARENS HERE, MY CO-COUNSEL

1 FOR BEING A GENEROUS SOUL AND FOR SHARING EVERYTHING WITH ME,
2 INCLUDING HIS COLD. HE SHARES EVERYTHING EXCEPT HIS WARDROBE.

3 THE COURT: A LOT OF US DON'T SHARE THAT WITH ANYONE
4 ELSE.

5 MR. CHIER: I WOULD LIKE TO ASK YOU -- I WOULD LIKE TO
6 START BY ASKING YOU MS. FURSTENBERG, IF YOU CAN TELL US, WHAT
7 IN YOUR OPINION, IS THE MOST IMPORTANT DECISION YOU HAVE EVER
8 MADE IN YOUR LIFE?

9 MS. FURSTENBERG: HAVING A CHILD.

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1 MR. CHIER: AND WAS THE DECISION TO HAVE A CHILD MADE
2 ARBITRARILY?

3 MS. FURSTENBERG: NO.

4 MR. CHIER: WAS IT MADE PERFUNCTORILY?

5 MS. FURSTENBERG: WOULD YOU LIKE TO EXPLAIN THAT?

6 MR. CHIER: I ASSUME YOU PUT A LOT OF CONSIDERATION INTO
7 IT.

8 MS. FURSTENBERG: YES, I DID.

9 MR. CHIER: AND THAT YOU DISCUSSED IT WITH YOUR HUSBAND?

10 MS. FURSTENBERG: YES, I DID.

11 MR. CHIER: AND THAT YOU REFLECTED ON IT PERSONALLY WITH
12 HIM.

13 MS. FURSTENBERG: YES.

14 MR. CHIER: YOU TALKED TO YOUR MOTHER ABOUT IT?

15 MS. FURSTENBERG: NO.

16 MR. CHIER: NO?

17 MS. FURSTENBERG: NO.

18 MR. CHIER: OKAY, IS THERE A REASON YOU DIDN'T TALK TO
19 HER?

20 MS. FURSTENBERG: I LEFT HOME. I WASN'T LIVING AT HOME
21 AT THE TIME.

22 MR. CHIER: IN ANY EVENT, A DECISION SUCH AS THE DECISION
23 AS TO WHETHER OR NOT TO HAVE A CHILD WHEN CONSIDERED BY A
24 RESPONSIBLE, SOCIALIZED PERSON IS AN EXTREMELY IMPORTANT
25 DECISION, RIGHT?

26 MS. FURSTENBERG: YES, IT IS.

27 MR. CHIER: THE DECISION IN A CRIMINAL CASE --

28 MS. FURSTENBERG: UH-HUH.

1 MR. CHIER: -- WHEN IT IS MADE BY A JUROR WHETHER TO
2 CONVICT OR NOT TO CONVICT --

3 MR. FURSTENBERG: UH-HUH.

4 MR. CHIER: -- FIRST OF ALL, IS THAT TYPE OF DECISION,
5 IT IS ONE OF THE MOST SERIOUS DECISIONS.

6 MS. FURSTENBERG: YES, IT IS.

7 MR. CHIER: DO YOU UNDERSTAND?

8 MS. FURSTENBERG: YES.

9 MR. CHIER: AND WHAT THIS IS LEADING UP TO IS THE IDEA
10 OF REASONABLE DOUBT. HOW REASONABLE -- DO YOU UNDERSTAND --
11 CAN YOU SEE HOW REASONABLE DOUBT FITS INTO THIS BUSINESS OF
12 MAKING DECISIONS?

13 MS. FURSTENBERG: YES.

14 MR. CHIER: REASONABLE DOUBT WOULD BE A DOUBT THAT YOU
15 WOULD HAVE IN YOUR MIND AFTER A CONSIDERATION AND REFLECTION
16 UPON ALL OF THE EVIDENCE --

17 MS. FURSTENBERG: YES.

18 MR. CHIER: -- THAT WOULD CAUSE YOU TO HESITATE TO ACT
19 IN THE MOST IMPORTANT OF YOUR PERSONAL AFFAIRS.

20 MS. FURSTENBERG: YES.

21 MR. CHIER: DO YOU UNDERSTAND IT IS DIFFICULT TO
22 QUANTIFY THESE THINGS?

23 MS. FURSTENBERG: YES.

24 MR. CHIER: YOU CAN ONLY USE ANALOGIES, WHICH ARE POOR
25 AT BEST.

26 BUT DO YOU HAVE AN IDEA OF WHAT I AM TALKING ABOUT
27 WHEN WE SAY REASONABLE DOUBT?

28 MS. FURSTENBERG: YES, YES.

1 MR. CHIER: OKAY, DO YOU HAVE ANY OBJECTION TO THE
2 CONCEPT OF REASONABLE DOUBT INsofar AS IT HAS BEEN EXPRESSED
3 HERE IN THE COURTROOM?

4 MS. FURSTENBERG: NO.

5 IT HAS BEEN EXPLAINED WELL.

6 MR. CHIER: DO YOU HAVE HAVE ANY RESERVATIONS ABOUT
7 IT, I MEAN --

8 MS. FURSTENBERG: NO.

9 MR. CHIER: AND SIMILARLY, THE CONCEPT THAT HAS BEEN
10 GONE OVER, I HOPE NOT ADNAUSEAM, BUT POSSIBLY ADNAUSEAM --

11 MS. FURSTENBERG: UH-HUH.

12 MR. CHIER: -- ABOUT CIRCUMSTANTIAL EVIDENCE, ALMOST
13 ADNAUSEAM.

14 MS. FURSTENBERG: YES.

15 MR. CHIER: DO YOU UNDERSTAND THAT CONCEPT?

16 MS. FURSTENBERG: YES, I DO.

17 MR. CHIER: AND THE REASON THAT WE HAVE THE DIFFERENCE,
18 WE DISTINGUISH BETWEEN CIRCUMSTANTIAL EVIDENCE AND DIRECT
19 EVIDENCE.

20 MS. FURSTENBERG: YES.

21 MR. CHIER: DO YOU UNDERSTAND WHEN EVIDENCE REQUIRES SOME
22 OBJECTIVE -- SOME SUBJECTIVITY OR ITS INTERPRETATION, THAT
23 ANY DOUBT THAT YOU HAVE IN RESOLVING THAT IN TRYING TO FIGURE
24 OUT WHICH WAY --

25 MS. FURSTENBERG: YOU ARE SAYING THAT IT IS BASED ON
26 THE SUBJECTIVE DECISION?

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1 MR. CHIER: BUT WHEN IT IS CIRCUMSTANTIAL EVIDENCE, IT
2 REQUIRES, LET'S SAY, PROOF OF A FACT, SUCH AS I WOULD PROVE
3 TO YOU THAT THE SIDEWALKS ARE WET. ALL RIGHT? THERE ARE
4 SOME INFERENCES YOU CAN DRAW FROM THAT.

5 MS. FURSTENBERG: YES.

6 MR. CHIER: RIGHT. ONE INFERENCE IS THAT IT IS RAINING?

7 MS. FURSTENBERG: YES, FROM THE DIRECT EVIDENCE.

8 MR. CHIER: FROM THE DIRECT EVIDENCE, RIGHT.

9 MS. FURSTENBERG: YES.

10 MR. CHIER: FROM THE DIRECT EVIDENCE, YOU CAN INFER --

11 MS. FURSTENBERG: YES.

12 MR. CHIER: -- THAT IT IS EITHER RAINING --

13 MS. FURSTENBERG: YES.

14 MR. CHIER: -- OR THAT THE GARDENER IS HERE AND I MEAN,
15 JUST TAKING TWO SIMPLE THINGS, OBVIOUSLY.

16 THERE ARE OTHER INSTANCES THAT I SUPPOSE ONE COULD
17 MAKE, LIKE A PIPE BURSTING. BUT THEN WE GET INTO THE AREA
18 OF UNREASONABLE INFERENCES. DO YOU UNDERSTAND?

19 MS. FURSTENBERG: YES.

20 MR. CHIER: SO THAT WHEN WE TALK ABOUT THE REASONABLE
21 INFERENCES, WE HAVE TWO DIFFERENT INFERENCES?

22 MS. FURSTENBERG: RIGHT.

23 MR. CHIER: YES. OKAY, SO YOU UNDERSTAND THAT WHEN YOU
24 HAVE THE SITUATION THAT I HAVE PRESENTED TO YOU, WHEN THE
25 EVIDENCE THAT YOU WOULD BE SHOWN SAY FOR EXAMPLE, BY THE
26 GOVERNMENT --

27 MS. FURSTENBERG: YES.

28 MR. CHIER: -- THAT THERE WAS A WET SIDEWALK --

1 MS. FURSTENBERG: YES.

2 MR. CHIER: -- AND YOUR ATTENTION CAN BE DRAWN TO THE
3 POSSIBILITY, THE REASONABLE POSSIBILITY OF RAIN --

4 MS. FURSTENBERG: UH-HUH.

5 MR. CHIER: -- OR THE GARDENER HAVING BEEN THERE --

6 MS. FURSTENBERG: OR A PIPE BURSTING.

7 MR. CHIER: YES. OR THE PIPE BURSTING. YOU WOULD
8 PROBABLY REJECT THE PIPE BURSTING FOR LACK OF SOME SORT OF
9 CORROBORATIVE EVIDENCE, RIGHT?

10 MS. FURSTENBERG: RIGHT.

11 MR. CHIER: YOU WOULDN'T NECESSARILY REJECT -- WELL,
12 LET'S ASSUME THERE WAS NO OTHER EVIDENCE OTHER THAN THE
13 SIDEWALK WAS WET.

14 MS. FURSTENBERG: OKAY.

15 MR. CHIER: AND THAT THE WET SIDEWALK WAS NOTED AT ABOUT
16 3:00 O'CLOCK IN THE AFTERNOON AND IT WAS KNOWN THAT THE
17 GARDENER CAME AROUND NOON.

18 MS. FURSTENBERG: OKAY.

19 MR. CHIER: IT WAS A COLD KIND OF OVERCAST DAY.

20 MS. FURSTENBERG: RIGHT.

21 MR. CHIER: THERE ARE TWO INFERENCES?

22 MS. FURSTENBERG: YES, RIGHT.

23 MR. CHIER: ONE THAT IT RAINED OR THAT THE GARDENER WAS
24 THERE AND THE SIDEWALK HAD NOT DRIED?

25 MS. FURSTENBERG: YES.

26 MR. CHIER: IN THAT SITUATION WHERE THE INFERENCES ARE
27 COMPETING AND THEY ARE ESSENTIALLY REASONABLE IN TERMS OF
28 YOU KNOW, ONE IS NOT SO FAR-FETCHED, THE BENEFIT OF THE DOUBT

1 MUST ALWAYS, IN EVERY CASE, WITHOUT EXCEPTION, GO TO THE
2 DEFENDANT IN A CRIMINAL CASE.

3 MS. FURSTENBERG: I UNDERSTAND THAT.

4 MR. CHIER: OKAY.

5 MS. FURSTENBERG: YES.

6 MR. CHIER: OKAY. NOW, COULD YOU TELL ME A LITTLE BIT
7 ABOUT -- I THINK I MUST HAVE BEEN -- MY LIGHTS MUST HAVE BEEN
8 ON BUT THERE WAS NOBODY HOME WHEN THE JUDGE ASKED YOU ABOUT
9 WHAT KIND OF WORK YOU DO AND YOUR HUSBAND.

10 MS. FURSTENBERG: SURE. I SAID THAT I WAS A GOFER.
11 THAT MEANT THAT I JUST ASSIST MY HUSBAND. I DO ERRANDS FOR
12 HIM.

13 I TAKE MESSAGES. I DO SECRETARIAL WORK FOR HIM.
14 I PICK UP CHECKS AND DEPOSIT CHECKS AND GO OVER LETTERS AND
15 TALK ABOUT CLIENT STRATEGIES.

16 I DELIVER SIGNS. YOU NAME IT, I JUST HELP HIM
17 OUT.

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1 MR. CHIER: SOUNDS LIKE YOU ARE MORE THAN A GOFER.
2 IT SOUNDS LIKE TOGETHER, YOU MAKE A WHOLE PERSON.

3 MS. FURSTENBERG: SOMETIMES.

4 MR. CHIER: AND WHAT IS THE NATURE OF HIS WORK
5 SPECIFICALLY? WHAT DOES HE DO EXACTLY?

6 MS. FURSTENBERG: HE HAS A CLIENT WHO IS INTERESTED IN
7 HAVING DIRECTORIES OR INFORMATIONAL SIGNS, IDENTIFICATION
8 SIGNS. HE DOES THE PLANNING FOR THAT CLIENT AS TO WHERE TO
9 PLACE THE SIGNS.

10 MR. CHIER: YOU ARE TALKING ABOUT ELECTRICAL SIGNS?

11 MS. FURSTENBERG: THEY CAN BE ELECTRICAL.

12 MR. CHIER: ARE THEY NEON OR ILLUMINATED PLASTIC?

13 MS. FURSTENBERG: IT CAN BE INNER-ILLUMINATED OR EXTERNALLY
14 OR JUST SILK-SCREEN. IT DOESN'T MATTER.

15 MR. CHIER: WITH NO ILLUMINATION OR --

16 MS. FURSTENBERG: RIGHT, EXTERNAL LIGHTING.

17 MR. CHIER: DID HE EVER WORK FOR HEATH & CO., BY ANY
18 CHANCE?

19 MS. FURSTENBERG: NO. BUT HE IS FRIENDS WITH THE
20 PEOPLE THAT OWN IT AND THE MANAGEMENT. HE KNOWS THEM.

21 MR. CHIER: HE DOES THAT TYPE OF WORK ON A MORE
22 EXCLUSIVE, BOUTIQUE BASIS?

23 MS. FURSTENBERG: I WOULDN'T SAY BOUTIQUE. I WOULD
24 JUST SAY CUSTOM. IF IT IS A HOSPITAL AND THEY WANT A
25 CERTAIN KIND OF SIGN TO FIT INTO THE ENVIRONMENT --

26 MR. CHIER: RATHER THAN DOING ONE FOR ARBY'S OR
27 WINCHELL'S DONUTS?

28 MS. FURSTENBERG: RIGHT. HE IS NOT OPPOSED TO THAT.

1 HE WOULD LIKE TO GO INTO THAT.

2 MR. CHIER: ALL RIGHT. NOW, I GUESS YOU HAVE HEARD
3 REFERENCE MADE TO THE HARVARD SCHOOL, THE PREP SCHOOL?

4 MS. FURSTENBERG: YES. I KNOW ABOUT IT. BUT I DON'T
5 KNOW ANY CHILDREN THAT WENT THERE.

6 MR. CHIER: DOES THAT FACT THAT THE DEFENDANT WENT
7 THERE --

8 MS. FURSTENBERG: DOESN'T BOTHER ME.

9 MR. CHIER: SOME OTHER WITNESSES --

10 MS. FURSTENBERG: NEITHER DOES THE BILLIONAIRE BOYS
11 CLUB BOTHER ME.

12 MR. CHIER: IT IS JUST A NAME?

13 MS. FURSTENBERG: RIGHT.

14 MR. CHIER: IT NEED NOT MEAN THAT THEY SELECTED IT FOR
15 THE INITIALS B.B.C., BUT IT MAY HAVE EVOLVED AS A RESULT OF
16 THE PRESS OF SOMETHING AND --

17 MS. FURSTENBERG: THE ONLY ASSOCIATION I HAVE MADE IS
18 THAT YOU HAVE TALKED ABOUT PEOPLE WHO PURSUE ECONOMIC GAINS.
19 I FIGURE IT HAD TO BE TIED TO THAT.

20 MR. CHIER: OKAY. HOW ABOUT THAT? DOES THAT FACT --

21 MS. FURSTENBERG: I AM PRO-CAPITALIST.

22 MR. CHIER: YOU ARE PRO-CAPITALIST?

23 MS. FURSTENBERG: YES.

24 MR. CHIER: AS LONG AS YOU DON'T DO ANYTHING UNDERHANDED
25 OR ILLEGAL OR --

26 MS. FURSTENBERG: UNETHICAL.

27 MR. CHIER: THE PURSUIT OF THE DOLLAR IS OKAY, IF THAT
28 IS WHAT TURNS YOU ON?

1 MS. FURSTENBERG: YES, RIGHT. RIGHT.

2 MR. CHIER: DO YOU UNDERSTAND THAT THERE IS A DIFFERENCE
3 BETWEEN THE CONTINENTAL SYSTEM OF JUSTICE AND THE AMERICAN
4 SYSTEM OF JUSTICE?

5 MS. FURSTENBERG: SLIGHTLY.

6 MR. CHIER: THE AMERICAN SYSTEM OF JUSTICE --

7 MS. FURSTENBERG: UH-HUH.

8 MR. CHIER: THE CRIMINAL JUSTICE SYSTEM ALWAYS PLACES
9 THE BURDEN OF PROOF ON THE PROSECUTION. DO YOU UNDERSTAND
10 THAT?

11 MS. FURSTENBERG: YES.

12 MR. CHIER: IN THIS COUNTRY?

13 MS. FURSTENBERG: YES.

14 MR. CHIER: AND IN ANY COUNTRY WHERE WE HAVE THE SO-
15 CALLED ANGLO-AMERICAN SYSTEM?

16 MS. FURSTENBERG: UH-HUH.

17 MR. CHIER: WHICH COULD INCLUDE GREAT BRITAIN AND
18 INDIA, AND ACTUALLY --

19 MS. FURSTENBERG: YES.

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1 MR. CHIER: AND DO YOU UNDERSTAND THAT IN THE EUROPEAN-
2 CONTINENTAL SYSTEM, THAT IS KIND OF A MIRROR IMAGE WHERE YOU
3 ARE PRESUMED GUILTY AND ONCE YOU ARE ACCUSED OF SOMETHING,
4 THAT IS UP TO THE DEFENDANT TO PROVE HIS INNOCENCE.

5 MS. FURSTENBERG: YES.

6 MR. CHIER: DO YOU THINK THAT WOULD BE A BETTER SYSTEM
7 THAN WE HAVE?

8 MS. FURSTENBERG: NO.

9 MR. CHIER: DO YOU THINK IT IS FAIR THAT THE ONLY WAY
10 TO EQUALIZE THE GOVERNMENT'S RESOURCES IN A CRIMINAL CASE,
11 THE FACT THAT THEY HAVE A POLICE DEPARTMENT AT THEIR DISPOSAL
12 AND A LOT OF OTHER LAWYERS IN THE D.A.'S OFFICE AND FINANCIAL
13 RESOURCES --

14 MS. FURSTENBERG: YES.

15 MR. CHIER: -- TO SAY THE LEAST, IS TO HAVE THEM HAVE
16 THE BURDEN OF PROOF AND MAKE THEM PUT THEIR MONEY WHERE THEIR
17 MOUTH IS, SO TO SPEAK, IF THEY ACCUSE SOMEBODY, THEY OUGHT
18 TO BE ABLE TO PROVE IT, RIGHT?

19 MS. FURSTENBERG: THAT'S RIGHT.

20 MR. CHIER: THE FACT THAT THEY MAY HAVE SOME EVIDENCE,
21 SOME CIRCUMSTANTIAL EVIDENCE --

22 MS. FURSTENBERG: OR DIRECT EVIDENCE, YES.

23 MR. CHIER: -- OR DIRECT EVIDENCE IS NOT EVIDENCE OF
24 THE DEFENDANT'S GUILT.

25 MS. FURSTENBERG: THAT'S RIGHT.

26 MR. CHIER: IT SIMPLY REPRESENTS THEIR OPINION THAT
27 THEY HAVE SOME EVIDENCE TO GO FORWARD WITH.

28 MS. FURSTENBERG: THAT'S RIGHT.

1 MR. CHIER: OKAY, DO YOU HAVE ANY PETS?

2 MS. FURSTENBERG: YES.

3 MR. CHIER: A DOG?

4 MS. FURSTENBERG: CAT.

5 MR. CHIER: CAT?

6 YOU ARE A CAT PERSON?

7 MS. FURSTENBERG: NO.

8 I LIKE DOGS JUST AS MUCH.

9 MR. CHIER: ANY ALLERGIES TO DOGS OR FOR SPACE REASONS?

10 MS. FURSTENBERG: FOR SPACE REASONS.

11 MR. CHIER: DO YOU SUBSCRIBE -- AND WHEN I SAY YOU,
12 LET ME HAVE YOU UNDERSTAND THAT I AM REFERRING TO YOU AS YOUR
13 HOUSEHOLD.

14 MS. FURSTENBERG: YES.

15 MR. CHIER: DOES YOUR WHOLE HOUSEHOLD REFER -- SUBSCRIBE
16 TO ANY MAGAZINES ON A REGULAR BASIS?

17 MS. FURSTENBERG: YES.

18 MR. CHIER: WHAT MAGAZINES DO YOU TAKE ON A REGULAR
19 BASIS?

20 MS. FURSTENBERG: VOGUE, ESQUIRE, AMERICAN HEALTH, SEVERAL
21 NEWSLETTERS.

22 MR. CHIER: WHAT KIND OF NEWSLETTERS DO YOU RECEIVE?

23 MS. FURSTENBERG: ON PRINCIPAL, THE AYN RAND INSTITUTE
24 NEWSLETTER, INTELLECTUAL ACTIVITIES AND THERE ARE SOME "SIGNS
25 OF THE TIMES" NEWSLETTERS WHICH IS A TRADE PUBLICATION IN
26 THE SIGN INDUSTRY.

27 MR. CHIER: IS THAT A KIPLINGER PUBLICATION OR IS THAT
28 CALLED CHANGING TIMES?

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1 MS. FURSTENBERG: THAT IS "CHANGING TIMES;" THE KIPLINGER
2 LETTER.

3 MR. CHIER: ARE YOU ANAYN RAND FAN?

4 MS. FURSTENBERG: YES.

5 MR. CHIER: SO YOU WOULD BE --

6 MS. FURSTENBERG: PRO-CAPITALISM.

7 MR. CHIER: -- STRONGLY PRO-CAPITALISM?

8 MS. FURSTENBERG: YES.

9 MR. CHIER: DO YOU UNDERSTAND THAT THE PURSUIT OF THE
10 DOLLAR GENERATES A LOT OF DIFFERENT EMOTIONS? IT GENERATES
11 ENVY, IT GENERATES GREED?

12 MS. FURSTENBERG: YES, IT DOES.

13 MR. CHIER: THERE IS A LOT OF THAT STUFF THAT IS ASSOCIATED
14 WITH THE CHASE OF THE DOLLAR AND YOU KNOW THAT THINGS ARE
15 NOT ALWAYS WHAT THEY APPEAR TO BE?

16 MS. FURSTENBERG: IT IS -- IT IS SEPARATE FROM THE VALUE
17 OF MONEY.

18 MR. CHIER: YES, IT CERTAINLY IS.

19 DO YOU UNDERSTAND, WHICH I AM SURE YOU DO, THAT
20 THINGS ARE NOT ALWAYS WHAT THEY APPEAR TO BE?

21 MS. FURSTENBERG: YES.

22 MR. CHIER: FOR EXAMPLE, IF I SHOWED YOU --

23 MS. FURSTENBERG: YES.

24 MR. CHIER: -- WHAT AM I SHOWING YOU?

25 MS. FURSTENBERG: FIVE FINGERS OR A HAND.

26 MR. CHIER: AND WHAT IS THAT?

27 MS. FURSTENBERG: YOUR HAND, YES.

28 MR. CHIER: SO YOU UNDERSTAND THAT FOR EVERY STORY,

1 FOR EVERYTHING, THERE IS USUALLY ANOTHER SIDE TO IT AND THAT
2 A LAWSUIT IS SOMETHING LIKE THAT.

3 MS. FURSTENBERG: YES.

4 MR. CHIER: AND THAT THINGS ARE NOT ALWAYS WHAT THEY
5 APPEAR TO BE?

6 MS. FURSTENBERG: YES.

7 MR. CHIER: AND THERE IS USUALLY AT LEAST ONE, IF NOT
8 MORE OTHER SIDES. I MEAN THAT IS ALMOST SELF-EVIDENT.

9 MS. FURSTENBERG: YES.

10 MR. CHIER: AND I DON'T MEAN TO INSULT YOUR INTELLIGENCE.

11 MS. FURSTENBERG: THAT'S ALL RIGHT. I UNDERSTAND.

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1 MR. CHIER: WE HAVE TO PROCEED IN A QUESTION AND ANSWER
2 FASHION HERE --

3 MS. FURSTENBERG: YES.

4 MR. CHIER: -- UNLESS OR UNTIL THE JUDGE WILL INTERCEDE
5 AND RUSH ME ALONG, OKAY?

6 MS. FURSTENBERG: I NOTICED.

7 MR. CHIER: CAN YOU TELL ME WHAT THE LAST BOOK THAT
8 YOU READ IS?

9 MS. FURSTENBERG: "THE PASSION OF AYN RAND" BY BARBARA
10 BRANDON.

11 MR. CHIER: THAT IS A BIOGRAPHY THAT HAS COME OUT IN
12 THE LAST SIX MONTHS OR SO?

13 MS. FURSTENBERG: YES, IN JUNE.

14 MR. CHIER: I TAKE IT, YOU ANTICIPATED THE PUBLICATION
15 EVEN BEFORE IT WAS OUT?

16 MS. FURSTENBERG: YES.

17 MR. CHIER: AND GOT IT AS SOON AS YOU COULD?

18 MS. FURSTENBERG: YES.

19 MR. CHIER: YOU WERE CALLING THE BOOKSTORE --

20 MS. FURSTENBERG: YES.

21 MR. CHIER: EVEN BEFORE IT GOT THERE?

22 MS. FURSTENBERG: YES.

23 MR. CHIER: AND I DON'T HAVE TO ASK YOU WHY YOU READ
24 IT.

25 I WILL ASK YOU IF YOU WATCH TV AT ALL.

26 MS. FURSTENBERG: YES.

27 MR. CHIER: DO YOU HAVE ANY FAVORITE PROGRAMS OR
28 CHANNELS THAT YOU WATCH?

1 MS. FURSTENBERG: DAVID LETTERMAN, SOME OF THE PBS
2 SPECIALS, CAGNEY AND LACEY, L.A. LAW -- MY HUSBAND LIKES BILL
3 COSBY, I DON'T LIKE IT.

4 THAT IS ABOUT IT.

5 MR. CHIER: DO YOU LISTEN TO RADIO WHEN YOU ARE DRIVING?

6 MS. FURSTENBERG: YES.

7 MR. CHIER: DO YOU HAVE ANY FAVORITE STATIONS?

8 MS. FURSTENBERG: KFAC AND --

9 MR. CHIER: DO YOU EVER LISTEN TO KCRW?

10 MS. FURSTENBERG: OCCASIONALLY.

11 MR. CHIER: NOW, YOU SEEM LIKE A FAIR-MINDED PERSON,
12 MRS. FURSTENBERG.

13 DOES THE FACT THAT MR. HUNT HAS TWO ATTORNEYS --

14 MS. FURSTENBERG: NO.

15 MR. CHIER: -- SEEM --

16 MS. FURSTENBERG: IT DOESN'T BOTHER ME.

17 MR. CHIER: -- SEEM TO BOTHER YOU?

18 MS. FURSTENBERG: NO.

19 MR. CHIER: WOULD YOU ACCEPT THE FACT THAT THE LAW
20 PROVIDES THAT IN DEATH PENALTY CASES THERE CAN AND SHOULD
21 BE TWO ATTORNEYS?

22 MS. FURSTENBERG: IT IS SOMETHING I DIDN'T KNOW.
23 I THINK THAT IS AN APPROPRIATE DECISION TO ADOPT THIS, YES.

24 MR. CHIER: IN MOST CASES, IN A DEATH PENALTY
25 REPRESENTATION, IT IS ALMOST TOO MUCH FOR ONE PERSON.

26 MS. FURSTENBERG: IT MAKES SENSE TO ME.

27 MR. CHIER: YOU WOULDN'T, LIKE, HANDICAP US BECAUSE
28 WE HAVE AN EXTRA PERSON OR WHAT APPEARS TO YOU TO BE AN

1 EXTRA PERSON, WOULD YOU?

2 MS. FURSTENBERG: NO.

3 MR. CHIER: OKAY, HAVE YOU EVER WRITTEN A LETTER TO
4 SOMEONE IN A HIGHLY EMOTIONAL STATE WHICH YOU NEVER MAILED?

5 MS. FURSTENBERG: NO.

6 MR. CHIER: HAVE YOU EVER KEPT A DIARY?

7 MS. FURSTENBERG: YES.

8 MR. CHIER: HAVE YOU EVER MADE ENTRIES INTO A DIARY
9 WHICH YOU WOULD BE, LIKE, HORRIFIED TO LEARN SOMEBODY HAD
10 READ?

11 MS. FURSTENBERG: YES, ABSOLUTELY.

12 MR. CHIER: AND SOMETIMES THE DIARY ENTRIES REPRESENT
13 FANTASIES?

14 MS. FURSTENBERG: YES.

15 MR. CHIER: NOW, COULD YOU UNDERSTAND THE EXPLANATION
16 OF CORPUS DELECTI?

17 MS. FURSTENBERG: YES.

18 MR. CHIER: THAT CORPUS DELECTI MEANS THE ELEMENTS OF
19 THE OFFENSE?

20 MS. FURSTENBERG: YES.

21 MR. CHIER: AND THAT A CRIME -- A CRIME IS SOMETHING
22 WHICH IS DEFINED UNIFORMLY BY LAW, THAT IS, WHAT THE
23 DEFINITION OF THE CRIME IS, EACH CRIME, YOU UNDERSTAND, HAS
24 ITS OWN SET OF ELEMENTS?

25 MS. FURSTENBERG: YES.

26 MR. CHIER: AND YOU REMEMBER THE ANALOGY I MADE ABOUT
27 THE BRICK WALL, DID YOU HEAR THAT?

28 MS. FURSTENBERG: YES.

1 MR. CHIER: THAT IN BUILDING A BRICK WALL, AS IN
2 DELIBERATING AS A JURY, YOU HAVE TO MAKE SURE THAT YOU HAVE
3 EACH ELEMENT, RIGHT?

4 MS. FURSTENBERG: UH-HUH, YES.

5 MR. CHIER: AND THAT EACH ELEMENT THEN BECOMES A SEPARATE
6 BRICK WHICH YOU THEN PUT INTO PLACE AND WHEN YOU ARE THROUGH
7 EVALUATING THE BRICKS AND PUTTING THEM INTO PLACE, IF THERE
8 IS HALF A BRICK MISSING OR IF THERE IS A WHOLE BRICK MISSING,
9 IF THERE IS MORE THAN ONE BRICK MISSING, THAT MEANS THAT THE
10 PROSECUTION HAS FAILED TO MEET THEIR BURDEN OF PROOF; DO YOU
11 UNDERSTAND THAT?

12 MS. FURSTENBERG: THAT'S RIGHT, YES.

13 MR. CHIER: BECAUSE IF THEY MEET THEIR BURDEN OF PROOF
14 AT THE VERY END, THAT BRICK WALL SHOULD BE THERE WITH NO HOLES.

15 MS. FURSTENBERG: HE HAS BUILT THE CASE, YES.

16 MR. CHIER: AND THE CASE IS THE BRICK WALL.

17 MS. FURSTENBERG: YES.

18 MR. CHIER: I HAVE NO FURTHER QUESTIONS OF
19 MRS. FURSTENBERG, YOUR HONOR.

20 THE COURT: ALL RIGHT, MR. WAPNER.

21 MR. WAPNER: GOOD AFTERNOON, MRS. FURSTENBERG.

22 MS. FURSTENBERG: GOOD AFTERNOON.

23 MR. WAPNER: I WILL TRY AND GO SLOWLY. IT IS TOUGH
24 ON THE REPORTER WHEN WE BOTH TALK AT THE SAME TIME.

25 MS. FURSTENBERG: YES, YES.

26 MR. WAPNER: IS YOUR CHILD A SON OR DAUGHTER?

27 MS. FURSTENBERG: DAUGHTER.

28 MR. WAPNER: AND WHAT IS SHE DOING NOW?

1 MS. FURSTENBERG: SHE IS A STUDENT AT UC SANTA CRUZ,
2 FRESHMAN.

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

4 MS. FURSTENBERG: RIGHT NOW, SHE IS HOME FOR CHRISTMAS
5 VACATION SO I SEE HER EVERY DAY.

6 PRIOR TO THAT, ABOUT EVERY TWO OR THREE DAYS WHEN
7 SHE WAS UP IN SANTA CRUZ AND SHE WOULD CALL.

8 MR. WAPNER: THIS IS HER FIRST -- SHE JUST FINISHED HER
9 FIRST QUARTER THERE?

10 MS. FURSTENBERG: YES.

11 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

12 MS. FURSTENBERG: MY MOTHER IS.

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

14 MS. FURSTENBERG: NO.

15 SHE LIVES IN CHICAGO.

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

17 MS. FURSTENBERG: ONCE A YEAR.

18 MR. WAPNER: IS THAT A BIRTHDAY OR --

19 MS. FURSTENBERG: EITHER CHRISTMAS OR HER BIRTHDAY.

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14A-1

1 MR. WAPNER: IS THAT BY YOUR CHOICE OR HER CHOICE?

2 MS. FURSTENBERG: BY HER CHOICE.

3 MR. WAPNER: DDI YOU LEAVE HOME AT A FAIRLY EARLY
4 AGE?

5 MS. FURSTENBERG: YES.

6 MR. WAPNER: HOW OLD WERE YOU, IF YOU DON'T MIND MY
7 ASKING?

8 MS. FURSTENBERG: SEVENTEEN.

9 MR. WAPNER: AND FROM THAT TIME UNTIL THE PRESENT, HAVE
10 YOU HAD THIS RELATIONSHIP WITH HER, WHERE YOU TALK TO HER ABOUT
11 ONCE A YEAR?

12 MS. FURSTENBERG: NO. IT WAS JUST THROUGH THE YEARS
13 IT HAS BEEN DIFFERENT.

14 MR. WAPNER: YOU HEARD ALL OF THE EXAMPLES THAT WE HAVE
15 USED THROUGH THE COURSE OF THIS JURY SELECTION THAT HAVE
16 ATTEMPTED TO ILLUSTRATE THE DIFFERENCE BETWEEN DRAWING
17 REASONABLE INFERENCES AS OPPOSED TO SPECULATING?

18 MS. FURSTENBERG: YES.

19 MR. WAPNER: SPECULATING ABOUT SOME POSSIBILITIES.
20 WHERE DO YOU PUT YOURSELF ON THAT SPECTRUM? ARE YOU ONE OF
21 THE PEOPLE WHO BELIEVES IN HELICOPTERS AND PHANTOM SPACE
22 SHIPS PULLING PEOPLE OUT OF THE OCEAN OR ARE YOU SOMEONE WHO
23 YOU THINK REASONABLY ANALYZES THINGS?

24 MS. FURSTENBERG: I HOPE THAT I AM THE TYPE OF PERSON
25 THAT REASONABLE ANALYZES THINGS.

26 MR. WAPNER: AS YOU HEARD ANY OF THOSE EXAMPLES, DID
27 ANY LIGHTS GO OFF IN YOUR MIND ABOUT THINGS THAT YOU THOUGHT
28 WERE SILLY, RIDICULOUS OR REASONABLE ON THE OTHER HAND?

1 MS. FURSTENBERG: PERHAPS IMAGINARY.

2 MR. WAPNER: ALL RIGHT. HAVE YOU EVER BEEN IN DISCUSSIONS,
3 SERIOUS DISCUSSIONS WITH FRIENDS ABOUT POLITICAL OR OTHER
4 ISSUES?

5 MS. FURSTENBERG: YES.

6 MR. WAPNER: HAVE YOU EVER CHANGED YOUR MIND ABOUT --

7 MS. FURSTENBERG: YES.

8 MR. WAPNER: TAKE A POSITION AND CHANGE YOUR MIND?

9 MS. FURSTENBERG: YES.

10 MR. WAPNER: ARE YOU CAPABLE OF LISTENING TO 11 OTHER
11 PEOPLE IN THE JURY ROOM?

12 MS. FURSTENBERG: YES.

13 MR. WAPNER: AND EXPRESSING YOUR VIEWS TO THEM?

14 MS. FURSTENBERG: YES.

15 MR. WAPNER: ARE YOU CAPABLE OF CHANGING YOUR MIND IF
16 YOU THINK THAT YOUR INITIAL POSITION WAS WRONG?

17 MS. FURSTENBERG: YES.

18 MR. WAPNER: ARE YOU CAPABLE OF HOLDING FAST TO YOUR
19 POSITION IF YOU THINK IT IS RIGHT?

20 MS. FURSTENBERG: YES.

21 MR. WAPNER: HOW DID YOUR IN-LAWS KNOW THAT THE PERSON
22 THAT ASSAULTED THEM WAS THE SAME PERSON WHO WAS KILLED A FEW
23 MONTHS LATER?

24 MS. FURSTENBERG: BY M.O., THE IDENTIFICATION AND THE
25 M.O. IS HOW HE APPROACHED THEM. WHAT HE SAID, WHAT HE DID
26 AND ALL OF THAT WAS REPEATED IN THE SECOND ROBBERY.

27 OBVIOUSLY, HIS IDENTITY WAS THE SAME, ACCORDING
28 TO THEM.

1 MR. WAPNER: WAS THERE A CASE, A CRIMINAL CASE PENDING
2 WHERE THEY WERE THE ALLEGED VICTIMS?

3 MS. FURSTENBERG: NO.

4 MR. WAPNER: DO YOU KNOW WHY NOT?

5 MS. FURSTENBERG: THEY DID NOT GO TO THE POLICE.

6 MR. WAPNER: DO YOU KNOW WHY THEY DIDN'T GO TO THE POLICE?

7 MS. FURSTENBERG: NO. I DON'T KNOW.

8 MR. WAPNER: DID THEY TELL YOU ABOUT THIS AFTER IT
9 HAPPENED?

10 MS. FURSTENBERG: YES.

11 MR. WAPNER: AND DID YOU AND YOUR HUSBAND ENCOURAGE THEM
12 TO GO TO THE POLICE?

13 MS. FURSTENBERG: WE LEFT IT UP TO THEM. IT WAS THEIR
14 DECISION.

15 MR. WAPNER: DID YOU HAVE AN OPINION ONE WAY OR THE
16 OTHER?

17 MS. FURSTENBERG: YES, I DID. I FELT THEY SHOULD HAVE
18 GONE TO THE POLICE.

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4A-4

1 MR. WAPNER: DID YOU TELL THEM THAT?

2 MS. FURSTENBERG: NO.

3 MR. WAPNER: DID THEY TELL YOU WHY THEY WERE NOT GOING
4 TO GO TO THE POLICE?

5 MS. FURSTENBERG: YES.

6 MR. WAPNER: WHY?

7 MS. FURSTENBERG: THEY ARE IN THEIR 70'S. THEY DIDN'T
8 WANT TO GET INTO ANY KIND OF A TRIAL.

9 THEY WANTED TO LET GO OF THE EXPERIENCE. THEY
10 DIDN'T WANT TO HAVE TO CONFRONT AND PARTICIPATE IN IT.

11 MR. WAPNER: DID THEY AS FAR AS YOU KNOW, MAKE AN
12 IDENTIFICATION OF THIS PERSON?

13 MS. FURSTENBERG: THEY KNEW WHO ROBBED THEM, YES.

14 MR. WAPNER: IT WAS SOMEONE --

15 MS. FURSTENBERG: THEY MADE NO IDENTIFICATION TO A
16 POLICEMAN OR TO A LAW ENFORCEMENT OFFICER OR ANYONE LIKE THAT.

17 THEY READ ABOUT THE ROBBERY, THAT THE PERSON WAS
18 SHOT, THE DESCRIPTION OF THE ROBBERY AND WHAT HAPPENED. THEY
19 SAID IT WAS THE PERSON THAT HAD ROBBED THEM. THEY READ ABOUT
20 IT IN THE NEWSPAPER.

21 THEY CONCLUDED THAT THE PERSON WAS THE PERSON THAT
22 ROBBED THEM.

23 MR. WAPNER: HOW MANY WEEKS OR MONTHS AFTER THE
24 ROBBERY OF THEM WAS THIS ARTICLE IN THE NEWSPAPER?

25 MS. FURSTENBERG: I DON'T KNOW. I AM NOT CLEAR HOW
26 MANY WEEKS.

27 MR. WAPNER: HAVE YOU EVER HAD A SITUATION WHERE YOU
28 SAW SOMEONE YOU THOUGHT YOU KNEW AND MAYBE EVEN SAID HELLO

1 TO THAT PERSON AND IT TURNED OUT TO BE A DIFFERENT PERSON?

2 MS. FURSTENBERG: YES.

3 MR. WAPNER: DID IT HAPPEN TO YOU MORE THAN ONCE?

4 MS. FURSTENBERG: A COUPLE OF TIMES, YES.

5 MR. WAPNER: HAVE YOU HAD ANY EXPERIENCE WITH THE
6 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION?

7 MS. FURSTENBERG: NO.

8 MR. WAPNER: WHETHER YOU IN SEEING SOMEONE, WERE ABLE
9 TO RECOGNIZE THEM, MIGHT DEPEND UPON LOTS OF THINGS, RIGHT?

10 MS. FURSTENBERG: YES.

11 MR. WAPNER: LIKE HOW LONG YOU HAD A CHANCE TO LOOK
12 AT THEM?

13 MS. FURSTENBERG: YES.

14 MR. WAPNER: UNDER WHAT CIRCUMSTANCES?

15 MS. FURSTENBERG: YES.

16 MR. WAPNER: WHERE YOU KNEW THE PERSON BEFORE?

17 MS. FURSTENBERG: YES.

18 MR. WAPNER: AND IF SO, HOW WELL?

19 MS. FURSTENBERG: YES.

20 MR. WAPNER: IN OTHER WORDS, IF YOU HAD SEEN THE PERSON
21 SEVERAL TIMES BEFORE AND HAD AN OPPORTUNITY TO SEE THEIR
22 FACE, YOU MIGHT BE MORE LIKELY TO RECOGNIZE THEM THAN IF IT
23 WAS JUST SOMEONE YOU HAD BEEN INTRODUCED TO ONE TIME?

24 MS. FURSTENBERG: THAT'S RIGHT. YES.

25 MR. WAPNER: AND YOU WOULD WANT TO KNOW IN AN EYEWITNESS
26 IDENTIFICATION SITUATION, AS MUCH AS YOU COULD ABOUT THE
27 PARTICULAR FACTS OF THE IDENTIFICATION BEFORE MAKING A
28 JUDGEMENT AS TO WHETHER OR NOT THE PERSON MAKING THE

1 IDENTIFICATION WAS CORRECT OR NOT?

2 MS. FURSTENBERG: YES.

3 MR. WAPNER: IN THE HYPOTHETICAL MR. CHIER GAVE YOU ABOUT
4 THE WET SIDEWALK, IF YOU WERE TRYING TO MAKE A DETERMINATION
5 AS TO WHETHER OR NOT THE SIDEWALK WAS WET BECAUSE OF RAIN OR
6 BECAUSE THE GARDENER HAD BEEN THERE, WHAT KINDS OF THINGS WOULD
7 YOU LIKE TO KNOW, ADDITIONAL THINGS WOULD YOU LIKE TO KNOW?

8 MS. FURSTENBERG: WELL, HE MENTIONED THAT THE GARDENER
9 WAS TO COME AT NOON ON THAT PARTICULAR DAY. AND HE MENTIONED
10 THAT IT WAS COLD AND AN OVERCAST DAY.

11 JUST WITH THAT INFORMATION, I WOULD ASSUME THAT
12 IT HAD TO BE ONE OR THE OTHER AND I WOULD MAKE -- I WOULD LOOK
13 AT THE SIDEWALK AND I WOULD LOOK TO SEE IF THERE WERE LOTS
14 OF PUDDLES BECAUSE IF I WOULD SEE THE GRASS WAS WET AND IF
15 THE TREES WERE WET AND IF IT LOOKED LIKE IT WAS WET AND THE
16 TREES WERE WET, THEN I WOULD ASSUME THAT IT EITHER RAINED OR
17 THE GARDENER CAME.

18 MR. WAPNER: WHAT ABOUT THE SIDEWALK ON THE OTHER SIDE
19 OF THE STREET? WOULD YOU WANT TO KNOW WHETHER IT WAS WET OR
20 NOT?

21 MS. FURSTENBERG: SURE.

22 MR. WAPNER: AND WHAT DIFFERENCE WOULD THAT MAKE TO YOU?

23 MS. FURSTENBERG: IF IT IS WET AND THE GARDENER DOESN'T
24 WORK OVER THERE, THEN I ASSUMED IT RAINED.

25 MR. WAPNER: IF IT WAS LIKE THE COURTHOUSE FOR EXAMPLE,
26 WHERE WE HAVE SIDEWALKS AROUND THE LAWN AND IN THE FRONT AND
27 WE HAVE A PARKING LOT, WOULD YOU WANT TO SEE WHETHER THE
28 PARKING LOT WAS WET?

1 MS. FURSTENBERG: YES.

2 MR. WAPNER: AND WHETHER THE CARS IN THE PARKING LOT
3 WERE WET?

4 MS. FURSTENBERG: YES. I WOULD LOOK FOR MORE EVIDENCE
5 AROUND ME.

6 MR. WAPNER: BASED ON ALL OF THE THINGS YOU COULD FIND
7 OUT, YOU WOULD THEN DETERMINE WHAT YOU THOUGHT WAS REASONABLE,
8 RIGHT?

9 MS. FURSTENBERG: RIGHT.
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1 MR. WAPNER: WHAT DID YOU HAVE IN MIND WHEN YOU SAY
2 YOU ARE PRO-CAPITALIST IN THE PURSUIT OF MONEY IS FINE, AS
3 LONG AS IT IS NOT UNETHICAL.

4 MS. FURSTENBERG: IF THE MONEY IS EARNED AND IT IS NOT --
5 IF IT IS COMPENSATION FOR SOMETHING THAT YOU -- SOME SERVICE
6 OR SOME PRODUCT OR LABOR THAT YOU HAVE PERFORMED, THEN YOU
7 HAVE EARNED THE MONEY.

8 IF IT HAS NOT BEEN DONE THROUGH FRAUD OR WITH
9 FORCE, THEN IT IS ETHICAL. TO PURSUE THE MONEY, THAT IS
10 PERFECTLY FINE WITH ME, TO WANT TO MAKE A LIVING, POSSESS
11 THINGS AND IMPROVE YOUR LIVELIHOOD, YOUR LIFESTYLE, THAT'S
12 FINE.

13 MR. WAPNER: IS THE PURSUIT OF MONEY AT ANY COST ALL
14 RIGHT?

15 MS. FURSTENBERG: NO.

16 MR. WAPNER: HAVE YOU SEEN IN YOUR OWN EXPERIENCE OR
17 READ ABOUT SITUATIONS WHERE PEOPLE GOT UPSET ENOUGH OVER MONEY
18 IN THE SITUATIONS THAT THEY WERE LIKELY TO USE FORCE OR
19 VIOLENCE IN PURSUIT OF IT?

20 MS. FURSTENBERG: I HAVE READ IT AND I HAVE SEEN IT.

21 MR. WAPNER: HAVE YOU SEE IT IN YOUR PERSONAL LIFE?

22 MS. FURSTENBERG: YES.

23 MR. WAPNER: TELL ME ABOUT THAT. AND IF IT IS SOMETHING
24 YOU PREFER TO DO AT THE BENCH, WE CAN DO IT, TOO.

25 THE COURT: WE DON'T HAVE TO DO IT AT THE BENCH.

26 MS. FURSTENBERG: NO. IT IS NOT NECESSARY. BASICALLY,
27 SOMEONE WAS DECEIVING ANOTHER PERSON FOR THEIR OWN PERSONAL
28 MOTIVES, WHATEVER IT WAS. THEY HURT THE OTHER PERSON BY MAKING

1 DECISIONS THAT CAUSED THEM TO LOSE OUT FINANCIALLY. I WILL
2 JUST BE GENERAL.

3 MR. WAPNER: OKAY. WITHOUT IDENTIFYING THE PEOPLE
4 INVOLVED GENERALLY, THAT DOESN'T GIVE ME -- THAT IS A LITTLE
5 TOO GENERAL FOR MY TASTE, FOR ME TO BE ABLE TO UNDERSTAND
6 EXACTLY WHAT HAPPENED.

7 CAN YOU BE A LITTLE MORE SPECIFIC FOR ME?

8 MS. FURSTENBERG: I AM THINKING OF A PARTNERSHIP. ONE
9 PARTNER FOR WHATEVER PERSONAL MOTIVES, DECIDED TO MAKE THE
10 DECISIONS THAT WERE IN HIS FAVOR BUT NOT IN THE FAVOR OF HIS
11 PARTNER AND CAUSED THE BUSINESS TO HAVE FINANCIAL DIFFICULTIES.

12 MR. WAPNER: WHEN THE BUSINESS HAD FINANCIAL DIFFICULTIES
13 IN THAT SITUATION, DID IT LEAD TO SOME KIND OF CONFRONTATION
14 BETWEEN THE PARTNERS?

15 MS. FURSTENBERG: A LOT OF ANGER AND A LOT OF SHOUTING.
16 A LOT OF YELLING. THERE WAS NOT LITIGATION. BUT THERE WAS
17 A PARTING OF THE WAYS.

18 MR. WAPNER: BESIDES SHOUTING AND YELLING, WAS THERE
19 ANY PHYSICAL CONTACT?

20 MS. FURSTENBERG: NO, NOT THAT I KNOW OF.

21 MR. WAPNER: DO YOU KNOW WHETHER THERE WAS A THREAT OF
22 ANY KIND OF VIOLENCE?

23 MS. SURSTENBERG: NO, NOT THAT I KNOW OF.

24 MR. WAPNER: IN THAT SITUATION, SINCE THERE WAS NO
25 LITIGATION, I ASSUME THAT THE PARTNERSHIP SPLIT UP AND ONE
26 PERSON BASICALLY SUFFERED A FAIRLY HEAVY LOSS?

27 MS. FURSTENBERG: YES.

28 MR. WAPNER: WERE THOSE DECISIONS THAT WERE MADE BY THE

1 ONE PARTNER WITHOUT CONSULTING THE OTHER ONE, IN YOUR OPINION,
2 UNWISE BUSINESS DECISIONS?

3 MS. FURSTENBERG: YES.

4 MR. WAPNER: AND IN YOUR OPINION, WERE THEY MOTIVATED
5 ENTIRELY BY SELFISHNESS ON THE PART OF THE PERSON WHO MADE
6 THEM?

7 MS. FURSTENBERG: I DON'T KNOW WHAT MOTIVATED THE
8 PERSON.

9 MR. WAPNER: DID THE PERSON WHO MADE THE DECISIONS
10 GAIN FROM THEM AT THE EXPENSE OF THE PARTNER?

11 MS. FURSTENBERG: IN MY OPINION, YES.
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15-1
1 MR. WAPNER: DID HE GAIN FINANCIALLY?

2 MS. FURSTENBERG: YES.

3 MR. WAPNER: WAS THAT A SITUATION WHERE THERE WAS ENOUGH
4 ANGER THAT YOU THOUGHT THAT HAD THE PERSON GETTING ANGRY BEEN
5 A DIFFERENT PERSON THAT THERE MIGHT HAVE BEEN SOME VIOLENCE?

6 MS. FURSTENBERG: YES, I COULD SEE IF IT WAS ANOTHER
7 PERSON, SURE, YES.

8 MR. WAPNER: I GUESS EVERYONE HAS THEIR POINT --

9 MS. FURSTENBERG: YES.

10 MR. WAPNER: -- AT WHICH THEY KIND OF CROSS THE LINE?

11 MS. FURSTENBERG: YES, YES.

12 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
13 OF A THEFT OR CON SCHEME?

14 MS. FURSTENBERG: SOMEONE -- A COUPLE OF YEARS AGO,
15 SOMEONE STOLE OUR CALLING CARD NUMBER AND CHARGED THREE OR
16 FOUR THOUSAND DOLLARS WORTH OF LONG DISTANCE CALLS ON OUR
17 PHONE CARD NUMBER WITH THE PACIFIC TELEPHONE CARD. THEY
18 EXCUSED US. THEY SAID IT WASN'T OUR CARD SO WE DIDN'T HAVE
19 TO GET INVOLVED.

20 THEY FELT IT WAS SOME KIND OF A RING OR SOME KIND
21 OF GROUP OF PEOPLE THAT WERE DOING THIS, SO THEY WERE GOING
22 TO FOLLOW THROUGH AND FIND OUT WHO DID IT. WE WEREN'T INVOLVED
23 OR WE WEREN'T QUESTIONED OR ANYTHING.

24 MR. WAPNER: OVER WHAT PERIOD OF TIME WAS THE THREE
25 OR FOUR THOUSAND DOLLARS CHARGED?

26 MS. FURSTENBERG: IT WAS A SHORT TIME. SOMETHING LIKE
27 A MONTH.

28 MR. WAPNER: DO YOU KNOW HOW THE CARD NUMBER WAS STOLEN?

1 MS. FURSTENBERG: I -- WE FIGURED THAT SOMEONE OVERHEARD
2 US AT A PHONE BOOTH, FROM MY HUSBAND AND I, USING THE SAME
3 NUMBER, YOU KNOW, YOU HAVE TO SAY IT INTO THE PHONE TO THE
4 OPERATOR SO SOMEONE OVERHEARD US.

5 MR. WAPNER: ANYTHING ELSE, ANY THEFT OR CON SCHEME
6 OR ANYTHING LIKE THAT?

7 MS. FURSTENBERG: A FEW YEARS BACK, SOMEBODY STOLE A
8 RADIO OUT OF MY HUSBAND'S CAR.

9 MR. WAPNER: DID YOU MAKE A REPORT OF THAT?

10 MS. FURSTENBERG: HE DID.

11 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
12 HONOR.

13 MR. BARENS: THANK YOU, YOUR HONOR, THE DEFENSE WOULD
14 REQUEST THE COURT TO THANK AND EXCUSE JUROR NUMBER 11,
15 MR. HUBBARD.

16 THE COURT: ALL RIGHT, THANK YOU, MR. HUBBARD.

17 THE CLERK: JOHN R. DENT, D-E-N-T.

18 THE COURT: WHAT WAS THAT?

19 THE CLERK: JOHN DENT, D-E-N-T.

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

22 MR. DENT: YES, I HAVE.

23 THE COURT: IF I WERE TO ASK YOU THE SAME GENERAL
24 QUESTIONS, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME OR
25 WOULD THEY BE IN ANY WAY DIFFERENT?

26 MR. DENT: SUBSTANTIALLY THE SAME.

27 THE COURT: DID ANYTHING OCCUR TO YOU DURING THE COURSE
28 OF THE QUESTIONING WHERE SOMETHING OCCURRED TO YOU IN YOUR

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MIND AND YOU SAID YOU WOULD LIKE TO ANSWER THIS QUESTION A
LITTLE DIFFERENTLY?

MS. DENT: NOT TO THE GENERAL QUESTIONS, NO.

THE COURT: ALL RIGHT, ONLY TO THE SPECIFIC ONE; IS
THAT RIGHT?

MR. DENT: THAT'S RIGHT.

THE COURT: WHEN I ASKED THE QUESTION ABOUT WHETHER
ANY OF THE JURORS HAD BEEN VICTIMS OF ANY KIND OF A CRIME,
YOU NEVER RAISED YOUR HAND; IS THAT RIGHT?

MR. DENT: THAT'S RIGHT.

THE COURT: ALL RIGHT. HAVE YOU EVER HAD ANY JURY DUTY?

MR. DENT: NO, I HAVE NOT.

THE COURT: AND WHAT DO YOU DO, AGAIN?

MR. DENT: I AM A TECHNOLOGY WRITER FOR CONTEL BUSINESS
SYSTEMS IN TORRANCE.

5A FO

1 THE COURT: WHAT DOES THAT JOB CONSIST OF, TELL ME.

2 MR. DENT: WE ARE A SMALL BUSINESS COMPUTER MANUFACTURER
3 AND I WRITE INSTRUCTION MANUALS FOR END USERS, SECRETARIES
4 ALL THE WAY UP THROUGH PROGRAMMERS AND SERVICE TECHNICIANS
5 AND THAT SORT OF THING.

6 THE COURT: YOU ARE NOT MARRIED, ARE YOU?

7 MR. DENT: NO, I AM NOT.

8 THE COURT: AND WHERE DO YOU LIVE?

9 MR. DENT: MANHATTAN BEACH.

10 THE COURT: YOU SAID YOU HAD NEVER SERVED ON A JURY
11 BEFORE?

12 MR. DENT: THAT'S RIGHT.

13 THE COURT: WHAT EDUCATION DID YOU HAVE?

14 MR. DENT: I HAVE A BACHELOR'S IN ENGLISH FROM UCLA.

15 THE COURT: AND HAVE YOU EVER HAD ANY POSTGRADUATE
16 STUDIES OF ANY KIND?

17 MR. DENT: NO, I HAVEN'T.

18 THE COURT: ALL RIGHT, THANK YOU.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 GOOD AFTERNOON, MR. DENT.

21 MR. DENT: GOOD AFTERNOON, MR. BARENS.

22 MR. BARENS: MR. DENT, DID YOU TELL US EARLIER YOU HAD
23 TAKEN SOME CLASSES IN ETHICS?

24 MR. DENT: YES, I HAVE TAKEN SOME ETHICS CLASSES, SOME
25 PHILOSOPHY CLASSES AND IN THE COURSE OF MY ENGLISH STUDIES,
26 I HAVE COME ACROSS QUITE A BIT OF DIFFERENT STUDIES.

27 MR. BARENS: WAS THERE ANY OF THAT SORT OF STUDIES THAT
28 WAS MORE INTERESTING TO YOU THAT YOU FOCUSED ON AS YOU PICKED

1 THE CLASSES?

2 MR. DENT: NOT REALLY.

3 THE ONLY SPECIFIC CLASS I EVER TOOK WAS MORE
4 A POLITICAL PHILOSOPHY CLASS, WHICH I WAS MORE DISAPPOINTED
5 IN AT THE END.

6 THE OTHER CLASSES WHERE I WOULD COME INTO CONTACT
7 WITH THAT WOULDN'T REALLY BE BECAUSE OF THE MOVEMENTS INVOLVED, BUT
8 I DID FOCUS ON CERTAIN AREAS WHERE THERE WERE INTELLECTUAL
9 MOVEMENTS GOING ON AT THE TIME, SOME IN ELIZABETHAN
10 AND I DID A LOT OF VICTORIAN STUFF, SO IN THOSE AREAS I WAS
11 EXPOSED TO MORE.

12 MR. BARENS: YOU SAY YOU WERE SOMEWHAT DISAPPOINTED IN
13 THE POLITICAL AND MORAL PHILOSOPHY CLASS TAHT YOU TOOK, AND
14 WHAT WAS THAT, MR. DENT?

15 MR. DENT: WELL, IT WAS TAUGHT BY A VISTING PROFESSOR
16 FROM BOSTON UNIVERSITY WHO -- WELL, PART OF THE PROBLEM WAS
17 I DIDN'T LIKE HIM MUCH AS A LECTURER. THE OTHER PROBLEM
18 WAS HE WAS GOING TO PRESENT GIANTS OF . AND POLITICAL
19 PHILOSOPHY AND STARTED OFF WITH PLATO AND LOCKE AND DOWN THE
20 LINE THROUGH MARX. IN ABOUT THE LAST FOUR WEEKS OF THE COURSE,
21 WE WERE STUDYING OBSCURE PEOPLE HE KNEW FROM HIS HARVARD DAYS,
22 AND THE LIKE, THAT HE CONSIDERED EVERY BIT AS POWERFUL. BUT
23 I HAD TROUBLE FINDING THAT THOSE PEOPLE WERE QUITE ALONG THE
24 SAME LINES AS THE OTHER PEOPLE WE STUDIED.

25 IT SEEMED TO BE THE EXPECTATION HAD GONE INTO
26 THE CLASS OF WANTING TO COVER AND I WASN'T ABLE TO COVER.

27 MR. BARENS: TOWARD THE END OF THAT SEMESTER, DID THE
28 PROFESSOR GET INTO ANYTHING ABOUT THE HART-FULLER DEBATES?

1 MR. DENT: NO.

2 MR. BARENS: DID YOU READ LUCAS' "ON FACTS."?

3 MR. DENT: NO.

4 MR. CHIER: DID HE START ON MARX AND DROP YOU OFF AT
5 MARX AND NEVER GET MORE CONTEMPORARY THAN THAT?

6 MR. DENT: TO TELL YOU THE TRUTH, AND IT SHOWS YOU HOW
7 INTERESTED I WAS IN THE CLASS, THAT I DON'T REMEMBER WHO THE
8 LAST PERSON WE STUDIED WAS. IT WAS A CONTINUATION OF MARX,
9 BUT NOT, SAY, ON AN ECONOMIC OR SOCIAL LEVEL BUT MORE ON THE
10 LEVEL OF SOCIAL JUSTICE OF --

11 WE SPENT A LOT OF TIME ON MARX TALKING ABOUT
12 OBVIOUS THINGS THAT COME UP IN MARX: WAGE, LABOR AND CAPITAL,
13 THAT SORT OF THING. BUT THAT WAS PRETTY MUCH DROPPED AND HE
14 WENT ON A DIFFERENT TANGENT.

15 MR. BARENS: YOU HAVE A BACHELOR'S DEGREE IN ENGLISH
16 LITERATURE?

17 MR. DENT: YES.

18 MR. BARENS: AND WAS THAT IN MORE CONTEMPORARY ENGLISH
19 LIT OR THE WHOLE GAMUT OF ENGLISH LIT?

20 MR. DENT: PRETTY MUCH THE WHOLE GAMUT. VERY LITTLE
21 CONTEMPORARY, ACTUALLY. IT WAS THE ENGLISH NOVEL UP UNTIL
22 THE TURN OF THE CENTURY AND SOME 19TH CENTURY DRAMA AND WITH
23 A BIT OF ELIZABETHAN.

24 MR. BARENS: DID YOU EVER HAVE A FELLOW NAMED PROFESSOR
25 LEAHAN AT UCLA?

26 MR. DENT: SURE, I TOOK A CLASS FROM HIM.

27 MR. BARENS: WHEN YOU TOOK PROFESSOR LEAHAN'S CLASS,
28 DID YOU TALK IN THAT CLASS ABOUT EXISTENTIALISM, DO YOU

1 REMEMBER THAT?

2 MR. DENT: NOT REALLY. IT DIDN'T COME UP IN THAT
3 PARTICULAR COURSE.

4 MR. BARENS: WHAT DID YOU READ IN DR. LEAHAN'S CLASS?

5 MR. DENT: THAT WAS AN HONOR'S CLASS, AN INTER-
6 DISCIPLINARY CLASS ON THE RISE OF THE WEST AND BASICALLY WAS
7 THE STUDY OF THE RISE OF CAPITALISM AND IT WAS A COMBINATION
8 OF A HISTORY COURSE AND ENGLISH COURSE, READING HISTORICAL
9 TEXTS AT THE SAME TIME AS READING THE LITERARY WORK. SO HE
10 WOULD START WITH DE FOE AND YOU GO THROUGH DICKENS AND THEN
11 GO THROUGH FITZGERALD AND THAT SORT OF THING.

12 MR. BARENS: YOU DIDN'T TALK, AS YOU GOT INTO THE MORE
13 MODERN THINGS, ABOUT TRANSCENDENTAL THOUGHTS OR CAMUS OR ANY
14 OF THE FRENCH WRITERS AND THEIR PHILOSOPHIES?

15 MR. DENT: THAT REALLY WASN'T THE FOCUS OF THE COURSE,
16 AND CERTAINLY NOT CONTINENTAL WRITERS BECAUSE THE EMPHASIS
17 WAS AMERICAN.

18 MR. BARENS: DID HE TALK ABOUT PRAGMATISM?

19 MR. DENT: YES, ABSOLUTELY.

20 MR. BARENS: YOU KNOW WHAT I MEAN BY EXISTENTIALISM,
21 DON'T YOU?

22 MR. DENT: YES, SIR.

23 MR. BARENS: DID YOU EVER TALK ABOUT A CONCEPT KNOWN
24 AS THE PARADOX PHILOSOPHY?

25 MR. DENT: I HAVE NEVER HEARD OF IT BY THAT NAME BUT
26 BASED ON WHAT I HEARD YOU TALKING ABOUT EARLIER, I AM FAMILIAR
27 WITH IT.

28 ONCE AGAIN, I HAVE STUDIED A NUMBER OF

1 EXISTENTIALIST AUTHORS IN NOVEL WRITING, SPECIFICALLY
2 HEMINGWAY, ALTHOUGH I HAVE NEVER READ SARTRE OR ANYTHING OF
3 THAT SORT BUT I AM FAMILIAR WITH IT. I HAVE ALSO READ
4 REBUTTALS TO EXISTENTIALISTS.

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6A-1

1 MR. BARENS: WELL, IF I TOLD YOU THAT WE MIGHT HAVE
2 TO DEAL WITH SOMETHING CALLED THE PARADOX PHILOSOPHY, HOW
3 DO YOU DEFINE THAT, BASED ON THE TYPE OF EXPOSURE YOU HAD
4 IN YOUR EDUCATION OVER AT UCLA?

5 MR. DENT: IF I UNDERSTAND CORRECTLY FROM WHAT I HEARD
6 EARLIER, IT IS THE IDEA THAT THERE ARE NO -- THERE IS NO
7 ABSOLUTE REALITY AND THAT TWO THINGS CAN APPEAR TO DIFFERENT
8 SIDES TO BE ABSOLUTELY TRUE BUT IT IS DEPENDENT MORE UPON
9 HOW THEY PERCEIVE IT.

10 AND IF YOU WANTED TO COMPARE IT WITH SOMETHING
11 LIKE PLATO, THERE IS NO ABSOLUTE FORM LYING OUT THERE, NO
12 ABSOLUTE TRUTH. IT IS SIMPLY DUE TO DIFFERENT PEOPLE PERCEIVING
13 DIFFERENT THINGS.

14 MR. BARENS: YOU CERTAINLY COULDN'T COMPARE IT WITH
15 THE VICTORIANS, WHO THOUGHT THEY KNEW ABSOLUTE TRUTH AND
16 ABSOLUTE GOOD AND BAD?

17 MR. DENT: SOMETHING LIKE THAT.

18 MR. BARENS: WHEN YOU ARE INTO THAT TYPE OF PHILOSOPHY,
19 DOES IT SEEM TO BESPEAK SOMETHING WHERE THE ENDS JUSTIFY THE
20 MEANS?

21 MR. DENT: THAT IS A LITTLE BIT BEYOND WHAT I KNOW.
22 I DON'T KNOW WHAT -- IF I READ SARTRE OR SOMETHING, I DON'T
23 KNOW WHAT HE WOULD SAY ON SOMETHING LIKE THAT.

24 I KNOW THAT OF WHAT LITERATURE THAT I HAVE READ
25 IN THAT AREA, THAT WOULDN'T BE TRUE. MOST PEOPLE MIGHT SAY
26 THAT THERE MAY NOT BE A GOD OR ABSOLUTE TRUTH OR GOOD OR SOME-
27 THING BUT THAT IS PRECISELY THE CHALLENGE, TO LIVE A JUST
28 LIFE, DESPITE THAT FACT. SO, IT MAY NOT NECESSARILY BE.

6A-2
1 MR. BARENS: DOES MORALITY PLAY A ROLE IN EXISTENTIALISM?

2 MR. DENT: ABSOLUTELY.

3 MR. BARENS: SO, YOU COULD HAVE AN EXISTENTIALIST OR
4 EVEN A PERSON WHO MIGHT BE SUBSCRIBING TO PARADOX PHILOSOPHY
5 THOUGH, WHO COULD STILL SUBSCRIBE TO A MORAL BELIEF, A
6 TRADITIONAL WESTERNER IN A CHRISTIAN SOCIETY?

7 MR. DENT: ABSOLUTELY.

8 MR. BARENS: NOTHING INCONSISTENT WITH THAT, IS THERE?

9 MR. DENT: NO.

10 MR. BARENS: IN YOUR JOB, YOU DO TECHNICAL WRITING?

11 MR. DENT: YES.

12 MR. BARENS: DO YOU WRITE A MANUAL OR A MANUSCRIPT OF
13 SOME KIND?

14 MR. DENT: YES, MANUALS.

15 MR. BARENS: AND MYSELF AS A USER, I WOULD REFER TO
16 YOUR MANUAL IN OPERATING A CERTAIN PIECE OF HARDWARE?

17 MR. DENT: OR SOFTWARE, YES.

18 MR. BARENS: NOW, YOU TRY TO BE RATHER SPECIFIC AND
19 PRECISE I SUPPOSE, AS PRECISE AS LANGUAGE PERMITS YOU TO BE
20 WHEN YOU DO THAT, DON'T YOU?

21 MR. DENT: THAT'S HALF OF THE CHALLENGE, YES.

22 MR. BARENS: NONETHELESS, YOU STILL GET A LOT OF CALLS
23 FROM PEOPLE ASKING YOUR COMPANY, WHAT DID YOU MEAN WHEN YOU
24 WROTE SO AND SO, DON'T YOU?

25 MR. DENT: FORTUNATELY, I DO NOT GET THE CALLS. BUT
26 THEY COME IN.

27 MR. BARENS: DO YOU HEAR ABOUT THOSE CALLS?

28 MR. DENT: THE MORE SERIOUS ONES, YES.

16A-3

1 MR. BARENS: AND DOES THAT TELL YOU THAT WHENEVER YOU
2 HAVE WRITING IN THE ENGLISH LANGUAGE, NO MATTER HOW SPECIFIC
3 WE ATTEMPT TO BE, IT IS SUBJECT TO INTERPRETATION?

4 MR. DENT: ABSOLUTELY.

5 MR. BARENS: SOME CONFUSION?

6 MR. DENT: YES.

7 MR. BARENS: NOW, YOU FOUND THAT WHEN YOU WERE READING
8 FOR YOUR MAJOR, YOU HAD THE SAME THING, DIDN'T YOU?

9 DIDN'T SOME OF YOUR PROFESSORS INTERPRET THE
10 AUTHOR'S MEANING AS ONE THING AND YOU THOUGHT WELL, GEEZ,
11 I SEE HIS WHOLE POINT AS BEING A LOT DIFFERENT THAN THAT?

12 MR. DENT: YES. THAT'S RIGHT.

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16B-1

1 MR. BARENS: I AM SURE OTHER STUDENTS IN YOUR CLASS
2 SAW THINGS THE SAME WAY?

3 MR. DENT: YES.

4 MR. BARENS: IF YOU HAD TO CONSIDER SOME WRITING IN
5 A COURT CASE, WOULDN'T YOU WANT TO CAREFULLY ANALYZE THE
6 DIFFERENCE BETWEEN WHAT WAS WRITTEN, LET'S ASSUME AND -- WELL,
7 ASSUME THAT WE ARE TALKING ABOUT SOMETHING WRITTEN LIKE A
8 "TO BE DONE" SOMETHING.

9 YOU ARE GOING TO DO SO AND SO OR WHATEVER. WOULDN'T
10 YOU CAREFULLY COMPARE WHAT IS WRITTEN TO BE DONE VERSUS ACTUALLY
11 IS DONE?

12 MR. DENT: YES.

13 MR. BARENS: JUST BECAUSE YOUR MANUAL SAYS YOU DO A,
14 B, C AND D, IT DOESN'T NECESSARILY MEAN THAT EVERYONE WHO
15 READS IT NUMBER ONE, UNDERSTANDS A, B, C AND D OR ACTUALLY
16 PERFORMS A, B, C AND D?

17 MR. DENT: THAT'S RIGHT.

18 MR. BARENS: WASN'T THAT ONE OF THE THINGS YOU WERE
19 TAUGHT, TO BE A LITTLE SKEPTICAL ABOUT LANGUAGE?

20 MR. DENT: YES.

21 MR. BARENS: OKAY. DO YOU HAVE ANY HOBBIES?

22 MR. DENT: YEAH. I HAVE A PERSONAL COMPUTER, SO I HACK
23 ON THAT.

24 I PLAY BASKETBALL AND A LITTLE BIT OF GOLF.

25 THIS PAST FALL, I HAVE BEEN SPENDING A LOT OF
26 TIME STUDYING FOR THE LSAT BECAUSE I AM HOPEFULLY --

27 MR. BARENS: YES?

28 THE COURT: WHAT IS THAT?

1 MR. DENT: THE LAW SCHOOL ADMISSION TEST. AND I HAVE
2 APPLICATIONS OUT RIGHT NOW.

3 MR. BARENS: PROBABLY, UNDOUBTEDLY, YOU WILL WANT TO
4 GO TO USC FOR LAW SCHOOL. BUT I WON'T GET INTO THAT, AFTER
5 YOU WERE AT UCLA. OKAY.

6 IN YOUR STUDIES, YOU READ THE "GREAT GATSBY"?

7 MR. DENT: YES. A NUMBER OF TIMES.

8 MR. BARENS: DID YOU HAVE DR. LEAHAN FOR THAT?

9 MR. DENT: THAT WAS IN THE SAME COURSE, YES.

10 MR. BARENS: AND HE HAD A PARTICULAR INTERPRETATION
11 AS TO WHAT WAS OPERATIVE IN THAT, DIDN'T HE?

12 MR. DENT: YES.

13 MR. BARENS: DID YOU AGREE WITH HIS INTERPRETATION
14 THROUGHOUT?

15 MR. DENT: FOR THE MOST PART, YES. IT IS A BIT DIFFICULT
16 FOR ME TO REMEMBER. THAT WAS BACK IN MY FRESHMAN YEAR OF
17 COLLEGE, WHICH IS SEVEN YEARS AGO OR SO. BUT ON THE WHOLE,
18 I DON'T REMEMBER HAVING ANY MAJOR DISAGREEMENT WITH HIM ON
19 THAT.

20 MR. BARENS: GATSBY APPEARED TO BE THE VICTIM OF
21 CAPITALISM?

22 MR. DENT: I DON'T KNOW IF "VICTIM" IS A GOOD WORD.
23 MAYBE HE WAS THE PRODUCT OF AN OVER ADHERENCE TO AN IDEALISM,
24 A SORT OF BLIND IDEALISM.

25 MR. BARENS: HORATIO ALGER AS A CHILD --

26 MR. DENT: YES.

27 MR. BARENS: KEEPS A LIST OF ALL DAILY ACTIVITIES?

28 MR. DENT: YES.

1 MR. BARENS: REALLY A BUSY FELLOW?

2 MR. DENT: YES.

3 MR. BARENS: ASPIRING AND ACHIEVING?

4 MR. DENT: YES.

5 MR. BARENS: DO YOU THINK GATSBY HAD A MORAL SIDE TO
6 HIM?

7 MR. DENT: ABSOLUTELY.

8 MR. BARENS: MORALITY AS REALITY?

9 MR. DENT: YES. SURE IT WAS.

10 MR. BARENS: SPENT HIS WHOLE LIFE IN PURSUIT OF DOLLARS
11 BUT YET, IN MORALITY, IN SOME CANON OF ETHICS, IT REMAINED
12 APPARENT?

13 MR. DENT: YES.

14 MR. BARENS: GATSBY AS A PRAGMATIST?

15 MR. DENT: YES.

16 MR. BARENS: STILL MORAL?

17 MR. DENT: ABSOLUTELY.

18 MR. BARENS: STILL MAKING A MORAL JUDGMENT ON RIGHT
19 AND WRONG?

20 MR. DENT: YES.

21 MR. BARENS: OFFENDED BY MURDER?

22 MR. DENT: YES.

23 MR. BARENS: OFFENDED BY THE CASUALNESS OF MURDER?

24 MR. DENT: YES.

25 MR. BARENS: DO YOU REMEMBER THE BBC, THE BILLIONAIRE
26 BOYS CLUB, ALLEGEDLY WOULD YOU FIND ANYTHING SUSPICIOUS OR
27 PERHAPS PECULIAR ABOUT A YOUNG MAN THAT MIGHT BELONG TO AN
28 ORGANIZATION WITH THAT TITLE?

5B-4
1 MR. DENT: NO. IT SOUNDS LIKE MEDIA HYPE. I DON'T
2 KNOW WHERE THE NAME CAME FROM. BUT IT SOUNDS LIKE SOMETHING
3 LIKE THAT.

4 MR. BARENS: YOU WOULD FIRST WANT TO FIND OUT IF THE
5 MEMBERS OF THAT GROUP EVEN CALLED THEMSELVES THE BILLIONAIRE
6 BOYS CLUB OR IF IT WAS A PRODUCT OF THE MEDIA, THAT MIGHT
7 HAVE STARTED AFTER THE TRIAL IN THE CASE WAS FILED?

8 MR. DENT: MY FIRST INCLINATION IN EITHER CASE, WOULD
9 BE TO THROW IT OUT. I AM NOT TERRIBLY INTERESTED IN THE NAME.

10 MR. BARENS: THAT WOULDN'T BE GERMANE TO YOU?

11 MR. DENT: YES.

12 MR. BARENS: HOW DO YOU FEEL ABOUT THAT COCOON THAT
13 MR. HUNT COMES WRAPPED IN, FOR ALL PURPOSES, THAT PRESUMPTION
14 OF INNOCENCE?

15 MR. DENT: VERY COMFORTABLE WITH IT.
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16B-5

1 MR. BARENS: CONSISTENT WITH YOUR BELIEF SYSTEM?

2 MR. DENT: ABSOLUTELY.

3 MR. BARENS: DO YOU THINK IT IS WORTHWHILE?

4 MR. DENT: DEFINITELY.

5 MR. BARENS: NOW, WE HAVE BEEN TALKING ABOUT CHOICES
6 AND PROBABILITIES AND POSSIBILITIES AND REASONABLE AND NOT
7 REASONABLE.

8 WE HEARD MR. CHIER AND LATER MR. WAPNER, THIS
9 AFTERNOON, TALK ABOUT IF YOU SAW A WET SIDEWALK, WHAT DO WE
10 PRESUME.

11 AND PERHAPS THE MOST PROBABLE OF THE POSSILITIES
12 IS THAT IT IS RAINING OR THAT THE GARDENER IS THERE. WE EVEN
13 HEARD THE LEARNED MR. CHIER SAY WELL, A PIPE BREAKING, THAT
14 IS PROBABLY NOT WHAT HAPPENED. DID YOU HEAR THAT?

15 MR. DENT: YES. I DID.

16 MR. BARENS: WELL, LET ME ASK YOU SOMETHING. MR. DENT,
17 JUST BECAUSE SOMETHING IS OUT OF THE ORDINARY, DO YOU EQUATE
18 UNUSUAL WITH UNREASONABLE?

19 MR. DENT: NO I DON'T.

20 MR. BARENS: OKAY. THE FACT THAT WE COULD HAVE A UNIQUE,
21 EVEN A SINGULAR EXPLANATION TO A SET OF FACTS, DOESN'T
22 NECESSARILY MAKE THAT UNREASONABLE, DOES IT?

23 MR. DENT: THAT'S RIGHT.

24 MR. BARENS: WOULDN'T WE FIRST HAVE TO KNOW ALL OF THE
25 FACTS FOR THAT PARTICULAR CASE BEFORE WE DETERMINED WHAT IS
26 REASONABLE AND WHAT IS NOT?

27 MR. DENT: YES.

28 MR. BARENS: JUST BECAUSE SOMETHING WAS CONTRARY TO

1 HUMAN EXPERIENCE UP TO THAT POINT, MAYBE WE HAD NOT HEARD
2 THAT STORY BEFORE, WE DON'T NECESSARILY HAVE TO HEAR SOMETHING
3 THAT WE HAVE ALL HEARD, TO FIND IF IT IS REASONABLE, DO WE?

4 MR. DENT: NO.

5 MR. BARENS: IT IS AN EDUCATIONAL PROCESS. THAT IS
6 WHAT A TRIAL IS, ABOUT EDUCATING THE JUROR TO A SET OF
7 FACTS ABOUT A PARTICULAR CASE?

8 MR. DENT: YES.

9 MR. BARENS: WE DON'T PRESUME THAT IN EVERY CASE, THAT
10 THIS OR ANY OTHER CASE IS EXACTLY LIKE EVERY OTHER CASE, DO
11 WE?

12 MR. DENT: NO.

13 MR. BARENS: EACH CASE STANDS OR FALLS ON ITS OWN,
14 DOESN'T IT?

15 MR. DENT: YES.

16 MR. BARENS: SO WHEN WE DETERMINE WHAT IS REASONABLE,
17 WE HAVE TO LOOK AT WHAT IS REASONABLE WITHIN THE FACTS OF
18 THE CASE BEFORE THE JURY, DON'T WE?

19 MR. DENT: YES WE DO.

20 MR. BARENS: NOT BASED ON SOME CASE THAT IT SHOULD BE
21 LIKE OR MIGHT BE LIKE?

22 MR. DENT: THAT'S RIGHT.

23 MR. BARENS: WHO MAKES THE DECISION ON WHAT IS
24 REASONABLE?

25 MR. DENT: WE DO.

26 MR. BARENS: AS JURORS?

27 MR. DENT: YES.

28 MR. BARENS: NOW, WE HEARD COMMENTARY ABOUT THAT

16C-1

1 PRESUMPTION OF INNOCENCE WHERE THE GOVERNMENT LAWYERS SAY
2 TO YOU, WELL, YOU KNOW, A LOT OF PEOPLE SITTING THERE WHERE
3 MR. HUNT IS WITH THAT PRESUMPTION OF REASONABLE -- SORRY,
4 THAT PRESUMPTION OF INNOCENCE, WERE LATER FOUND GUILTY.

5 I SUPPOSE THAT IS TO DEPRECIATE ONE'S APPRECIATION
6 FOR THE SIGNIFICANCE OF THAT COCOON.

7 MR. WAPNER: EXCUSE ME. I WOULD LIKE TO TAKE AN
8 EXCEPTION TO THAT. IT IS NOT TO DEPRECIATE ANYTHING.

9 THE COURT: I GOT A NOTE FROM THE BAILIFF. I DIDN'T
10 HEAR THE QUESTION AND ANSWER. WOULD YOU READ IT BACK?

11 (RECORD WAS READ BY THE REPORTER.)

12 THE COURT: REPHRASE YOUR QUESTION. I CAN'T UNDERSTAND
13 IT.

14 MR. BARENS: WE HAVE HEARD THE DISCUSSION THAT THE PEOPLE
15 WHO HAD THAT PRESUMPTION OF INNOCENCE, WERE LATER FOUND GUILTY.
16 LET'S JUST SAY THAT I DON'T KNOW WHY MR. WAPNER SAID THAT.
17 BUT NONETHELESS, IT WAS SAID. DO YOU REMEMBER HEARING THAT?

18 MR. DENT: YES.

19 MR. BARENS: DO YOU ALSO APPRECIATE THE FACT THAT A
20 LOT OF PEOPLE WHO HAVE SAT THERE WITH THAT PRESUMPTION OF
21 INNOCENCE, EVEN THOUGH THE GOVERNMENT CAME AFTER THEM AND
22 ACCUSED THEM OF COMMITTING SERIOUS CRIMES AND MURDER AND PUT
23 ON A FULL CASE WITH ALL OF THE WITNESSES THEY COULD PRODUCE,
24 THAT IS, WITNESSES AT THEIR DISPOSAL, A LOT OF THOSE PEOPLE
25 WERE FOUND INNOCENT AND THE JURORS REJECTED THOSE CHARGES?

26 MR. DENT: YES.

27 MR. BARENS: DO YOU UNDERSTAND THAT IT IS A TWO-WAY
28 STREET?

16c-2
1 MR. DENT: YES I DO.

2 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

3 MR. DENT: NO I HAVE NOT.

4 MR. BARENS: DO YOU HAVE ANY BROTHERS OR SISTERS?

5 MR. DENT: THREE SISTERS AND A BROTHER.

6 MR. BARENS: MY GOODNESS. DO THEY ALL LIVE IN
7 CALIFORNIA HERE LOCALLY?

8 MR. DENT: ONE OF THEM. MY YOUNGEST SISTER IS LEFT.
9 THE OTHER THREE ARE SCATTERED AROUND.

10 MR. BARENS: COULD YOU JUST, STARTING FROM THE OLDEST
11 TO THE YOUNGEST, TELL ME WHAT THEY DO FOR A LIVING?

12 MR. DENT: SURE. MY OLDEST SISTER IS STUDYING FOR HER
13 DOCTORATE IN PSYCHOLOGY AT THE WRIGHT INSTITUTE IN BERKELEY.

14 MY BROTHER IS GETTING AN ARCHITECTURAL DEGREE
15 AT THE UNIVERSITY OF OREGON.

16 MY NEXT SISTER IS A FIRST-YEAR LAW STUDENT AT
17 STANFORD.

18 THEN THERE IS ME AND MY YOUNGER SISTER. SHE IS
19 JUST FINISHING UP AT UCLA.

20 MR. BARENS: AND WHAT IS SHE MAJORING IN?

21 MR. DENT: ECONOMICS.

22 MR. BARENS: WELL, THERE ARE LAW SCHOOL THINGS GOING
23 ON HERE. HAVE YOU TAKEN ANY LAW CLASSES?

24 MR. DENT: NO I HAVE NOT.

25 MR. BARENS: AT UCLA IN YOUR SENIOR YEAR -- LET'S SEE.
26 WHAT YEAR DID THEY HAVE -- YOU DIDN'T TAKE THAT CLASS ON LAW
27 AND ETHICS THAT THEY HAVE?

28 MR. DENT: NO.

16C-3

1 MR. BARENS: BUSINESS LAW?

2 MR. DENT: NO. I HAVE NO LAW BACKGROUND IN ANYTHING.

3 MR. BARENS: ANYTHING IN ACCOUNTING THAT YOU TOOK?

4 THE COURT: YOU WILL HAVE ALL OF THAT WHEN YOU GET THROUGH
5 WITH THIS CASE.

6 MR. DENT: YES. I KNOW.

7 MR. BARENS: IT MIGHT WELL GIVE YOU A RUNNING START,

8 MR. DENT. ANYTHING IN ECONOMICS?

9 MR. DENT: I HAVE TAKEN THE SIMPLEST, MOST BASIC
10 MACROECONOMICS COURSE AND THE SIMPLEST MOST BASIC ACCOUNTING
11 COURSE AND I HAVE FORGOTTEN MOST OF BOTH OF THEM, I AM AFRAID.

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1 MR. BARENS: OKAY, WELL, WE WILL GET IT ALL OVER AGAIN.

2 NOT TO PRY, BUT DO YOU HAVE A STEADY GIRLFRIEND?

3 MR. DENT: NOT RIGHT NOW, NO.

4 MR. BARENS: HAVE YOU HAD ANY SIGNIFICANT CONTACTS IN
5 YOUR LIFE WITH LAW ENFORCEMENT?

6 MR. DENT: NO, NOT AT ALL.

7 MR. BARENS: HOW DO YOU FEEL ABOUT BEING A JUROR ON THIS
8 CASE PROSPECTIVELY, IS IT SOMETHING YOU WOULD LIKE TO DO?

9 MR. DENT: DEFINITELY. GIVEN WHAT IS HOPEFULLY IN STORE
10 FOR ME, THIS IS LITERALLY MY ONCE-IN-A-LIFETIME CHANCE SO --

11 MR. BARENS: DO YOU THINK THAT ALTHOUGH YOU PLAN TO BE
12 A LAWYER, YOU COULD TRY TO JUDGE THE FACTS YOU HEAR IN THIS
13 CASE AND BE INSTRUCTED BY THE JUDGE AS HE INSTRUCTS YOU TO
14 DEAL WITH THE EVIDENCE, RATHER THAN ANY PRECONCEIVED IDEAS
15 YOU MIGHT HAVE AS A PROSPECTIVE COUNSEL, RATHER THAN A JUROR?

16 MR. DENT: WELL, I CAN PROBABLY ANSWER THAT BY SAYING
17 THAT I AM NOT GOING TO LAW SCHOOL TO BECOME A LAWYER. THAT
18 MAY WELL BE WHAT LIES AT THE END OF IT BUT I AM DOING IT MUCH
19 MORE FOR BOTH AN ACADEMIC CHALLENGE -- I AM INTERESTED IN GOING
20 ON AND DOING MORE GRADUATE WORK BUT I DON'T WANT TO BE
21 STRANDED AFTER X NUMBER OF YEARS OF WORKING FOR A DEGREE AND
22 HAVING SOMETHING THAT IS USELESS TO ME, SO WHILE BEING A
23 COUNSEL MAY BE A POSSIBILITY DOWN THE ROAD, IT IS NOT CERTAINLY,
24 NOT A CAREER GOAL AT THIS POINT AND I DON'T THINK IT WOULD
25 HAVE ANY BEARING ON MY THINKING.

26 MR. BARENS: WHAT SORT OF POSTGRADUATE WORK WOULD YOU
27 BE INTERESTED IN?

28 MR. DENT: WELL, MY OTHER POSSIBILITY WOULD BE TO GET

1 A DOCTORATE IN ENGLISH BUT ANYBODY WHO -- MY FATHER IS A
2 RETIRED PROFESSOR OF ENGLISH AT UCLA AND WAS THE VICE
3 CHAIRMAN OF THE DEPARTMENT FOR SOME TIME AND DID A LOT OF
4 INTERVIEWING OF PROSPECTIVE FACULTY MEMBERS AND TELLS ME IT
5 IS JUST TOO TOUGH A WORLD OUT THERE UNLESS YOU ARE A BIT OF
6 A MASOCHIST, THERE IS NOT MUCH REASON TO GO INTO IT.

7 MR. BARENS: HAVE YOU DONE ANY WRITING YOURSELF?

8 MR. DENT: PUBLISHABLE WRITING?

9 MR. BARENS: YES.

10 MR. DENT: NO, I HAVEN'T.

11 MR. BARENS: YOU HAVEN'T DONE ANY MASTER'S WORK --

12 MR. DENT: NO.

13 MR. BARENS: -- AS FAR AS A MASTER'S THESIS OR ANYTHING
14 LIKE THAT?

15 MR. DENT: NO.

16 MR. BARENS: DO YOU RECALL WHAT WAS THE LAST TERM PAPER
17 YOU WROTE ON AN ELECTIVE BASIS WHERE YOU WERE ABLE TO CHOOSE
18 YOUR TOPIC?

19 MR. DENT: WELL, I WROTE TWO IN MY LAST QUARTER THERE,
20 ONE WAS A SHAKESPERIAN COURSE AND IT WAS A COMPARISON OF
21 MACBETH AND RICHARD, III AS TRAGEDY AND THE OTHER WAS IN A
22 RHETORIC CLASS, AN EXAMINATION OF TEDDY KENNEDY'S SPEECH TO
23 THE 1980 DEMOCRATIC CONVENTION AS A RHETORICAL EXERCISE.

24 MR. BARENS: I WILL STAY AWAY FROM BOTH.

25 (LAUGHTER IN THE COURTROOM.)

26 MR. BARENS: WHILE YOU WERE AT UCLA, DID YOU SPEND ANY
27 TIME ON THE SCOPES TRIAL?

28 MR. DENT: NO.

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1 MR. BARENS: YOU DIDN'T HAVE A MANDATORY READING ON THAT

2 MR. DENT: NO.

3 MR. BARENS: -- OR ANALYSIS ON THAT?

4 ANYTHING ON ANY CASES, CONTEMPORARY CASES SUCH
5 AS LEOPOLD AND LOEB.

6 MR. DENT: NOT THAT I CAN THINK OF.

7 MR. BARENS: DID YOU READ "IN COLD BLOOD"?

8 MR. DENT: NO.

9 MR. BARENS: THANK YOU VERY MUCH, MR. DENT.

10 PASS FOR CAUSE, YOUR HONOR.

11 THE COURT: ALL RIGHT.

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1 MR. WAPNER: GOOD AFTERNOON, MR. DENT.

2 MR. DENT: GOOD AFTERNOON.

3 MR. WAPNER: THE JUDGE ASKED YOU ABOUT THE GENERAL
4 QUESTIONS. THE OTHER SIDE OF THAT WAS THAT THERE WERE CERTAIN
5 SPECIFIC ONES THAT YOU WOULD ANSWER DIFFERENTLY.

6 ARE THERE ANY OF THEM THAT YOU REMEMBER THAT YOU
7 WOULD ANSWER DIFFERENTLY?

8 MR. DENT: WELL, JUST IN WHAT WENT ON A FEW MINUTES AGO --
9 WITH ALL DUE RESPECT, I HAVE READ SOME AYN RAND
10 AND I DON'T HAVE THE SAME OPINION ON THAT.

11 MR. WAPNER: DOES THAT MEAN THAT IF YOU AND MRS.
12 FURSTENBERG ARE BOTH ON THE JURY THAT YOU CAN'T GET ALONG?

13 MR. DENT: NO, I DON'T THINK SO.

14 MR. WAPNER: ANYTHING ELSE THAT YOU REMEMBER SPECIFICALLY
15 ON QUESTIONS THAT WERE ASKED?

16 MR. DENT: OH, NO, NOT REALLY.

17 I MEAN THEY WERE ALL DEALING WITH SPECIFIC
18 BACKGROUNDS AND THAT SORT OF THING.

19 MR. WAPNER: YOUR FOLKS ARE STILL LIVING LOCALLY?

20 MR. DENT: YES, THEY ARE.

21 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO THEM?

22 MR. DENT: MY FATHER, EVERY WEEK, I GO OVER THERE TO
23 THEIR HOUSE IN THE VALLEY ON SUNDAY NIGHTS.

24 MY MOM IS AN AEROSPACE PROPOSAL WRITING CONSULTANT
25 AND DOES QUITE A BIT OF TRAVELING SO WHEN SHE IS IN TOWN I
26 SEE HER EVERY WEEK. IT HAS BEEN ABOUT TWO MONTHS SINCE I
27 HAVE SEEN HER LAST.

28 MR. WAPNER: WHAT IS YOUR DAD DOING NOW THAT HE IS

1 RETIRED?

2 MR. DENT: PRETTY MUCH THE SAME OLD THING THAT HE WAS
3 DOING WHEN HE WASN'T RETIRED, EXCEPT HE IS NOT TEACHING BUT
4 HE HAS BOUGHT HIMSELF A PERSONAL COMPUTER AND HOLES HIMSELF
5 UP IN HIS HOME OFFICE AND CONTINUES TO DO THE SAME RESEARCH
6 AND SAME PUBLISHING THAT HE WAS DOING BEFORE, EXCEPT NOW FULL
7 TIME.

8 MR. WAPNER: WHAT KIND OF BOOKS OR ARTICLES HAS HE
9 WRITTEN AND PUBLISHED?

10 MR. DENT: REALLY EXCITING STUFF. HE PUBLISHES AN INDEX
11 OF ALL OF THE PROVERBS IN SHAKESPEARE'S 36 PLAYS.

12 (LAUGHTER IN THE COURTROOM.)

13 MR. WAPNER: WAIT, I HAVE GOT TO RUN OUT AND GET THAT.

14 MR. DENT: IT IS GOOD READING.

15 THE COURT: THEY HAVE BECOME PROVERBS BUT THEY WEREN'T
16 IN HIS TIME, WERE THEY?

17 MR. DENT: WELL, THAT IS WHAT THE ISSUE OF THE BOOK WAS,
18 WHICH OF THESE WERE PROVERBS? A LOT OF THESE THINGS HAVE BEEN
19 ASCRIBED TO SHAKESPEARE AS BEING PROVERBS AND THE BOOK SAID,
20 WELL, MOST OF THEM AT THE TIME, HE WAS JUST VERY FOND OF.
21 AND AT THE END OF THAT, WHICH HE HAS BEEN DOING PRETTY MUCH
22 IN HIS RETIREMENT, HE IS DOING THE SAME THING FOR JAMES JOYCES'
23 ULYSSES, WHICH I CONVINCED HIM TO READ AND HE FINALLY READ
24 IT.

25 HE WALKED IN AND SAID "DID YOU NOTICE HOW MANY
26 PROVERBS ARE IN THIS BOOK?" AND SO HE IS OFF ON A NEW BOOK.

27 THE COURT: DO YOU KNOW THE STORY ABOUT THE OLD LADY
28 WHO LOVED TO READ HAMLET BECAUSE IT WAS SO FULL OF QUOTATIONS?

1 (LAUGHTER IN THE COURTROOM.)

2 MR. WAPNER: IN YOUR STUDIES OF LITERATURE, A LOT OF
3 WHAT YOU DID WAS TO TRY AND FIGURE OUT WHAT THE WRITER WAS
4 TRYING TO SAY, RIGHT?

5 MR. DENT: YES.

6 MR. WAPNER: DID YOU EVER HAVE OCCASION TO READ THINGS
7 BY PEOPLE WHO SAID, "I TALKED TO THE WRITER AND HE SAID HE
8 WAS SAYING A, B OR C"?

9 MR. DENT: NO.

10 WE WOULD READ WRITINGS AND THEN READ CRITICISMS
11 BY THE AUTHORS THEMSELVES; SHAW DOES THAT ALL THE TIME.

12 BUT NO, I NEVER HAD A PROFESSOR WHO KNEW ANYONE
13 PERSONALLY, THAT SORT OF THING.

14 MR. WAPNER: IF YOU WERE TRYING TO INTERPRET THE MEANING
15 OF A WRITING AND YOU HAD SOMEBODY WHO SAID "I WAS THERE WHEN
16 THE PERSON WAS WRITING IT AND I SAW HIM WRITING IT AND AS HE
17 WAS WRITING IT HE SAID, THIS MEANS THIS AND THIS MEANS THAT,"
18 THAT WOULD BE KIND OF SIGNIFICANT TO YOU, WOULDN'T IT?

19 MR. DENT: THERE ARE TWO SCHOOLS OF THOUGHT ON THAT.
20 TO ME, YES, THAT WOULD BE.

21 MR. WAPNER: MR. BARENS SAID SOMETHING TO YOU ABOUT
22 THE FACT THAT IF SOMETHING IS CONTRARY TO HUMAN EXPERIENCE,
23 THAT DOESN'T NECESSARILY MAKE IT UNREASONABLE; DO YOU REMEMBER
24 THAT?

25 MR. DENT: YES.

26 MR. WAPNER: IF YOU WERE TRYING TO DETERMINE WHETHER
27 OR NOT SOMETHING A WITNESS SAID WAS REASONABLE OR NOT, WHAT
28 KIND OF THINGS WOULD YOU USE IN YOUR BACKGROUND TO TRY AND

1 MAKE THAT JUDGEMENT?

2 MR. DENT: WELL, IT IS VERY HARD TO ANSWER SPECIFICALLY
3 A QUESTION THAT GENERAL.

4 I WOULD ONLY SAY THAT MOST OF MY EDUCATION HAS
5 BEEN BASED ON LOOKING AT TWO SIDES OF A GIVEN ISSUE. IF I
6 READ AYN RAND, I READ KARL MARX, I DON'T NECESSARILY AGREE
7 WITH EITHER ONE OF THEM. IN THAT EXAMPLE, I WOULDN'T. IT
8 IS ALL ABOUT GETTING AS MUCH DIFFERENT ANGLES ON IT AS YOU
9 CAN AND SEEING WHICH ONE MAKES THE MOST SENSE.

10 IF YOU WANTED TO DECIDE THAT SOMETHING WAS
11 REASONABLE THAT WAS OUTSIDE OF HUMAN EXPERIENCE, THERE WOULD
12 HAVE TO BE QUITE A BIT OF EVIDENCE POINTING TO IT, QUITE A BIT
13 MORE FOR SOMETHING THAT EXTRAORDINARY THAN FOR SOMETHING THAT
14 IS INSIDE THAT REALM .

15 MR. WAPNER: BASICALLY, IF YOU HEAR A WITNESS SAY
16 SOMETHING, WOULDN'T YOU TAKE WHAT WAS YOUR HUMAN EXPERIENCE,
17 WHAT HAD MADE SENSE TO YOU IN OTHER LIFE SITUATIONS AND TRY
18 TO ANALYZE IT IN LIGHT OF THAT?

19 MR. DENT: YES, CERTAINLY.

20 MR. WAPNER: DID YOU UNDERSTAND WHAT I WAS SUGGESTING
21 ABOUT THE PRESUMPTION OF INNOCENCE NOT NECESSARILY MEANING
22 THAT SOMEONE IS INNOCENT?

23 MR. DENT: YES.

24 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY TYPE
25 OF A CON SCHEME?

26 MR. DENT: NO, I HAVEN'T

27 MR. WAPNER: HAVE YOU BEEN THE VICTIM OF ANY KIND OF
28 A THEFT?

29 MR. DENT: NO.

18-1

1 MR. WAPNER: DO YOU HAVE ANY DIFFICULTY USING THE SAME
2 STANDARDS TO EVALUATE THE CREDIBILITY OF ALL WITNESSES WHO
3 TESTIFY?

4 MR. DENT: I DON'T THINK SO, NO.

5 MR. WAPNER: DO YOU UNDERSTAND THAT IT DOESN'T MEAN
6 THAT ALL WITNESSES ARE ENTITLED TO THE SAME WEIGHT?

7 MR. DENT: YES I DO.

8 MR. WAPNER: HAD YOU EVER HEARD OF ANYTHING LABELED
9 "PARADOX PHILOSOPHY" BEFORE YOU CAME INTO THIS COURTROOM?

10 MR. DENT: NO. I NEVER HEARD OF THAT PHRASE BEFORE.

11 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

12 THE COURT: I THINK IT IS WELL FOR US TO TAKE OUR RECESS
13 AT THIS TIME. LADIES AND GENTLEMEN, WE'LL TAKE A 15-MINUTE
14 RECESS AT THIS TIME.

15 (RECESS.)
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1 THE COURT: IT WILL BE STIPULATED THE DEFENDANT AND
2 COUNSEL ARE PRESENT. OUR PROSPECTIVE JURORS ARE PRESENT.

3 I BELIEVE IT WAS THE PEOPLE'S PEREMPTORY.

4 MR. WAPNER: YES. WE WILL THANK AND ASK THE COURT TO
5 EXCUSE JUROR NUMBER 2, MS. BORNE.

6 THE COURT: THANK YOU, MA'AM.

7 (PROSPECTIVE JUROR BORNE EXITED THE
8 COURTROOM.)

9 THE CLERK: LORI BRANNON, B-R-A-N-N-O-N.

10 THE COURT: MISS BRANNON, I THINK THAT IS GETTING TO
11 BE THE HOT SEAT IN THE JURY BOX.

12 MS. BRANNON: I GUESS SO.

13 THE COURT: ALL RIGHT. YOU ALSO HEARD ALL OF THE
14 QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

15 MS. BRANNON: YES.

16 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
17 OF YOU, WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY
18 BE SUBSTANTIALLY THE SAME?

19 MS. BRANNON: THE SAME.

20 THE COURT: ALL RIGHT. HAVE YOU EVER SAT AS A JUROR
21 ON A CRIMINAL CASE BEFORE?

22 MS. BRANNON: NO.

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

24 MS. BRANNON: I AM AN INSURANCE CLAIMS ADJUSTOR FOR
25 THE AUTO CLUB.

26 THE COURT: ON CENTURY PARK EAST?

27 MS. BRANNON: NO, IN TORRANCE.

28 THE COURT: IS THAT RIGHT? WHERE DO YOU LIVE?

1 MS. BRANNON: HAWTHORNE.

2 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

3 MS. BRANNON: ONLY HIGH SCHOOL AT NORTH TORRANCE HIGH
4 SCHOOL.

5 THE COURT: WHERE?

6 MS. BRANNON: NORTH TORRANCE.

7 THE COURT: ALL RIGHT. HAVE YOU OR MEMBERS OF YOUR
8 FAMILY BEEN THE VICTIMS OF ANY KIND OF A CRIME?

9 MS. BRANNON: NOT TO MY KNOWLEDGE.

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

11 MS. BRANNON: YOU ARE WELCOME.

12 MR. BARENS: GOOD AFTERNOON, MS. BRANNON.

13 MS. BRANNON: HI.

14 MR. BARENS: HOW LONG HAVE YOU BEEN AN INSURANCE
15 ADJUSTOR WITH THE AUTO CLUB?

16 MS. BRANNON: FOUR YEARS.

17 MR. BARENS: AND HAVE YOU ALWAYS WORKED IN THE TORRANCE
18 OFFICE?

19 MS. BRANNON: NO. I WAS ALSO EMPLOYED IN THE MANHATTAN
20 BEACH OFFICE FOR TWO YEARS.

21 MR. BARENS: HAVE YOU ALWAYS BEEN A CLAIMS ADJUSTOR?

22 MS. BRANNON: WELL, I STARTED OUT AS A PBX OPERATOR.
23 THEN I SLOWLY CLIMBED MY WAY UP, YES.

24 MR. BARENS: YOU WORK WITH PLAINTIFFS' LAWYERS ALL DAY
25 LONG?

26 MS. BRANNON: YES I DO.

27 MR. BARENS: AND THEY CALL YOU UP AND THEY SEND THEIR
28 SPECIALS TO YOU AND ALL THAT SORT OF THING? AND THEN YOU

18-4
1 GO ON TO EVALUATE THEM AND YOU TALK TO THEM ALL DAY? WELL,
2 AFTER FOUR YEARS OF THAT STUFF, HOW DO YOU FEEL ABOUT LAWYERS?

3 MS. BRANNON: I HAVE A CERTAIN RESPECT FOR THEM,
4 FOR THEIR KNOWLEDGE AND FOR A LOT OF READING THAT THEY DO.

5 AND SO, I HAVE NO REAL OPINION ABOUT THEM, NO.

6 MR. BARENS: YOU DON'T FEEL ANY AUTOMATIC SUSPICION
7 ABOUT LAWYERS BECAUSE THEY MAKE UNREASONABLE DEMANDS UPON
8 YOUR OFFICE?

9 MS. BRANNON: NO I DON'T.

10 MR. BARENS: YOU UNDERSTAND THAT THAT IS JUST PART OF
11 THE PROCESS OF PERSONAL INJURY CLAIMS ADJUSTING, THAT SOMETIMES
12 LAWYERS TAKE POSITIONS THAT MIGHT EXAGGERATE WHAT THEY REALLY
13 EXPECT THEIR CLIENTS TO GET?

14 MS. BRANNON: RIGHT.

15 MR. BARENS: BUT THEY ALSO EXPECT TO GET SOMETHING,
16 DON'T THEY?

17 MR. BRANNON: YES.

18 MR. BARENS: SO, THERE IS A KERNAL OF TRUTH IN WHAT
19 THEY DO WITH YOU?

20 MS. BRANNON: UH-HUH.

21 MR. BARENS: DO YOU CONFERENCE THE CLAIMS THAT YOU
22 GET WITH SUPERVISORS?

23 MS. BRANNON: YES. MOSTLY FOR THE PROPERTY DAMAGE CLAIMS,
24 THE PEOPLE THAT WE DON'T HAVE A CONTRACT FOR, THE CLAIMANT
25 ON THE POLICY.

26 MR. BARENS: WHAT ABOUT YOUR B.I. CLAIMS?

27 MS. BRANNON: I DON'T HANDLE TOO MANY OF THOSE. MOSTLY
28 THEY ARE HANDLED BY THE MEDICAL PORTION WITH OUR INSURED BEING

1 THE CLAIMANT. SO I DON'T HAVE A LOT OF THOSE.

2 MR. BARENS: YOU KNOW GENERALLY ABOUT HANDLING AN
3 UNINSURED MOTORIST CLAIM?

4 MS. BRANNON: ONLY FOR THE PROPERTY DAMAGE, NOT THE
5 MEDICAL. USUALLY WHEN THERE IS AN INSURED, THEY RETAIN AN
6 ATTORNEY AND IT GOES TO LITIGATION. SO IT IS OUT OF MY HANDS.

7 MR. BARENS: DO YOU KNOW ABOUT THE CONTACT RULE BEFORE
8 YOUR U.M. POLICY COMES INTO EFFECT?

9 MR. BRANNON: YES.

10 MR. BARENS: WHAT DO YOU THINK ABOUT THAT? DO YOU THINK
11 IT IS A FAIR RULE?

12 MS. BRANNON: YES. I DON'T SEE ANYTHING UNFAIR ABOUT
13 IT, YOU KNOW.

14 MR. BARENS: AND SUPPOSING THAT YOU HAD ONE OF YOUR
15 INSUREDS CALL UP AND SAY WELL, LISTEN, I WAS TAKING EVASIVE
16 ACTION. I DIDN'T COME INTO CONTACT WITH THE PHANTOM VEHICLE.

17 BUT I WAS TAKING EVASIVE ACTION WHEN I DROVE INTO
18 THIS WALL. I HAVE GOT \$3,000 WORTH OF DAMAGE TO MY NEW CAR.
19 I WOULD LIKE TO KNOW WHAT THE AUTO CLUB IS GOING TO DO ABOUT
20 THIS.

21 WHAT DO YOU FEEL WHEN YOU GET THAT KIND OF A CALL?

22 MS. BRANNON: WELL, I FEEL THAT THEY ARE ENTITLED TO
23 THEIR -- INCONVENIENCE, WHICH THEY CALL -- I FEEL IT IS FAIR,
24 YOU KNOW. I CAN'T -- I DON'T CALL THEM A LIAR WHEN THEY CALL.
25 I CAN'T SAY IT DIDN'T HAPPEN. I HAVE TO GIVE THEM THE BENEFIT
26 OF THE DOUBT, IF IT DID.

27 THEY ARE ENTITLED TO WHAT THEY HAVE, IF IT DID
28 HAPPEN.

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1 MR. BARENS: IN OTHER WORDS, YOU ARE USED TO THAT BENEFIT
2 OF A DOUBT CONCEPT?

3 MS. BRANNON: SURE.

4 MR. BARENS: THAT THERE IS NOTHING UNFAIR ABOUT GIVING
5 THE BENEFIT OF THE DOUBT TO THE CLAIMANT IN THAT INSTANCE,
6 IS THERE?

7 MS. BRANNON: NO.

8 MR. BARENS: NOW, DO YOU READ A LOT OF POLICE REPORTS
9 IN THE NORMAL COURSE OF YOUR WORK?

10 MS. BRANNON: MANY.

11 MR. BARENS: MANY? JUST ABOUT ALL OF THE TIME?

12 MS. BRANNON: YES.

13 MR. BARENS: DO YOU FIND THAT ON THOSE POLICE REPORTS,
14 THAT A LOT OF TIMES, THERE ARE INACCURACIES IN WHAT THE
15 OFFICER WRITES?

16 MS. BRANNON: I WOULD SAY PERHAPS MAYBE IN ONE OUT OF
17 ONE HUNDRED. I MEAN, IT IS VERY FEW.

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1 MR. BARENS: DO YOU HAVE MANY TIMES A CLAIMANT OR AN
2 INSURED THAT TELLS YOU THE POLICE REPORT IS WRONG?

3 MS. BRANNON: UH-HUH, YES.

4 MR. BARENS: DO YOU NECESSARILY BELIEVE THAT THE POLICE
5 REPORT IS RIGHT JUST BECAUSE IT WAS WRITTEN BY A POLICE OFFICER?

6 MS. BRANNON: NOT AT ALL

7 MR. BARENS: IT IS STILL -- I MEAN YOU HAVE HEARD PEOPLE
8 ARGUE ABOUT THE FACTS ON BOTH SIDES, HAVEN'T YOU, ON THOSE
9 POLICE REPORTS?

10 MS. BRANNON: YES, I HAVE.

11 MR. BARENS: IF YOU HEARD A POLICEMAN TESTIFY HERE AS
12 A WITNESS, WOULD YOU BE MORE LIKELY TO BELIEVE HIS TESTIMONY
13 THAN YOU WOULD THE TESTIMONY OF A PRIVATE CITIZEN THAT MIGHT
14 CONTRADICT HIM?

15 MS. BRANNON: NOT AT ALL.

16 MR. BARENS: YOU WOULDN'T HAVE ANY PROBLEM, EVEN THOUGH
17 99 OUT OF 100 TIMES YOU FIND THOSE FACTS THE POLICEMAN WRITE
18 DOWN TO BE ACCURATE?

19 MS. BRANNON: NO. IT WOULD BE AN EQUAL MEASUREMENT.

20 MR. BARENS: MOST OF THE TIME WHEN THESE POLICE REPORTS
21 ARE WRITTEN THEY ARE BASED ON WHAT PEOPLE TELL THEM AFTER
22 THE FACT?

23 MS. BRANNON: RIGHT.

24 MR. BARENS: IT IS VERY SELDOM THAT THE POLICE REPORT
25 IS WRITTEN BY A POLICEMAN WHO ACTUALLY SAW WHAT HAPPENED;
26 ISN'T THAT TRUE?

27 MS. BRANNON: TRUE.

28 MR. BARENS: SO THE POLICEMAN IS INTERPRETING AND MAKING

19-2

1 A JUDGMENT ABOUT WHAT TWO PEOPLE OR EVEN THREE OR FOUR PEOPLE
2 SOMETIMES MIGHT TELL THEM HAPPENED EARLIER IN THAT DAY OR
3 EARLIER THAT NIGHT?

4 MS. BRANNON: CORRECT, UH-HUH.

5 MR. BARENS: SOMETIMES THINGS GET LOST IN THE
6 TRNASLATION?

7 MS. BRANNON: YES.

8 MR. BARENS: AND YOU HAVE SEEN WHERE PEOPLE FILE
9 AMENDED POLICE REPORTS?

10 MS. BRANNON: YES.

11 MR. BARENS: AND SOMETIMES THOSE CAN MAKE A REAL BIG
12 DIFFERENCE?

13 MS. BRANNON: A LOT OF TIMES THEY REALLY CAN'T DO IT
14 A LOT BUT WHEN IT DOES, IT MAKES A DIFFERENCE, YES.

15 MR. BARENS: SOMETHING THAT APPEARED CATEGORICALLY ONE
16 WAY MAY BE SIGNIFICANTLY MODIFIED?

17 MS. BRANNON: YES.

18 MR. BARENS: BECAUSE MORE FACTS WERE BROUGHT INTO THE
19 SITUATION?

20 MS. BRANNON: RIGHT.

21 MR. BARENS: DO YOU UNDERSTAND THAT IS WHY THAT
22 THE PRESUMPTION OF INNOCENCE WE TALKED ABOUT WITH MR. HUNT
23 STAYS WITH HIM INTO THE JURY ROOM ALL DURING YOUR DELIBERATIONS
24 UNTIL YOU REACH A CONCLUSION?

25 MS. BRANNON: I FEEL VERY COMFORTABLE WITH THAT.

26 MR. BARENS: DO YOU UNDERSTAND THAT THE PEOPLE, THE
27 GOVERNMENT GETS TO PUT THEIR WITNESSES ON FIRST, AND PROPERLY
28 SO, BECAUSE THEY HAVE THE INITIAL BURDEN OF PROOF OR THE

9-3
1 SINGULAR BURDEN OF PROOF.

2 WHAT I AM CONCERNED ABOUT IS THAT BECAUSE YOU
3 GET TO HEAR THEIR SIDE OF THE CASE FIRST BEFORE THE DEFENSE
4 HAS PUT ON A WITNESS, THAT BECAUSE THAT IS ALL YOU HAVE HEARD,
5 YOU DON'T SAY, "WELL, I HAVE HEARD THAT SIDE, THAT MAN IS
6 GUILTY"; YOU UNDERSTAND IT WOULDN'T BE APPROPRIATE OR WITHIN
7 THE LAW FOR YOU TO FORM A CONCLUSION ON YOUR OPINION ABOUT
8 MR. HUNT'S GUILT OR INNOCENCE PRIOR TO THE TIME YOU HAVE HEARD
9 THE OTHER SIDE OF THE CASE?

10 MS. BRANNON: UH-HUH, TRUE.

11 MR. BARENS: DOES THAT SEEM REASONABLE TO YOU?

12 MS. BRANNON: YES.

13 MR. BARENS: REASONABLE MINDS CAN DIFFER ABOUT THE SAME
14 FACTS?

15 MS. BRANNON: IT HAPPENS IN MY JOB EVERY DAY.

16 MR. BARENS: EVERY DAY?

17 MS. BRANNON: EVERY DAY.

18 MR. BARENS: NOW, WE ALL KNOW THAT A REAR-END CASE IS
19 ALWAYS AN OPEN AND SHUT CASE, ISN'T IT?

20 MS. BRANNON: YES, BASICALLY.

21 MR. BARENS: ALWAYS?

22 MS. BRANNON: WELL, NOT ALWAYS.

23 MR. BARENS: DON'T YOU GUYS OVER AT THE AUTO CLUB HAVE
24 YOUR LAWYERS ONCE IN A WHILE SAY "HE BACKED INTO OUR CLIENT"?

25 MS. BRANNON: I HAVE NEVER HEARD THAT HAPPEN BUT I AM
26 SURE IT HAS.

27 MR. BARENS: SOMETIMES EVEN THE APPEARANCE IS SIMPLE,
28 A TWO-CAR ACCIDENT, IT LOOKS LIKE HE WAS REAR-ENDED BUT YOUR

19-
1 INSURED IS SAYING TO YOU "DON'T BUY THAT. HE BACKED UP INTO
2 ME"; ISN'T THAT TRUE?

3 MS. BRANNON: THAT IS TRUE, YES.

4 MR. BARENS: IT COULD BE TRUE?

5 MS. BRANNON: YES, IT COULD.

6 MR. BARENS: IT IS A TOUGH CALL ON THAT ONE, ISN'T IT?

7 MS. BRANNON: YES, IT IS.

8 MR. BARENS: ALMOST IMPOSSIBLE?

9 MS. BRANNON: RIGHT.

10 MR. BARENS: HOW ABOUT RED LIGHT-GREEN LIGHT; YOU HAVE
11 THAT ALL OF THE TIME, DON'T YOU?

12 MS. BRANNON: YES.

13 MR. BARENS: TWO PEOPLE ARGUING ABOUT THE COLOR OF THE
14 LIGHT?

15 MS. BRANNON: YES.
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1 MR. BARENS: NO INDEPENDENT WITNESSES?

2 MS. BRANNON: LOTS OF TIMES. TOO MANY.

3 MR. BARENS: WHAT DO WE DO WITH THOSE?

4 MS. BRANNON: SINCE WE HAVE A CONTRACT WITH MY INSURED,
5 WE GIVE THEM THE BENEFIT OF THE DOUBT. WE DECLINE THE CLAIM
6 AND THEY WILL TAKE IT ON A CIVIL MATTER THROUGH SMALL CLAIMS
7 OR WHATEVER.

8 MR. BARENS: THE OTHER SIDE, WE TURN DOWN?

9 MS. BRANNON: RIGHT.

10 MR. BARENS: NO PROOF?

11 MS. BRANNON: NO PROOF.

12 MR. BARENS: NOT PROVEN?

13 MS. BRANNON: RIGHT.

14 MR. BARENS: IT IS A COMPLETELY DIFFERENT SET OF
15 STANDARDS OR CRITERIA WE HAVE TO REACH IN THIS FORM, BUT WE
16 ARE STILL TALKING, AT LEAST ON THE MOST FUNDAMENTAL BASIS
17 ABOUT NOT PROVEN HERE.

18 MS. BRANNON: RIGHT.

19 MR. BARENS: DO YOU UNDERSTAND THAT THE GOVERNMENT HAS
20 THE BURDEN OF PROOF TO SUSTAIN THEIR ALLEGATION THAT JOE DID
21 SOMETHING?

22 MS. BRANNON: YES.

23 MR. BARENS: AND IT IS NOT JUST ONE THING OR TWO THINGS
24 BUT IT IS EVERY SINGLE ELEMENT NECESSARY TO PROVE THAT A MURDER
25 IN FACT TOOK PLACE --

26 MS. BRANNON: UH-HUH.

27 MR. BARENS: -- THAT A PERSON IS DEAD?

28 MS. BRANNON: RIGHT.

1 MR. BARENS: THAT A PERSON IS DEAD AS A RESULT OF
2 CRIMINAL MEANS AND IT TOOK PLACE DURING A ROBBERY AND THAT
3 MR. HUNT DID IT?

4 MS. BRANNON: RIGHT.

5 MR. BARENS: YOU UNDERSTAND THAT WE HAVE GOT TO PROVE
6 ALL OF THOSE THINGS BEFORE YOU CAN VOTE GUILTY?

7 MS. BRANNON: YES, I DO.

8 MR. BARENS: YOU ARE COMFORTABLE WITH THAT?

9 MS. BRANNON: YES, I AM.

10 MR. BARENS: ARE YOU COMFORTABLE WITH THE IDEA THAT
11 IN THIS INSTANCE THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING
12 TO YOU?

13 MS. BRANNON: I AM COMFORTABLE WITH THAT.

14 MR. BARENS: DO YOU HESITATE ON THAT?

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

16 MR. BARENS: DO YOU HAVE ANY HOBBIES?

17 MS. BRANNON: LOTS.

18 MR. BARENS: WHAT WOULD BE YOUR HOBBIES, KIND OF LISTING
19 THEM IN THE MOST ACTIVE -- OR NOT ACTIVE, BUT THE MOST
20 FAVORITE HOBBY, THE LESSER.

21 MS. BRANNON: I ENJOY A LOT OF TENNIS AND A NEW THING
22 CALLED SLICK TRACK, WHICH IS MOTORIZED CARS ON A METAL TRACK
23 AND THAT IS FUN.

24 I ALSO ENJOY SPENDING TIME WITH MY SISTER, WE
25 GO TO THE MOVIES A LOT.

26 I ENJOY VOLLEYBALL ON OCCASION.

27 AND I SPEND A LOT OF TIME WITH MY BOYFRIEND.

28 AND THAT IS ABOUT ALL I HAVE THE TIME FOR.

1 THE COURT: I SHOULD THINK HE WOULDN'T LIKE THAT IF
2 YOU CHARACTERIZE HIM AS BEING A HOBBY.

3 MR. WAPNER: OR AT THE BOTTOM OF THE LIST.

4 (LAUGHTER IN COURTROOM.)

5 MS. BRANNON: WHAT CAN I SAY?

6 MR. BARENS: OKAY. JUST OUT OF CURIOSITY, WHAT IS SLICK
7 TRACK AGAIN?

8 MS. BRANNON: IT IS A MOTORIZED ONE-PERSON CAR AND IT
9 IS AT ASCOT AND IT HAS A METAL GROUND TRACK AND SO WHEN YOU
10 GO AROUND THE CORNERS, YOU KIND OF SLIDE.

11 MR. BARENS: SO ACTUALLY YOU OPERATE THE VEHICLE?

12 MS. BRANNON: RIGHT, RIGHT.

13 MR. BARENS: PERSONALLY?

14 ALL RIGHT, YOU HEAR SOMETHING NEW ALL THE TIME.

15 WHAT DOES YOUR SISTER DO?

16 MS. BRANNON: MY SISTER IS 11. SHE IS A STUDENT.

17 MR. BARENS: I SEE, OKAY.

18 DO YOU HAVE OTHER SISTERS AND BROTHERS?

19 MS. BRANNON: ONE OLDER SISTER, WHO IS IN ESCROW WITH
20 HERMOSA ESCROW IN HERMOSA BEACH.

21 MR. BARENS: AND THAT IS YOUR ONLY SIBLINGS?

22 MS. BRANNON: YES.

23 MR. BARENS: AND WHAT DOES YOUR BOYFRIEND DO?

24 MS. BRANNON: HE IS A SELF-EMPLOYED PLUMBER AND SERVES
25 WEST LOS ANGELES.

26 MR. BARENS: DO YOU HAVE ANY SPECIALIZED EDUCATION OR
27 DID YOU ATTEND ANY CLASSES AFTER YOU GOT OUT OF HIGH SCHOOL?

28 MS. BRANNON: I TOOK TWO YEARS AT SKROC FOR DESIGNING.

1 IT IS AN EDUCATIONAL SCHOOL FOR INTERIOR DESIGNING.

2 MR. BARENS: FOR INTERIOR DESIGNING?

3 MS. BRANNON: YES.

4 MR. BARENS: AFTER THAT, YOU DIDN'T PURSUE THAT AS AN
5 OCCUPATION?

6 MS. BRANNON: NO.

7 MR. BARENS: HOW DID YOU HAPPEN TO DECIDE TO GO TO THE
8 AUTO CLUB?

9 MS. BRANNON: ACTUALLY, MY SISTER WAS A BOOKKEEPER AT
10 THE TIME FOR THE MANHATTAN BEACH AUTO CLUB AND SHE DIRECTED
11 ME TO THE PBX OPERATOR POSITION THAT WAS OPEN AND THEY HIRED
12 ME.

13 MR. BARENS: HAVE YOU EVER OBSERVED A PERSONAL INJURY
14 TRIAL?

15 MS. BRANNON: NO, I HAVEN'T.

16 MR. BARENS: OR ARBITRATION?

17 MS. BRANNON: NO.

18 MR. BARENS: DO YOU FOLKS DO ANY MOCK P.I. TRIALS OVER
19 THERE?

20 MS. BRANNON: NO.

21 MR. BARENS: DO YOU HAVE ANY CONTACTS WITH YOUR HOUSE
22 COUNSEL?

23 MS. BRANNON: NO, I DON'T.

24 MR. BARENS: NONE OF THE FOLKS AT SPRAY, GOULD AND BOWERS?

25 MS. BRANNON: NO.

26 MR. BARENS: NONE OF THOSE FOLKS THAT WORK FOR YOU?

27 MS. BRANNON: THEY MAY CALL ME TO ASK FOR AN ITEM IN
28 MY FILE BUT NOTHING AS FAR AS THAT GOES.

1 MR. BARENS: YOU SAY YOU LIKE TO GO TO MOVIES WITH YOUR
2 SISTER; WHAT WAS THE LAST MOVIE YOU SAW?

3 MS. BRANNON: WELL, IT WAS A DOUBLE FEATURE, "TOP GUN"
4 AND "STAND BY ME."

5 MR. BARENS: DID YOU PICK THE MOVIES?

6 MS. BRANNON: SHE DID BUT I ENJOYED THEM VERY MUCH.

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1 MR. BARENS: YOU COULD RELATE TO THEM?

2 MS. BRANNON: YES.

3 MR. BARENS: YOU RELATE IT TO "STAND BY ME"?

4 MS. BRANNON: YES.

5 MR. BARENS: DO YOU REMEMBER IN THERE THAT SOMETIMES
6 THERE WAS THAT ONE FELLOW, RIGHT IN THE BEGINNING OF THE MOVIE,
7 THAT WANTED TO TAKE CREDIT FOR THINGS MAYBE THAT WEREN'T TRUE?

8 MS. BRANNON: YES.

9 MR. BARENS: COULD YOU SEE HOW PEOPLE MIGHT ACT THAT
10 WAY TO IMPRESS THEIR PEERS OR CONTEMPORARIES?

11 MS. BRANNON: YES.

12 MR. BARENS: AND THAT WOULD BE REASONABLE TO YOU THAT
13 PEOPLE WOULD ACT THAT WAY?

14 MS. BRANNON: YES.

15 MR. BARENS: DO YOU UNDERSTAND THAT THERE IS A DIFFERENCE
16 BETWEEN THINGS THAT PEOPLE SAY THEY HAVE DONE AND PERHAPS WHAT
17 THEY HAVE ACTUALLY DONE?

18 MS. BRANNON: YES.

19 MR. BARENS: AND THERE IS ALSO QUITE A DIFFERENCE BETWEEN
20 SOMETHING I MIGHT SAY I INTEND TO DO --

21 MS. BRANNON: YES.

22 MR. BARENS: AS OPPOSED TO WHAT I DO?

23 MS. BRANNON: UH-HUH.

24 MR. BARENS: WATCH YOUR BOYFRIEND ON THAT.

25 MS. BRANNON: I DO.

26 MR. BARENS: WHAT OCCUPATION WERE YOUR PARENTS IN?

27 MS. BRANNON: MY MOTHER IS IN MANAGEMENT WITH GARRETT
28 AIRESEARCH CORPORATION IN THE CONTRACTS DIVISION.

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1 MY FATHER WHO IS NOW DECEASED, WAS A FRAMER IN
2 CONTRACTS.

3 MR. BARENS: YOU HAVE NEVER BEEN MARRIED, OF COURSE?

4 MS. BRANNON: NO.

5 MR. BARENS: HOW DID YOU FEEL ABOUT THE CONCEPT THAT
6 IN THIS SETTING, CLOSE CALLS AND BENEFITS OF THE DOUBT GO TO
7 THE DEFENDANT?

8 MS. BRANNON: VERY COMFORTABLE WITH THAT.

9 MR. BARENS: COMFORTABLE WITH THAT?

10 MS. BRANNON: YES.

11 MR. BARENS: DO YOU THINK YOU UNDERSTAND ALL OF THE
12 CONCEPTS WE HAVE BEEN DISCUSSING ABOUT CIRCUMSTANTIAL EVIDENCE
13 AND DIRECT EVIDENCE?

14 MS. BRANNON: THE EXAMPLES HELPED A LOT, YES.

15 MR. BARENS: THEY DID?

16 MS. BRANNON: YES.

17 MR. BARENS: EVEN THOUGH WE BEAT THEM TO DEATH?

18 MS. BRANNON: YES. THEY WERE BLOWN UP A LITTLE BUT
19 UNDERSTANDABLE.

20 MR. BARENS: DO YOU UNDERSTAND WHAT I AM TALKING ABOUT
21 WHEN I SAY THAT JUST BECAUSE SOMETHING ISN'T PREDICTABLY WHAT
22 WE MIGHT EXPECT IT TO BE, THAT IT IS STILL AT THE SAME TIME,
23 NOT NECESSARILY UNREASONABLE?

24 MS. BRANNON: YES.

25 MR. BARENS: SOMETIMES THE LESS LIKELY THING YOU THINK
26 SOMETHING IS, CAN TURN OUT TO BE TRUE, ISN'T THAT SO?

27 MS. BRANNON: YES.

28 MR. BARENS: AND ALTHOUGH IT MIGHT NOT BE THE MOST

1 PREDICTABLE ANSWER TO A QUESTION, IT STILL CAN BE TRUE AND
2 ONCE TRUE, IT LOOKS REASONABLE?

3 MS. BRANNON: RIGHT.

4 MR. BARENS: NOW OBVIOUSLY IN THIS CASE, THERE ARE GOING
5 TO BE TWO POINTS OF VIEW AS FAR AS WHAT HAPPENED HERE.

6 NOW, DON'T YOU THINK IT IS IMPORTANT TO HEAR ALL
7 OF THE EVIDENCE BEFORE WE START BELIEVING WHEN THE LAWYERS
8 START SAYING IT IS OBVIOUS AND UNDENIABLE -- BECAUSE WE ALWAYS
9 TALK THAT WAY, MYSELF, EVERYTHING THAT I SAY IS ALWAYS QUITE
10 OBVIOUS AND UNDENIABLE.

11 AND I AM SURE THAT WHAT MR. WAPNER SAYS IS EQUALLY
12 UNDENIABLE. DO YOU UNDERSTAND THAT BEFORE YOU CONCLUDE THAT
13 EITHER OF US IS RIGHT, YOU HAVE TO LISTEN TO ALL OF THE EVIDENCE?

14 MS. BRANNON: YES. I AM USED TO THAT IN MY POSITION
15 AT WORK.

16 MR. BARENS: AND WE HAVE TO AT LEAST CONSIDER ALL OF
17 THE POSSIBILITIES BEFORE WE DECIDE WHAT IS REASONABLE?

18 MS. BRANNON: YES.

19 MR. BARENS: NOW, IF THE GOVERNMENT TELLS YOU WHAT IS
20 REASONABLE, DO YOU FEEL ANY OBLIGATION TO SAY WELL, IF THAT
21 IS WHAT THE GOVERNMENT TELLS ME IS REASONABLE, THAT IS WHAT
22 IS REASONABLE?

23 MS. BRANNON: NO. I HAVE TO JUDGE WHAT IS REASONABLE
24 FOR MYSELF.

25 MR. BARENS: YOU AS JURORS, ARE THE SOLE JUDGES OF WHAT
26 IS REASONABLE AND WHAT IS NOT REASONABLE. AND IF YOU COME
27 TO A CONCLUSION THAT SOMETHING EVEN BIZARRE OR UNLIKELY IS
28 REASONABLE, DO YOU UNDERSTAND THAT YOU ARE ENTITLED TO BELIEVE

20-4

1 THAT?

2 MS. BRANNON: YES.

3 MR. BARENS: AND DO YOU UNDERSTAND THAT EVEN IF 11 OTHER
4 JURORS SAY TO YOU, "MISS BRANNON, THAT IS THE MOST UNREASONABLE
5 POSITION I HAVE EVER HEARD ONE TAKE," YOU STILL REMAIN ENTITLED
6 TO THAT BELIEF?

7 MS. BRANNON: YES.

8 MR. BARENS: ALL RIGHT. SO WE KNOW THERE IS A DIFFERENCE
9 BETWEEN THE CONCEPT OF REASONABLE AND THE USUAL?

10 MS. BRANNON: YES.

11 MR. BARENS: ALTHOUGH SOME THINGS MAY BE PREDICTABLY
12 TRUE, YOU CAN APPRECIATE THAT IN THIS SETTING, AS THEY SAY,
13 IT AIN'T NECESSARILY SO. THANK YOU, MISS BRANNON.

14 MS. BRANNON: THANK YOU.

15 MR. BARENS: I PASS FOR CAUSE, YOUR HONOR.

16 MR. CHIER: HOLD ON FOR ONE MOMENT, PLEASE, YOUR HONOR.

17 MR. BARENS: YES, YOUR HONOR. WE WOULD LIKE A CONFERENCE
18 FOR A MOMENT BEFORE WE ELECT.

19 (BRIEF PAUSE.)

20 MR. BARENS: SORRY. IT IS MR. WAPNER'S --

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1 THE COURT: HE MAY HAVE EQUAL TIME.

2 MR. WAPNER: I FEEL SO SLIGHTED. GOOD AFTERNOON, MISS
3 BRANNON. THE KIDS IN "STAND BY ME" THE ONES THAT WERE TAKING
4 CREDIT FOR THINGS THEY DIDN'T DO, HOW OLD WERE THEY?

5 MS. BRANNON: I WOULD SAY THERE WERE 11, 10 OR 11.

6 MR. WAPNER: 10, 11, 12, I THINK GOING INTO THE SIXTH
7 GRADE. RIGHT?

8 MS. BRANNON: I DON'T REALLY RECALL.

9 MR. WAPNER: HAD BEEN IN THE SIXTH GRADE AND WERE GOING
10 INTO JUNIOR HIGH SCHOOL?

11 MS. BRANNON: OKAY.

12 MR. WAPNER: HAVE YOU HAD FRIENDS OF YOURS, YOUR AGE,
13 COME UP TO YOU AND TAKE CREDIT FOR THINGS THEY DIDN'T DO, TO
14 TRY TO IMPRESS YOU?

15 MS. BRANNON: I REALLY CAN'T RECALL ANYTHING. IN MY
16 LITTLE SISTER, YES. I CAN RELATE IT TO HER.

17 MR. WAPNER: SHE IS 11, ABOUT THE SAME AGE AS THE BOYS
18 IN THE MOVIE?

19 MS. BRANNON: YES. I CAN RELATE IT TO HER. YES.

20 MR. WAPNER: BEFORE YOU SAT AS A JUROR ON THIS CASE,
21 HAD YOU EVER MET MR. BARENS?

22 MS. BRANNON: NO.

23 MR. WAPNER: YOU DON'T KNOW ANYTHING ABOUT HIM, RIGHT?

24 MS. BRANNON: NO.

25 MR. BARENS: HAVING HAD THIS QUESTION AND ANSWER SESSION
26 WITH HIM, JUST FOR THE LAST TEN MINUTES OR SO, DO YOU HAVE
27 AN OPINION AS TO WHETHER HE PRACTICES ANY PERSONAL INJURY LAW?

28 MS. BRANNON: NO.

1 MR. WAPNER: DID HE SEEM TO KNOW A LOT ABOUT IT TO YOU.

2 MS. BRANNON: I AM SURE THAT HE KNOWS A LOT OF THINGS.

3 MR. WAPNER: OKAY. HE ASKED A LOT OF QUESTIONS THAT
4 A PERSONAL INJURY LAWYER OR A PERSON WHO KNEW SOMETHING ABOUT
5 PERSONAL INJURY LAW MIGHT?

6 MS. BRANNON: I AM SURE THAT HE SHOULD BE FAMILIAR WITH
7 IT, YES.

8 MR. WAPNER: WOULD YOU SAY THOSE MIGHT BE CIRCUMSTANCES
9 TENDING TO INDICATE THAT HE EITHER PRACTICES OR USED TO
10 PRACTICE SOME PERSONAL INJURY LAW?

11 MS. BRANNON: IT COULD, YES. I NEVER REALLY SWAYED IT
12 EITHER WAY, THOUGH. SO --

13 MR. WAPNER: ALL RIGHT. IT DIDN'T MAKE YOU THINK ONE
14 WAY OR ANOTHER THAT HE HAD DONE ANYTHING, JUST BECAUSE OF THE
15 QUESTIONS HE ASKED YOU?

16 MS. BRANNON: NO.

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17 MR. WAPNER: IN TRYING TO FIGURE OUT WHETHER A WITNESS
18 IS TELLING THE TRUTH OR NOT, WOULD YOU ANALYZE WHAT THEY SAY
19 IN LIGHT OF YOUR EXPERIENCES?

20 MS. BRANNON: YES.

21 MR. WAPNER: THE THINGS THAT YOU HAVE HAD IN LIFE THAT
22 MAKE SENSE TO YOU?

23 MS. BRANNON: SURE.

24 MR. WAPNER: ALL RIGHT. AND WHEN MR. BARENS SAID THAT
25 IF YOU FIND OUT IT IS TRUE, THEN YOU CAN DETERMINE IF IT IS
26 REASONABLE, DO YOU UNDERSTAND THAT PROBABLY YOUR JOB IS GOING
27 TO BE JUST THE OPPOSITE?

28 THAT IS, LISTENING TO WHAT THEY SAY, THEY ARE

1 NOT GOING TO -- EVERYBODY IS GOING TO TAKE AN OATH AND SWEAR
2 TO TELL THE TRUTH, RIGHT?

3 MS. BRANNON: RIGHT.

4 MR. WAPNER: DO YOU THINK THAT THAT MEANS THEY ARE ALL
5 TELLING THE TRUTH?

6 MS. BRANNON: NO.

7 MR. WAPNER: AND SINCE THEY TAKE THE OATH AND SWORE TO
8 TELL THE TRUTH, DO YOU THINK IT IS LIKELY THAT ON THE WITNESS
9 STAND, THEY WILL ADMIT THEY ARE NOT TELLING THE TRUTH?

10 MS. BRANNON: I AM SURE THAT THAT IS VERY UNLIKELY.

11 MS. WAPNER: ALL RIGHT. SO ISN'T IT MORE LIKELY THAT
12 YOU ARE GOING TO HAVE TO FIGURE OUT WHAT IS REASONABLE FIRST
13 AND THEN TRY TO -- FROM TAKING WHAT IS REASONABLE, DEDUCE WHAT
14 IS TRUE AND WHAT IS NOT?

15 MS. BRANNON: YES.

16 MR. WAPNER: ALL RIGHT. FOR EXAMPLE, IF SOMEONE GETS
17 ON THE WITNESS STAND AND THEY SAY THEY SWEAR TO TELL THE
18 TRUTH AND THEY SAY ORANGES ARE PURPLE, YOU KNOW FROM YOUR
19 COMMON EXPERIENCE THAT THAT IS NOT TRUE. RIGHT?

20 MS. BRANNON: RIGHT.

21 MR. WAPNER: DID YOU HEAR ME TELL SOME OF THE OTHER JURORS
22 THAT YOU ARE NOT OBLIGATED TO LEAVE YOUR REASON AND COMMON
23 SENSE OUT IN THE HALLWAY WHEN YOU COME AND LISTEN TO THE
24 TRIAL?

25 MS. BRANNON: YES.

26 MR. WAPNER: ALL RIGHT. WHEN I SAY TO YOU, WILL YOU
27 ANALYZE WHAT THEY SAY IN LIGHT OF REASON AND COMMON SENSE,
28 WHAT I AM ASKING YOU TO DO IS TO TAKE YOUR COMMON SENSE AND

1 KNOWLEDGE THAT ORANGES ARE ORANGE AND WHEN YOU HEAR HIM SAY
2 THEY ARE PURPLE, YOU SAY THAT YOU ARE FULL OF BALONEY. DO
3 YOU UNDERSTAND THAT?

4 MS. BRANNON: YES.

5 MR. WAPNER: OR PURPLE ORANGES, AS THE CASE MAY BE.
6 YOU ARE THE KIND OF PERSON WHO IS CAPABLE OF CHANGING YOUR
7 MIND IF SOMEONE PROVES TO YOU THAT YOU ARE WRONG?

8 MS. BRANNON: YES.

9 MR. WAPNER: CAN YOU ON THE OTHER HAND, STICK TO YOUR
10 GUNS IF YOU THINK YOU ARE RIGHT?

11 MS. BRANNON: YES.

12 MR. WAPNER: THANK YOU.

13 MS. BRANNON: YOU ARE WELCOME.

14 MS. WAPNER: PASS FOR CAUSE.

15 MS. BRANNON: JUST A MOMENT, YOUR HONOR.

16 THE COURT: YES.

17 (PAUSE.)

18 MR. BARENS: YOUR HONOR, THE DEFENSE RESPECTFULLY
19 ACCEPTS THE PANEL AS PRESENTLY CONSTITUTED.

20 THE COURT: ALL RIGHT, THANK YOU.

21 THE PEOPLE?

22 MR. WAPNER: WE THANK AND ASK THE COURT TO EXCUSE MISS
23 BRANNON, JUROR NUMBER 2.

24 THE COURT: ALL RIGHT. THANK YOU.

25 (PROSPECTIVE JUROR BRANNON EXITS THE
26 COURTROOM.)

27 THE CLERK: ROY STROUP, S-T-R-O-U-P.

28 THE COURT: YOU TOLD US SOMETIME AGO THAT YOU OR A

1 MEMBER OF YOUR FAMILY HAD BEEN A VICTIM OF SOME KIND OF A
2 CRIME?

3 MR. STROUP: YES. OUR HOUSE WAS BURGLARIZED ABOUT TEN
4 YEARS AGO. NOTHING WAS RECOVERED.

5 BUT IT WAS PROBABLY MY OWN FAULT. I HAD THE BACK
6 DOOR OPEN. I JUST HAD A LITTLE DOG, A FRENCH POODLE INSTEAD
7 OF A GERMAN SHEPHERD.

8 THE COURT: WAS IT INVESTIGATED BY THE POLICE?

9 MR. STROUP: YES. THEY CAME AND MADE A REPORT OF THE
10 ARTICLES THAT WERE MISSING. THAT IS THE LAST I HEARD OF IT.

11 THE COURT: ALL RIGHT. DO YOU THINK THAT THEY DID THE
12 BEST THEY COULD?

13 MR. STROUP: I BELIEVE IT, YES.

14 THE COURT: ALL RIGHT.

15 MR. STROUP: ONE OTHER ITEM THAT I NEVER BROUGHT UP
16 BEFORE WHEN I HAVE BEEN ON JURY DUTY IS THAT MY WIFE WAS
17 ROBBED AT GUNPOINT ABOUT 10 YEARS AGO.

18 THE COURT: WAS THE ROBBER EVER CAUGHT?

19 MR. STROUP: NOT TO OUR KNOWLEDGE.

20 THE COURT: BUT THAT TOO, WAS INVESTIGATED?

21 MR. STROUP: YES.

22 THE COURT: NOTHING CAME OUT OF IT?

23 MR. STROUP: NO.

24 THE COURT: THEY DID THE BEST THEY COULD?

25 MR. STROUP: YES. SHE WENT DOWN TO THE POLICE STATION
26 AND LOOKED OVER SOME MUG SHOTS. BUT SHE DIDN'T RECOGNIZE ANY-
27 ONE.

28 THE COURT: WELL, AS A RESULT OF THAT, WOULD THAT IN

1 ANY WAY INFLUENCE YOU AGAINST EITHER ONE OF THE PARTIES IN
2 THE CASE?

3 MR. STROUP: NO WAY.

4 THE COURT: OTHER THAN THAT, WERE I TO ASK YOU THE SAME
5 GENERAL QUESTIONS ASKED OF THE OTHER JURORS, WITHOUT HAVING
6 TO REPEAT THEM IN DETAIL, WOULD YOUR ANSWERS BE ANY DIFFERENT
7 OR WOULD THEY BE SUBSTANTIALLY THE SAME?

8 MR. STROUP: SUBSTANTIALLY THE SAME, YES.

9 THE COURT: ALL RIGHT. WHAT DO YOU DO, MR. STROUP?

10 MR. STROUP: I AM RETIRED.

11 THE COURT: RETIRED?

12 MR. STROUP: YES.

13 THE COURT: FROM WHAT?

14 MR. STROUP: I WAS A MACHINIST AT A COMPANY-OWNED SHOP
15 IN SANTA MONICA, HERE.

21-1

1 THE COURT: AND ARE YOU MARRIED?

2 MR. STROUP: YES.

3 THE COURT: DOES YOUR WIFE PURSUE ANY EMPLOYMENT OUTSIDE
4 THE HOME?

5 MR. STROUP: NOT AT PRESENT, NO.

6 THE COURT: AND WHAT HAD SHE DONE IN THE PAST?

7 MR. STROUP: WELL, IN THE RECENT FIVE YEARS SHE WAS
8 A BABY-SITTER AT HOME FOR ABOUT FIVE YEARS AND THEN BEFORE
9 THAT, SHE WAS IN THE DRYCLEANING BUSINESS AS AN INSPECTOR
10 AND ALSO AS MANAGING THE DRYCLEANING STORE.

11 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

12 MR. STROUP: JUST HIGH SCHOOL.

13 THE COURT: AND HERS?

14 MR. STROUP: HERS IS HIGH SCHOOL ALSO.

15 THE COURT: HAVE YOU EVER SERVED ON A JURY?

16 MR. STROUP: YES, TWO PREVIOUS OCCASIONS.

17 THE COURT: WHAT KIND OF CASES WERE THEY?

18 MR. STROUP: THE LAST ONE ABOUT FOUR YEARS AGO IN
19 INGLEWOOD COURTHOUSE.

20 THE COURT: MUNICIPAL COURT?

21 MR. STROUP: JUST -- IT WAS A DRUNK DRIVING CHARGE.

22 THE COURT: DID THE JURY REACH A VERDICT IN THAT CASE?

23 MR. STROUP: YES, THEY DID.

24 THE COURT: WHAT ABOUT THE OTHER ONE?

25 MR. STROUP: THE OTHER WAS ABOUT 12 YEARS AGO IN SANTA
26 MONICA HERE. I SAT ON TWO DIFFERENT CASES. ONE WAS AN
27 ATTEMPT RAPE, KIDNAPPING AND THERE WAS A HUNG JURY, THE VERDICT,
28 AND THE OTHER CASE WAS A DRUNK DRIVING CHARGE AND WE REACHED

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1 A VERDICT ON THAT.

2 THE COURT: IN ALL OF THOSE CASES, WHATEVER YOU MIGHT
3 HAVE HEARD, YOU WILL JUST LAY THAT ASIDE AND JUST BE GUIDED
4 BY THE EVIDENCE IN THIS CASE AND MY INSTRUCTIONS, RATHER THAN
5 WHAT YOU HEARD BEFORE; IS THAT RIGHT?

6 MR. STROUP: YES, YES.

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

8 MR. BARENS: MR. CHIER WILL QUESTION.

9 MR. CHIER: LET'S SEE IF I HAVE ANY STEAM LEFT,
10 MR. STROUP.

11 GOOD AFTERNOON, SIR.

12 MR. STROUP: GOOD AFTERNOON.

13 MR. CHIER: BEFORE DISCUSSING SOME GENERAL STUFF WITH
14 YOU, I WOULD LIKE TO FOCUS IF I MIGHT ON YOUR PRIOR -- I WOULD
15 LIKE TO FOCUS ACTUALLY ON THE INCIDENT WHERE YOUR WIFE WAS
16 THE VICTIM OF AN ARMED ROBBERY.

17 MR. STROUP: ALL RIGHT.

18 MR. CHIER: ALL RIGHT, WERE YOU MARRIED TO HER AT THE
19 TIME?

20 MR. STROUP: YES.

21 MR. CHIER: AND HOW LONG AGO DID THAT HAPPEN?

22 MR. STROUP: THAT IS ABOUT 12, 13 YEARS AGO.

23 MR. CHIER: DID IT HAPPEN HERE IN CALIFORNIA?

24 MR. STROUP: JUST DOWN THE STREET IN VENICE.

25 MR. CHIER: JUST DOWN THE STREET? WHERE DO YOU PRESENTLY
26 LIVE?

27 MR. STROUP: NO.

28 IT HAPPENED ON LINCOLN BOULEVARD NEAR LAKE STREET

21-3

1 BUT I LIVE WITHIN A MILE OF THERE, YES.

2 MR. CHIER: ARE YOU FROM CALIFORNIA ORIGINALLY?

3 MR. STROUP: NO, I AM NOT.

4 MR. CHIER: WHERE WERE YOU REARED, SIR?

5 MR. STROUP: IN MICHIGAN.

6 MR. CHIER: AND WHEN DID YOU EMIGRATE TO CALIFORNIA?

7 MR. STROUP: IN 1939.

8 MR. CHIER: AND YOU HAVE BEEN HERE EVER SINCE?

9 MR. STROUP: NO, NO.

10 I WAS HERE FOR ABOUT TWO YEARS AND THEN I WENT
11 BACK EAST AND THEN I WENT IN THE SERVICE FOR FIVE YEARS.

12 AND THEN I CAME BACK HERE IN '45 OR '46, AND THEN
13 I WENT BACK TO MICHIGAN AND I WAS SELF-EMPLOYED FOR TEN YEARS
14 AS A DAIRY FARMER.

15 MR. CHIER: AS A DAIRY FARMER?

16 MR. STROUP: YES.

17 MR. CHIER: IN THE VALLEY AREA, IN THE SAN FERNANDO
18 VALLEY?

19 MR. STROUP: NO. THAT WAS BACK IN MICHIGAN.

20 MR. CHIER: OKAY.

21 MR. STROUP: THE LAST TIME I CAME OUT HERE WAS 1958
22 AND I HAVE BEEN OUT HERE EVER SINCE.

23 MR. CHIER: IN SOUTHERN CALIFORNIA CONTINUOUSLY SINCE
24 1958?

25 MR. STROUP: WITHIN THREE MILES OF HERE.

26 MR. CHIER: THREE MILES OF WHERE WE ARE TODAY?

27 MR STROUP: YES.

28 MR. CHIER: AND BEFORE I GET BACK TO THE ROBBERY, SIR,

1 CAN I ASK YOU ABOUT YOUR SERVICE EXPERIENCE; WHAT BRANCH OF
2 THE SERVICE WERE YOU IN?

3 MR. STROUP: I WAS IN THE COMBAT ENGINEERS.

4 MR. CHIER: AND WHERE DID YOU SERVE?

5 MR. STROUP: IN THE EUROPEAN THEATER.

6 MR. CHIER: IN GERMANY?

7 MR. STROUP: IN ABOUT SIX, SEVEN COUNTRIES IN EUROPE.

8 MR. CHIER: AND YOU WERE A COMBAT ENGINEER?

9 MR. STROUP: YES.

10 MR. CHIER: WHAT DID YOU SPECIALIZE IN, SIR?

11 MR. STROUP: LOCATING LAND MINES, PERSONNEL MINES, RIVER
12 CROSSINGS, SHUTTLING THE INFANTRY AND THAT TOOK IN MOST OF
13 IT.

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1 MR. CHIER: DID YOU ACTUALLY EVER GO OUT IN THE MINE
2 FIELDS AND RIVERS WITH METAL DETECTORS LOOKING FOR MINES?

3 MR. STROUP: YES.

4 MR. CHIER: SO YOU ALWAYS FACED DANGER EVERY TIME YOU
5 WENT OUT THERE?

6 MR. STROUP: YES, I WAS IN THE FRONT LINES FOR
7 APPROXIMATELY NINE MONTHS.

8 MR. CHIER: WERE THERE OCCASIONS, MR. STROUP -- AND
9 I AM GOING TO GET BACK TO THE ROBBERY BUT I WOULD LIKE TO
10 DIGRESS RIGHT NOW WITH YOUR SERVICE EXPERIENCE.

11 WOULD YOU SAY THAT THERE WERE OCCASIONS WHEN YOU
12 WERE IN THE SERVICE AND WHEN YOU WERE LOOKING FOR ENEMY MINES
13 WHERE EVERY DECISION YOU MADE WAS A LIFE OR DEATH DECISION
14 FOR YOURSELF OR YOUR BUDDIES?

15 MR. STROUP: YES, YES, THAT IS CORRECT.

A 16 MR. CHIER: WERE THERE OCCASIONS WHEN YOU WERE -- WELL,
17 TELL ME, COULD YOU DESCRIBE FOR ME A LITTLE BIT OF HOW YOU
18 WOULD GO ABOUT, LET'S SAY, CHECKING OUT A MINE FIELD? I HAVE
19 SOME QUESTIONS I WOULD LIKE TO ASK YOU ABOUT THAT.

20 MR. STROUP: WELL, WE HAD MINE DETECTORS AND WHEN THE
21 INFANTRY RAN INTO ANY OBSTACLE WHERE THEY FELT IT WAS MINED,
22 SOME ROADWAYS WERE, SO THEN THEY CALLED US IN AND WE PROCEEDED
23 TO GO OUT TO THE AREA TO REMOVE THE MINES AND DEACTIVATE THEM
24 ONCE WE FIND THEM.

25 MR. CHIER: YOU WERE ALSO IN CHARGE OF DEACTIVATING
26 THESE THINGS --

27 MR. STROUP: YES.

28 MR. CHIER: -- ONCE YOU LOCATED THEM?

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1 MR. STROUP: YES.

2 MR. CHIER: YOU YOURSELF?

3 MR. STROUP: WELL, OUR GROUP DID, BUT WE HAD TRAINING
4 FOR THAT, YES.

5 MR. CHIER: YOU WERE ONE OF THE GROUP THAT WOULD DO
6 THIS?

7 MR. STROUP: YES.

8 MR. CHIER: AND WHAT RANK DID YOU HOLD, SIR?

9 MR. STROUP: I JUST CAME OUT AS A SERGEANT, AS A BUCK
10 SERGEANT, YES.

11 MR. CHIER: AND WERE YOU IN CHARGE OF A GROUP?

12 MR. STROUP: JUST IN THE LATER YEARS, LATER MONTHS,
13 THE LAST COUPLE OF MONTHS OF COMBAT, I WAS A PLATOON SERGEANT.

14 MR. CHIER: SO WHEN YOU SWEEP A FIELD FOR THE EXISTENCE
15 OF MINES, DID YOU DO SO IN SINGLE FILE, DID YOU SPREAD OUT
16 OR HAVE ONE LEAD MAN?

17 MR. STROUP: NO. IT WOULD BE TWO OR THREE OF THEM THERE
18 THAT COVERED THE AREA AND THEY WOULD BE SPACED APART ABOUT
19 SIX TO EIGHT FEET, SOMETHING LIKE THAT.

20 MR. CHIER: DID YOU HAVE TO DECIDE -- WAS EACH STEP
21 FORWARD BY YOU A LIFE OR DEATH DECISION FOR YOU?

22 MR. STROUP: YES, SIR, IT WAS.

23 MR. CHIER: HOW DID YOU MAKE THESE DECISIONS WHETHER
24 TO STEP DOWN OR NOT TO STEP DOWN OR DID YOU HAVE A DEVICE
25 WHICH DID IT FOR YOU?

26 MR. STROUP: WELL, IT WAS SORT OF TRIAL AND ERROR.

27 IF IT WAS ERROR, IT WAS KIND OF FATAL.

28 MR. BARENS: I BEG YOUR PARDON?

1 (WHEREUPON, THE ANSWER WAS READ BY THE
2 REPORTER.)

3 THE COURT: MR. STROUP, WE ARE ALL VERY MUCH INTERESTED
4 SO KEEP YOUR VOICE UP SO WE CAN ALL HEAR YOU.

5 MR. STROUP: YES, YES.

6 MR. CHIER: MR. STROUP, IT IS FAIR TO SAY THAT THERE
7 REALLY WAS NO MARGIN FOR ERROR IN THE TYPE OF WORK YOU WERE
8 DOING, WAS THERE?

9 MR. STROUP: NO.

10 MR. CHIER: DO YOU UNDERSTAND WHAT WE HAVE BEEN TALKING
11 ABOUT WHEN WE HAVE BEEN SPEAKING OF REASONABLE DOUBT,
12 MR. STROUP?

13 MR. STROUP: YES, SIR.

14 MR. CHIER: DO YOU UNDERSTAND THE NOTION THAT REASONABLE
15 DOUBT IS THAT STATE OF MIND, THAT STATE OF THE EVIDENCE WHEN
16 YOU CAN SAY -- WHEN YOU WOULD HESITATE TO ACT IN THE MOST
17 IMPORTANT OF YOUR OWN PRIVATE OR PERSONAL AFFAIRS?

18 MR. STROUP: YES.

19 MR. CHIER: WERE THERE OCCASIONS WHEN YOU HAD DOUBT
20 ABOUT WHETHER TO GO FORWARD IN THE MINE FIELD WHEREVER YOU
21 WERE SWEEPING?

22 MR. STROUP: YES, THERE WERE OCCASIONS, PLENTY OF
23 OCCASIONS.

24 MR. CHIER: WHEN YOU HAD DOUBT ABOUT THE SAFETY OF
25 PROCEEDING FORWARD OR YOU HAD DOUBT ABOUT YOUR INABILITY TO
26 LOCATE MINES WHICH YOU SENSED WERE THERE, DID YOU THEN
27 RECEDE OR GO SOME OTHER DIRECTION?

28 MR. STROUP: YES, WE WOULD RECEDE.

1 MR. CHIER: SO WHEN YOU HAD A DOUBT AND IT WAS BASED
2 UPON REASON, AND IN SOME CASES BASED UPON YOUR EXPERIENCE,
3 YOU ERRED ON THE SIDE OF CAUTION, I TAKE IT?

4 MR. STROUP: YES, WE DID.

5 MR. CHIER: DO YOU UNDERSTAND THAT THE SAME TYPE OF
6 LOGIC AND THE SAME TYPE OF MENTAL ENGINEERING, IF YOU WILL,
7 TAKES PLACE IN A TRIAL OF THIS TYPE?

8 MR. STROUP: YES.

9 MR. CHIER: DO YOU SEE THE SIMILARITY, SIR?

10 MR. STROUP: YES.

11 MR. CHIER: WOULD YOU LIKE TO BE A JUROR IN THIS CASE,
12 SIR?

13 MR. STROUP: YES, I WOULD LIKE TO BE, YES. I FEEL IT
14 IS MY OBLIGATION AND I HAVE BEEN VOTING FOR 50 YEARS AND I
15 HAVE AN ACTIVE INTEREST IN POLITICS SO I FEEL I AM OBLIGATED
16 TO DO IT.

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1 MR. CHIER: YOU DON'T SEE THIS AS ANY KIND OF A POLITI
2 TRIAL, DO YOU?

3 MR. STROUP: GOSH, NOT. NO, SIR.

4 MR. CHIER: ALL RIGHT. EVEN DESPITE THE FACT THAT THERE
5 IS SOME MEDIA ATTENTION, THIS IS NOT A POLITICAL TRIAL?

6 MR. STROUP: NO.

7 MR. CHIER: ALL RIGHT. AND CAN YOU TELL US A LITTLE
8 ABOUT THE ROBBERY THAT YOUR WIFE EXPERIENCED?

9 MR. STROUP: WELL, I DON'T KNOW. IT IS KIND OF SIMPLE.
10 SHE WAS SETTING (SIC) IN A CAR, EATING HER LUNCH AND THE GUY
11 CAME UP FROM BEHIND HER AND PUT A PISTOL TO HER AND SHE SEEN
12 A GUN.

13 I THINK HE ONLY GOT FIVE DOLLARS CASH. SO HE
14 DIDN'T TAKE HER PURSE. HE JUST TOLD HER TO OPEN IT UP AND
15 GIVE HIM THE MONEY OUT OF HER BILLFOLD INSIDE THE PURSE.

16 MR. CHIER: AND SO THE PROPERTY WAS TAKEN BY THIS
17 DEFENDANT OR THIS ASSAILANT BY FORCE OR FEAR OR INTIMIDATION,
18 CORRECT?

19 MR. SHROUP: YES. SHE SEEN THE REVOLVER, THOUGH.

20 MR. CHIER: ALL RIGHT. SO NOW YOU SEE THAT THE
21 ELEMENTS OF A ROBBERY EXIST IN RELATION TO YOUR WIFE'S
22 EXPERIENCE. FIRST THERE WAS A TAKING OF FIVE DOLLARS, THE
23 FIRST ELEMENT. THEN, THERE WAS THE ELEMENT OF FORCE OR FEAR
24 OR INTIMIDATION BY THE PLACING OF THE FIREARM TO HER HEAD,
25 RIGHT?

26 MR. SHROUP: YES.

27 MR. CHIER: SO THAT IS A ROBBERY. AND DO I UNDERSTAND
28 THAT THE PERSON WAS NOT APPREHENDED?

1 MR. SHROUP: NO. HE WAS NOT, NOT TO MY KNOWLEDGE.

2 MR. CHIER: ALL RIGHT. WAS THAT YOUR FIRST -- EITHER
3 YOU OR YOUR WIFE'S FIRST EXPERIENCE AS A VICTIM OF A CRIME?

4 MR. STROUP: YES.

5 MR. CHIER: AND HAVE YOU HAD SUBSEQUENT EXPERIENCES WHICH
6 MAY HAVE BEEN LESSER, JUST THAT YOU HAVE BEEN VICTIMIZED
7 HAVING A CAR RADIO STOLEN OR SOMETHING LIKE THAT?

8 MR. STROUP: NO, JUST BURGLARIZED IN THE HOUSE, IS ALL.

9 MR. CHIER: YOU HAD A HOUSE BURGLARY?

10 MR. STROUP: YES.

11 MR. CHIER: SINCE YOUR WIFE WAS HELD UP AT GUNPOINT?

12 MR. STROUP: YES. IT WAS ABOUT TWO YEARS AFTER SHE GOT
13 HELD UP AT GUNPOINT.

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1 MR. CHIER: NOW, WAS YOUR WIFE TRAUMATIZED BY THAT, SINCE
2 THE ROBBERY?

3 MR. STROUP: NO, NO.

4 MR. CHIER: SHE RECOVERED FROM IT?

5 MR. STROUP: YES. IT DIDN'T SEEM TO BOTHER HER TOO
6 MUCH. SHE WAS FRIGHTENED AT THE TIME.

7 SHE WAS WORRIED THAT THE WORST COULD HAPPEN, WHEN
8 SOMEONE PULLED A GUN ON HER.

9 MR. CHIER: I ANTICIPATE THAT THERE MAY BE EVIDENCE IN
10 THIS CASE, THAT THERE WAS A GUN USED IN A ROBBERY THAT TOOK
11 PLACE AT GUNPOINT.

12 DO YOU THINK THAT IF THAT SHOULD DEVELOP IN THE
13 EVIDENCE, THAT YOUR WIFE'S EXPERIENCE WHICH YOU HAVE EXPERIENCED
14 VICARIOUSLY, WOULD IN ANY WAY AFFECT YOU IN THIS CASE?

15 MR. STROUP: NO. THAT WOULDN'T AFFECT ME.

16 MR. CHIER: I DON'T MEAN TO BE OVERLY SIMPLISTIC OR
17 INSULT YOUR INTELLIGENCE, BUT I HAVE TO ASK THESE QUESTIONS
18 JUST TO MAKE SURE THAT THERE IS NOTHING ABOUT THIS CASE WHICH
19 HAS GIVEN YOU A BAD TASTE OR HAS SOURED YOU TOWARD THE SYSTEM
20 OR ANYTHING AFFECTING MY CLIENT, I HOPE.

21 MR. STROUP: NO. THE FUNNY PART ABOUT IT, I NEVER EVEN
22 BROUGHT IT UP BEFORE. I HAVE BEEN ON JURY DUTY TWICE.

23 MR. CHIER: YOU MEAN THIS IS THE FIRST TIME IT SURFACED
24 IN THREE TIMES THAT YOU HAVE SAT ON JURY DUTY?

25 MR. STROUP: THAT'S RIGHT. SO IT IS --

26 MR. CHIER: SO I TAKE IT THAT YOU AND THE MRS. HAVE PUT
27 IT OUT OF YOUR PRESENT CONSCIOUSNESS?

28 MR. STROUP: YES.

1 MR. CHIER: OKAY. NOW, THE FIRST EXPERIENCE THAT YOU
2 HAD ON JURY DUTY WAS AN ATTEMPTED RAPE OR DRIVING UNDER THE
3 INFLUENCE?

4 MR. STROUP: I THINK THE FIRST ONE WAS DRIVING UNDER
5 TYHE INFLUENCE AND IN THIS COURTHOUSE.

6 AND THEN THE SECOND ONE ON THE SAME JURY DUTY TIME
7 WAS ATTEMPTED RAPE AND KIDNAPPING.

8 MR. CHIER: OKAY. IT WAS THE FIRST, DRIVING UNDER THE
9 INFLUENCE CASE WHERE THE JURY WASN'T ABLE TO REACH A VERDICT?

10 MR. STROUP: NO.

11 MR. CHIER: ALL RIGHT. THERE WAS A VERDICT IN THAT CASE?

12 MR. STROUP: YES.

13 MR. CHIER: WERE YOU A REGULAR OR ALTERNATE ON THAT JURY?

14 MR. STROUP: I WAS A REGULAR.

15 MR. CHIER: AND WAS THERE ANYTHING ABOUT YOUR EXPERIENCE
16 AS A JUROR IN THAT CASE, WHICH CAUSED YOU TO HAVE ANY BIASES
17 OR MIND-SETS AGAINST SOME OF THE PLAYERS IN THIS HUMAN DRAMA
18 SUCH AS THE DEFENSE ATTORNEY?

19 MR. STROUP: NO, NO, SIR.

20 MR. CHIER: DID YOU THINK THAT HE CONDUCTED HIMSELF
21 PROPERLY?

22 MR. STROUP: I THINK SO, YES.

23 MR. CHIER: AND THE D.A. OR THE PROSECUTOR IN THAT CASE?
24 I TAKE IT THAT YOU THOUGHT HE CONDUCTED HIMSELF PROFESSIONALLY?

25 MR. STROUP: YES.

26 MR. CHIER: AND YOU UNDERSTAND THAT THIS IS AN ADVERSARY
27 SYSTEM OF JUSTICE WHERE EACH SIDE PRESENTS EVIDENCE FAVORABLE
28 TO HIS OR HER SIDE?

1 MR. STROUP: YES.

2 MR. CHIER: OKAY. AND DID THE DEFENDANT TESTIFY IN THE
3 CASE IN THE DRIVING UNDER THE INFLUENCE CASE?

4 MR. STROUP: NO, HE DID NOT.

5 MR. CHIER: DID THAT BOTHER YOU IN ANY WAY?

6 MR. STROUP: NO.

7 MR. CHIER: DID YOU WISH THAT YOU COULD HAVE HEARD
8 FROM HIM?

9 MR. STROUP: NO. IT DIDN'T MAKE NO DIFFERENCE TO ME.

10 MR. CHIER: DID YOU FEEL COMFORTABLE --

11 MR. BARENS: COULD WE HAVE THE LAST COMMENT HE SAID?

12 MR. STROUP: NO.

13 MR. BARENS: WHAT DID YOU SAY AFTER THAT, SIR?

14 MR. STROUP: I SAID NO.

15 MR. BARENS: DID YOU SAY AFTER THAT THAT IT DIDN'T
16 MAKE ANY DIFFERENCE TO YOU?

17 MR. STROUP: NO.

18 MR. BARENS: TERRIBLY SORRY, SIR.

19 MR. CHIER: DID YOU AND YOUR FELLOW JURORS IN THAT CASE
20 HAVE ANY DIFFICULTY IN FOLLOWING THE LAW AS GIVEN TO YOU BY
21 THE COURT, DESPITE THE FACT THAT THE DEFENDANT DIDN'T TESTIFY
22 IN THAT CASE?

23 MR. STROUP: NO.

24 MR. CHIER: YOU ACCEPT THAT AS A PART OF THE SYSTEM,
25 THERE IS THIS PRIVILEGE AGAINST SELF-INCRIMINATION WHICH CAN
26 BE ASSERTED BY ANY PERSON IN ANY PROCEEDING WHICH HAS CRIMINAL
27 CONSEQUENCES?

28 MR. STROUP: YES.

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MR. CHIER: AND THAT IT IS UNCONSTITUTIONAL, NOT TO S
IMPROPER TO DRAW ANY INFERENCES FROM THE FACT THAT A DEFEND-
DOES NOT TESTIFY IN CRIMINAL PROCEEDINGS?

MR. STROUP: YES.

MR. CHIER: YOU UNDERSTAND THAT THE FIFTH AMENDMENT
PRIVILEGE SIR, IS A PRIVILEGE WHICH EXISTS ON THE LOWEST
LEVEL OF GOVERNMENT AS WELL AS THE HIGHEST LEVEL OF GOVERNMENT?

1 MR. STROUP: YES. I AM IN FAVOR OF IT.

2 MR. CHIER: PARDON ME?

3 MR. STROUP: I AM IN FAVOR OF IT.

4 MR. CHIER: DO YOU THINK THE TWO GENTLEMEN, NORTH AND
5 WHITEHEAD WHO HAVE ASSERTED THEIR PRIVILEGE UNDER THE
6 AMENDMENT, ARE ANY LESS ENTITLED TO IT BECAUSE --

7 THE COURT: NORTH AND WHITEHEAD. DO YOU MEAN POINDEXTER?

8 MR. CHIER: POINDEXTER. THANK YOU.

9 DO YOU UNDERSTAND THAT IN A DEMOCRACY, WE DON'T
10 DISCRIMINATE AGAINST PEOPLE BECAUSE OF THEIR STATION IN LIFE,
11 BECAUSE OF THEIR COLOR, BECAUSE OF THEIR LACK OF STATURE; DO
12 YOU UNDERSTAND THAT?

13 MR. STROUP: YES.

14 MR. CHIER: THAT IN A DEMOCRACY, EVERYBODY HAS THE SAME
15 RIGHTS?

16 MR. STROUP: EVERYBODY IS EQUAL, YES.

17 MR. CHIER: THE PEOPLE HERE IN THE JURY BOX HAVE THE
18 SAME PRIVILEGE?

19 MR. STROUP: THAT'S RIGHT, YES.

20 MR. CHIER: ALL RIGHT. AND HOW DID YOU FEEL ABOUT THE
21 FACT THAT THERE IS SOME PUBLIC CRITICISM OF POINDEXTER AND
22 NORTH WERE TAKING THIS EXERCISE -- WERE EXERCISING THEIR
23 PRIVILEGE BECAUSE OF THEIR HIGH POSITION IN GOVERNMENT?

24 MR. STROUP: I GUESS THEY HAD REASON FOR DOING IT. AND
25 IN A DEMOCRATIC SOCIETY, IT IS ALL RIGHT TO DO IT.

26 MR. CHIER: LET ME ASK YOU THIS, MR. STROUP. LET ME
27 SEE IF YOU AGREE WITH ME.

28 DON'T YOU THINK THAT THE FACT THAT THE PRIVILEGE

1 AGAINST SELF-INCRIMINATION EXISTS IS REASON ENOUGH FOR EXE
2 THAT PRIVILEGE?

3 MR. STROUP: YES.

4 MR. CHIER: DON'T YOU THINK THAT A PERSON NEED NOT HAVE
5 ANY REASON TO EXERCISE IT, EXERCISE SUCH A PRIVILEGE OTHER
6 THAN THE FACT THAT THAT IS HIS PRIVILEGE?

7 MR. STROUP: YES.

8 MR. CHIER: OKAY. SO, DO YOU FULLY, WITHOUT RESERVATION,
9 ACCEPT THE NOTION THAT IN THE CRIMINAL CASE, THAT IN ALL CASES,
10 A PERSON ACCUSED OF WRONGDOING HAS THIS PRIVILEGE AGAINST
11 SELF-INCRIMINATION?

12 MR. STROUP: YES.

13 MR. CHIER: AND THAT NO INFERENCE NEED OR MUST OR SHOULD
14 BE DRAWN FROM THE EXERCISE OF THAT PRIVILEGE?

15 MR. STROUP: YES.

16 MR. CHIER: THAT IS EVERYBODY'S PRIVILEGE AND THEY
17 DON'T HAVE TO HAVE A REASON FOR EXERCISING IT?

18 MR. STROUP: NO.

19 MR. CHIER: NO MATTER HOW CURIOUS YOU MIGHT BE ABOUT
20 WHAT THEY WOULD SAY IF THEY DIDN'T EXERCISE IT? DO YOU
21 UNDERSTAND THAT?

22 MR. STROUP: YES.

23 MR. CHIER: OKAY. NOW, WAS IT IN THE SECOND CASE SIR,
24 THAT THE JURY FAILED TO REACH A VERDICT?

25 MR. STROUP: YES, THE ATTEMPTED RAPE.

26 MR. CHIER: DO YOU UNDERSTAND THAT IT IS DESIRABLE IN
27 A CRIMINAL CASE TRIED BY A JURY, THAT THE JURY REACH A VERDICT?
28 IT IS DESIRABLE BUT IT IS NOT REQUIRED?

1 MR. STROUP: YES.

2 MR. CHIER: I TAKE IT THAT FROM YOUR EXPERIENCE IN TH
3 CASE, YOU SEE THAT -- BEFORE I ASK YOU THAT QUESTION, DO YOU
4 THINK THAT THE PEOPLE ON THE JURY WHO DIDN'T SEE THE FACTS
5 THE SAME WAY AS YOU DID, WERE UNREASONABLE IN THEIR
6 EVALUATION OF THE EVIDENCE, SIR?

7 MR. STROUP: I DON'T THINK SO.

8 MR. CHIER: COULD YOU AS A JUROR, AS A REASONABLE PERSON,
9 UNDERSTAND HOW THEY WOULD VIEW IT FROM THEIR POINTS OF VIEW,
10 WHATEVER THEY WERE?

11 MR. STROUP: YES.

12 MR. CHIER: ALL RIGHT. SO THAT DID YOU THEN EXPERIENCE
13 FOR YOURSELF, THE FACT THAT REASONABLE PEOPLE CAN VIEW THE
14 SAME EVIDENCE DIFFERENTLY AND COME TO DIFFERENT CONCLUSIONS
15 REGARDING THE SAME EVIDENCE?

16 MR. STROUP: YES.

17 MR. CHIER: ALL RIGHT. IN FACT IT IS INEVITABLE AND
18 I WOULDN'T SAY ABERRATION BUT THE SYSTEM NECESSARILY CAN RESULT
19 IN HUNG JURIES FROM TIME TO TIME WITHOUT THAT BEING ANY KIND
20 OF A INDICTMENT OF THE SYSTEM?

21 MR. STROUP: YES.

22 MR. CHIER: IS THERE ANYTHING FROM YOUR EXPERIENCE AS
23 A JUROR IN THESE OTHER CASES WHICH CAUSED YOU TO HAVE ANY
24 RESERVATIONS OR CRITICISMS ABOUT THE SYSTEM AS A WHOLE?

25 MR. STROUP: I THINK IT IS FAIR. IF ANYTHING, IT IS
26 PROBABLY A LITTLE BIT IN FAVOR OF THE DEFENSE.

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1 MR. CHIER: OKAY, COULD WE TALK ABOUT THIS, MR. STROU
2 EVEN THOUGH THERE IS A ROOM FULL OF PEOPLE HERE, I WOULD VE
3 MUCH LIKE TO DISCUSS THIS PARTICULAR THING WITH YOU IF YOU
4 DON'T MIND.

5 MR. STROUP: OKAY.

6 MR. CHIER: COULD YOU TELL ME WHAT YOU MEANT OR WHAT
7 YOU HAVE IN MIND WHEN YOU THINK THAT THE SYSTEM IS TIPPED
8 A LITTLE BIT IN FAVOR OF THE DEFENDANT.

9 MR. STROUP: WELL, IT IS KIND OF HARD TO GET 12 JURISTS
10 TO AGREE ON ALL POINTS.

11 MR. CHIER: OKAY. SO YOU THINK, IF I UNDERSTAND YOU
12 CORRECTLY, SIR, THE FACT THAT A DEFENDANT CANNOT BE CONVICTED
13 EXCEPT BY UNANIMOUS VOTE OF ALL THE JURORS GIVES THE DEFENDANT
14 AN ADVANTAGE; IS THAT WHAT YOU ARE SAYING?

15 MR. STROUP: WELL, I JUST SAID A LITTLE BIT OF AN
16 ADVANTAGE.

17 MR. CHIER: HOW?

18 BECAUSE YOU THINK IT IS AN IMPOSSIBLE TASK FOR
19 THE PROSECUTION OR NEARLY IMPOSSIBLE TASK TO CONVINCING 12 PEOPLE
20 THAT THE FACTS ARE THE WAY THE PROSECUTION SAYS THEY ARE?

21 MR. STROUP: NO, IT ISN'T IMPOSSIBLE BUT I JUST THINK
22 IT IS A LITTLE BIT IN FAVOR OF THE DEFENDANT, THAT'S ALL.

23 MR. CHIER: DO YOU THINK THAT THE SYSTEM, AT LEAST FROM
24 YOUR POINT OF VIEW, THE SYSTEM WOULD BE BETTER OFF IF A
25 DEFENDANT COULD BE CONVICTED BY A NINE TO THREE VOTE?

26 MR. STROUP: DEFINITELY NOT.

27 MR. CHIER: ALL RIGHT. SO IF YOU THINK THAT IT IS A
28 SLIGHT ADVANTAGE FOR A DEFENDANT FOR THE BURDEN OF PROOF TO

23-2

1 REQUIRE THE UNANIMOUS VOTE OF ALL 12 JURORS, HOW DO YOU
2 THAT THE ADVANTAGE COULD BE TAKEN AWAY FROM THE DEFENDANT
3 IN A CRIMINAL CASE AND THE SITUATION EVENED UP?

4 MR. STROUP: WELL, BY EXTENSIVE INQUIRY OF EACH JURIST,
5 I THINK.

6 MR. CHIER: NOW, THERE WAS A THIRD CASE THAT YOU SAT
7 ON AFTER THE ATTEMPTED RAPE CASE WHERE THE JURY COULD NOT
8 REACH A VERDICT, RIGHT?

9 MR. STROUP: YES.

10 MR. CHIER: AND THAT WAS A DRIVING UNDER THE INFLUENCE
11 CASE?

12 MR. STROUP: YES.

13 MR. CHIER: AND DID THAT JURY REACH A VERDICT?

14 MR. STROUP: YES, WE DID.

15 MR. CHIER: AND HOW LONG AGO WAS THAT JURY SERVICE,
16 SIR?

17 MR. STROUP: THAT WAS ABOUT FOUR YEARS AGO.

18 MR. CHIER: DID THAT EXPERIENCE ON YOUR LAST JURY SERVICE
19 IN ANY WAY CHANGE THE ATTITUDES AND BELIEFS YOU HAD DEVELOPED
20 TOWARD THE JURY SYSTEM, CRIMINAL JUSTICE SYSTEM PRIOR TO THAT
21 TIME?

22 MR. STROUP: NO.

23 MR. CHIER: IT WAS BASICALLY JUST AN AFFIRMATION OF
24 WHAT YOU ALREADY THOUGHT ABOUT THE SYSTEM?

25 MR. STROUP: YES.

26 MR. CHIER: DO YOU THINK THAT IN THIS CASE, WHICH IS
27 NO DIFFERENT THAN ANY OF THE CASES YOU SAT ON OTHER THAN THE
28 PEOPLE ARE DIFFERENT BUT I MEAN IT WAS A CRIMINAL CASE, DO

23-3

1 YOU THINK IN THIS CASE THE DEFENDANT HAS THAT ADVANTAGE
2 BECAUSE THE PROSECUTION IS REQUIRED TO PROVE ITS CASE BEYOND
3 A REASONABLE DOUBT AND CONVINCED ALL 12 PEOPLE, DO YOU THINK
4 THAT?

5 MR. STROUP: NO, I DON'T THINK HE HAS GOT AN ADVANTAGE.

6 MR. CHIER: YOU SAID YOU FELT -- AND I DON'T WANT TO
7 MISQUOTE YOU -- BUT YOU DID SAY THAT YOU THOUGHT THIS WAS
8 AN ADVANTAGE FOR A DEFENDANT IN A CRIMINAL CASE?

9 MR. STROUP: JUST A SLIGHT ADVANTAGE, SIMILAR TO
10 CIRCUMSTANTIAL EVIDENCE.

11 MR. CHIER: SO YOU THINK THE DEFENDANT HAS A SLIGHT
12 ADVANTAGE IN THIS CASE?

13 MR. STROUP: POSSIBLY, YES.

14 MR. CHIER: WELL, I MEAN IN ORDER TO BE CONSISTENT WITH
15 YOUR POINT OF VIEW, YOU WOULD HAVE TO SAY YES; ISN'T THAT
16 SO?

17 MR. STROUP: OH, YES.

18 MR. CHIER: DO YOU THINK THAT THE SLIGHT ADVANTAGE THAT
19 A DEFENDANT HAS IN ALL CASES, AND NECESSARILY IN THIS CASE,
20 ALSO DERIVES FROM THE FACT THAT THE CIRCUMSTANTIAL EVIDENCE
21 RULE FAVORS THE DEFENDANT IN A CASE OF CLOSE CALLS?

22 MR. STROUP: YES, THAT WOULD.

23 MR. CHIER: SO YOU ADD THAT TO THE BURDEN OF PROOF,
24 YOU ADD THAT TO THE FACT THAT THE GOVERNMENT IS REQUIRED TO
25 CONVINCED ALL 12 PEOPLE OF A DEFENDANT'S GUILT AND THEN ADD
26 TO THAT THE FACT THAT HE IS IN THIS COCOON --

27 MR. STROUP: YES, HE IS INNOCENT.

28 MR. CHIER: -- EVEN THOUGH HE HAS BEEN CHARGED WITH





23-4

1 THE CRIME, ALL OF THIS ADDS UP IN YOUR MIND TO SOME SLIGHT
2 ADVANTAGE IN FAVOR OF THE DEFENDANT, RIGHT?

3 MR. STROUP: YES.

4 MR. CHIER: THE D.A. IN THESE CASES HAS KIND OF AN UPHILL
5 BATTLE THAT STARTS WITH ONE HANDICAP, DOESN'T HE?

6 MR. STROUP: IT ISN'T THAT MUCH OF AN ADVANTAGE, THOUGH.

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1 MR. CHIER: WELL, IT IS NOT EVEN, RIGHT, SOME ADVANTAGE,
2 HOWEVER MEASURABLE IT MIGHT BE?

3 MR. STROUP: YES.

4 MR. CHIER: AND YOU THINK THAT SO LONG AS THE SYSTEM
5 STAYS THE WAY IT IS, THAT A DEFENDANT WILL ALWAYS HAVE THAT
6 SLIGHT ADVANTAGE IN CRIMINAL CASES UNLESS THERE ARE SOME
7 CHANGES MADE SOMEWHERE DOWN THE LINE?

8 MR. STROUP: WELL, I THINK IT IS THE BEST SYSTEM GOING
9 IN COMPARISON WITH OTHER COUNTRIES.

10 MR. CHIER: OKAY. BUT EVEN THOUGH IT IS BETTER THAN
11 OTHER SYSTEMS, THERE IS THIS INHERENT INEQUITY WHICH SLIGHTLY
12 FAVORS THE DEFENDANT, IN YOUR BELIEF.

13 MR. STROUP: WELL, THAT IS JUST WHAT I GATHER FROM --
14 I MEAN THAT IS MY OPINION.

15 MR. CHIER: I UNDERSTAND.

16 THE COURT: HE DIDN'T SAY THERE IS ANY INHERENT
17 INEQUITY. HE SAID THERE IS A SLIGHT ADVANTAGE FOR THE
18 DEFENDANT.

19 MR. CHIER: ALL RIGHT. THERE IS IN THIS CASE, AS WELL
20 AS OTHER CASES, A SLIGHT ADVANTAGE FOR THE DEFENDANT?

21 MR. STROUP: YES.

22 MR. CHIER: BECAUSE OF ALL OF THESE THINGS WE HAVE
23 DISCUSSED?

24 MR. STROUP: YES.

25 MR. CHIER: WELL, LET ME ASK YOU, MR. STROUP, DO YOU
26 THINK THAT A PERSON -- DO YOU THINK THAT YOU, HAVING THIS
27 OPINION TO WHICH YOU ARE PERFECTLY ENTITLED AND WHICH NO ONE
28 WILL CRITICIZE YOU FOR, DO YOU THINK THAT IT WOULD BE FAIR

23A-2
1 FOR YOU TO BE A JUROR IN THE CASE, HAVING THIS BELIEF,
2 HOWEVER SLIGHT, THAT THE DEFENDANT HAD AN ADVANTAGE OVER THE
3 PROSECUTOR?

4 MR. STROUP: YES, I THINK I CAN MAKE A FAIR JUDGMENT
5 ON IT.

6 MR. CHIER: WELL, WHAT ARE YOU GOING TO DO? ARE YOU
7 GOING TO HANDICAP THE DEFENDANT?

8 DO YOU PLAY GOLF, SIR?

9 MR. STROUP: YES, I DO.

10 MR. CHIER: YOU KNOW WHAT A HANDICAP IS, RIGHT?

11 MR. STROUP: YES.

12 MR. CHIER: A HANDICAP IS A WAY OF EVENING UP THE PLAYERS
13 SO THAT THEY PLAY ON A RELATIVELY EVEN PAR, RIGHT?

14 MR. STROUP: YES.

15 MR. CHIER: SO BY GIVING THE BETTER PLAYER -- HOW DOES
16 A HANDICAP WORK?

17 I AM NOT GUILTY OF PLAYING GOLF SO --

18 MR. STROUP: WELL, I THINK THE HANDICAP WOULD BE ON
19 THE PROSECUTOR.

20 MR. CHIER: HE HAS A HANDICAP, BECAUSE HE IS THE --

21 WHY DOES HE HAVE THE HANDICAP?

22 MR. STROUP: BECAUSE THAT -- I THINK THAT IS IN FAVOR
23 OF THE DEFENDANT.

24 MR. CHIER: OKAY, SO YOU THINK THE PROSECUTOR WOULD
25 BE HANDICAPPED IN THIS CASE?

26 MR. STROUP: INSTEAD OF THE OTHER WAY AROUND, YES,
27 INSTEAD OF THE DEFENDANT.

28 MR. CHIER: THE DEFENDANT HAS THE ADVANTAGE SO THE

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1 PROSECUTOR HAS THE HANDICAP?

2 MR. STROUP: YES.

3 MR. CHIER: ALL RIGHT, SO THAT IS THE LOGIC OF IT.

4 NOW WHAT ARE WE GOING TO DO, IN YOUR MIND, TO
5 SEE THAT THESE PLAYERS HERE START OFF WITH THE SAME SCORE?

6 DO YOU SEE WHAT THE SITUATION IS, MR. STROUP?
7 IN YOUR MIND, RIGHT OUT OF THE GATE, THE DEFENDANT STARTS
8 WITH EITHER PLUS 1 OR PLUS 2 AND THE PROSECUTOR STARTS WITH
9 MINUS, DO YOU SEE WHAT HAPPENS?

10 MR. STROUP: YES.

11 THE COURT: WAIT A MINUTE NOW. WE HAVE BEEN TELLING
12 THE JURY ALL THROUGHOUT THE WEEKS AND WEEKS AND WEEKS THAT
13 THERE IS A PRESUMPTION OF INNOCENCE THAT CLOTHES THE DEFENDANT
14 IN THE COCCON THAT COUNSEL SPEAKS ABOUT, HE IS SURROUNDED
15 BY THAT. THAT PRESUMPTION STAYS WITH HIM ALL THROUGHOUT THE
16 TRIAL AND ALL THROUGHOUT THE DELIBERATIONS OF THE JURY IN
17 THE JURY ROOM AND HE CAN'T BE CONVICTED UNTIL THE JURY
18 CONVICTS HIM BEYOND A REASONABLE DOUBT; AND REASONABLE DOUBT
19 HAS BEEN DEFINED FOR THE JURY SO THAT OBVIOUSLY THE LAW
20 INTENDED THAT TO BE A BENEFIT FOR THE DEFENDANT. THAT IS
21 ALL THIS JUROR IS SAYING, THAT THE DEFENDANT HAS THE BENEFIT
22 BECAUSE THE LAW GIVES IT TO HIM; ISN'T THAT WHAT YOU ARE TELLING
23 US?

24 MR. STROUP: YES, THAT IS IT RIGHT THERE.

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1 THE COURT: HE CAN'T BE CONVICTED UNLESS IT IS A
2 UNANIMOUS VOTE; IS THAT WHAT YOU ARE TELLING US?

3 MR. STROUP: YES.

4 THE COURT: THAT IS ALL. GO ON.

5 MR. CHIER: YOU ARE SAYING THAT THAT IS NOT A HANDICAP
6 OR THAT THE DEFENDANT DOES NOT HAVE A SLIGHT ADVANTAGE BECAUSE
7 OF THESE THINGS THE JUDGE HAS SAID?

8 MR. STROUP: NO. HE HAS THE COCOON AROUND HIM. IT HAS
9 GOT TO BE WITHIN A REASONABLE DOUBT, MUCH MORE THAN A
10 REASONABLE DOUBT.

11 SO I JUST FIGURE THAT IT IS SORT OF THE BENEFIT
12 OF HIM THAT IS ALL IN THE SYSTEM.

13 MR. CHIER: DO YOU THINK HE STARTS OUT A LITTLE BIT AHEAD
14 OF THE D.A. BECAUSE OF THOSE THINGS?

15 MR. STROUP: WELL, I DON'T THINK HE IS AHEAD OF THE D.A.
16 BUT HE IS STRICTLY ON NEUTRAL GROUND.

17 MR. CHIER: OKAY. DID YOU HEAR ALL OF THE TALK IN THE
18 EXAMPLES ABOUT CIRCUMSTANTIAL EVIDENCE, MR. STROUP?

19 MR. STROUP: YES.

20 MR. CHIER: DO YOU UNDERSTAND WHAT HAPPENS WHEN -- DO
21 YOU REMEMBER THE EXAMPLE ABOUT THE WET SIDEWALK?

22 MR. STROUP: YES.

23 MR. CHIER: AND THERE WERE TWO POSSIBILITIES, WEREN'T
24 THERE? THERE WERE JUST TWO POSSIBILITIES WHICH CAME
25 IMMEDIATELY TO MIND, THAT IT RAINED OR THAT THE GARDENER HAD
26 BEEN THERE, RIGHT?

27 MR. STROUP: YES.

28 MR. CHIER: UPON FURTHER INQUIRY, THERE WERE OTHER

1 POSSIBILITIES, RIGHT, SUCH AS THE PIPE HAD BURST OR --

2 MR. STROUP: THE STREET CLEANER WENT BY.

3 MR. CHIER: ALL RIGHT. OKAY. BUT THERE WERE OTHER
4 POSSIBILITIES. NOW, DO YOU UNDERSTAND WHAT HAPPENS IF THE
5 ONLY EVIDENCE -- IF YOU WERE TO HEAR THE ONLY EVIDENCE TO
6 DECIDE WHETHER IT RAINED OR NOT AND THE ONLY EVIDENCE WAS THAT
7 THE SIDEWALK WAS WET AND YOU KNEW THE GARDENER -- IT WAS
8 3:00 O'CLOCK AND WHEN YOU LOOKED IT WAS A GLOOMY DAY AND THE
9 GARDENER HAD BEEN THERE AT NOON, DO YOU UNDERSTAND THAT YOU
10 HAVE TWO INFERENCES HERE? RIGHT?

11 MR. STROUP: RIGHT.

12 MR. CHIER: AND WHAT YOU HAVE TO DO IN THAT CASE?

13 MR. STROUP: WELL, I WOULD HAVE TO LOOK FOR OTHER
14 EVIDENCE. I WOULD LOOK OUT IN THE STREET OR ACROSS THE
15 STREET OR ON THE CARS PARKED TO SEE IF THERE WAS WATER ON TOP
16 OF THE CARS. IT IS A GOOD POSSIBILITY THAT IT WAS NOT THERE
17 FROM THE SPRINKLERS.

18 MR. CHIER: DO YOU UNDERSTAND THE EVIDENCE, THE ONLY
19 EVIDENCE YOU CONSIDER IS THE EVIDENCE THAT COMES FROM THAT
20 STAND RIGHT THERE, MR. STROUP?

21 MR. STROUP: YES.

22 MR. CHIER: SO IF THERE IS NO OTHER EVIDENCE THAT IS
23 PRESENTED TO YOU, YOU CAN'T GO OUT ON YOUR OWN AND LOOK FOR
24 IT, RIGHT?

25 MR. STROUP: NO.

26 MR. CHIER: YOU HAVE TO MAKE A DECISION BASED ON
27 EVIDENCE THAT IS ACTUALLY PRESENTED TO YOU, EVEN THOUGH YOU
28 OR ALL OF YOU WOULD ACTUALLY DESIRE THAT THERE WOULD BE MORE

1 EVIDENCE. DO YOU UNDERSTAND THAT?

2 MR. STROUP: YES.

3 MR. CHIER: SO, DO YOU UNDERSTAND THAT YOU HAVE TO
4 ACQUIT THE DEFENDANT IN THE CASE OF A DOUBT WHEN THE
5 INFERENCES ARE EQUALLY BALANCED?

6 MR. STROUP: YES.

7 MR. CHIER: DOES THAT BOTHER YOU? DO YOU THINK IT IS
8 AN ADVANTAGE FOR THE DEFENDANT?

9 MR. STROUP: IN NO WAY DOES IT BOTHER ME.

10 MR. CHIER: OKAY. COUNSEL CAN EXAMINE, YOUR HONOR.
11 THANK YOU.

12 THE COURT: DO YOU PASS FOR CAUSE?

13 MR. CHIER: NO.

14 THE COURT: PLEASE COME UP TO THE BENCH. THANK YOU.

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

3 THE COURT: STATE YOUR REASONS.

4 MR. CHIER: I THINK IT IS A LITTLE PREMATURE. MR. WAPNER-

5 THE COURT: WELL, SORRY. STATE YOUR REASONS AS TO WHY
6 YOU THINK YOU CAN'T PASS FOR CAUSE. YOU FINISH YOUR
7 EXAMINATION NOW.

8 MR. CHIER: I BELIEVE THAT THE GENTLEMAN IS NOT A TOTALLY
9 NEUTRAL, UNBIASED WITNESS, AS REQUIRED BY 1070 OF THE PENAL
10 CODE, YOUR HONOR. HE FEELS THAT THESE PROCEDURAL RIGHTS OR
11 PROTECTIONS ARE ADVANTAGES TO A DEFENDANT.

12 THE COURT: WELL, THE LAW GIVES THE DEFENDANT THE
13 ADVANTAGES. THAT IS ALL HE WAS SAYING, THAT YOU NEED A
14 UNANIMOUS VERDICT AND THAT YOU NEED A PRESUMPTION WHICH STAYS
15 WITH HIM ALL THROUGHOUT THE TRIAL. YOU CAN'T CONVICT HIM
16 UNLESS IT IS BEYOND A REASONABLE DOUBT.

17 OF COURSE THERE ARE ADVANTAGES FOR THE DEFENDANT.
18 THIS MAN IS PERFECTLY RIGHT ABOUT THAT. JUST BECAUSE HE
19 EXPRESSES SOMETHING WHICH THE LAW SAYS THE DEFENDANT IS
20 ENTITLED TO, DOESN'T MEAN THAT HE IS PREJUDICED IN ANY WAY.

21 MR. BARENS: YOUR HONOR, COULD I MAKE AN INQUIRY?
22 YOUR HONOR, DOES YOUR HONOR BELIEVE THAT THE WORD "BENEFIT"
23 IN THIS SETTING EQUATES WITH THE WORD "ADVANTAGE"?

24 THE COURT: I DON'T KNOW WHAT THE DIFFERENCE IS. WHY
25 ARE YOU QUIBBLING ABOUT WORDS? WHAT --

26 MR. BARENS: I WILL TELL YOU WHY.

27 THE COURT: THE ONLY THING THAT THIS JUROR SAYS IS THAT
28 THE DEFENDANT HAS AN ADVANTAGE. IT IS AN ADVANTAGE THAT THE

24B-1

1 PEOPLE HAVE TO PROVE THEM GUILTY BEYOND A REASONABLE DOUBT.
2 RIGHT? THAT IS TRUE.

3 MR. BARENS: YOUR HONOR, RESPECTFULLY, THERE IS NO DOUBT
4 IN MY MIND THAT AT THIS MOMENT, EVERY JUROR IN THIS ROOM
5 BELIEVES YOUR HONOR FEELS THAT THE WORD "BENEFIT" EQUATES
6 WITH THE WORD "ADVANTAGE".

7 THE COURT: I DIDN'T SAY ANYTHING ABOUT BENEFIT OR
8 ADVANTAGE. ALL I TOLD THEM WAS THAT THE DEFENDANT HAD CERTAIN
9 ADVANTAGES.

10 MR. BARENS: NOW, YOU USED THE WORD "BENEFIT" AND --

11 THE COURT: LET'S FORGET ABOUT QUIBBLING ABOUT WORDS.

12 MR. BARENS: I AM NOT QUIBBLING BECAUSE THERE IS A
13 DIFFERENCE IN MY MIND.

14 THE COURT: ALL RIGHT. LISTEN, DO YOU HAVE ANYTHING
15 TO ADD?

16 MR. WAPNER: YES I DO. NOTWITHSTANDING EVERYTHING HE
17 SAID, I DON'T THINK HE SAID ANYTHING THAT INDICATED THAT
18 BECAUSE OF ANYTHING HE BELIEVES, HE WOULD BE UNFAIR TO EITHER
19 SIDE. HE WAS STATING HIS OPINIONS ABOUT WHAT THE SYSTEM,
20 HOW THE SYSTEM WORKS.

21 HE DIDN'T SAY THAT BECAUSE OF THAT, HE WOULD TAKE
22 IT OUT ONE WAY OR THE OTHER ON EITHER PARTY.

23 MR. BARENS: YOUR HONOR, BEFORE LEAVING THE POINT --
24 AND YOUR HONOR, I BELIEVE THAT I CAN THEORETICALLY AGREE WITH
25 WHAT YOUR HONOR IS SAYING. THE ONLY THING I AM CONCERNED
26 WITH YOUR HONOR, IS, IF YOUR HONOR WOULD WISH TO ADDRESS THE
27 JURORS TO CLARIFY THAT PERHAPS YOUR HONOR DOES NOT EQUATE
28 ADVANTAGE WITH BENEFIT --

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1 THE COURT: I SAID NOTHING ABOUT BENEFIT.

2 MR. BARENS: YES, YOUR HONOR. WHEN YOU SPOKE TO MR.
3 CHIER FROM THE BENCH, YOU SAID THAT THE CONSTITUTION CONVEYS
4 A BENEFIT.

5 MR. WAPNER: I DON'T THINK IT IS PROPER.

6 THE COURT: I DON'T THINK IT IS EITHER. I WILL TELL
7 YOU THAT YOU SHOULD FINISH UP. THEN I WILL RULE ON THE FACT
8 THAT THERE IS NO CHALLENGE FOR CAUSE AS TO THIS DEFENDANT
9 AND --

10 MR. BARENS: YOUR HONOR, WOULD YOU NOT --

11 THE COURT: AS TO THIS WITNESS.

12 MR. BARENS: YOUR HONOR WOULD NOT CARE TO SAY THAT A
13 BENEFIT IS NOT NECESSARILY AN ADVANTAGE?

14 THE COURT: NO. I WON'T SAY ANYTHING.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 MR. WAPNER: IN LIGHT OF THE HOUR, MAY I START WITH
17 THIS JUROR TOMORROW MORNING?

18 THE COURT: YES.

19 MR. WAPNER: THANK YOU.

20 (THE FOLLOWING PROCEEDINGS WERE HELD
21 IN OPEN COURT:)

22 THE COURT: LADIES AND GENTLEMEN, WE HAVE ABOUT REACHED
23 THE ADJOURNMENT HOUR. SO, WE'LL TAKE AN ADJOURNMENT AT THIS
24 TIME UNTIL TOMORROW MORNING. DO WE HAVE ANYTHING ON THE
25 CALENDAR?

26 THE CLERK: 10:30.

27 THE COURT: WHAT DO WE HAVE? 10:30.

28 WE HAVE A COUPLE OF OTHER MATTERS TO TAKE CARE

1 OF TOMORROW MORNING. WHAT I WILL DO IS ASK YOU TO GO TO THE
2 JURY ASSEMBLY ROOM AT 10:30 TOMORROW MORNING.

3 WHEN WE ARE READY FOR YOU HERE, WE'LL ASK YOU
4 TO COME IN. GOOD NIGHT.

5 (AT 4:25 P.M. AN ADJOURNMENT WAS TAKEN
6 UNTIL TUESDAY, DECEMBER 23, 1986, AT
7 10:30 A.M.)

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