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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

SUPERIOR COURT
NO. A-090435

OCT 09 1987

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

APPEARANCES:

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

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME ³³ OF 101
(PAGES 400 TO 5091, INCLUSIVE)

COPY

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

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.)

JOSEPH HUNT,)

DEFENDANT.)

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

TUESDAY, ~~DECEMBER~~ ^{JANUARY} 13, 198~~6~~⁷

VOLUME 33

PAGES 4900 TO 5091 INCL.

APPEARANCES:

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

FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.
10209 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067

AND

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

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

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TUESDAY, JANUARY 13, 1987 VOLUME 33 PAGES 4900 TO 5091

A.M. 4900

P.M. 4961

PROCEEDINGS

VOIR DIRE OF PROSPECTIVE JURORS (CONTINUED) 4900

1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 13, 1987; 10:30 A.M.

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

3 (APPEARANCES AS NOTED ON TITLE PAGE.)

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

7 (PROSPECTIVE JUROR MICKELL ENTERS
8 CHAMBERS.)

9 THE COURT: HOW ARE YOU, MRS. MICKELL?

10 MS. MICKELL: HELLO.

11 THE COURT: NICE TO SEE YOU.

12 MS. MICKELL: NICE TO SEE YOU.

13 WHERE WOULD YOU LIKE ME TO SIT?

14 THE COURT: ANY PLACE YOU LIKE. I SHOULD SAY WHEREVER
15 YOU SIT IS THE HEAD OF THE TABLE.

16 MS. MICKELL: OH, MY. THANK YOU.

17 THE COURT: WE ASKED YOU TO COME IN -- WOULD YOU MIND
18 SITTING OVER THERE? LET HIM SIT HERE.

19 MS. MICKELL: GOOD MORNING.

20 I WAS TOLD THE FIRST DAY OF JURY DUTY NOT TO
21 ACKNOWLEDGE, SMILE OR EVEN SAY HELLO TO ANYBODY INVOLVED SO
22 I DON'T WANT TO BE UNFRIENDLY.

23 THE COURT: WE ARE HAVING THIS NOT IN FRONT OF THE OTHER
24 JURORS, SO TELL US ABOUT YOUR BROTHER AND HOW YOU CAME TO
25 KNOW THIS, HOW MUCH YOU KNOW AND SO ON.

26 MS. MICKELL: RIGHT. AFTER, I GUESS, AFTER THANKSGIVING
27 THE FAMILY WAS TOGETHER AND WE DIDN'T TALK ABOUT IT, BECAUSE
28 I SAID "I CAN'T TALK ABOUT THE CASE," BUT MY BROTHER TOLD MY

1 MOTHER. I GUESS SHE TOLD HIM THE NAME OF THE CASE OR HE
2 FIGURED OUT WHAT THE CASE WAS, AND HE SAID "OH, I KNEW THE
3 GUY THAT SUPPOSEDLY WAS MURDERED" OR "THAT WAS MURDERED," I
4 DON'T KNOW IF HE KNEW WHICH WAY IT WAS OR WHAT. WE DON'T KNOW
5 WHICH WAY IT WENT.

6 AND SO MY MOTHER SAID "YOUR BROTHER SEEMS TO HAVE
7 MET HIM OR SOMETHING," SO I DIDN'T KNOW WHETHER TO CALL HIM
8 AND FIND OUT ANY MORE BECAUSE I DIDN'T WANT TO KNOW ANY MORE.

9 BUT THEN I CALLED HIM AND I SAID "DON'T TELL ME
10 ANYTHING THAT CAN PREJUDICE ME IN ANY WAY BUT DID YOU -- OR
11 WHEN DID YOU MEET THIS PERSON?"

12 HE SAID "I DON'T KNOW HIM. I MET HIM A COUPLE
13 OF TIMES DURING" -- I SAID "HOW RECENTLY WAS THAT?" AND HE
14 SAID THAT WAS IN 1960 AND THAT IS 26 YEARS AGO.

15 I THOUGHT MAYBE IT WAS A RECENT THING. I DIDN'T
16 KNOW UNTIL AFTER I SENT YOU THE NOTE. FIRST, I SENT YOU A
17 NOTE SAYING THERE WAS A CONNECTION, WHICH I WANTED YOU ALL
18 TO KNOW. THEN A FEW DAYS LATER, MY BROTHER CALLED ME BACK
19 BECAUSE I HADN'T BEEN ABLE TO GET HOLD OF HIM. I SAID "I
20 DON'T WANT YOU TO TELL ME ANYTHING ABOUT THE CASE," SO I SAID
21 "WHAT IS THE LAST TIME YOU SAW HIM?" SO I DIDN'T ASK HIM
22 ANY MORE THAN THAT.

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1 MR. BARENS: THANK YOU, YOUR HONOR. IT IS MRS. MICKELL?

2 MS. MICKELL: YES.

3 MR. BARENS: MRS. MICKELL, DID YOUR BROTHER, ALTHOUGH
4 YOU DIDN'T ASK HIM ANYTHING, VOLUNTEER ANYTHING ABOUT HIS
5 IMPRESSIONS ABOUT MR. LEVIN?

6 MS. MICKELL: I HAVE TO BE HONEST AND SAY IT WAS ABOUT
7 THE KIND OF FEELING THAT I GOT FROM SOME OF YOUR COMMENTS,
8 THAT HE WAS NOT A PARTICULARLY -- BOB SAID HE WAS NOT A
9 FRIEND OF HIS. HE WAS NOT A PARTICULARLY NICE PERSON OR --
10 HE DIDN'T SAY HOW HE WAS NOT NICE.

11 BUT HE SAID THAT HE WAS NOT THE KIND OF PERSON
12 HE WOULD BE FRIENDS WITH.

13 MR. BARENS: DID HE INDICATE WHETHER HE HAD ANY BUSINESS
14 DEALINGS WITH HIM?

15 MS. MICKELL: NO. HE SAID -- I ASKED IF HE WERE IN
16 BUSINESS AND HE SAID NO. IT WAS MAINLY THROUGH A FRIEND OF
17 MY BROTHER'S.

18 MR. BARENS: DID HE EXPRESS AN OPINION AS TO WHAT MIGHT
19 OR MIGHT NOT HAVE HAPPENED TO MR. LEVIN?

20 MS. MICKELL: ABSOLUTELY NOT.

21 MR. BARENS: DID HE EXPRESS AN OPINION AND NOT TO BE
22 COLLOQUIAL OR -- DID HE SAY ANYTHING LIKE, "I KNEW SOMETHING
23 WAS GOING TO HAPPEN TO HIM EVENTUALLY," OR ANY EXPRESSION
24 LIKE THAT?

25 MS. MICKELL: NO.

26 MR. BARENS: DID HE EXPRESS ANY OPINION ABOUT JOE HUNT?

27 MS. MICKELL: NO. NO, NOTHING AT ALL. I DON'T EVEN
28 KNOW EXACTLY HOW HE CONNECTED THE TWO. BUT HE DIDN'T SAY

1 ANYTHING ABOUT HUNT. HE DOES NOT KNOW HUNT.

2 MR. BARENS: YOUR BROTHER DOES NOT? HE KNEW THAT YOU
3 WERE CALLING FROM THE PERSPECTIVE OF A PROSPECTIVE JUROR IN
4 THIS CASE?

5 MS. MICKELL: RIGHT.

6 MR. BARENS: DID YOUR BROTHER COMMENT AT ALL ABOUT YOUR
7 BEING A JUROR ON THIS CASE?

8 MS. MICKELL: NO.

9 MR. BARENS: AND CONVERSELY, DID YOUR MOTHER SAY ANYTHING
10 ABOUT MR. LEVIN OR WHAT YOUR BROTHER MIGHT HAVE SAID TO HER
11 ABOUT MR. LEVIN?

12 MS. MICKELL: NO. THEY KNEW THAT I AM A REALLY -- WHEN
13 I WALKED IN, I SAID THAT WE COULDN'T DISCUSS IT BECAUSE I
14 WAS IMPANELED. I THINK THEY, OUT OF UNDERSTANDING OF THE
15 WAY I AM -- AND I HAVE ONE OTHER NEW THING SINCE THANKSGIVING.
16 THE BAR EXAM RESULTS CAME THE DAY AFTER THANKSGIVING. I HAVE
17 A NIECE, ONE OF THE OTHER MICKELLS WHO HAS BEEN ACCEPTED,
18 PASSED THE BAR.

19 SHE WAS VERY NERVOUS ABOUT THE RESULTS WHICH WERE
20 COMING OUT THE DAY AFTER THANKSGIVING. AND BECAUSE LINDA
21 WAS IMPANELED, NOBODY SHOULD DISCUSS THE JURY CASE. WE
22 REALLY DID NOT MENTION ANYTHING SINCE.

23 MR. BARENS: AND I AM QUITE THANKFUL FOR YOUR CANDOR
24 AND FOR YOUR FOLLOWING THE JUDGE'S INSTRUCTIONS IN THAT
25 REGARD.

26 DID YOUR BROTHER SAY ANYTHING ELSE THAT WE SHOULD
27 KNOW CONCERNING EITHER LEVIN OR YOUR JURY SERVICE OR
28 ANYTHING AT ALL ABOUT THAT?

1 MS. MICKELL: NO. HE SAID AS I SAY, THAT HE WAS NOT
2 A PARTICULARLY NICE PERSON IN 1960. BUT HE HAD NOT SEEN HIM
3 SINCE.

4 THE COURT: WHATEVER CONVERSATIONS YOU HAD, WHATEVER
5 FACTS YOU MIGHT HAVE GOTTEN IF ANY, IS THAT GOING TO
6 INFLUENCE YOU IN SERVING AS AN IMPARTIAL JUROR?

7 MS. MICKELL: NO.

8 MR. BARENS: COULD I BE AT LIBERTY TO ASK ONE OTHER
9 QUESTION?

10 THE COURT: SURE.

11 MR. BARENS: HIS HONOR INDICATED I THINK, THAT YOU ALSO
12 HAD PRIOR CONTACT WITH THE JUDGE IN THIS CASE?

13 MS. MICKELL: YES.

14 MR. BARENS: WOULD THAT IN ANY WAY -- I THOUGHT I SHOULD
15 ASK THIS QUESTION NOW RATHER THAN IN FRONT OF THE PANEL, IF
16 YOUR HONOR DOES NOT MIND.

17 WOULD THAT IN ANY WAY INFLUENCE YOUR ORIENTATION
18 ON THIS CASE?

19 MS. MICKELL: ABSOLUTELY NOT.

20 MR. BARENS: ALL RIGHT.

21 MS. MICKELL: I KNOW ONE OTHER JUDGE.

22 THE COURT: WE MET BRIEFLY ABOUT TEN YEARS AGO.

23 MS. MICKELL: I THINK IT WAS THAT AT LEAST, PROBABLY.

24 MR. BARENS: WOULD THE FACT, IF IT SHOULD HAPPEN --
25 AND I AM SURE THIS COULD NEVER OCCUR, BUT IF HIS HONOR AND
26 MYSELF DISAGREE ON A POINT DURING THE TRIAL, AS INCREDIBLE
27 AS THAT MAY SOUND, MS. MICKELL --

28 THE COURT: THE SAME THING COULD BE SAID ABOUT THE

1 PEOPLE. WE MIGHT DISAGREE DURING THE COURSE OF A TRIAL.
2 THAT WOULDN'T INFLUENCE YOU AGAINST ANYBODY?

3 MR. BARENS: THE FACT THAT YOU KNOW HIS HONOR WOULD
4 NOT INFLUENCE YOU AGAINST ME OR MR. WAPNER IN THAT REGARD?

5 MS. MICKELL: NO.

6 MR. BARENS: THANK YOU.

7 MR. WAPNER: MS. MICKELL, CAN YOU RECONSTRUCT AS BEST
8 YOU CAN, THE CONVERSATION YOU HAD WITH YOUR BROTHER?

9 MS. MICKELL: OKAY. IT WAS A PHONE CONVERSATION.

10 MR. WAPNER: ALL RIGHT.

11 MS. MICKELL: AND I SAID TO HIM, "BOB, I AM ON THIS
12 PANEL AND I GUESS MOTHER AND DAD TOLD YOU THE CASE OR
13 SOMEHOW, YOU MENTIONED THAT YOU KNEW OR HAD MET THE ALLEGED
14 VICTIM OF THE CASE."

15 AND HE SAID YES. I AM TRYING TO THINK. I MUST
16 HAVE HAD TWO CONVERSATIONS BECAUSE THE FIRST TIME I SAID THAT
17 I DIDN'T WANT TO KNOW ANYTHING MORE ABOUT IT. I SAID THAT
18 I WOULD WRITE A NOTE.

19 THEN A FEW DAYS LATER, I THOUGHT THAT I BETTER
20 ASK HOW MUCH HE KNEW, WITHOUT SAYING, "WHAT DID YOU DO," OR
21 "IS HE A NASTY MAN?"

22 I SAID, "DON'T TALK TO ME ABOUT IT." AND THEN
23 WHEN I CAME IN THAT MONDAY MORNING AND WROTE YOU THAT NOTE,
24 MANY WEEKS AGO, IT SEEMS, THEN I CALLED HIM BACK.

25 I SAID THAT HE BETTER TELL ME IF HE KNEW HIM WELL
26 AND HOW RECENTLY HE HAD SEEN HIM SO THAT WHEN I AM EXAMINED
27 ABOUT THIS NOTE, AT LEAST I WILL HAVE THAT MUCH INFORMATION.

28 HE SAID, "I DON'T THINK I HAVE SEEN HIM SINCE

1 THE END OF 1960." THAT SURPRISED ME. I DON'T KNOW WHY.
2 I ASSUMED HE HAD SEEN HIM IN THE LAST FEW YEARS.

3 AND I SAID, "WERE YOU FRIENDS WITH HIM?" AND
4 HE SAID, "NOT WITH SOMEBODY LIKE THAT" OR "IT WAS THROUGH
5 A FRIEND OF HIS, MIKE. I MET HIM A COUPLE OF TIMES. HE WAS
6 NOT A VERY NICE PERSON THEN AND I DON'T KNOW WHAT HAPPENED
7 TO HIM."

8 BUT IT WAS A GENERAL, NEGATIVE REACTION HE HAD
9 TO HOWEVER HE MET THIS PERSON.

10 I SAID, "YOU DIDN'T HAVE BUSINESS WITH HIM?"
11 AND HE SAID NO.

12 MR. WAPNER; WHAT IS YOUR BROTHER'S NAME?

13 MS. MICKELL: ROBERT LEVY.

14 MR. WAPNER: WHAT DOES HE DO NOW?

15 MS. MICKELL: HE IS A FILM EDITOR.

16 MR. WAPNER: AND DO YOU KNOW THIS PERSON MIKE, WHAT
17 HIS LAST NAME IS?

18 MS. MICKELL: YES, MICHAEL CALLEY, C-A-L-L-E-Y, I
19 IMAGINE.

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1 MR. WAPNER: SINCE YOU WERE AWARE OF LIMITING YOUR
2 CONVERSATION WITH HIM --

3 MS. MICKELL: RIGHT.

4 MR. WAPNER: -- BECAUSE OF YOUR INVOLVEMENT IN THE CASE,
5 WHEN HE TOLD YOU THAT HE WASN'T A VERY NICE PERSON, THEN DID
6 YOU THINK ABOUT HOW THAT COMMENT MIGHT AFFECT YOU AS A JUROR
7 IN THIS CASE?

8 MS. MICKELL: NO, BECAUSE I HAD ALREADY HEARD YOU GIVE
9 THE ILLUSTRATIONS OF, YOU KNOW, THE PRIEST AND THE DOPE
10 PEDDLER AND IF THIS PERSON ISN'T NICE, I MEAN THAT HAD ALREADY
11 BEEN PLAYED AROUND WITH QUITE A BIT IN THE JURY ROOM HERE SO
12 IT WOULDN'T HAVE AFFECTED ME ANY MORE THAN I HEARD IN THE
13 COURTROOM.

14 THE COURT: YOU ARE TAKING HIM AT HIS WORD?

15 MS. MICKELL: RIGHT.

16 THE COURT: WHATEVER REPUTATION HE MIGHT HAVE, WHETHER
17 IT WOULD HAVE BEEN GOOD, BAD OR INDIFFERENT, THAT WOULDN'T
18 AFFECT YOU?

19 MS. MICKELL: NO, IT WOULDN'T AFFECT ME AT ALL, AS I
20 SAID.

21 MR. WAPNER: HOW OFTEN DO YOU TALK TO YOUR BROTHER?

22 MS. MICKELL: WELL, HE LIVES RIGHT HERE IN TOWN AND WE
23 ARE CLOSE. WE ARE A CLOSE FAMILY. BUT I DON'T I THINK I TALK
24 TO MY BROTHER MORE THAN EVERY THREE, FOUR WEEKS. HE GOES TO
25 THE FOOTBALL GAMES OCCASIONALLY WITH MY HUSBAND BUT NOT TOO
26 MANY TIMES DO WE TALK.

27 THE COURT: YOU UNDERSTAND, OF COURSE, IF YOU ARE
28 SELECTED AS A JUROR YOU WILL HAVE NO MORE CONVERSATIONS WITH

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1 HIM?

2 MS. MICKELL: YES -- I CAN'T TALK TO MY BROTHER?

3 THE COURT: NOT ABOUT THIS.

4 MS. MICKELL: NOT ABOUT THIS, NO.

5 MR. WAPNER: OKAY. THE ONLY THING IS, TO FOLLOW UP ON
6 SOMETHING THAT YOU WERE ASKED BEFORE, WHO IS THE OTHER
7 JUDGE THAT YOU KNOW?

8 MS. MICKELL: OH, THAT IS STRICTLY SOCIAL. GIL ALSTON,
9 BUT HE IS IN LOS ANGELES.

10 THE COURT: ALL RIGHT.

11 MR. BARENS: ONE QUESTION, YOUR HONOR?

12 THE COURT: YES.

13 MR. BARENS: HOW OLD IS YOUR BROTHER?

14 MS. MICKELL: MY BROTHER IS NOW -- COUNTING BACK FROM
15 ME -- HE MUST BE 43.

16 MR. BARENS: WHICH WOULD MEAN HE WAS PERHAPS IN HIGH
17 SCHOOL WHEN HE MET MR. LEVIN.

18 MS. MICKELL: YES, BECAUSE I WAS MARRIED IN 1960, WHICH
19 WAS 26 YEARS AGO, AND HE WOULD HAVE BEEN IN HIGH SCHOOL --
20 NO, HE WOULD HAVE BEEN IN COLLEGE. I GOT MARRIED AFTER --
21 WELL, IT WAS EITHER --

22 MR. BARENS: HE MIGHT HAVE JUST STARTED COLLEGE?

23 MS. MICKELL: YES, SOMETHING LIKE THAT.

24 MR. BARENS: HE MIGHT HAVE BEEN 17?

25 MS. MICKELL: RIGHT.

26 MR. BARENS: THANK YOU.

27 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU WON'T
28 SAY ANYTHING TO THE OTHER JURORS.

1 MS. MICKELL: DO I GO INTO THE WAITING ROOM? DO I STAY
2 WITH THE OTHERS?

3 THE COURT: YOU GO STAY WITH THE OTHER JURORS.

4 (THE FOLLOWING PROCEEDINGS WERE HELD
5 OUTSIDE THE PRESENCE AND HEARING OF
6 PROSPECTIVE JUROR MICKELL:)

7 THE COURT: WELL, ANYTHING FURTHER? I DON'T THINK THAT
8 DISQUALIFIES HER IN ANY WAY.

9 MR. WAPNER: IT DOESN'T SEEM TO ME TO DISQUALIFY HER
10 REALLY.

11 MR. BARENS: I DON'T SEE ANY FOR CAUSE BASED ON THAT.
12 HOWEVER, WE OBVIOUSLY RESERVE UNTIL THE END OF HER GENERAL
13 VOIR DIRE.

14 THE COURT: OH, OF COURSE.

15 MR. BARENS: THANK YOU.

16 (THE FOLLOWING PROCEEDINGS WERE HELD
17 IN OPEN COURT:)

18 THE COURT: YOU ARE GOING TO START WITH HER, AREN'T YOU?

19 MR. BARENS: YOUR HONOR HAD ASKED THE GENERAL -- HAD
20 YOU COMPLETED YOUR QUESTIONING?

21 THE COURT: I HAD COMPLETED.

22 MR. BARENS: THEN I WILL COMMENCE WITH THAT, YOUR HONOR.

23 THE BAILIFF: WE ARE MISSING ONE JUROR, VENICE MURRAY.

24 THE COURT: ALL RIGHT, WE WILL DO WITHOUT HIM.

25 ALL RIGHT, IT WILL BE STIPULATED THE DEFENDANT
26 IS PRESENT, COUNSEL ARE PRESENT AND THE PROSPECTIVE JURORS
27 ARE PRESENT, BUT NOT MR. MURRAY.

28 YOU MAY QUESTION.

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1 MR. BARENS: THANK YOU, YOUR HONOR.

2 GOOD MORNING, MRS. MICKELL.

3 MS. MICKELL: GOOD MORNING.

4 MR. BARENS: MRS. MICKELL, AS IT WAS WITH THE LAST
5 COUPLE OF JURORS, I RECALL THAT YOU HAD READ SOMETHING ABOUT
6 THIS MATTER IN THE LOS ANGELES TIMES?

7 MS. MICKELL: CORRECT.

8 MR. BARENS: IS MY RECOLLECTION CORRECT THAT THAT IS
9 THE ONLY THING YOU HAD READ, IS A SINGLE TIMES ARTICLE?

10 MS. MICKELL: THAT'S CORRECT.

11 MR. BARENS: CAN YOU TELL ME SINCERELY THIS MORNING,
12 IF THAT BE YOUR STATE OF MIND, THAT NOTHING YOU READ IN THAT
13 ARTICLE WOULD IN ANY WAY AFFECT ANY EVALUATION OR ANALYSIS
14 YOU MIGHT DO OF THIS MATTER IF YOU WERE SELECTED AS A JUROR?

15 MS. MICKELL: I CAN TELL YOU IT WOULD NOT.
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1 MR. BARENS: AND YOU UNDERSTAND THAT THE CONTEXT WITHIN
2 WHICH WE ARE OPERATING HERE IS COMPLETELY DIFFERENT THAN A
3 WRITER OPERATES IN WHEN HE IS WRITING SOMETHING FOR SALE?

4 MS. MICKELL: CORRECT.

5 MR. BARENS: AND YOU COULD PUT THAT TOTALLY OUT OF YOUR
6 MIND AND JUST JUDGE THE EVIDENCE BASED ON WHAT YOU HEAR IN
7 THIS COURTROOM?

8 MS. MICKELL: YES, I COULD.

9 MR. BARENS: DO YOU RECOGNIZE THAT MR. HUNT HAS AN
10 ABSOLUTE PRESUMPTION OF INNOCENCE AS HE SITS HERE THIS
11 MORNING?

12 MS. MICKELL: YES, I DO.

13 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

14 MS. MICKELL: VERY.

15 MR. BARENS: I UNDERSTAND YOU HAVE NEVER HAD JURY DUTY
16 BEFORE.

17 MS. MICKELL: NO.

18 MR. BARENS: HAVE YOU EVER WATCHED OR OBSERVED A TRIAL
19 BEFORE?

20 MS. MICKELL: NO.

21 MR. BARENS: AND YOU HAVE NEVER BEEN A WITNESS IN
22 LITIGATION BEFORE?

23 MS. MICKELL: RIGHT.

24 THE COURT: JUST A MINUTE. MR. MURRAY NOW HAS COME IN.
25 DO YOU WANT HIM TO BE EXCLUDED OR DO YOU WANT HIM TO STAY?

26 MR. BARENS: MR. MURRAY?

27 THE COURT: YES.

28 MR. BARENS: I WOULDN'T WANT HIM EXCLUDED.

1 THE COURT: HOW ABOUT YOU?

2 MR. WAPNER: HE SHOULD STAY.

3 THE COURT: MR. MURRAY, I TRUST IN THE FUTURE THAT YOU
4 WILL BE ON TIME?

5 MR. MURRAY: YES.

6 THE COURT: BECAUSE IF ONE OF YOU ISN'T HERE, WE WILL
7 HAVE TO WASTE TIME WAITING UNTIL YOU COME.

8 WILL YOU DO THAT, PLEASE?

9 MR. MURRAY: YES.

10 THE COURT: THANK YOU. GO AHEAD.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 ASIDE FROM THE TIMES ARTICLE THAT YOU READ, YOU
13 HADN'T SEEN ANYTHING ON TELEVISION, HAD YOU?

14 MS. MICKELL: NO.

15 MR. BARENS: OR ANY OF THAT SORT OF THING?

16 MS. MICKELL: NO.

17 MR. BARENS: OKAY. I UNDERSTAND THAT YOU ARE RETIRED
18 FROM BEING A FLORAL DESIGNER?

19 MS. MICKELL: CORRECT.

20 MR. BARENS: AND WHAT DID YOU DO IN THAT OCCUPATION?

21 MS. MICKELL: BRIEFLY, I DID -- I GOT UP IN THE MORNING,
22 WENT DOWN TO THE FLOWER MARKET AT 4:00 IN THE MORNING, I
23 BOUGHT THE FLOWERS, CAME BACK TO MY STUDIO.

24 I ORIGINALLY STARTED IN MY HOME. I OPENED A STUDIO
25 A YEAR LATER.

26 WE TOOK ORDERS, A FULL SERVICE SHOP, DID PARTIES,
27 WEDDINGS, RESTAURANTS AND HOMES.

28 MR. BARENS: YOU WERE SELF-EMPLOYED IN THAT CAPACITY?

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1 MS. MICKELL: YES.

2 MR. BARENS: HOW LONG AGO DID YOU RETIRE FROM THAT
3 ACTIVITY?

4 MS. MICKELL: ABOUT -- IT IS ALMOST TWO YEARS, YEAR AND
5 A HALF, TWO YEARS.

6 MR. BARENS: WHAT HAVE YOU DONE WITH YOUR TIME SINCE
7 THEN?

8 MS. MICKELL: I HAVE BEEN VERY INVOLVED IN MORE OF THE
9 ARTS, IN DIFFERENT AREAS OF THE ARTS I AM INTERESTED IN.
10 MUSEUM WORK, I AM ON THE BOARD OF A NEW MUSEUM THAT JUST
11 STARTED. I AM ALSO ACTIVE WITH THE INTERNATIONAL AFFAIRS
12 PROGRAM.

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1 THE COURT REPORTER: I COULDN'T HEAR THE LAST.

2 MS. MICKELL: I BELONG TO THE LOS ANGELES INTERNATIONAL
3 VISITOR PROGRAM AND I OFTEN HOST AND TAKE APPOINTMENTS OF
4 PEOPLE THAT ARE VISITING HERE. AND I PURSUE SOME OF MY
5 INTERESTS IN THE ARTS AND I WRITE.

6 MR. WAPNER: I AM SORRY. I DIDN'T HEAR YOU.

7 MS. MICKELL: AND I DO SOME WRITING JUST FOR MYSELF
8 PERSONALLY.

9 MR. BARENS: IS THERE A PARTICULAR TYPE OF SUBJECT
10 MATTER YOU WRITE ABOUT?

11 MS. MICKELL: NO. FAMILIES, PEOPLE.

12 MR. BARENS: DO YOU WRITE MYSTERIES, BY CHANCE?

13 MS. MICKELL: NO. I WOULDN'T GET NEAR IT.

14 MR. BARENS: YOU WILL NOW PERHAPS.

15 MRS. MICKELL, IS THERE A PARTICULAR TYPE OF ART
16 EXPRESSION THAT YOU ARE INVOLVED WITH?

17 MS. MICKELL: WELL, I AM A COLLECTOR OF PUPPETS, ANTIQUE
18 PUPPETS, AND I AM INVOLVED IN SOME ASIAN TEXTILES, I AM GETTING
19 MORE INVOLVED WITH ASIAN THINGS.

20 MR. BARENS: YOU ARE INVOLVED WITH THE NEW MODERN
21 MUSEUM OF ART?

22 MS. MICKELL: I AM A MEMBER BUT I AM NOT INVOLVED WITH
23 THAT.

24 MR. BARENS: DO YOU BELONG TO ANY OTHER ORGANIZATIONS
25 OR HAVE OTHER CHARITABLE ACTIVITIES?

26 MS. MICKELL: I AM A MEMBER, NOT AN ACTIVE MEMBER, OF
27 OTHER CHARITABLE ORGANIZATIONS, YES.

28 MR. BARENS: BY MY QUESTION, I AM ASKING YOU ABOUT ANY

1 OTHER ORGANIZATIONS YOU MIGHT BE ACTIVELY INVOLVED WITH.

2 MS. MICKELL: OTHER THAN THE L.A. COUNTY MUSEUM OF ART,
3 WHICH I AM INVOLVED WITH, NO.

4 MR. BARENS: YOU HAVE TWO CHILDREN, I BELIEVE, ONE OF
5 WHOM IS A GRADUATE OF USC?

6 MS. MICKELL: UH-HUH.

7 MR. BARENS: AND THAT CHILD IS A GRADUATE IN WHAT FIELD
8 OF STUDY?

9 MS. MICKELL: COMMUNICATIONS.

10 MR. BARENS: AND IS THAT A BOY OR A GIRL?

11 MS. MICKELL: THAT IS A DAUGHTER.

12 THEY ARE BOTH DAUGHTERS.

13 MR. BARENS: WHAT DOES THE GIRL THAT GRADUATED FROM USC,
14 WHAT DOES SHE DO FOR A LIVING?

15 MS. MICKELL: WELL, SHE HASN'T GOTTEN A WONDERFUL JOB
16 SINCE SHE, IN THE THREE OR FOUR MONTHS SHE GOT OUT OF COLLEGE,
17 BUT RIGHT NOW SHE IS WORKING AT A DOCTOR'S OFFICE IN SANTA
18 MONICA AND IS STILL LOOKING FOR SOMETHING INVOLVED IN THE
19 ARTS.

20 MR. BARENS: OBVIOUSLY WAITING TO GET MARRIED --

21 MS. MICKELL: NO, NO. THAT IS NOT THE WAY IT WORKS NOW.

22 (LAUGHTER IN COURTROOM.)

23 MR. BARENS: ALL RIGHT, I WILL SAVE THAT FOR LATER.

24 MR. WAPNER: WITH NINE WOMEN AND THREE MEN ON A JURY
25 AND YOU MAKE A COMMENT LIKE THAT.

26 MR. BARENS: WE ARE TESTING THEM. WE ARE TESTING THEM.

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A1
1 MR. BARENS: WE ARE TESTING THEM. ALL RIGHT. I ASK
2 YOU ALL TO BE OPEN-MINDED.

3 YOUR OTHER DAUGHTER WENT TO BOSTON --

4 MS. MICKELL: BUT REASONABLE.

5 MR. BARENS: WELL, I TRUST THAT WON'T HAUNT ME NOW OR
6 LATER.

7 YOUR OTHER DAUGHTER WENT TO BOSTON UNIVERSITY?

8 MS. MICKELL: YES. SHE IS STILL THERE NOW.

9 MR. BARENS: IS SHE MAJORING IN ANYTHING AT THIS POINT
10 IN TIME?

11 MS. MICKELL: SHALL I BRAG OR BE HONEST? WHATEVER I
12 SAY, SHE CALLED THIS MORNING AND SHE GOT AN A IN ABOUT THE
13 HARDEST CLASS AT BU, CONSTITUTIONAL LAW, CON LAW.

14 SHE IS VERY THRILLED. SHE IS PROBABLY GOING INTO
15 LAW SCHOOL. SHE IS MAJORING IN POLITICAL SCIENCE.

16 MR. BARENS: VERY GOOD.

17 MS. MICKELL: BUT I DIDN'T ASK HER ANYTHING MORE ABOUT
18 THE CASE OR ANYTHING.

19 MR. BARENS: AND YOUR HUSBAND IS AN EXECUTIVE WITH A
20 MATTRESS COMPANY?

21 MS. MICKELL: RIGHT.

22 MR. BARENS: AND HAS HE ALWAYS DONE THAT SINCE YOU HAVE
23 BEEN MARRIED, BEEN GENERALLY INVOLVED IN THAT INDUSTRY?

24 MS. MICKELL: WELL, HE OPENED THE STORE TWO YEARS AFTER
25 WE MARRIED. HE WAS IN THE FURNITURE BUSINESS WHEN WE GOT
26 MARRIED.

27 MR. BARENS: DURING YOUR MARRIAGE, WAS YOUR HUSBAND
28 EVER ON JURY DUTY?

4A-2
1 MS. MICKELL: NO.

2 MR. BARENS: AND I PRESUME YOUR CHILDREN HAVE NOT BEEN?

3 MS. MICKELL: NO.

4 MR. BARENS: FURTHER IN THAT REGARD, I UNDERSTAND THAT
5 YOU HAVE A DEGREE IN PSYCHOLOGY FROM UCLA?

6 MS. MICKELL: YES.

7 MR. BARENS: DO YOU HAVE AN EMPHASIS WITHIN THAT MAJOR?

8 MS. MICKELL: CHILD PSYCHOLOGY. I DID SOME WORK WITH
9 AUTISTIC CHILDREN.

10 MR. BARENS: AND DURING YOUR STUDIES, DURING YOUR MAJOR,
11 DID YOU HAVE ANY PSYCHOLOGY THAT WOULD OVERLAY CRIMINAL
12 PSYCHOLOGY?

13 MS. MICKELL: I HAD SOME CRIMINOLOGY COURSES MORE IN
14 THE SOCIOLOGY DEPARTMENT.

15 MR. BARENS: AND WAS THERE ANYTHING THAT YOU STUDIED
16 DURING THE CLASSES ON CRIMINOLOGY THAT MIGHT GIVE YOU ANY
17 PARTICULAR ORIENTATION WHEN LISTENING TO WITNESSES IN A
18 CRIMINAL CASE?

19 MS. MICKELL: I AM NOT AWARE OF ANY. IT WAS A COURSE
20 THAT I TOOK, YOU KNOW, 26 YEARS AGO.

21 AND I DON'T THINK IT GIVES ME ANY PARTICULARLY
22 DIFFERENT PERSPECTIVE THAN ANYBODY ELSE.

23 MR. BARENS: THERE USED TO BE SOME EDUCATIONAL THEORIES
24 WHICH MAY OR MAY NOT STILL REMAIN, ALTHOUGH THEY MIGHT BE
25 LESS POPULAR TODAY, TO TRY TO PREDICT A CRIMINAL PROFILE AND
26 THEY USED TO ACTUALLY DISCUSS THAT IN COLLEGE, AS I RECALL.

27 DO YOU RECALL HAVING ANY CLASSES WHERE THEY TRIED
28 TO PROFILE FOR YOU A CRIMINAL TYPE?

A-3
1 MS. MICKELL: I THINK I AM VAGUELY AWARE OF WHAT YOU
2 ARE SAYING. I DON'T REMEMBER.

3 I AM SURE THERE WERE BODY TYPES I BELIEVED THAT
4 THEY USED IN PSYCHOLOGY. I THINK IT WAS SOMATOTYPES, WASN'T
5 THAT THE WORD?

6 BUT I HAVE NOT THOUGHT OF THAT FOR YEARS. I DON'T
7 THINK IT IS RELEVANT ANY MORE.

8 MR. BARENS: ALL RIGHT. YOU WOULD NOT TRY TO REFER
9 OR RELY UPON ANY OF THAT KNOWLEDGE THAT YOU HAD GAINED IN
10 LISTENING TO MR. HUNT AS A WITNESS OR NOT LISTENING, AS THE
11 CASE MAY BE?

12 MS. MICKELL: NO.

13 MR. BARENS: HOW DO YOU FEEL ABOUT THAT BUSINESS OF
14 A RIGHT OF A DEFENDANT NOT TO TESTIFY, SHOULD HE CHOOSE NOT
15 TO, IN A TRIAL?

16 MS. MICKELL: I AM VERY HAPPY WITH THAT. IT DOESN'T
17 BOTHER ME.

18 MR. BARENS: BY THE SAME TOKEN, DO YOU THINK THAT YOU
19 COULD BE OPEN-MINDED IN LISTENING TO A DEFENDANT TESTIFY,
20 WHOSE LIFE MIGHT BE ON THE LINE?

21 MS. MICKELL: CERTAINLY.

22 MR. BARENS: DO YOU THINK YOU COULD OPENLY AND FAIRLY
23 JUDGE HIS TESTIMONY?

24 MS. MICKELL: YES.

25 MR. BARENS: NOW, YOU HEARD ALL OF THESE EXAMPLES WE
26 WENT ON WITH FOR WEEKS, ABOUT BOATS AND PIES. I GAVE YOU
27 A COKE BOTTLE FROM THE SKY AND AN ASTEROID.

28 MS. MICKELL: RIGHT.

A-4
1 MR. BARENS: WHAT DID YOU FEEL ABOUT ALL OF THAT STUFF?
2 DID YOU THINK THAT SOME OF THE ANSWERS YOU HEARD ABOUT THE
3 BOAT OR THE PIE WERE REASONABLE OR UNREASONABLE?

4 MS. MICKELL: SOME OF THEM TO MY MIND, WERE UNREASONABLE.

5 MR. BARENS: WITHOUT HAVING TO MAKE REFERENCE TO THE
6 SPECIFIC ANSWERS YOU ARE MAKING REFERENCE TO, WHAT MADE THINGS
7 SOUND UNREASONABLE TO YOU? WHAT DO YOU MEAN WHEN YOU SAY
8 TO ME THAT THEY WERE UNREASONABLE?

9 MS. MICKELL: WELL, I THINK REACHING FARFETCHED IDEAS
10 NOT CLEARLY WITHIN THE REALM OF FEASIBLE OR THE POSSIBLE.

11 MR. BARENS: ALL RIGHT. OF COURSE, IF WE DETERMINE
12 I SUPPOSE THAT SOMETHING IS POSSIBLE, IT IS THEREFORE,
13 REASONABLE.

14 I SUPPOSE THE OPPOSITE OF THAT IS THAT ANYTHING
15 THAT IS IMPOSSIBLE, IS UNREASONABLE. WHAT DO WE DO ABOUT
16 SOMETHING THAT IS HIGHLY UNUSUAL? COULD SOMETHING THAT IS
17 HIGHLY UNUSUAL BE REASONABLE?

18 MS. MICKELL: YES AND POSSIBLE.

19 MR. BARENS: AND POSSIBLE, INDEED. WOULD YOU
20 NECESSARILY BE LOOKING IN TESTIMONY HERE, IF THE GOVERNMENT
21 COMES OUT AND SAYS TO YOU, WELL, THIS IS A SIMPLE CASE, WE
22 CAN'T FIND MR. LEVIN AND THEREFORE, HE IS DEAD.

23 WOULD YOU BE LOOKING FOR SOME SIMPLISTIC ANSWER
24 AND EXPECT EVERYTHING TO JUST FOLLOW SOME RATHER PREDICTABLE,
25 TYPICALLY LOGICAL SEQUENCING IN THIS TRIAL? WOULD YOU BE
26 LOOKING FOR THAT?

27 MS. MICKELL: NO.

28 MR. BARENS: WOULD YOU BE WILLING TO CONSIDER ALL OF

4A-5
1 THE EVIDENCE THAT CAME IN BEFORE COMING TO ANY CONCLUSION?

2 MS. MICKELL: YES.

3 MR. BARENS: NOW, WHAT ARE YOU GOING TO DO IN A
4 SITUATION WHERE THE GOVERNMENT PUTS ON A CERTAIN CASE AND
5 WANTS YOU TO BELIEVE AND MAKE A CONCLUSION, YOU KNOW, BASED
6 ON ALL THAT CIRCUMSTANTIAL EVIDENCE, THAT INDIRECT EVIDENCE
7 AND THE DEFENSE COULD BE SAYING WE DON'T KNOW WHAT HAPPENED
8 TO HIM?

9 AND YOU, IN YOUR OWN MIND, COME TO A CONCLUSION
10 THAT WELL, THERE IS EVIDENCE IN MY MIND THAT SOMETHING MIGHT
11 HAVE HAPPENED TO THIS FELLOW OR THAT HE IS REALLY GONE,
12 MISSING, WHATEVER, BUT I AM NOT SURE WHAT HAPPENED TO HIM.

13 BUT THE GOVERNMENT TOLD ME THAT HE IS GONE AND
14 HE IS GONE. WHAT WOULD YOU DO WITH MR. HUNT AT THAT PARTICULAR
15 TIME?

16 MS. MICKELL: ARE WE ASSUMING THIS IS AFTER THE
17 CONCLUSION AND EVERYTHING IS IN?
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1 MR. BARENS: ABSOLUTELY. THE STATE OF MIND YOU HAVE
2 WHEN YOU LEAVE HERE AND YOU ARE IN THE JURY ROOM DELIBERATING
3 IS, YOU SAY, WELL, I AM CERTAINLY CONVINCED THAT HE IS GONE.
4 THE DEFENSE COULDN'T GIVE ME AN ANSWER AS TO WHERE HE IS.

5 THE GOVERNMENT SAYS THAT HE IS GONE AND IT MEANS
6 HE IS MURDERED.

7 WHAT DO YOU DO IN THAT TYPE OF A SITUATION? THAT
8 IS YOUR STATE OF MIND.

9 MS. MICKELL: I HAVE TO FIND MR. HUNT INNOCENT.

10 MR. BARENS: NOT PROVEN?

11 MS. MICKELL: NOT PROVEN.

12 MR. BARENS: NOT GUILTY?

13 MS. MICKELL: RIGHT.

14 MR. BARENS: NOW, DO YOU UNDERSTAND THAT THE DEFENSE
15 DOES NOT HAVE AN OBLIGATION TO PROVE TO YOU WHERE SOMEONE
16 WHO IS MISSING, IS?

17 MS. MICKELL: YES.

18 MR. BARENS: WOULD YOU EXPECT THAT IF THE GOVERNMENT
19 SAYS HE IS MISSING THEN THE DEFENDANT BETTER GET UP THERE
20 AND TELL YOU WHERE HE IS? DO YOU UNDERSTAND THAT THAT ISN'T
21 THE DEFENSE'S OBLIGATION?

22 MS. MICKELL: I UNDERSTAND.

23 MR. BARENS: COULD YOU ACCEPT A DEFENDANT GETTING UP
24 THERE AND SAYING, "I DON'T KNOW"?

25 MS. MICKELL: YES.

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

27 MS. MICKELL: "THE MAN WHO MISTOOK HIS WIFE FOR A HAT."

28 MR. BARENS: ALL RIGHT. WHAT IN THE WORLD WAS THAT

1 ABOUT?

2 MS. MICKELL: THE AUTHOR WILL BE SIGNING BOOKS I JUST
3 HEARD, IN THE BRENTWOOD BOOKSTORE NEXT WEEK.

4 MR. BARENS: DOES YOUR HONOR KNOW THAT ONE? YOUR HONOR
5 IS EXTREMELY WELL READ.

6 THE COURT: WHAT IS THE NAME OF IT?

7 MS. MICKELL: "THE MAN WHO MISTOOK HIS WIFE FOR A HAT."

8 THE COURT: NO. BUT THERE ARE MANY, MANY BEST SELLERS
9 AND --

10 MS. MICKELL: IT IS A TRUE --

11 THE COURT: THAT ARE ON THE --

12 MS. MICKELL: IT IS A TRUE STORY.

13 MR. BARENS: WHAT WAS THAT ABOUT?

14 MS. MICKELL: YOU ARE TALKING ABOUT REASONABLE IN THE
15 COURTROOM. IT IS A STORY --

16 MR. BARENS: IT IS REASONABLE TO ME.

17 MS. MICKELL: OKAY. IT IS WRITTEN BY DR. OLIVER SACHS,
18 WHO IS A NEUROLOGIST.

19 THEY ARE CASE HISTORIES OF STRANGE, MENTAL --
20 BIZARRE BEHAVIORS. I ACTUALLY HEARD ABOUT IT FROM SOMEBODY
21 WHO WAS PRODUCING A PLAY AND MAKING AN OPERA OUT OF IT.

22 THIS PARTICULAR MAN MISTOOK HIS WIFE FOR A HAT.
23 IF HE HUMMED HIS OPERAS FROM CLASSES THAT HE TOOK IN SCHOOL,
24 HE WAS PERFECTLY CAPABLE OF RUNNING HIS BUSINESS, A MUSICAL
25 BUSINESS.

26 BUT WHEN HE STOPPED SINGING, HE HAD ALL KINDS
27 OF TROUBLE AND EVEN HIS WIFE'S FACE SEEMED TO BE A HAT. SO
28 IT IS GOING TO BE MADE INTO A PLAY.

1 MR. BARENS: THAT BOOK INVOLVED ALL STORIES OF CASE
2 HISTORIES ABOUT BIZARRE, UNUSUAL BEHAVIOR?

3 MS. MICKELL: RIGHT.

4 MR. BARENS: THAT WERE NONETHELESS, TRUE?

5 MS. MICKELL: TRUE.

6 MR. BARENS: I WILL BET THAT A LOT OF THAT BEHAVIOR
7 SEEMED RATHER UNREASONABLE, DIDN'T IT?

8 MS. MICKELL: YES.

9 MR. BARENS: I WILL BET THAT HAD I TOLD YOU ABOUT THAT
10 BEHAVIOR AND SAID TO YOU THAT I HAD A FRIEND OF MINE AND WHEN
11 HE STOPS HUMMING, HE THINKS HIS WIFE IS A HAT, YOU MIGHT SAY
12 THAT MR. BARENS IS JUST TEASING ME OR WORSE.

13 BUT WHEN YOU READ IT AND THE GOOD DOCTOR SAID
14 IT, IT BECAME NOT UNREASONABLE? IT BECAME TRUE, DIDN'T IT?

15 MS. MICKELL: UH-HUH.

16 MR. BARENS: WELL, WHAT DO WE HAVE? AN ALTERED
17 PERSPECTIVE BASED ON WHO IS TELLING THE STORY.

18 I HOPE THAT YOU WOULD LOOK AT THE WITNESSES WITH
19 THE SAME LIGHT AND CONSIDER THE MOTIVATIONS AND PERSPECTIVE
20 OF WITNESSES WHO HAVE TESTIFIED.

21 MS. MICKELL: UH-HUH.

22 MR. BARENS: IS THAT YES?

23 MS. MICKELL: YES I WOULD.

24 MR. BARENS: NOW, WE HAVE ALL BEEN TOLD BY MR. WAPNER
25 THAT THERE IS A HIGH LIKELIHOOD THAT WE MIGHT HAVE AN
26 IMMUNIZED WITNESS COMING IN THIS COURTROOM.

27 MS. MICKELL: YES.

28 MR. BARENS: YOU OF COURSE, UNDERSTAND WHAT THAT MEANS?

1 MS. MICKELL: YES I WOULD.

2 MR. BARENS: AND THE IMMUNIZED WITNESS IS A PERSON WHO
3 TELLS A STORY TO THE AUTHORITIES IN EXCHANGE FOR WHICH STORY,
4 HE COULD SAY WELL, YOU KNOW, I COMMITTED A MURDER ALONG WITH
5 SOMEONE ELSE BUT OF COURSE, I WILL NOT ONLY TELL YOU MY STORY
6 BUT I WILL TELL IT IN THE COURTROOM FOR YOU FOLKS IN EXCHANGE
7 FOR SOMETHING GOOD HAPPENING TO ME OR SOMETHING BAD NOT
8 HAPPENING TO ME.

9 YOU WOULD KEEP IN MIND THE CONTEXT IN WHICH AN
10 IMMUNIZED WITNESS COMES FORWARD?

11 MS. MICKELL: YES.

12 MR. BARENS: WOULD YOU RECALL THAT AN IMMUNIZED
13 WITNESS HAS MADE A CERTAIN OFFER OF TESTIMONY BEFORE THEY
14 COME INTO THE COURTROOM HERE AND THAT IS PART OF THE DEAL
15 HE MAKES?

16 MS. MICKELL: YES.

17 MR. BARENS: DO YOU UNDERSTAND ON THE OTHER HAND, THAT
18 THE DEFENDANT COMES BEFORE YOU WITH NO DEAL? HE COMES IN
19 AND JUST SWEARS AN OATH TO TELL THE TRUTH ON THE STAND AND
20 LET THE CHIPS FALL WHERE THEY MAY.

21 MS. MICKELL: I UNDERSTAND.

22 MR. BARENS: YOU SEE, THERE IS A MARKED DIFFERENCE BETWEEN
23 THOSE TYPES OF WITNESSES.

24 WHAT WAS THE LAST MOVIE YOU SAW?

25 MS. MICKELL: "CROCODILE DUNDEE."

26 MR. BARENS: IT IS POPULAR HERE. HOW DO YOU FEEL ABOUT
27 THE POSSIBILITY OF BEING A JUROR ON THIS CASE?

28 MS. MICKELL: I FEEL PAUSE. I CAME IN HERE AT THE

1 BEGINNING OF NOVEMBER BECAUSE I REALLY BELIEVE IN THE
2 OBLIGATION OF PUTTING SOMETHING BACK INTO THE SYSTEM.

3 I BELIEVE IN THAT STRONGLY AND I THINK I AM A
4 FAIR PERSON. I THINK I WOULD LIKE TO HAVE ME ON A JURY IF
5 I WERE EVER ACCUSED OF A CRIME.

6 IT IS GETTING ON TO THREE MONTHS ALREADY AND IT
7 LOOKS LIKE IT IS GOING TO BE A LONG TIME. SO I HAVE CERTAIN
8 HESITATIONS ABOUT IT NOW.

9 THAT WOULD BE MY ONLY HESITATION. I DON'T THINK
10 IT WOULD INTERFERE WITH MY DOING MY DUTY OR WANTING TO DO
11 MY DUTY.

12 BUT IT SEEMS LIKE IT IS GETTING LONGER AND LONGER.
13 BUT I DON'T KNOW HOW I FEEL ABOUT --

14 MR. BARENS: I AGREE WITH YOUR ASSESSMENT OF YOURSELF
15 AS A PROSPECTIVE JUROR. WE PASS FOR CAUSE. THANK YOU.

16 THE COURT: ALL RIGHT. MR. WAPNER?
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1 MR. WAPNER: THANK YOU.

2 GOOD MORNING, MRS. MICKELL.

3 MS. MICKELL: HELLO.

4 MR. WAPNER: THOSE EXAMPLES THAT YOU HEARD THE OTHER
5 JURORS RESPOND TO, DO YOU RECALL WHICH ONES YOU THOUGHT WERE
6 KIND OF UNUSUAL OR FAR-FETCHED?

7 MS. MICKELL: WHICH ONES? WELL, SOME OF THOSE THINGS
8 POPPING OUT OF THE SKY, THE SUBMARINE COMING UP OUT OF THE
9 OCEAN. I THINK THERE WERE A FEW THAT WERE A LITTLE FAR-FETCHED.

10 MR. WAPNER: IN MAKING A DISTINCTION BETWEEN THINGS THAT
11 ARE POSSIBLE AND THINGS THAT ARE REASONABLE, DO YOU DO THAT
12 IN YOUR MIND?

13 MS. MICKELL: YES.

14 MR. WAPNER: HOW LONG WERE YOU IN THE --

15 MS. MICKELL: FLOWER BUSINESS.

16 MR. WAPNER: -- FLOWER BUSINESS?

17 MS. MICKELL: WELL, IN A RETAIL WAY FOR FIVE YEARS.

18 MR. WAPNER: AND SO YOU HAD A LOT OF EXPERIENCE IN
19 SELECTING FLOWERS AND MAKING ARRANGEMENTS AND THINGS LIKE THAT?

20 MS. MICKELL: RIGHT.

21 MR. WAPNER: AND ALSO IN THE BUSINESS END OF IT IN
22 DEALING WITH PRIVATE PARTIES AND BUSINESSES AND ARRANGING
23 FLOWERS FOR THEM?

24 MS. MICKELL: RIGHT.

25 MR. WAPNER: OKAY. AND IF YOU KNEW THAT THERE WAS SOMEONE
26 WHO WAS JUST STARTING IN THE FLOWER BUSINESS AND THEY WERE
27 BRAND NEW --

28 MS. MICKELL: UH-HUH.

1 MR. WAPNER: -- AND THAT PERSON WAS GOING TO COMPETE
2 WITH YOU FOR AN ACCOUNT TO DO A PARTY, FOR EXAMPLE, WOULD YOU
3 SAY THAT IT IS POSSIBLE, AND LET'S ALSO SAY THAT THIS WAS THE
4 FIRST JOB THIS PERSON WAS GOING TO DO ON A COMMERCIAL BASIS,
5 WOULD YOU SAY IT IS POSSIBLE THEY COULD DO AS GOOD A JOB AS
6 YOU?

7 MS. MICKELL: I WOULD HAVE TO SAY IF I HAD NEVER SEEN
8 THEIR WORK, YES, IT WOULD BE POSSIBLE.

9 I WOULD, OF COURSE, DOUBT IT BUT --

10 MR. WAPNER: DO YOU THINK IT WOULD BE REASONABLE?

11 MS. MICKELL: NO.

12 MR. WAPNER: CONSIDERING ALL OF THE BACKGROUND THAT
13 YOU HAD IN THE BUSINESS, INCLUDING THE BUSINESS END OF IT AND
14 DEALING WITH CLIENTS AND --

15 MS. MICKELL: RIGHT.

16 MR. WAPNER: -- AND MAKING FINANCIAL, AS WELL AS THE
17 ARTISTIC, ARRANGEMENTS?

18 MS. MICKELL: CORRECT.

19 MR. WAPNER: SO YOU CAN SEE THAT THERE ARE -- THERE IS SOME-
20 WHAT OF A DISTINCTION BETWEEN THINGS THAT ARE POSSIBLE AND
21 THINGS THAT ARE REASONABLE?

22 MS. MICKELL: YES.

23 MR. WAPNER: WHAT INTEREST HAVE YOU CONTINUED TO HAVE,
24 IF ANY, IN PSYCHOLOGY SINCE YOU LEFT SCHOOL?

25 MS. MICKELL: EVERY-DAY LIVING, I THINK, PROBABLY APPLIES
26 MORE TO PSYCHOLOGY THAN ANY OTHER CLASSES I HAD AT THE
27 UNIVERSITY, BUT I HAVEN'T PURSUED IT ACADEMICALLY.

28 MR. WAPNER: HAVE YOU PURSUED IT IN TERMS OF BOOKS YOU

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1 READ OR THINGS LIKE THAT?

2 MS. MICKELL: NOT REALLY.

3 I HAVE DONE SOME VOLUNTEER WORK. I HAVE BEEN
4 INVOLVED IN MENTAL HEALTH ORGANIZATIONS INVOLVED IN THE
5 COMMUNITY BUT NOT ANYMORE. THAT WAS SEVERAL YEARS AGO.

6 MR. WAPNER: WHEN YOU WERE INVOLVED IN MENTAL HEALTH
7 ORGANIZATIONS, WHAT KIND OF WORK DID YOU DO?

8 MS. MICKELL: WELL, I WAS CHAIRMAN OF THE REISS-DAVIS
9 CHILD STUDY CENTER AND WE BROUGHT IN LECTURERS TO SPEAK A
10 COUPLE OF TIMES A YEAR. BUT THAT WAS MORE OF A MEMBERSHIP
11 THING, JUST TO EXPOSE THE WORK THAT REISS-DAVIS WAS DOING.

12 I WORKED WITH PATIENTS WITH AUTISTIC CHILDREN ON
13 A VOLUNTARY BASIS 20 YEARS AGO BUT I HAVEN'T REALLY BEEN
14 IN THAT KIND OF WORK FOR MANY YEARS.

15 MR. WAPNER: KEEP YOUR VOICE UP.

16 MS. MICKELL: I AM SORRY. I HAVEN'T WORKED FOR 15 YEARS,
17 PROBABLY.

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1 MR. WAPNER: WHAT POSSESSED YOU TO READ THIS PARTICULAR
2 BOOK, THIS LAST BOOK THAT YOU READ?

3 MS. MICKELL: WE WERE TALKING TO A DIRECTOR OF A MUSEUM
4 AND HE MENTIONED THAT A PLAY -- THE NEXT PLAY THAT WAS OPENING
5 A WEEK AFTER WE WERE LEAVING TOWN WAS -- HE GAVE ME THE TITLE
6 AND I LAUGHED AND I SAID, "THAT WAS A BIZARRE TITLE."

7 AND HE SAID "IT IS A VERY INTERESTING BOOK. YOU
8 SHOULD READ IT. IT IS BEING MADE INTO AN OPERA OR MUSICAL.
9 IT IS ABOUT A CASE HISTORY."

10 SO THEN WE CAME HOME TO L.A. AND READ THE BOOK.
11 IT HAS MANY OTHER STORIES IN IT.

12 MR. WAPNER: WHAT WAS YOUR OPINION OF THE BOOK OR ANY
13 PARTICULAR INCIDENTS IN THE BOOK?

14 MS. MICKELL: I THOUGHT IT WAS A FASCINATING LOOK INTO
15 A WORLD THAT I KNEW VERY LITTLE ABOUT. I MEAN IT IS A STRANGE
16 BEHAVIOR. IT IS LIKE AMNESIA. THERE ARE PEOPLE IN THERE THAT
17 JUST SUDDENLY AT ONE POINT STOP REMEMBERING EVERYTHING.

18 THERE WERE SOME INTERESTING STORIES. IT WAS WELL
19 WRITTEN BY A DOCTOR BUT IT WAS AT A VERY EVERY-DAY LEVEL.

20 MR. WAPNER: ANY STORIES IN THERE ABOUT PEOPLE WHO
21 DISAPPEARED?

22 MS. MICKELL: NO.

23 MR. WAPNER: OKAY. AND WERE THESE ALL PEOPLE WHO HAD
24 BEEN TREATED BY THIS DOCTOR?

25 MS. MICKELL: TREATED OR SEEN, YES.

26 MR. WAPNER: WERE THEY ALL PEOPLE WHO HAD DIAGNOSED
27 MEDICAL PROBLEMS THAT CAUSED THIS BEHAVIOR?

28 MS. MICKELL: WELL, THIS DR. SACHS WAS ABLE TO DIAGNOSE

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1 IT BUT SOME OF THEM WERE NEVER -- NEVER SEEN BEFORE CONDITION,
2 SO IT WAS HARD. THEY WOULD BE SENT BY A DOCTOR BECAUSE NOBODY
3 COULD FIGURE OUT WHY THIS PERSON ACTED IN THIS WAY, SO, YES,
4 THEY WERE DIAGNOSED BUT LIKE A FIRST-TIME DIAGNOSIS, IT WAS.

5 MR. WAPNER: OKAY. WERE THEY ALL INSTANCES OF VERY
6 SPECIFIC BEHAVIOR? I MEAN LIKE THIS MAN WITH THE SEEMINGLY
7 CHANGED CHARACTER?

8 MS. MICKELL: YES.

9 MR. WAPNER: CAN YOU GIVE ME SOME OTHER EXAMPLES?

10 MS. MICKELL: ONE IS -- ONE IS A WOMAN WHO ALL OF A
11 SUDDEN COULDN'T FEEL ANY PARTS OF HER BODY. SHE COULDN'T
12 STAND. SHE COULDN'T SIT. SHE DIDN'T HAVE ANY FEELING. LIKE,
13 YOU KNOW, THAT HAPPENS WHEN SOMETHING IS -- A LIMB IS
14 AMPUTATED AND SOMEHOW YOU CONTINUE TO HAVE FEELINGS.

15 WELL, SHE WAS PHYSICALLY FINE BUT SHE LOST ALL
16 FEELING. IT WAS SOMETHING IN HER BRAIN CONNECTION THAT
17 USUALLY TELLS YOUR BODY WHERE IT IS, HOW YOU STAND AND HOW
18 YOU ADJUST YOUR THINGS. BUT EVIDENTLY THAT HAD BEEN DESTROYED.

19 MR. WAPNER: WERE THERE OTHER KINDS OF THINGS?

20 MS. MICKELL: A MAN THAT STOPPED REMEMBERING, COULDN'T
21 REMEMBER ANYTHING MORE THAN THREE MINUTES AND HE HAD NO
22 RECOLLECTION OF ANY OF HIS PAST SINCE HE WAS, LIKE, 15.

23 MR. WAPNER: AND DID THEY DIAGNOSE THE BASIS FOR THAT
24 CONDITION?

25 (PROSPECTIVE JUROR MICKELL SHAKES HER
26 HEAD FROM SIDE TO SIDE.)

27 THE COURT: IS THIS A BOOK REVIEW COURSE ON WHAT HAPPENED?

28 (LAUGHTER IN COURTROOM.)

1 THE COURT: LET'S GET ON TO SOMETHING ELSE, IF YOU WILL,
2 PLEASE.

3 MR. WAPNER: THANK YOU.

4 IN EVALUATING THE TESTIMONY OF ANY WITNESS WHO
5 TESTIFIES, WILL YOU TAKE INTO CONSIDERATION WHAT BIAS, IF ANY,
6 THEY MAY HAVE?

7 MS. MICKELL: YES.

8 MR. WAPNER: AND IN EVALUATING THE TESTIMONY OF ALL
9 WITNESSES, WILL YOU USE THE SAME STANDARDS?

10 MS. MICKELL: YES.

11 MR. WAPNER: WILL YOU DO THAT FOR THE DEFENDANT AS WELL
12 AS ANY OTHER WITNESS?

13 MS. MICKELL: YES.

14 MR. WAPNER: SO IF IT APPEARS TO YOU THAT HE HAS A BIAS
15 IN THE CASE, YOU WILL LOOK AT THAT?

16 MS. MICKELL: YES.

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

19 MS. MICKELL: NO.

20 MR. WAPNER: HAVE YOU BEEN IN A SITUATION WHERE YOU HAVE
21 HAD A SERIOUS DISCUSSION WITH A FRIEND OF YOURS WHERE YOU TOOK
22 A POSITION AND THEN CHANGED YOUR MIND?

23 MS. MICKELL: YES, I AM SURE I HAVE. I CAN'T RIGHT NOW
24 TELL YOU, BUT I HAVE.

25 MR. WAPNER: ALL RIGHT. IF YOU GET INTO THE JURY ROOM
26 IN THIS CASE AND YOU INITIALLY TAKE ONE POSITION AND YOU
27 DISCUSS IT WITH THE OTHER JURORS AND YOU ARE CONVINCED THAT
28 YOUR ORIGINAL POSITION WAS WRONG, ARE YOU GOING TO STICK TO

1 IT OR CHANGE IT?

2 MS. MICKELL: IF I AM CONVINCED IT IS WRONG, I WILL
3 CHANGE IT.

4 MR. WAPNER: AND IF YOU ARE CONVINCED THAT IT IS RIGHT,
5 YOU CAN STICK TO IT?

6 MS. MICKELL: RIGHT.

7 MR. WAPNER: DID YOUR HUSBAND START HIS BUSINESS WITH
8 HIS BROTHERS?

9 MS. MICKELL: YES.

10 MR. WAPNER: AND WHEN THE THREE OF THEM STARTED THAT
11 BUSINESS THEY BASICALLY STARTED FROM SCRATCH?

12 MS. MICKELL: ONE STORE, UH-HUH.

13 MR. WAPNER: HOW MANY ARE THERE NOW?

14 MS. MICKELL: I SHOULD HAVE ASKED.

15 I THINK THERE ARE ABOUT 80 OR 84.

16 MR. WAPNER: DOES HE STILL WORK PRETTY HARD IN THE
17 BUSINESS?

18 MS. MICKELL: YES.

19 MR. WAPNER: AND THE THREE OF THEM STILL OWN IT?

20 MS. MICKELL: YES.

21 MR. WAPNER: AND WHEN YOU STARTED YOUR BUSINESS, YOU
22 BASICALLY STARTED IT FROM SCRATCH?

23 MS. MICKELL: YES.

24 MR. WAPNER: IT WAS HARD FOR ME TO HEAR ABOUT ALL OF
25 THE WRITING THAT YOU DID; CAN YOU TELL ME THAT AGAIN?

26 MS. MICKELL: OH, I JUST -- IT IS STRICTLY HOME,
27 PERSONAL. I ENJOY WRITING.

28 MR. WAPNER: ABOUT WHAT?

1 MS. MICKELL: WELL, OVER THE YEARS I HAVE WRITTEN LETTERS
2 OR WORDS.

3 THE COURT REPORTER: WOULD YOU REPEAT THAT?

4 MS. MICKELL: I HAVE WRITTEN LETTERS OR WORDS OR ADVICE
5 TO OUR CHILDREN, MY FEELINGS AND SPECIAL THINGS THAT I WANTED
6 THEM TO BE ABLE TO REMEMBER POSSIBLY SEEING AND THEY WILL
7 APPRECIATE MAYBE WHAT I THOUGHT ABOUT THEM WHEN THEY WERE
8 LITTLE.

9 AND NOW, I AM TRYING TO WRITE SOMETHING A LITTLE
10 BIT MORE SERIOUS.

11 MR. WAPNER: WHAT ARE YOU TRYING TO WRITE NOW?

12 MS. MICKELL: A NOVEL, STORY THAT I PLAYED AROUND WITH
13 IN MY HEAD FOR A LONG TIME. I AM NOW TRYING TO PUT IT DOWN.

14 MR. WAPNER: OKAY. WOULD IT BE GIVING AWAY ANY SECRETS
15 IF YOU TOLD US WHAT THAT WAS ABOUT?

16 MS. MICKELL: YES. EVERYBODY MIGHT COPY MY STORY.

17 (LAUGHTER IN COURTROOM.)

18 MS. MICKELL: IT IS A FAMILY, IT IS A CONTEMPORARY
19 FAMILY AND PROBLEMS OF GROWING OLDER AND THE OLDER GENERATION.

20 MR. WAPNER: DO YOU FEEL YOU ARE PRETTY CLOSE TO YOUR
21 CHILDREN?

22 MS. MICKELL: VERY.
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6A-1
1 MR. WAPNER: AT THE RISK OF GETTING THE JUDGE A LITTLE
2 BIT UPSET WITH ME, THE THINGS THAT YOU REMEMBERED IN THE BOOK,
3 ARE THINGS YOU THINK HAPPENED TO PEOPLE EVERY DAY OR DID YOU
4 PUT THEM MORE IN THE REALM OF THE BIZARRE?

5 MS. MICKELL: BIZARRE.

6 MR. WAPNER: AND THEY ALL IN ONE WAY OR ANOTHER, HAD
7 TO DO WITH MEDICAL CONDITIONS, RIGHT?

8 MS. MICKELL: YES.

9 MR. WAPNER: IS THERE SOME HESITATION ABOUT THAT?

10 MS. MICKELL: NO. I THINK THEY WERE ALL -- YES, MEDICAL.

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

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

14 MR. BARENS: WE THANK AND EXCUSE JUROR NUMBER 11,
15 YOUR HONOR. THAT IS MS. GOOLEY.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MS. GOOLEY.

17 (PROSPECTIVE JUROR GOOLEY EXITED THE
18 COURTROOM.)

19 THE CLERK: PHILIP DIPAOLA, D-I-P-A-O-L-A.

20 THE COURT: MR. DIPAOLA, I BELIEVE THAT YOU TOLD US
21 A LONG TIME AGO THAT YOU OR SOME MEMBER OF YOUR FAMILY HAD
22 BEEN INVOLVED -- HAD BEEN THE VICTIM OF SOME KIND OF A CRIME?

23 MR. DIPAOLA: YES. IT IS A RATHER DISTANT RELATIVE.
24 BUT MY WIFE'S UNCLE WAS KILLED IN A LIQUOR STORE ROBBERY.
25 HE WAS THE PROPRIETOR.

26 THE COURT: HOW LONG AGO WAS THAT?

27 MR. DIPAOLA: TWENTY YEARS.

28 THE COURT: THE FACT THAT A CHARGE AGAINST THE DEFENDANT

A-2
1 HERE IS ONE OF MURDER DURING A ROBBERY, WOULD THAT IN ANY
2 WAY, AFFECT YOU IN DETERMINING HIS GUILT OR INNOCENCE?

3 MR. DIPAOLA: I DON'T BELIEVE SO.

4 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
5 SAME GENERAL QUESTIONS WHICH WERE ASKED OF THE OTHER JURORS,
6 WOULD YOUR ANSWERS BE ANY DIFFERENT OR WOULD THEY BE
7 SUBSTANTIALLY THE SAME?

8 MR. DIPAOLA: SUBSTANTIALLY THE SAME.

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

10 MR. DIPAOLA: I AM A MANAGER FOR GENERAL TELEPHONE.

11 THE COURT: TELL US MORE ABOUT YOUR DUTIES.

12 MR. DIPAOLA: I MANAGE THE PUBLIC TELEPHONE BUSINESS
13 FOR GENERAL TELEPHONE OF CALIFORNIA.

14 THE COURT: THE PUBLIC TELEPHONE BUSINESS?

15 MR. DIPAOLA: YES.

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

17 MR. DIPAOLA: 19 YEARS.

18 THE COURT: WHAT IS YOUR PREVIOUS BACKGROUND AND
19 EDUCATION?

20 MR. DIPAOLA: I HAVE A BACHELOR'S DEGREE FROM USC AND
21 A MASTER'S FROM LONG BEACH STATE, BOTH WITH EMPHASIS IN
22 BUSINESS.

23 THE COURT: AND ARE YOU MARRIED?

24 MR. DIPAOLA: YES.

25 THE COURT: AND WHAT DOES MRS. DIPAOLA DO, IF ANYTHING?

26 MR. DIPAOLA: SHE TAKES CARE OF OUR THREE BOYS.

27 THE COURT: ALL RIGHT. HOW OLD ARE THEY?

28 MR. DIPAOLA: TWO YEARS OLD, EIGHT AND TEN.

1 THE COURT: ALL BOYS, ARE THEY?

2 MR. DIPAOLA: YES.

3 THE COURT: AND WHERE DO YOU LIVE?

4 MR. DIPAOLA: I LIVE IN WOODLAND HILLS.

5 THE COURT: DID ANYTHING OCCUR TO YOU DURING THE
6 COURSE OF THE QUESTIONING WHERE YOU MIGHT HAVE HAD SOME
7 MENTAL RESERVATIONS ABOUT SOME ANSWERS WHICH WERE GIVEN THAT
8 YOU MIGHT HAVE ANSWERED ANY DIFFERENTLY?

9 MR. DIPAOLA: NO.

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

12 MR. DIPAOLA: NEVER.

13 THE COURT: ALL RIGHT. MR. DIPAOLA, THANK YOU.

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 GOOD MORNING, MR. DIPAOLA.

16 MR. DIPAOLA: GOOD MORNING.

17 MR. BARENS: MR. DIPAOLA, AT THE RISK OF BEING
18 REDUNDANT, I HAVE AN OBLIGATION TO ASK YOU ABOUT THE
19 PRESUMPTION OF INNOCENCE THAT THE DEFENDANT COMES BEFORE YOU
20 WITH.

21 MR. DIPAOLA: I THINK IT IS PERFECTLY CORRECT.

22 MR. BARENS: YOU ARE COMFORTABLE WITH THAT?

23 MR. DIPAOLA: YES.

24 MR. BARENS: DO YOU HAVE JUST FOR THE SAKE OF BREVITY --
25 WHAT WERE YOUR IMPRESSIONS ABOUT THE ANSWERS THAT WERE GIVEN
26 AND ALL OF THE HYPOTHETICALS THAT WERE TALKED ABOUT IN THE
27 COURTROOM OVER THE SEVERAL WEEKS? DID YOU FEEL THAT SOME
28 OF THE ANSWERS THE JURORS GAVE TO THE HYPOTHETICALS WERE

1 UNREASONABLE OR HOW DID YOU FEEL?

2 MR. DIPAOLA: I THINK IT WAS POSSIBLE THAT SOME WERE
3 RARE POSSIBILITIES AND OTHERS WERE UNLIKELY.

4 MR. BARENS: DID YOU IN YOUR OWN MIND, FEEL THAT BECAUSE
5 SOMETHING MIGHT BE A RARE POSSIBILITY OR I MIGHT CALL IT A
6 REMOTE POSSIBILITY, DID YOU FEEL THAT THAT WAS NECESSARILY
7 UNREASONABLE?

8 MR. DIPAOLA: NO.

9 MR. BARENS: COULD YOU UNDERSTAND THAT SOMETIMES THE
10 LESS PREDICTABLE IS THE TRUE STATEMENT?

11 MR. DIPAOLA: YES.
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1 MR. BARENS: DO YOU HAVE AN IMPRESSION BEING HERE, THAT
2 WE ARE ALL INVOLVED, ABOUT TO TRY WHAT WE MIGHT CALL A
3 GARDEN VARIETY MURDER OR PERHAPS A MORE COMPLICATED MATTER?

4 MR. DIPAOLA: IT SEEMS LIKE A RATHER UNIQUE SET OF
5 CIRCUMSTANCES HERE.

6 MR. BARENS: RIGHT. OBVIOUSLY, APPARENTLY, THE
7 UNIQUENESS OF THE SITUATION EVEN BEFORE WE HAVE HAD THE FIRST
8 WITNESS -- BUT, JUST BASED ON THE TYPE OF JURY CONDITIONING
9 WE ARE DOING HERE, MIGHT THAT SUGGEST TO YOU, THE URGENCY
10 IN THIS INSTANCE, TO CONSIDER ALL OF THE POSSIBILITIES BEFORE
11 COMING TO A CONCLUSION?

12 MR. DIPAOLA: ABSOLUTELY.

13 MR. BARENS: EVEN ONES THAT MIGHT SEEM AT LEAST
14 INITIALLY, SOMEWHAT REMOTE OR UNUSUAL?

15 MR. DIPAOLA: ALL THAT COULD SEEM APPROPRIATE IN THIS
16 CASE, YES.

17 MR. BARENS: YOU WOULD BE WILLING TO LISTEN TO BOTH
18 SIDES AND TO ALL OF THE EVIDENCE BEFORE YOU FORMULATED YOUR
19 CONCLUSION?

20 MR. DIPAOLA: YES.

21 MR. BARENS: NOW, YOU KNOW SOMETIMES WHEN YOU HEAR ONE
22 SIDE OF AN ARGUMENT AND IT GOES ON FOR WEEKS -- AND LET ME
23 SUBMIT TO YOU THAT BEFORE THE GOVERNMENT'S CASE IS CONCLUDED,
24 WEEKS WILL GO BY WHEN ALL YOU WILL HEAR IS THE GOVERNMENT
25 PUTTING ON THEIR CASE. THEY GO FIRST. THEY PUT ALL OF THEIR
26 BEST FOOT FORWARD AND THAT SORT OF THING.

27 DO YOU THINK YOU COULD IN FACT, RESIST COMING
28 TO A CONCLUSION BASED ON THEIR CASE THAT MIGHT GO ON FOR WEEKS

1 AND WEEKS AND WEEKS BEFORE YOU HEARD THE DEFENDANT'S CASE?

2 MR. DIPAOLA: NO CONCLUSION IS NECESSARY UNTIL WE GO
3 INTO THE FINAL DELIBERATION PHASE.

4 MR. BARENS: QUITE SO. IN OTHER WORDS, YOU WOULD NOT,
5 ALTHOUGH I AM SURE THEY WILL PUT ON A WONDERFULLY CONVINCING
6 CASE IN THE FIRST INSTANCE OF SORTS, DRAW A CONCLUSION FROM
7 THAT BEFORE YOU HAVE HEARD THE OTHER SIDE?

8 MR. DIPAOLA: NOT UNTIL IT IS TIME TO GO AND MAKE THE
9 DECISION.

10 MR. BARENS: ALL RIGHT, SIR. NOW, YOU ARE EMPLOYED
11 AS A MANAGER OF GENERAL TELEPHONE. I REALLY DIDN'T UNDERSTAND
12 EXACTLY WHAT YOU MEANT BY SAYING YOU WERE INVOLVED WITH THEIR
13 PUBLIC TELEPHONE ACTIVITIES.

14 MR. DIPAOLA: I AM RESPONSIBLE FOR THE PRODUCT MANAGEMENT,
15 THE SALES AND PLACEMENT OF -- WELL, THE STRATEGIC DIRECTION
16 OF THE BUSINESS AND THE FINANCIAL RESULTS AND THOSE KINDS
17 OF THINGS.

18 MR. BARENS: ARE YOU INVOLVED WITH ANY GOVERNMENTAL
19 AGENCIES IN THE EXECUTION OF YOUR DUTIES?

20 MR. DIPAOLA: INDIRECTLY. FOR INSTANCE, WE HAVE PHONES
21 IN THIS BUILDING. WE HAVE A BUSINESS RELATIONSHIP WITH THE
22 CITY OF SANTA MONICA AS WELL AS WE DO AT HENRY'S LIQUOR
23 STORE, FOR THE PLACEMENT OF PHONES AND THE PAYMENT OF
24 COMMISSIONS TO THE AGENT AND CERTAIN KINDS OF MAINTENANCE
25 THAT WE DO ON THE PHONES.

26 THE COURT REPORTER: PLEASE KEEP YOUR VOICE UP.

27 MR. DIPAOLA: WE REPAIR THEM. WE COLLECT THEM AND ASSIGN
28 THE PROFITS AND ET CETERA.

1 MR. BARENS: IN MY QUESTION THAT I HAD IN MIND, WAS
2 THE FACT THAT YOU FOLKS HAVE THE PHONES IN THE COURT BUILDINGS.
3 WOULD THERE BE ANYTHING AT ALL IN YOUR EXPERIENCE DEALING
4 WITH THAT ASPECT OF YOUR BUSINESS, THAT MIGHT IN ANY WAY,
5 INFLUENCE YOU AS A JUROR?

6 MR. DIPAOLA: THEY ARE JUST ANOTHER BUSINESS PARTNER
7 OF OURS IN THIS SITUATION.

8 MR. BARENS: YOU CALL THEM BUSINESS PARTNERS RATHER
9 THAN CUSTOMERS NOW?

10 MR. DIPAOLA: RIGHT.

11 MR. BARENS: INDEED. I LIKE THAT.

12 MR. DIPAOLA: WE ACTUALLY PAY COMMISSIONS TO THE CITY
13 AS WELL AS WE DO OTHER BUSINESS PEOPLE. SO WE BOTH SHARE
14 IN THE PROCEEDS OF THE PAY TELEPHONE BUSINESS.

15 MR. BARENS: ALL RIGHT. BEFORE ENGAGING IN THAT
16 ACTIVITY, HAD YOU HAD ANOTHER TYPE OF EMPLOYMENT?

17 MR. DIPAOLA: WITHIN THE COMPANY I HAVE HAD SEVERAL
18 DIFFERENT JOBS. BEFORE THAT I WAS IN THE MARKET ANALYSIS
19 GROUP. BEFORE THAT, I WAS IN BUILDINGS AND FLEET MANAGEMENT,
20 PURCHASING AND SEVERAL DIFFERENT AREAS.

21 MR. BARENS: I SEE. AND YOU RECEIVED A MASTER'S IN
22 BUSINESS?

23 MR. DIPAOLA: YES.

24 MR. BARENS: ANY PARTICULAR EMPHASIS IN THAT MASTER'S
25 PROGRAM?

26 MR. DIPAOLA: MANAGEMENT MARKETING AND I -- WELL, JUST
27 MANAGEMENT AND MARKETING WERE THE TWO AREAS OF EMPHASIS.

28 MR. BARENS: DID YOU DO A GRADUATE MASTER'S THESIS?

1 MR. DIPAOLA: NO. WE HAD A COMPREHENSIVE FINAL.

2 MR. BARENS: IT WAS AT LONG BEACH STATE?

3 MR. DIPAOLA: YES.

4 MR. BARENS: WHAT WAS YOUR MAJOR AT USC?

5 MR. DIPAOLA: ALSO BUSINESS.

6 MR. BARENS: ALL RIGHT. YOU TOOK ACCOUNTING CLASSES?

7 MR. DIPAOLA: YES.

8 MR. BARENS: AND DID YOU TAKE ANY PHILOSOPHY CLASSES?

9 MR. DIPAOLA: YES.

10 MR. BARENS: AND DO YOU RECALL, WAS THAT IN YOUR

11 UNDERGRADUATE OR GRADUATE ACTIVITIES?

12 MR. DIPAOLA: UNDERGRADUATE WORK.

13 MR. BARENS: DID YOU TAKE MORE THAN ONE?

14 MR. DIPAOLA: WELL, YES. I HAD ONE SURVEY COURSE AND
15 ONE OR TWO SPECIFIC ONES THAT WERE SOMEWHERE BETWEEN POLITICAL
16 SCIENCE AND PHILOSOPHY.

17 MR. BARENS: IN YOUR PREVIOUS COURSE, IN YOUR SURVEY
18 COURSE, WAS THAT STATISTICAL PROBABILITIES?

19 MR. DIPAOLA: I THOUGHT YOU WERE TALKING ABOUT
20 PHILOSOPHY.

21 MR. BARENS: BUT WHEN YOU SAID YOU TOOK A SURVEY COURSE --

22 MR. DIPAOLA: A SURVEY COURSE IN GENERAL PHILOSOPHY,
23 FROM EARLY PHILOSOPHERS IN TO MORE CURRENT PHILOSOPHERS.

24 MR. BARENS: THEN YOU GOT THE PHILOSOPHY OF POLITICAL
25 ACTIVITIES?

26 MR. DIPAOLA: YES.

27 MR. BARENS: WERE THERE ANY PHILOSOPHERS IN THAT THAT
28 PARTICULARLY IMPRESSED YOU AS A YOUNG MAN THAT MIGHT HAVE

1 CARRIED FORWARD IN YOUR LIFE?

2 MR. DIPOLA: ACTUALLY, THERE ARE ASPECTS OF SEVERAL
3 OF THEM THAT I SORT OF TOOK ON AS A PERSONAL PHILOSOPHY.
4 THERE IS CERTAINLY A LOT OF SPREAD IN THE PHILOSOPHERS THAT
5 WERE ACTIVE, IF YOU WILL.
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1 MR. BARENS: COULD YOU TELL ME WHICH ONES MIGHT READILY
2 COME TO YOUR MIND, AS WE ARE HERE TODAY, THAT CONTINUE TO
3 IMPRESS YOU?

4 MR. DIPAOLA: PLATO FOR ONE.

5 YOU KNOW, YOU DON'T EVEN THINK ABOUT --

6 THE COURT REPORTER: WOULD YOU PLEASE SPEAK UP?

7 MR. DIPAOLA: YES.

8 YOU DON'T EVEN THINK OF PIECES OF A PHILOSOPHY
9 AS YOU PUT THEM TOGETHER, YOU JUST ADOPT THEM PERSONALLY
10 AND --

11 MR. BARENS: SPEAKING OF PLATO, DOES HE HAVE SOME
12 EMPIRIC UNIVERSE OUT THERE WHERE THINGS ARE ALWAYS DISCERNIBLE
13 AND IDENTIFIABLE AND KNOWABLE?

14 MR. DIPAOLA: CERTAINLY THE SEARCH IS THERE FOR THOSE
15 THINGS.

16 MR. BARENS: DOES PLATO SEEM TO BELIEVE THAT THERE ARE
17 ACTUALLY OBJECTIVE ANSWERS TO ALL OF THESE THINGS IN THE
18 UNIVERSE?

19 HE HAS SOME RATHER ORDERED CONSTRUCT ABOUT THE
20 WAY THINGS ARE; DID YOU GET THAT IMPRESSION?

21 MR. DIPAOLA: I CAN REMEMBER JUST LIKING HIS PHILOSOPHY.

22 TO GET INTO THE SPECIFICS AT THIS POINT, I
23 PROBABLY WOULDN'T BE PREPARED TO DISCUSS IT.

24 MR. BARENS: WHEN PLATO DOES THAT --

25 WERE YOU IMPRESSED AT ALL WITH HIS ALLEGORY OF
26 THE CAVE, DO YOU REMEMBER THAT AT ALL WITH PLATO WHERE HE
27 DOES THAT?

28 MR. DIPAOLA: NO, I DON'T REMEMBER.

1 MR. BARENS: OR ANY OF THE ALLEGORICAL DIALOGUES HE GETS
2 INTO WHERE WE TALK ABOUT ONE THING AND WE ARE SUPPOSED TO
3 CONCLUDE WITH THAT WHERE WE HAVE SOME GREAT ENLIGHTENMENT,
4 OR YOU DON'T BRING THAT FORWARD WITH YOU?

5 MR. DIPAOLA: I DON'T REMEMBER. I MEAN THIS IS 26 YEARS
6 AGO OR SOMETHING LIKE THAT.

7 MR. BARENS: ALL RIGHT. DID YOU EVER HEAR ANYTHING
8 ABOUT SOMETHING CALLED THE PARADOX PHILOSOPHY?

9 MR. DIPAOLA: IN THE COURTROOM IS THE FIRST TIME I
10 REMEMBERED HEARING IT.

11 MR. BARENS: ALL RIGHT. PRIOR TO THAT, YOU HAD NOT
12 READ ANYTHING ROUGHLY THAT WOULD FALL INTO THAT TYPE OF A
13 THING?

14 MR. DIPAOLA: WHAT OCCURRED TO ME AS VARIOUS TESTIMONY
15 HAS GONE ON WAS I HAD WRITTEN A PAPER ABOUT EXISTENTIALIST
16 PHILOSOPHERS --

17 THE COURT REPORTER: WOULD YOU REPEAT THAT?

18 MR. DIPAOLA: I HAD WRITTEN A PAPER CONCERNING
19 EXISTENTIAL PHILOSOPHERS AT ONE TIME, AND THAT SEEMED TO BE
20 WHAT YOU WERE INTERESTED IN THERE.

21 MR. BARENS: QUITE SO.

22 MR. DIPAOLA: AGAIN, IT WAS A MORE BROAD TYPE ABOUT
23 HEIDEGGER AND SARTRE AND POSSIBLY NIETZSCHE AS THEY RELATED
24 TO THAT PHILOSOPHY.

25 AGAIN, THESE ARE THINGS THAT HAVE NOT COME UP
26 RECENTLY IN MY LIFE BUT CERTAINLY THAT WAS ONE OF THEM.

27 MR. BARENS: KNOWING THAT IF YOU ARE A JUROR, THERE IS
28 A HIGH PROBABILITY THOSE THINGS COULD COME UP HERE AND THERE

7-3

1 WOULD BE SOME EMPHATIC DISCUSSION ABOUT THIS PARADOX
2 PHILOSOPHY AND, LET'S SAY, IT MIGHT GENERALLY BE DESCRIBED
3 AS SOME SORT OF EXISTENTIALIST PHILOSOPHY -- AND WHEN I SAY
4 EXISTENTIAL PHILOSOPHY TO YOU, WHAT DO YOU THINK THAT IS; WHAT
5 DOES THAT MEAN TO YOU?

6 MR. DIPAOLA: IT SEEMS TO ME THAT THAT TYPE OF A
7 PHILOSOPHY DEALT WITH -- LET ME GO BACK.

8 IF I WERE TO TALK ABOUT A PERSONAL PRESCRIPTION
9 FOR MY VIEW OF THE WORLD, AND IT WOULD NOT HAVE BEEN
10 EXISTENTIALISM, BUT IT SEEMED VERY FATALISTIC IN MY MEMORY
11 OF IT.

12 I COULD JUST GIVE YOU MORE FEELINGS ABOUT IT THAN
13 SPECIFICS ABOUT WHAT THE VARIOUS PHILOSOPHERS ESPOUSED.

14 MR. BARENS: HOW WOULD YOU DIFFER?

15 MR. DIPAOLA: IT SEEMED THAT I CAN REMEMBER VAGUELY
16 SOME OF SARTRE'S PERSPECTIVE.

17 MR. BARENS: IT IS VAGUE TO ME, TOO.

18 MR. DIPAOLA: YES.

19 MR. BARENS: GO AHEAD.

20 MR. DIPAOLA: IT SEEMED LIKE HE HAD GIVEN UP IN SOME
21 WAYS. THAT HE SAW NO MEANINGFUL END TO EXISTENCE AND I FOUND
22 THAT A LITTLE UNCOMFORTABLE, BECAUSE I LIKE THE IDEA THAT THERE
23 WILL BE SOME END TO EXISTENCE, SOME VALUE OF IT.

24 MR. BARENS: BUT WHILE HE WAS GOING TO BE STUCK ON THE
25 PLANET, WHAT DO YOU THINK SARTRE THOUGHT ABOUT TRUTH, THE
26 CONCEPT OF TRUTH? DID HE HAVE A DEFINITION FOR TRUTH?

27 MR. DIPAOLA: I DON'T REMEMBER.

28 THE COURT: MR. BARENS, I THINK WE HAVE HAD ENOUGH OF

7-4

1 THIS PHILOSOPHY. LET'S GET ON TO SOMETHING ELSE, PLEASE.

2 MR. BARENS: I WOULD LIKE TO CLOSE WITH THE POINT I AM
3 TRYING TO GET TO ON THIS, YOUR HONOR.

4 THE COURT: GO AHEAD.

5 MR. BARENS: IN YOUR READING OF EXISTENTIAL PHILOSOPHY
6 AND SARTRE AND CAMUS AND ANYBODY ELSE YOU MIGHT HAVE READ HERE,
7 DID THEY IN YOUR MIND COME TO AN OPINION THAT THE ENDS IN LIFE
8 JUSTIFIED THE MEANS; DO YOU GET AN IMPRESSION ABOUT THAT?

9 MR. DIPAOLA: THE IMPRESSION WOULD BE THAT THEY DO IN
10 THEIR CASE.

11 MR. BARENS: ASSUMING THAT TO BE THE CASE, DID THEY,
12 NONETHELESS, IN YOUR IMPRESSION -- DID THEY NONETHELESS HAVE
13 A MORAL PHILOSOPHY THAT AN OVERLAY OF MORALITY REMAINED
14 RELEVANT, EVEN THOUGH WE MIGHT BE PRAGMATIC IN THE WAY WE
15 CONDUCTED OURSELVES?

16 MR. DIPAOLA: I AM NOT SURE ABOUT THEIR MORAL PERSPECTIVE
17 REGARDING THEIR BEHAVIOR.

18 MR. BARENS: WOULD YOU FEEL THAT A PERSON WHO MIGHT
19 SUBSCRIBE TO AN EXISTENTIALIST ORIENTATION WOULD BE LESS
20 MORALLY INCLINED THAN SOMEONE WHO MIGHT HAVE A PHILOSOPHY
21 MORE AKIN TO YOUR OWN?

22 MR. DIPAOLA: THERE IS NO REASON THEY WOULD HAVE TO,
23 NO.

24 MR. BARENS: THERE IS NOTHING FROM THE EDUCATION YOU
25 RECEIVED THAT WOULD PRECLUDE AN EXISTENTIALIST FROM HAVING
26 A CONVENTIONAL GOLDEN RULE OR CHRISTIAN ETHIC?

27 MR. DIPAOLA: NONE THAT I CAN SEE.

28 MR. BARENS: SO I WOULDN'T NEED TO BE CONCERNED ABOUT

1 THAT?

2 MR. DIPAOLA: JUST AS IN MY CASE, I PICKED UP PIECES
3 OF VARIOUS PHILOSOPHIES, I ASSUME OTHER PEOPLE DO, AS OPPOSED
4 TO SUBSCRIBING FULLY TO ALL OF THE TENETS OF PHILOSOPHY.

5 MR. BARENS: QUITE SO, THAT A PERSON'S PHILOSOPHY,
6 ALTHOUGH HE MIGHT SAY I AM ONE THING OR THE OTHER, IT IS
7 BELIEVABLE TO YOU, THAT MY PHILOSOPHY IS IN FACT ONE AMALGUM
8 OF A VARIETY OF EXPERIENCES AND EDUCATIONAL VIEWPOINTS THAT
9 I MIGHT HAVE EXPERIENCED.

10 MR. DIPAOLA: ABSOLUTELY.

11 MR. BARENS: IT WOULD BE DIFFICULT TO CONSIDER ANYONE
12 SO DIALECTICALLY PURIST IN OUR SOCIETY, WOULDN'T IT?

13 (PROSPECTIVE JUROR DIPAOLA NODS HIS HEAD
14 UP AND DOWN.)

15 MR. BARENS: DO YOU HAVE ANY HOBBIES?

16 MR. DIPAOLA: YES. I LIKE TO SKI, TENNIS, THOSE TYPES
17 OF THINGS.

18 WITH THREE BOYS, I AM INVOLVED IN SOCCER. I AM
19 ALSO INVOLVED IN INDIAN GUIDES, THOSE TYPES OF THINGS, YES.

20 MR. BARENS: THINGS THAT YOU ARE SUPPOSED TO BE DOING.

21 MR. DIPAOLA: DEFINITELY.

22 MR. BARENS: DO YOU BELONG TO ANY SOCIAL ORGANIZATIONS?

23 MR. DIPAOLA: SHORT OF INDIAN GUIDES AND YMCA, NO.

24 MR. BARENS: ALL RIGHT. IS THERE ANYTHING ABOUT SOMEONE
25 WHO MIGHT BELONG TO THE BILLIONAIRE BOYS CLUB THAT MIGHT
26 CREATE ANY IMPRESSION IN YOUR MIND ONE WAY OR ANOTHER?

27 MR. DIPAOLA: NO PROBLEM. IT SOUNDS INTERESTING.

28 MR. BARENS: WAS YOUR WIFE EMPLOYED DURING YOUR MARRIAGE?

1 MR. DIPAOLA: EARLY IN THE MARRIAGE SHE WORKED FOR
2 RALPH M. PARSONS IN PASADENA AND WAS IN THEIR PERSONNEL
3 DEPARTMENT.

4 MR. BARENS: THAT IS REAL ESTATE ORIENTED?

5 MR. DIPAOLA: THEY ARE ACTUALLY ENGINEERING ORIENTED.

6 MR. BARENS: ENGINEERING?

7 MR. DIPAOLA: YES.

8 MR. BARENS: AND WAS SHE DOING THAT WHEN YOU MET HER?

9 MR. DIPAOLA: NO.

10 SHE WAS A STUDENT WHEN I MET HER.

11 MR. BARENS: DOES YOUR WIFE HAVE A DEGREE?

12 MR. DIPAOLA: YES.

13 MR. BARENS: IN WHAT AREA?

14 MR. DIPAOLA: SHE HAS A BACHELOR'S IN PSYCHOLOGY.

15 MR. BARENS: ALL RIGHT. WHAT WAS THE LAST BOOK YOU
16 READ, MR. DIPAOLA?

17 MR. DIPAOLA: ACTUALLY, I DON'T READ FULL BOOKS. I READ
18 SEVERAL EXCERPTS. OF THE THIRD WAVE, SERVICE AMERICA, AND
19 THEN I LEAN TO THE CASSETTE TAPES AND PARTIAL BOOKS, BOOK
20 REVIEWS.

21 MR. BARENS: I FORGET THE NAME OF THAT OUTFIT.

22 MR. DIPAOLA: I FORGOT IT, TOO.

23 MR. BARENS: "BOOKS ON TAPE"?

24 MR. DIPAOLA: YES.

25 MR. BARENS: THAT IS OBVIOUS WHAT YOU WOULD CALL IT.

26 WHAT WAS THE LAST ONE OF THOSE YOU EITHER PURCHASED
27 OR RENTED?

28 MR. DIPAOLA: THERE WAS ONE ON MANAGEMENT VERSUS

7-7

1 LEADERSHIP, WARREN VENICE FROM USC. IT WAS HIS BOOK.

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

3 MR. DIPAOLA: IT IS LIKE, "PEGGY SUE GETS MARRIED."

4 MR. BARENS: ALL RIGHT, MR. DIPAOLA, IF YOU WERE A
5 DEFENDANT IN THIS COURTROOM ON A MURDER CHARGE, HOW WOULD YOU
6 FEEL IF THE 12 PEOPLE IN THE BOX WERE YOU, YOU ARE THE
7 DEFENDANT NOW, YOU ARE NOT REALLY YOU ANYMORE, SO YOU CAN'T
8 COUNT ON THAT KINSHIP HERE; HOW WOULD YOU FEEL IF YOU HAD 12
9 PEOPLE WITH YOUR OUTLOOK AND YOUR ORIENTATIONS AS JURORS IN
10 THIS CASE?

11 MR. DIPAOLA: IF I HAD GOOD REPRESENTATION AND WERE
12 INNOCENT, I WOULD FEEL GREAT.

13 IF I HAD LESS THAN GOOD REPRESENTATION, I MIGHT
14 GET A LITTLE CONCERNED.

15 BUT I KNOW THAT I WOULD GET A FAIR TRIAL IN EITHER
16 CASE.

17 MR. BARENS: THAT IS REALLY WHAT I AM LOOKING FOR.

18 DO YOU FEEL YOU WOULD BE THE TYPE OF JUROR YOU
19 WOULD WANT TO HAVE FOR YOURSELF?

20 MR. DIPAOLA: DEFINITELY.

21 MR. BARENS: DO YOU CONSIDER YOURSELF, ON THAT, DO YOU
22 MEAN SOMEONE WHO IS TRULY AS NEUTRAL AS WE GET AS HUMANS AND
23 OPEN-MINDED?

24 MR. DIPAOLA: OPEN-MINDED, YES.

25 NEUTRAL, AT THIS POINT, CERTAINLY, YES.

26 AGAIN, EVERYBODY BRINGS CERTAIN BIASES TO THEIR
27 VIEW OF THE CASE. I WOULD TRY TO LIMIT THOSE TO CONSIDERING
28 THE FACTS PRESENTED.

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1 MR. BARENS: HOW DO YOU FEEL ABOUT BEING A JUROR ON
2 THIS CASE, WITH THAT IN MIND?

3 MR. DIPAOLO: UP TO NOW, IT HAS BEEN RATHER AWKWARD
4 BECAUSE WE WEREN'T SURE WHEN TO BE HERE. WE WEREN'T SURE
5 WHEN TO BE HERE BUT IT IS AWKWARD ON SOMEONE'S SCHEDULE. IF
6 I KNEW I WAS ON THE CASE, IT WOULD BE MUCH MORE SETTLED THAN
7 IT HAS BEEN DURING THE PROCESS.

8 MR. BARENS: ASSUMING IF YOU WERE A JUROR, I CAN ASSURE
9 YOU THAT THERE CAN BE ABSOLUTELY -- WELL, "ABSOLUTE" IS A BAD
10 WORD. THERE WOULD BE PREDICTABILITY IN YOUR SCHEDULE.

11 KNOWING THAT, WOULD YOU LIKE TO BE A JUROR ON
12 THIS CASE, ASSUMING THAT YOU HAD A PREDICTABLE SCHEDULE?

13 MR. DIPAOLO: IT IS GOING TO BE AN INTERESTING CASE.
14 I HAVE NEVER FULFILLED MY OBLIGATION AS A JUROR. I PROBABLY
15 SHOULD DO THAT AT SOME POINT.

16 IT IS SOMEWHAT CONFLICTING WITH OTHER THINGS IN
17 MY LIFE. I HAVE A BUSY JOB AND AN ACTIVE FAMILY.

18 THOSE MAY GET A LITTLE MORE COMPLEX. BUT I COULD
19 DO IT APPROPRIATELY IF I WERE SELECTED.

20 MR. BARENS: THANK YOU VERY MUCH. I PASS FOR CAUSE.

21 THE COURT: ALL RIGHT.

22 MR. WAPNER?

23 MR. WAPNER: WOULD YOU PRONOUNCE YOUR NAME FOR ME AGAIN?

24 MR. DIPAOLO: DIPAOLO.

25 MR. WAPNER: THANK YOU, MR. DIPAOLO. THOSE LITTLE
26 INDIAN GUIDES SOMETIMES GROW UP TO BE REAL PEOPLE. I CAN
27 TESTIFY TO THAT. IN OTHER WORDS, I WAS A LITTLE RED JACKET
28 MANY, MANY YEARS AGO.

A-2

1 YOU SAID THAT YOU WERE TALKING ABOUT YOUR ABILITY
2 TO BE A FAIR JUROR. DO YOU THINK IN YOUR MIND, IF THE OTHER
3 11 PEOPLE ON THIS JURY HAD YOUR PRESENT MIND SET, THAT THE
4 PROSECUTION IS GETTING A FAIR TRIAL?

5 MR. DIPAOLA: WELL, I DON'T THINK THE PROSECUTION IS
6 ON TRIAL. I THINK IF THE FACTS PRESENTED SUBSTANTIATE THE
7 PROSECUTION'S CASE, THEY WOULD GET A FAIR TRIAL.

8 MR. WAPNER: CLEARLY, THE PROSECUTION IS NOT ON TRIAL.
9 BUT SINCE THERE ARE TWO SIDES OF THE CASE, YOUR OBLIGATION
10 AS A JUROR IS TO BE FAIR TO BOTH SIDES.

11 MR. DIPAOLA: ABSOLUTELY.

12 MR. WAPNER: OKAY. YOU DON'T HAVE ANY PROBLEM WITH
13 THAT?

14 MR. DIPAOLA: NOT AT ALL.

15 MR. WAPNER: OKAY. YOU MENTIONED THAT EACH PERSON
16 BRINGS SOME BIASES WITH THEM INTO THE COURTROOM AND YOU SAID
17 THAT YOU WOULD TRY TO LIMIT THEM.

18 WHICH ONES DO YOU BRING?

19 MR. DIPAOLA: WELL, ONE BIAS I MENTIONED A MOMENT AGO
20 HAS TO DO WITH PERSONAL TIME INVOLVED HERE. THERE IS SOME
21 BIAS AS TO TIME LIMITS.

22 I BASICALLY HAVE TO SAY THAT IF I AM SELECTED,
23 I WILL CAST THE OTHER THINGS ASIDE.

24 IF I AM ON THE CASE, I MEAN THAT IS THE DECISION
25 THAT HAS TO BE MADE IF I AM SELECTED FOR THE JURY. SO THAT
26 IS YOU KNOW, A BIAS FOR LIKE A -- I GO TO WORK AT 7:30 IN
27 THE MORNING. I COME HERE AT 10:30 IN THE MORNING. I WORK
28 AT NIGHTTIME TO SORT OF CLEAR TIME FOR RIGHT NOW.

BA-2
1 AND IF I WERE ON THE JURY, I WOULD JUST HAVE TO
2 REASSIGN THE RESPONSIBILITIES.

3 SO, THAT IS ONE SET OF BIASES THAT I HAVE GOT
4 TO GET RID OF. I THINK THAT THAT WOULD BE THE PRIMARY ONE
5 FOR ME.

6 MR. WAPNER: IT WOULD HAVE BEEN EASIER IF GENERAL
7 TELEPHONE HAD STAYED IN SANTA MONICA?

8 MR. DIPAOLO: PROBABLY.

9 MR. WAPNER: OKAY. DID YOU DO ANY STUDIES OF
10 COMMODITIES TRADING WHEN YOU WERE IN SCHOOL?

11 MR. DIPAOLO: VERY LIMITED.

12 MR. WAPNER: DO YOU HAVE ANY KNOWLEDGE OF THAT NOW?

13 MR. DIPAOLO: SOME KNOWLEDGE OF COMMODITY TRANSACTIONS.

14 MR. WAPNER: HAVE YOU EVER DONE ANY INVESTING IN
15 COMMODITIES YOURSELF?

16 MR. DIPAOLO: NO.

17 MR. WAPNER: IS THAT THE KNOWLEDGE THAT YOU HAVE JUST
18 OUT OF GENERAL INTEREST IN THE SUBJECT?

19 MR. DIPAOLO: GENERAL INTEREST. BECAUSE I DO SOME
20 INVESTING IN THE STOCK MARKET. I HAVE JUST NEVER BEEN IN
21 COMMODITIES.

22 MR. WAPNER: WOULD YOU SAY OF YOURSELF GENERALLY THAT
23 YOU ARE A GAMBLER OR A RISK-TAKER OR ARE YOU MORE ON THE
24 CONSERVATIVE SIDE?

25 MR. DIPAOLO: MORE ON THE CONSERVATIVE SIDE.

26 MR. WAPNER: HOW DO YOU FEEL OR HOW DID YOU FEEL BEFORE
27 YOU CAME INTO THIS COURT ABOUT THE CONCEPT OF CIRCUMSTANTIAL
28 EVIDENCE?

BA-"
1 MR. DIPAOLA: ACTUALLY, I HAD NOT THOUGHT VERY MUCH
2 ABOUT IT UNTIL WE CAME INTO THIS COURTROOM.

3 AND I THINK THAT I HAVE LEARNED QUITE A BIT SINCE
4 THEN.

5 MR. WAPNER: DO YOU HAVE ANY PROBLEM WITH THE IDEA THAT
6 THE LAW IN THIS STATE PERMITS THE PROSECUTION TO PROSECUTE
7 A MURDER CASE, EVEN THOUGH THE BODY OF THE VICTIM HAS NOT
8 BEEN RECOVERED?

9 MR. DIPAOLA: NO PROBLEM.

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

12 MR. DIPAOLA: I AM NOT SURE IN THIS CASE. WE ARE IN
13 SOME LITIGATION NOW THAT WILL DETERMINE THAT.

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MR. WAPNER: YOU PERSONALLY, ARE IN LITIGATION?

MR. DIPAOLOA: WE ARE.

MR. WAPNER: WHEN YOU SAY "WE" DOES THAT MEAN THE PHONE COMPANY?

MR. DIPAOLOA: NO. WE IS MY WIFE AND I. WE ARE CONCERNED WITH SOME BUSINESS DEALINGS THAT WE HAVE. THERE IS A SUIT PENDING WITH AN INDIVIDUAL.

MR. WAPNER: IF IT IS NOT TOO PERSONAL, CAN YOU GIVE ME A LITTLE MORE BACKGROUND ON THAT SO THAT I HAVE SOME IDEA WHAT THAT IS ABOUT?

MR. DIPAOLOA: WELL, THE PERSON STRUCTURED PARTNERSHIPS, REAL ESTATE PARTNERSHIPS IN PARTICULAR AND WAS A VERY EFFECTIVE SALESPERSON IN GETTING PEOPLE INVOLVED.

HE HAD THE SOLE MANAGEMENT RESPONSIBILITY OVER THESE PARTNERSHIPS. AND SOME OF HIS BEHAVIOR WE THOUGHT, WAS SUSPECT.

MR. WAPNER: SUCH AS?

MR. DIPAOLOA: ONE PARTICULAR CASE IS THAT THERE WAS A PROPERTY FORECLOSED ON IN ABOUT FEBRUARY OF THE YEAR. I FOUND OUT ABOUT IT THROUGH A RATHER OUTSIDE MEANS.

SOMEBODY HAD TOLD ME ABOUT IT. I PURSUED IT AND FOUND OUT THAT WE HAD LOST THE PROPERTY I THINK, IN FEBRUARY.

IN NOVEMBER OF THE YEAR, HE HAD NEVER TOLD US IT WAS GONE. SO IT SEEMS TO ME THAT SOMEBODY WHO IS ACTING ON YOUR BEHALF AND DOESN'T EVEN TELL YOU PROPERTIES THAT YOU INVESTED IN HAVE BEEN FORECLOSED ON, I GET A LITTLE SUSPICIOUS ABOUT THEIR THINKING PROCESS.

MAYBE THEY LOST IT -- MAYBE THEY WERE JUST LOSING

1 IT BY POOR MANAGEMENT. BUT NOT TO TELL SOMEBODY WHO INVESTED
2 IN A PROPERTY, SEEMED A LITTLE BIT SCURRILOUS TO US. WE ARE
3 PURSUING IT.

4 MR. WAPNER: SO THAT IS NOW BEING PURSUED LEGALLY?

5 MR. DIPAOLO: YES.

6 MR. WAPNER: OTHER THAN THAT, ANY OTHER INCIDENTS THAT
7 YOU CAN THINK OF?

8 MR. DIPAOLO: NO.

9 MR. WAPNER: YOU HAVE NOT BEEN THE VICTIM OF ANY OTHER
10 TYPES OF CRIMES, CAR BURGLARIES OR CAR THEFTS OR HOUSE
11 BURGLARIES OR ANYTHING LIKE THAT?

12 MR. DIPAOLO: NO, NOTHING.

13 MR. WAPNER: WHAT DO YOU KNOW ABOUT THIS INCIDENT WHERE
14 THIS DISTANT RELATIVE WAS KILLED IN A LIQUOR STORE ROBBERY?

15 MR. DIPAOLO: FAMILY HEARSAY. I MEAN, THAT IS ABOUT
16 AS CLOSE TO IT AS I WAS.

17 MR. WAPNER: THIS OBVIOUSLY WAS A VERY DISTANT
18 RELATIVE. I DIDN'T EXACTLY FOLLOW THE CHAIN.

19 MR. DIPAOLO: IT WAS MY WIFE'S UNCLE.

20 MR. WAPNER: OKAY. AND DID THAT HAPPEN IN LOS ANGELES?

21 MR. DIPAOLO: YES. I BELIEVE IT DID.

22 MR. WAPNER: WAS THAT BEFORE YOU WERE MARRIED?

23 MR. DIPAOLO: YES IT WAS. I THINK WE WERE COURTING.

24 MR. WAPNER: DO YOU HAVE ANY IDEA IN YOUR HEAD OF WHAT
25 A MURDER DURING THE COURSE OF A ROBBERY IS SUPPOSED TO LOOK
26 LIKE?

27 MR. DIPAOLO: I GUESS THE TELEVISION VARIETY WOULD BE
28 THE ONLY THING I AM FAMILIAR WITH.

1 MR. WAPNER: OKAY. IF THE FACTS IN THIS CASE DIFFER
2 SUBSTANTIALLY FROM EITHER THE TELEVISION VARIETY OR THE TYPE
3 OF SCENARIO THAT HAPPENED TO YOUR WIFE'S UNCLE, DOES THAT
4 NECESSARILY MEAN TO YOU THAT IT DOESN'T FALL INTO THE
5 CATEGORY OF A MURDER DURING A ROBBERY?

6 MR. DIPAOLO: NO.

7 MR. WAPNER: OKAY. YOU DIDN'T GO TO LAW SCHOOL OR TAKE
8 ANY LEGAL COURSES?

9 MR. DIPAOLO: I TOOK SOME LEGAL COURSES.

10 MR. WAPNER: DID YOU TAKE ANY BUSINESS LAW?

11 MR. DIPAOLO: BUSINESS LAW AND REAL ESTATE LAW.

12 MR. WAPNER: ANY CRIMINAL LAW AT ALL?

13 MR. DIPAOLO: NO.

14 MR. WAPNER: YOU ARE NOT GOING TO FALL INTO THAT GROUP
15 OF PEOPLE I ALLUDED TO MANY WEEKS AGO, THAT GET ON JURIES
16 AND SOMEHOW DECIDE THAT THEY KNOW MORE LAW THAN THE JUDGE?

17 MR. DIPAOLO: NO. I DON'T BELIEVE I WILL DO THAT.

18 MR. WAPNER: OKAY. SO IF THE JUDGE AT THE END OF THE
19 CASE GIVES YOU THE LAW AND DEFINES IT FOR YOU AND DEFINES
20 ROBBERY AND DEFINES MURDER, DO YOU THINK THAT YOU WILL HAVE
21 ANY DIFFICULTY APPLYING THAT LAW TO THE FACTS OF THE CASE
22 WITHOUT COMPARING THOSE FACTS TO ANY OTHER FACTS?

23 MR. DIPAOLO: FIRST, THIS CASE IS SEPARATE FROM ANY
24 OTHER FACTS. I WILL TAKE WHAT THE JUDGE LAID OUT, AS THE
25 LAW.

26 MR. WAPNER: ARE YOU THE KIND OF A PERSON WHO IS
27 CAPABLE OF CHANGING YOUR MIND, IF YOU THINK THAT YOUR INITIAL
28 OPINION IS INCORRECT?

1 MR. DIPAOLO: YES.

2 MR. WAPNER: HAVE YOU EVER BEEN IN A DISCUSSION WITH
3 A FRIEND OR RELATIVE ON ANY SERIOUS TOPIC AND TAKEN A
4 POSITION AND THEN CHANGED YOUR MIND?

5 MR. DIPAOLO: YES.

6 MR. WAPNER: DO YOU HAVE ANY DIFFICULTY WITH THE IDEA
7 OF USING THE SAME SCALES OF JUSTICE TO EVALUATE THE TESTIMONY
8 OF ALL OF THE WITNESSES WHO TESTIFY?

9 MR. DIPAOLO: THE SAME SCALE WOULD BE APPROPRIATE FOR
10 ALL, YES.

11 MR. WAPNER: RIGHT. NOT THE SAME WEIGHT, JUST THE SAME
12 SCALE?

13 MR. DIPAOLO: I UNDERSTAND, YES.

14 MR. WAPNER: DO YOU UNDERSTAND THE DIFFERENCE?

15 MR. DIPAOLO: YES I DO.

16 MR. WAPNER: SO IF IT IS APPROPRIATE TO TAKE BIAS INTO
17 CONSIDERATION IN EVALUATING THE TESTIMONY OF ONE WITNESS,
18 IT WOULD BE APPROPRIATE TO TAKE THAT INTO CONSIDERATION
19 EVALUATING THE TESTIMONY OF ALL WITNESSES?

20 MR. DIPAOLO: YES.

21 MR. WAPNER: THAT DOESN'T MEAN THAT ONE OR ANY WITNESS
22 IS BIASED, JUST THAT THAT IS ONE OF THE THINGS YOU COULD
23 CONSIDER?

24 MR. DIPAOLO: YES.

25 MR. WAPNER: THANK YOU VERY MUCH.

26 I PASS FOR CAUSE.

27 THE COURT: ALL RIGHT. IT IS THE PEOPLE'S PEREMPTORY.

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

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MR. WIENS, JUROR NUMBER 12.

THE COURT: THANK YOU, MR. WIENS.

(PROSPECTIVE JUROR WIENS EXITED
THE COURTROOM.)

THE CLERK: RUDOLPH MANTECON, M-A-N-T-E-C-O-N.

1 THE COURT: ALL RIGHT, MR. MANTECON, YOU HEARD ALL OF
2 THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

3 MR. MANTECON: YES, I HAVE.

4 THE COURT: IT IS SILLY FOR ME TO ASK YOU THAT. THEY
5 KEEP ON ASKING THE SAME QUESTIONS ANYWAY.

6 AT ANY RATE, IF THE SAME GENERAL QUESTIONS WERE
7 ASKED OF YOU, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME?

8 MR. MANTECON: SUBSTANTIALLY THE SAME.

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

10 MR. MANTECON: I AM A RAMP SERVICE MAN FOR TRANSWORLD
11 AIRLINES.

12 THE COURT: IS THERE A MRS. MANTECON?

13 MR. MANTECON: YES, THERE IS.

14 THE COURT: DOES SHE HAVE ANY EMPLOYMENT OUTSIDE THE
15 HOME?

16 MR. MANTECON: SHE IS A HOMEMAKER.

17 THE COURT: AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

18 MR. MANTECON: HIGH SCHOOL.

19 THE COURT: AND THE SAME WITH YOUR WIFE?

20 MR. MANTECON: YES.

21 THE COURT: AND WHERE DO YOU LIVE?

22 MR. MANTECON: TORRANCE.

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

25 MR. MANTECON: YES, I HAVE, TWICE.

26 THE COURT: WHAT KIND OF CASES WERE THEY?

27 MR. MANTECON: WELL, ONE WAS APPROXIMATELY 20 YEARS AGO,
28 AND IT WAS -- I THINK IT HAD SOMETHING TO DO WITH KIND OF A

1 DISRUPTION AT THE BEACH AREA. I DON'T REALLY RECALL TOO MUCH
2 ABOUT IT.

3 THE COURT: AT ANY RATE, DID THE JURY REACH A VERDICT
4 IN THAT CASE?

5 MR. MANTECON: YES, WE DID.

6 THE COURT: WHATEVER YOU MIGHT HAVE HEARD AND YOUR
7 REACTIONS AND YOUR IMPRESSIONS IN THAT CASE, YOU WILL JUST
8 LAY THEM ALL ASIDE AND JUST BE GUIDED BY THE EVIDENCE IN THIS
9 CASE, WOULD YOU NOT?

10 MR. MANTECON: YES.

11 THE COURT: ALL RIGHT, YOU HAVE NEVER BEEN THE VICTIM
12 OF ANY CRIME, HAVE YOU?

13 MR. MANTECON: NO, I HAVEN'T.

14 THE COURT: ALL RIGHT, I HAVE LUNCH WITH JUSTICE
15 FEINERMAN --

16 MR. BARENS: WHY DON'T YOU PROCEED WITH THAT AND WE WILL
17 PICK IT UP AFTER LUNCH?

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE WILL
19 TAKE A RECESS AT THIS TIME UNTIL 1:45 THIS AFTERNOON. THANK
20 YOU VERY MUCH. YOU COME RIGHT BACK INTO THIS COURTROOM AT
21 THAT TIME.

22 (AT 11:50 A.M. LUNCH RECESS WAS TAKEN UNTIL
23 1:45 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; TUESDAY, JANUARY 13, 1987; 1:50 P.M.
2 DEPARTMENT WEST 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 MR. BARENS: THANK YOU, YOUR HONOR. GOOD AFTERNOON, SIR.
9 COULD YOU SAY YOUR NAME FOR ME, PLEASE?

10 MR. MANTECON: MANTECON, RUDY MANTECON.

11 MR. BARENS: THANK YOU, SIR. MR. MANTECON, BEFORE THE
12 LUNCHEON BREAK, YOU HAD MENTIONED THAT YOU WERE ACTUALLY
13 INVOLVED WITH TWO PRIOR JURIES, AS I RECALL.

14 MR. MANTECON: YES, THAT'S CORRECT.

15 MR. BARENS: AND ONE YOU WERE INDICATING TO YOUR HONOR,
16 WAS APPROXIMATELY 20 YEARS AGO AND INVOLVING A DISRUPTION AT
17 A BEACH?

18 MR. MANTECON: I BELIEVE THAT IS WHAT IT WAS ABOUT. I
19 DON'T REMEMBER TOO MUCH ABOUT THAT ONE.

20 I WAS ALSO INVOLVED IN ONE ABOUT EIGHT YEARS AGO.

21 MR. BARENS: WHAT DID THAT INVOLVE, SIR?

22 MR. MANTECON: WELL, IT WAS A CRIMINAL COURT. IT WAS
23 I BELIEVE, A PERSON WHO HAD SOMETHING TO DO WITH FIGHTING WITH
24 A POLICE OFFICER OR RESISTING ARREST TYPE OF THING.

25 MR. BARENS: DO YOU RECALL WHETHER IT WAS A FELONY OR
26 A MISDEMEANOR TRIAL, SIR?

27 MR. MANTECON: I BELIEVE IT WAS A MISDEMEANOR.

28 MR. BARENS: AND DID THE JURY REACH A VERDICT IN THAT

1 CASE?

2 MR. MANTECON: YES, THEY DID.

3 MR. BARENS: WERE YOU A JUROR THROUGHOUT THE PROCEEDINGS
4 IN THAT MATTER, SIR?

5 MR. MANTECON: YES.

6 MR. BARENS: AND HOW DID YOU FEEL ABOUT YOUR EXPERIENCE
7 IN THE SECOND CASE? DID YOU THINK THE SYSTEM WORKED?

8 MR. MANTECON: YES. IT WORKED FINE.

9 MR. BARENS: AND DID YOU THINK BOTH THE PROSECUTOR AND
10 THE DEFENSE COUNSEL HAD PROPERLY REPRESENTED THE INTEREST OF
11 THEIR CLIENTS?

12 MR. MANTECON: YES. AS I RECALL, I BELIEVE THEY DID.

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1 MR. BARENS: AND YOU HESITATED AT ALL ON THAT,
2 MR. MANTECON?

3 MR. MANTECON: WELL, I REALLY DON'T REMEMBER A LOT ABOUT
4 IT, TO TELL YOU THE TRUTH. IT IS A LITTLE WHILE BACK AND
5 IT WAS VERY QUICK. I BELIEVE THAT THE TRIAL AND THE
6 DELIBERATION, I THINK, TOOK PLACE IN ABOUT TWO DAYS.

7 MR. BARENS: REALLY? INCLUDING THE JURY SELECTION?

8 MR. MANTECON: UH-HUH. WELL, MAYBE NOT THE JURY
9 SELECTION.

10 MR. BARENS: WELL, THAT WILL BE A MODEL FOR US ALL.

11 MR. MANTECON, DID YOUR MIND CHANGE DURING THE
12 DELIBERATION PROCESS ONCE YOU RETIRED OR WAS IT A SETTING
13 WHERE EVERYBODY KIND OF FELT THE SAME WAY WHEN YOU WENT IN
14 THERE AND IT WAS JUST A REAL QUICK VERDICT?

15 MR. MANTECON: WELL, I DON'T BELIEVE I HAD MADE UP MY
16 MIND WHEN I FIRST WENT THERE. I HAD LISTENED TO EVERYTHING
17 AND WE VOTED AND THEN WE ADDRESSED EACH OTHER ON OUR OPINIONS.

18 MR. BARENS: SO YOU VOTED TO BEGIN WITH?

19 MR. MANTECON: WE VOTED.

20 MR. BARENS: THEN YOU DELIBERATED AND YOU VOTED A SECOND
21 TIME, AT LEAST?

22 MR. MANTECON: OH, YES, FOUR TIMES.

23 MR. BARENS: DID YOUR VOTE CHANGE DURING THE PROCESS?

24 MR. MANTECON: I DON'T BELIEVE SO.

25 MR. BARENS: I SEE.

26 DID THE DEFENDANT TESTIFY IN THAT CASE?

27 MR. MANTECON: YES, HE DID.

28 MR. BARENS: HOW DID YOU FEEL ABOUT THE DEFENDANT AND

1 HIS TESTIMONY -- WITHOUT INDICATING TO THE COURT HOW YOU VOTED,
2 BECAUSE I AM NOT ASKING YOU THAT QUESTION. RATHER, I AM ASKING
3 YOU YOUR IMPRESSION OF HOW YOU WERE TAKEN BY THE DEFENDANT'S
4 TESTIMONY.

5 MR. MANTECON: WELL, I THOUGHT IT WAS HIS RIGHT. IN
6 THAT PARTICULAR CASE, I BELIEVE HE DID THE RIGHT THING.

7 MR. BARENS: DID YOU THINK THE DEFENDANT HAD BEEN HONEST
8 IN HIS TESTIMONY?

9 MR. MANTECON: YES.

10 MR. BARENS: AND THEREFORE, YOU COULD UNDERSTAND THAT
11 IF THE DEFENDANT IN THIS CASE TESTIFIES, YOU WOULDN'T GO IN
12 ASSUMING THAT HE WOULD BE LESS THAN CANDID BECAUSE HE WAS
13 THE DEFENDANT IN THIS COURTROOM?

14 MR. MANTECON: I WOULD NOT.

15 MR. BARENS: BY CHANCE, WERE YOU THE FOREMAN ON THAT
16 JURY?

17 MR. MANTECON: NO, I WAS NOT.

18 MR. BARENS: I SEE. NOW, ON THE OTHER OCCASION SOME
19 20 YEARS EARLIER -- I AM SORRY -- IT WOULD HAVE BEEN 12 YEARS
20 EARLIER?

21 MR. MANTECON: YES.

22 MR. BARENS: WAS THERE ANYTHING DIFFERENT ABOUT THAT
23 EXPERIENCE IN EITHER THE IMPRESSIONS YOU HAD OR THE WAY YOU
24 FELT AS A RESULT OF THE MORE RECENT JURY EXPERIENCE?

25 MR. MANTECON: NO, I DON'T BELIEVE SO.

26 I DON'T RECALL TOO MUCH ABOUT THE FIRST ONE. IT
27 WAS IN A LITTLE COURT BUILDING THAT NO LONGER EXISTS. IT
28 WAS IN THE OLD REDONDO BEACH MUNICIPAL COURT AND IT WAS --

1 I JUST DON'T REMEMBER TOO MUCH ABOUT IT. THERE
2 WAS A LOT OF PEOPLE INVOLVED.

3 MR. BARENS: WHERE WAS THE SECOND TRIAL?

4 MR. MANTECON: LONG BEACH.

5 MR. BARENS: LONG BEACH?

6 ALL RIGHT, SIR, ASIDE FROM THOSE TWO CRIMINAL
7 JURIES THAT YOU PARTICIPATED IN, HAVE YOU BEEN INVOLVED IN
8 ANY OTHER JURY EXPERIENCE?

9 MR. MANTECON: NO, SIR.

10 MR. BARENS: AND HAVE YOU EVER WATCHED A TRIAL OTHER
11 THAN THE TWO YOU PARTICIPATED IN?

12 MR. MANTECON: NO, I HAVE NOT.

13 MR. BARENS: HAVE YOU EVER BEEN A WITNESS IN A TRIAL?

14 MR. MANTECON: NO.

15 MR. BARENS: ALL RIGHT, YOU MENTIONED THAT YOU ARE A
16 TWA SERVICEMAN?

17 MR. MANTECON: YES, I WORK FOR TRANSWORLD AIRLINES.
18 I AM RAMP SERVICEPERSON.

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1 MR. BARENS: R-A-M-P?

2 MR. MANTECON: YES.

3 MR. BARENS: THEN HAVE YOU DONE THAT FOR QUITE SOME TIME?

4 MR. MANTECON: THIRTY-ONE YEARS.

5 MR. BARENS: THAT IS SOME TIME. ARE YOU A MEMBER OF
6 A UNION THERE?

7 MR. MANTECON: YES, I AM.

8 MR. BARENS: WHICH UNION IS THAT?

9 MR. MANTECON: INTERNATIONAL ASSOCIATION OF MACHINISTS,
10 IAM.

11 MR. BARENS: ARE YOU ACTIVE IN THAT UNION?

12 MR. MANTECON: NOT AS AN OFFICER, AS A MEMBER.

13 MR. BARENS: AND HAVE YOU PREVIOUSLY SERVED AS AN OFFICER
14 OR SHOP STEWARD OR ANYTHING?

15 MR. MANTECON: NO.

16 MR. BARENS: JUST AS AN EMPLOYED MEMBER OF THE UNION?

17 MR. MANTECON: YES.

18 MR. BARENS: ALL RIGHT, SIR. ARE YOU MARRIED?

19 MR. MANTECON: YES.

20 MR. BARENS: YOUR WIFE IS EMPLOYED?

21 MR. MANTECON: NO. SHE IS A HOMEMAKER.

22 MR. BARENS: HASE SHE EVER BEEN EMPLOYED DURING YOUR
23 MARRIAGE?

24 MR. MANTECON: MANY YEARS AGO SHE WAS A WAITRESS FOR
25 A WHILE.

26 MR. BARENS: DO YOU HAVE CHILDREN, SIR?

27 MR. MANTECON: YES.

28 MR. BARENS: HOW OLD?

1 MR. MANTECON: A BOY 32, SON 30, DAUGHTER 27 AND A
2 DAUGHTER 25.

3 MR. BARENS: YOUR SON THAT IS 32, HOW IS HE EMPLOYED,
4 SIR?

5 MR. MANTECON: HE IS A SHEET METAL MECHANIC AND IN
6 REFRIGERATION. HE IS EMPLOYED IN SAN DIEGO.

7 MR. BARENS: YOUR 30-YEAR-OLD SON?

8 MR. MANTECON: HE WORKS FOR STANDARD OIL IN EL SEGUNDO.

9 MR. BARENS: WHAT DOES HE DO FOR STANDARD?

10 MR. MANTECON: HE IS LIKE, A FIELD WORKER. HE MIXES
11 FUELS AND THAT TYPE OF THING.

12 MR. BARENS: YOUR 27-YEAR-OLD SON?

13 MR. MANTECON: DAUGHTER.

14 MR. BARENS: SORRY, DAUGHTER.

15 MR. MANTECON: SHE IS EMPLOYED BY FIRST INTERSTATE BANK
16 INCORPORATION.

17 MR. BARENS: AND IN WHAT CAPACITY?

18 MR. MANTECON: SHE IS A CORPORATE SECRETARY I BELIEVE
19 IT IS, IN THE COMPUTER PART OF THE BANKING SYSTEM, NOT AT
20 THE BANK ITSELF.

21 MR. BARENS: AND HOW IS YOUR YOUNGEST CHILD EMPLOYED?

22 MR. MANTECON: SHE IS A HOMEMAKER.

23 MR. BARENS: WHAT DOES HER HUSBAND DO?

24 MR. MANTECON: HE WORKS FOR HUGHES AIRCRAFT COMPANY.

25 MR. BARENS: ALL RIGHT. EARLIER ON, I HAVE SOME NOTES
26 THAT DURING THE DEATH PENALTY QUESTIONING, YOU USED THE
27 EXPRESSION -- AND IF I AM WRONG, PLEASE CORRECT ME, SIR, WHERE
28 YOU SAID, "I DID IMPOSE THE DEATH PENALTY ONCE."

1 MR. MANTECON: NO, SIR.

2 MR. BARENS: YOU NEVER SAID ANYTHING LIKE THAT?

3 MR. MANTECON: NOT THAT I RECALL.

4 MR. BARENS: I SEE. MIGHT YOU HAVE SAID THAT YOU DID
5 OPPOSE THE DEATH PENALTY AT ONE TIME IN YOUR LIFE?

6 MR. MANTECON: NO, SIR.

7 MR. BARENS: ALL RIGHT. SO NOW AGAIN, I APOLOGIZE IF
8 I AM MISTAKEN.

9 WERE YOU IN THE SERVICE?

10 MR. MANTECON: YES. I WAS IN THE AIR FORCE.

11 MR. BARENS: AND HOW LONG WERE YOU IN THE SERVICE?

12 MR. MANTECON: FOUR YEARS FROM OCTOBER OF 1951 TO JULY
13 OF 1955.

14 MR. BARENS: WHAT DID YOU DO IN THE SERVICE?

15 MR. MANTECON: I WAS A CLERK, SUPPLY CLERK, A CLERK/
16 TYPIST.

17 MR. BARENS: YOU WEREN'T ON ANY SORT OF MILITARY
18 COMBAT DUTY OR ANYTHING?

19 MR. MANTECON: NO.

20 MR. BARENS: I SEE. ALL RIGHT, SIR. DID YOU HAVE ANY
21 OTHER APPOINTMENT BEFORE YOU STARTED YOUR LONG TENURE WITH
22 TWA?

23 MR. MANTECON: WELL, BEFORE THAT I WAS IN THE SERVICE.
24 THEN I WAS IN HIGH SCHOOL AND I WORKED ON AND OFF IN HIGH
25 SCHOOL AT ODD JOBS.

26 MR. BARENS: BUT AFTER COMING OUT OF THE SERVICE, YOU
27 WENT STRAIGHT TO TWA FROM THERE?

28 MR. MANTECON: YES, THAT'S RIGHT.

1 MR. BARENS: DO YOU HAVE ANY HOBBIES?

2 MR. MANTECON: WELL, MY WIFE AND I OWN A HOME IN BIG
3 BEAR. WE SPEND A LOT OF TIME UP THERE WORKING ON THAT.

4 WE BOWL. TRAVELING IS A HOBBY WITH US. WE CALL
5 IT A HOBBY. IT IS LEISURE.

6 MR. BARENS: DO YOU BELONG TO ANY CLUBS OR SERVICE
7 ORGANIZATIONS?

8 MR. MANTECON: NO.

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1 MR. BARENS: DOES YOUR WIFE?

2 MR. MANTECON: NO.

3 MR. BARENS: HOW DO YOU FEEL ABOUT BEING A JUROR ON
4 THIS CASE?

5 MR. MANTECON: WELL, I BELIEVE I COULD DO IT WITHOUT
6 ANY PROBLEMS AND KEEP AN OPEN MIND.

7 MR. BARENS: YOU DO THINK YOU COULD KEEP AN OPEN MIND?

8 MR. MANTECON: YES. I AM SURE I COULD.

9 MR. BARENS: IF YOU WERE A DEFENDANT AND AGAIN I ASK
10 YOU IN RESPONSE TO THE QUESTION, TO SEPARATE YOURSELF -- YOU
11 ARE NOT A PROSECUTION WITNESS OR YOU ARE NOT A BENEFICIARY
12 OF THE PROSECUTION, BUT RATHER YOU ARE A DEFENDANT NOW IN A
13 CRIMINAL CASE.

14 HOW WOULD YOU FEEL IF THE JURORS WERE COMPOSED
15 OF THE SAME OUTLOOK AND STATE OF MIND AS YOU WERE? WOULD YOU
16 FEEL COMFORTABLE BEING A DEFENDANT ON TRIAL WITH 12 PEOPLE
17 WITH YOUR STATE OF MIND AS THE DECIDERS OF FACTS?

18 MR. MANTECON: YES. I CAN ACCUMULATE ALL OF THE EVIDENCE
19 AND COME TO A CONCLUSION.

20 MR. BARENS: YOU WOULD BE WILLING TO LISTEN OPEN-
21 MINDEDLY TO BOTH SIDES?

22 MR. MANTECON: ABSOLUTELY.

23 MR. BARENS: NOW, HOW DID YOU FEEL ABOUT SOME OF THE
24 RESPONSES GIVEN TO THE VARIOUS -- ARE YOU A MEMBER OF THE
25 ORIGINAL 11, I CALL THEM NOW?

26 MR. MANTECON: YES.

27 MR. BARENS: YOU ARE A SURVIVOR OF THE ORIGINAL GROUP
28 WE HAD HERE? THEN YOU HAVE HAD THE BENEFIT AND THE GOOD

1 FORTUNE OF HAVING HEARD ALL THOSE EXAMPLES IN THIS COURTROOM
2 OVER ALL THOSE WEEKS.

3 HOW DID YOU FEEL ABOUT SOME OF THE ANSWERS YOU
4 HEARD TO THE BOAT EXAMPLE? DO YOU REMEMBER THE BOAT?

5 MR. MANTECON: YES.

6 MR. BARENS: HOW DID YOU FEEL?

7 MR. MANTECON: WELL, I THINK SOME OF THEM WERE KIND OF
8 FAR-FETCHED. THE LOGICAL THING WOULD BE THAT THE MAN DROWNED.

9 BUT THEN, IT DOES OPEN UP A LOT OF OTHER STUFF.
10 YOU WOULD HAVE TO HAVE MORE EVIDENCE TO REALLY COME TO A
11 PROPER CONCLUSION ON IT.

12 MR. BARENS: SO YOU WOULD BE LOOKING IN THIS COURTROOM,
13 TO MAKE ASSUMPTIONS ON WHAT WOULD BE THE APPARENT, LOGICAL
14 THING?

15 MR. MANTECON: I WOULD HAVE TO HEAR ALL THE EVIDENCE.

16 MR. BARENS: BECAUSE IT OCCURS TO ME THAT EARLY ON IN
17 THIS MATTER, THAT SOMEONE IN THIS COURTROOM IS GOING TO TELL
18 YOU THE EASY, OBVIOUS, LOGICAL THING TO LOOK FOR AND TELL YOU
19 WHAT IS LOGICAL BEFORE YOU EVEN HEAR THE EVIDENCE.

20 YOU ARE GOING TO BE TOLD WHAT IS LOGICAL. LET
21 ME ASSURE YOU OF THAT.

22 WOULD YOU WANT TO SEE THE EVIDENCE BEFORE YOU
23 CONCLUDED SOMETHING WAS LOGICAL?

24 MR. MANTECON: I WOULD HAVE TO.

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1 MR. BARENS: EVEN THOUGH IN YOUR OWN MIND YOU MIGHT
2 HAVE AN ASSUMPTION ABOUT WHAT IS LOGICAL BEFORE YOU HEARD
3 ANY EVIDENCE, WOULD YOU LET THAT DETERMINE THE OUTCOME OF
4 HOW YOU WERE GOING TO VOTE IN THIS CASE OR WOULD YOU DETERMINE
5 IT BASED ON THE EVIDENCE YOU SAW?

6 MR. MONTECON: ON THE EVIDENCE I HAVE SEEN.

7 MR. BARENS: I HAVE BEEN TRYING TO MAKE A POINT WITH
8 JURORS, AND I HOPE YOU HAVE HEARD ME, THAT PERHAPS WHAT IS
9 TYPICALLY REASONABLE OR OBVIOUS MAY NOT ANSWER THE QUESTION
10 IN THIS CASE; HAVE YOU HEARD THAT?

11 MR. MONTECON: YES.

12 MR. BARENS: COULD YOU BELIEVE IN YOUR OWN MIND THAT
13 SOMETHING THAT WASN'T NECESSARILY USUAL OR TYPICAL OR
14 PREDICTABLE COULD, NONETHELESS BE REASONABLE?

15 MR. MONTECON: IT CAN BE, YES.

16 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

17 MR. MONTECON: WELL, IT ISN'T JUST SO MUCH BEING
18 COMFORTABLE, AS I REALIZE IT CAN BE, IF I HAD PARTICULAR
19 EVIDENCE PERTAINING TO THAT. SOMETHING AT FIRST CAN BE VERY
20 LOGICAL BUT IF IT LOOKS LIKE AN APPLE, IT IS USUALLY AN APPLE
21 BUT AT TIMES IT IS NOT.

22 MR. BARENS: WELL, IN YOUR STATEMENT YOU ARE SAYING
23 THAT SOMETHING LOOKS LIKE AN APPLE. OF COURSE, THE QUESTION
24 HERE IS: DOES IT LOOK LIKE MURDER, ISN'T IT? ISN'T THAT
25 WHAT WE ARE GOING TO DECIDE HERE: DOES IT LOOK LIKE MURDER?

26 MR. MONTECON: WE ARE THE ONES TO DECIDE THAT, YES.

27 MR. BARENS: AND PRELIMINARILY, ARE WE FIRST GOING TO
28 INQUIRE AS TO WHETHER OR NOT SOMEONE WAS MURDERED OR NOT,

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1 WOULD YOU DO THAT?

2 MR. MONTECON: ABSOLUTELY, YES.

3 MR. BARENS: NOW, IN THE EXAMPLE, IT LOOKS LIKE AN
4 APPLE, THAT IS THE KIND OF THING THAT LOOKS LIKE A DUCK, WALKS
5 LIKE A DUCK, TALKS LIKE A DUCK, MARRIED TO A DUCK, TYPICALLY
6 A DUCK; IF YOU DON'T HAVE ALL OF THAT DUCK STUFF HERE OR APPLE
7 STUFF HERE BUT THE DEFENDANT DOESN'T GIVE YOU ANYTHING, YOU
8 GET A COUPLE OF DUCK STUFF AND THAT IS IT AND, LET'S SAY,
9 IT TAKES FOUR DUCK THINGS TO MAKE A DUCK AND YOU GET TWO DUCK
10 THINGS.

11 (LAUGHTER IN COURTROOM.)

12 MR. WAPNER: I THINK THE JUDGE WAS RIGHT ABOUT THIS
13 EXAMPLE.

14 MR. BARENS: WELL, THE PROBLEM I GET IS THAT APPLES
15 DON'T HAVE A LOT --

16 THE COURT: ASK THEM IF THEY READ THE TIMES TODAY.

17 A JUROR: RIGHT, CONRAD.

18 THE COURT: WHERE WHAT'S-HIS-NAME, CONRAD, WAS IN THEIR
19 PUBLICATION. DID YOU SEE THAT?

20 MR. BARENS: I DIDN'T SEE THAT.

21 THE COURT: HE MAKES THAT POINT, TOO. HE TALKS ABOUT
22 LOOKS LIKE A DUCK, WALKS LIKE A DUCK, QUACKS LIKE A DUCK AND,
23 THEREFORE, IT MUST BE A DUCK.

24 MR. BARENS: I HAVE SEEN SO MANY OF THESE THINGS THAT
25 DIDN'T TURN OUT TO BE DUCKS IS WHY I AM INTO THIS DIALOGUE
26 WITH YOU, SIR.

27 IF YOU NEED FOUR DUCK THINGS TO MAKE A DUCK AND
28 YOU ONLY GET TWO AND THE DEFENSE GIVES YOU NOTHING, EXCEPT

3-3
1 SAYING "I DON'T KNOW IF IT IS A DUCK OR NOT," WHAT DO YOU
2 DO?

3 MR. MONTECON: NOT GUILTY. NOT ENOUGH PREPONDERANCE
4 OF EVIDENCE.

5 MR. BARENS: OH, SIR, PLEASE, DO NOT SAY THAT WE HAVE
6 HERE THE PREPONDERANCE OF EVIDENCE. THAT IS ONE OF THOSE
7 CIVIL THINGS. IN CIVIL COURT, WE TALK ABOUT THE PREPONDERANCE
8 OF EVIDENCE, THAT IS 51-49, WHICH GIVES YOU THE
9 PREPONDERANCE OF THE EVIDENCE, WHERE THE PLAINTIFF WINS IF
10 THERE IS AN ACCIDENT OR A CONTRACT CASE, THAT TYPE OF THING.
11 ARE YOU WITH ME ON THAT?

12 MR. MONTECON: YES.

13 MR. BARENS: WHAT DO WE HAVE HERE? WHAT IS THE STANDARD
14 OF PROOF HERE, SIR?

15 MR. MONTECON: BEYOND A REASONABLE DOUBT.

16 MR. BARENS: RIGHT. THAT IS WHAT THE JUDGE IS GOING
17 TO TELL YOU AND THAT IS VASTLY DIFFERENT AS A PROTECTION FOR
18 YOUR CONSTITUTIONAL RIGHTS THAN A PREPONDERANCE OF THE
19 EVIDENCE.

20 IF THERE IS MERELY A PREPONDERANCE OF THE EVIDENCE,
21 IF WE GET TO A MORE LIKELY THAN NOT END TO THIS CASE, WHAT
22 DO YOU DO IF ALL YOU ARE DOING IS YOU ARE SITTING IN THE JURY
23 BOX AND YOU ARE SAYING, "WELL, WE NEED TWO DUCK THINGS, WE
24 HAD NOTHING FROM THE DEFENSE, THEY ARE JUST SAYING WE DON'T
25 KNOW WHETHER HE IS DEAD OR WHERE HE IS OR ANYTHING ELSE AND
26 YOU ARE SAYING, 'WELL, MORE LIKELY THAN NOT THE GUY IS PROBABLY
27 DEAD,'" WHAT DO YOU DO THEN?

28 MR. MONTECON: YOU HAVE TO FIND HIM NOT GUILTY.

1 MR. BARENS: THAT IS QUITE WELL NOT BEYOND A REASONABLE
2 DOUBT, ISN'T IT?

3 MR. MONTECON: YES.

4 MR. BARENS: ALL RIGHT. ARE YOU COMFORTABLE WITH THAT
5 WHOLE CONCEPT THAT CLOSE CALLS GO TO THE DEFENDANT?

6 MR. MONTECON: OH, YES.

7 MR. BARENS: HOW ABOUT THE PRESUMPTION OF INNOCENCE
8 THAT THE DEFENDANTS HAVE UNDER OUR SYSTEM?

9 MR. MONTECON: HE IS INNOCENT.

10 MR. BARENS: ALL RIGHT. WHAT IS THE LAST BOOK YOU READ?

11 MR. MONTECON: WELL, I FINISHED READING A SERIES OF
12 HISTORY OF MANKIND BOOK, FOUR VOLUMES OF BOOKS.

13 MR. BARENS: AND WHO WROTE THOSE?

14 MR. MONTECON: WELL, IT IS JUST A GIFT FROM -- I RECEIVED
15 FROM -- IT CAME THROUGH THE NATIONAL GEOGRAPHIC. I DON'T
16 KNOW WHO WROTE IT, THERE IS NOT ONE AUTHOR.

17 MR. BARENS: PROBABLY A GROUP?

18 MR. MONTECON: GROUP OF PEOPLE, YES.

19 MR. BARENS: THAT PROBABLY CORROBORATED?

20 DO YOU RECALL WHAT YOU HAD READ JUST BEFORE THAT?

21 MR. MONTECON: SOMETHING BY CARL SAGAN. I THINK --
22 IT IS NOT THE NEW BOOK BUT ONE OF HIS OLDER BOOKS.

23 MR. BARENS: AND THE LAST MOVIE YOU SAW?

24 MR. MONTECON: "ET."

25 MR. BARENS: ALL RIGHT. WELL, WE ARE NOT GOING TO GET
26 INTO THAT HERE EITHER. THAT IS MORE LIKE THAT BOAT. I WILL
27 STAY AWAY FROM SPACE SHIPS AND THOSE.

28 THANK YOU FOR YOUR TIME, SIR.

1 WE PASS FOR CAUSE.

2 THE COURT: ALL RIGHT.

3 MR. WAPNER: GOOD AFTERNOON, MR. MONTECON.

4 MR. MONTECON: GOOD AFTERNOON.

5 MR. WAPNER: DID YOU THINK WE WOULD EVER GET TO YOU?

6 MR. MONTECON: I WAS WONDERING.

7 MR. WAPNER: WE KEEP TALKING ABOUT THAT BOAT. MS. SHELBY
8 HERE WANTED TO SINK THAT BOAT THE FIRST DAY.

9 MS. SHELBY: RIGHT.

10 MR. WAPNER: WERE YOU ABLE TO HEAR ALL OF THE QUESTIONS
11 THAT I ASKED OF THE OTHER PEOPLE?

12 MR. MONTECON: YES.

13 MR. WAPNER: OKAY. DID YOU HAVE SOME IDEA ABOUT
14 CIRCUMSTANTIAL EVIDENCE BEFORE YOU CAME INTO THE COURTROOM?

15 MR. MONTECON: WELL, I NEVER REALLY GAVE IT MUCH THOUGHT.
16 I KNEW IT EXISTED AND WHAT THE WORD WAS.

17 MR. WAPNER: DO YOU THINK YOU UNDERSTAND IT A LITTLE
18 BIT BETTER THAN YOU DID BEFORE?

19 MR. MONTECON: YES.

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

21 MR. MONTECON: WELL, I HAVE BEEN TO A LOT OF PLACES,
22 EUROPE, ALL THROUGH THE UNITED STATES, AND WE LIKE TO
23 VACATION IN PARTICULARLY THE NEW ENGLAND AREA.

24 MR. WAPNER: TELL ME WHAT A RAMP SERVICE PERSON DOES.
25 WHAT DOES YOUR JOB ENTAIL?

26 MR. MONTECON: WELL, TO SERVICE THE AIRCRAFT AND
27 EVERYTHING RELATED TO THE AIRCRAFT, PARTICULARLY I WORK IN
28 THE CARGO ROOM DIVISION AND WHERE THE CUSTOMER SHIPS FREIGHT,

1 I HANDLE THE SHIPMENT OF FREIGHT FOR THE CUSTOMER.

2 MR. WAPNER: TAKING IT ON AND PUTTING IT OFF THE AIRPLANES,
3 THINGS LIKE THAT?

4 MR. MONTECON: WELL, THAT IS PART OF THE JOB, I DON'T
5 PARTICULARLY DO THAT.

6 I WORK IN THE AIR FREIGHT BUILDING.

7 MR. WAPNER: HAVE YOU ALWAYS WORKED IN THAT PARTICULAR
8 PART OF THE AIRPLANE BUSINESS OR HAVE YOU HAD DIFFERENT JOBS
9 IN 31 YEARS?

10 MR. MONTECON: DIFFERENT JOBS ALL RELATED TO THE SAME.

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

13 MR. MONTECON: NO.

14 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
15 OF CRIME AT ALL?

16 MR. MONTECON: NO.

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

3 THE COURT: ALL RIGHT. IT IS THE DEFENDANT'S PEREMPTORY.

4 MR. BARENS: THE DEFENSE WOULD THANK AND ASK THE COURT
5 TO EXCUSE JUROR NUMBER 11, MR. DIPAOLOA.

6 THE COURT: THANK YOU, MR. DIPAOLOA.

7 (PROSPECTIVE JUROR DIPAOLOA EXITS THE
8 COURTROOM.)

9 THE CLERK: JOSEPHINE GRALINSKI, G-R-A-L-I-N-S-K-I.

10 MS. GRALINSKI: IT IS INITIAL J. HEIDI.

11 THE CLERK: WHAT?

12 MS. GRALINSKI: INITIAL J. HEIDI.

13 MR. WAPNER: J. HEIDI, NOT JOSEPHINE.

14 MS. GRALINSKI: I HAVE ASKED YOU TO CHANGE IT.

15 THE CLERK: IS THAT MRS.?

16 MS. GRALINSKI: NO, MISS.

17 THE COURT: MISS GRALINSKI, YOU HEARD ALL THE QUESTIONS
18 AND ANSWERS WHICH WERE ASKED AND GIVEN?

19 MS. GRALINSKI: YES.

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

23 MS. GRALINSKI: SUBSTANTIALLY THE SAME.

24 THE COURT: WHAT DO YOU DO, PLEASE?

25 MS. GRALINSKI: I WORK WITH SERIOUSLY EMOTIONALLY
26 DISTURBED ADOLESCENTS.

27 THE COURT: PARDON ME.

28 (BRIEF PAUSE.)

1 THE COURT: WHAT WAS THE NAME OF THE COMPANY?

2 MS. GRALINSKI: NO. IT IS PEOPLE, SERIOUSLY EMOTIONALLY
3 DISTURBED ADOLESCENTS. I AM A TEACHER/COUNSELOR.

4 THE COURT: WHERE IS THAT LOCATED?

5 MS. GRALINSKI: I WORK FOR THE SIMI VALLEY SCHOOL
6 DISTRICT.

7 THE COURT: HAVE YOU EVER BEEN A JUROR IN A CRIMINAL
8 CASE BEFORE?

9 MS. GRALINSKI: NO.

10 THE COURT: HAVE YOU EVER BEEN A VICTIM OF ANY KIND OF
11 SERIOUS CRIME?

12 MS. GRALINSKI: NO, JUST CAR BREAK-INS.

13 THE COURT: ALL RIGHT. WHAT IS YOUR FORMAL EDUCATION?

14 MS. GRALINSKI: I HAVE A BACHELOR'S DEGREE IN PSYCHOLOGY
15 AND A MASTER'S DEGREE IN SPECIAL EDUCATION.

16 THE COURT: FROM WHAT SCHOOL?

17 MS. GRALINSKI: THE BACHELOR'S IS FROM CLARK UNIVERSITY
18 AND THE MASTER'S IS FROM CSC, CALIFORNIA LUTHERAN COLLEGE.

19 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. DO YOU
20 HAVE ANY QUESTIONS OR DO YOU PASS FOR CAUSE?

21 MR. BARENS: PARDON ME?

22 THE COURT: I ASKED YOU IF YOU HAD ANY QUESTIONS OR
23 WHETHER YOU HAD PASSED FOR CAUSE.

24 MR. BARENS: THE DAY MUST HAVE GOTTEN A LOT COLDER THAN
25 I THOUGHT IT WAS, YOUR HONOR. ALL RIGHT.

26 GOOD AFTERNOON, MS. GRALINSKI. ARE YOU SINGLE?

27 MS. GRALINSKI: YES.

28 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

4-3

1 MS. GRALINSKI: NO.

2 MR. BARENS: I SEE. DO YOU HAVE -- NOT MEANING TO
3 PRY BUT MR. CHIER ASKED ME TO ASK IF YOU HAD A STEADY BOYFRIEND
4 AND WHAT HE DOES.

5 MS. GRALINSKI: HE IS A CO-OWNER OF A POST PRODUCTION
6 COMPANY.

7 MR. BARENS: IN FILM, GENERAL FILM-MAKING?

8 MS. GRALINSKI: YES.

9 MR. BARENS: I SEE. YOU HAD TOLD US EARLIER ON I BELIEVE,
10 THAT YOU HAD READ A TIME MAGAZINE ARTICLE CONCERNING THIS CASE?

11 MS. GRALINSKI: YES.

12 MR. BARENS: WAS THAT THE ONLY THING YOU READ ABOUT THIS
13 CASE?

14 MS. GRALINSKI: YES.

15 MR. BARENS: AND COULD YOU TELL US IN ALL HONESTY AND
16 CANDOR, AS YOU SIT HERE TODAY, IF YOU WERE SELECTED AS A JUROR,
17 THAT YOU COULD BASE YOUR DECISIONS SOLELY ON WHAT YOU HEAR
18 IN THIS COURTROOM?

19 MS. GRALINSKI: YES.

20 MR. BARENS: YOU WOULDN'T BE BIASED EITHER FOR OR AGAINST
21 THE PROSECUTION OR DEFENSE, BASED ON ANYTHING YOU READ THERE?

22 MS. GRALINSKI: NO.

23 MR. BARENS: THANK YOU FOR THAT. NOW, HOW LONG HAVE
24 YOU BEEN WORKING WITH EMOTIONALLY DISTURBED ADOLESCENTS?

25 MS. GRALINSKI: IT IS 12 YEARS.

26 MR. BARENS: COULD YOU GENERALLY DESCRIBE TO ME WHAT
27 YOU DO IN YOUR ACTIVITIES?

28 MS. GRALINSKI: YES. I WORK WITHIN A SCHOOL SETTING.

4-4
1 MOST OF MY WORK IS DIRECTED TOWARDS THE EDUCATIONAL ACTIVITIES
2 OF THE STUDENTS.

3 I DO SOME ACADEMIC TEACHING AND SOME COUNSELING
4 IN RELATION TO GETTING ALONG WITHIN AN ACADEMIC SETTING.

5 I ALSO AM A SUPPORT PERSON TO THE REGULAR
6 EDUCATION STAFF, HELPING THEM SET UP PROGRAMS FOR THE KIDS
7 THAT I WORK WITH.

8 MR. BARENS: ARE YOU PART OF THE SIMI UNIFIED SCHOOL
9 DISTRICT?

10 MS. GRALINSKI: YES. NOW I AM. AT ONE TIME, I WAS WITH
11 COUNTY MENTAL HEALTH.

12 NOW I AM WITH THE SCHOOL DISTRICT.

13 MR. BARENS: DO YOU OCCASIONALLY DEAL WITH ADOLESCENTS
14 OR HAVE YOU, DURING YOUR OCCUPATION, THAT HAVE GOTTEN IN
15 TROUBLE WITH THE LAW?

16 MS. GRALINSKI: NOT TOO OFTEN. BUT, YES.

17 MR. BARENS: HAVE YOU EVER HAD OCCASION WHERE YOU HAVE
18 HAD TO BE A WITNESS?

19 MS. GRALINSKI: NO.

20 MR. BARENS: HAVE YOU HAD OCCASION WHERE YOU HAVE HAD
21 TO SPEAK WITH POLICE OFFICERS ABOUT THE CONDUCT OF CHILDREN?

22 MS. GRALINSKI: YES.

23 MR. BARENS: AND HOW ABOUT PROBATION OFFICERS?

24 MS. GRALINSKI: YES.

25 MR. BARENS: AND HAVE YOU HAD TO PARTICIPATE IN ANY
26 JUVENILE COURT SETTINGS UP THERE AT SYLMAR?

27 MS. GRALINSKI: NO.

28 MR. BARENS: COULD YOU TELL US A LITTLE ABOUT WHAT

4-5

1 PARTICIPATION YOU HAVE HAD WITH POLICE OFFICERS AND
2 ADOLESCENTS AND WHAT ROLE YOU PLAYED?

3 MS. GRALINSKI: USUALLY IT HAS TO DO WITH RUNAWAYS,
4 REPORTING RUNAWAY CASES AND SUSPECTED CHILD ABUSE.

5 AND USUALLY I WAS INVOLVED MORE WITH PROBATION.
6 I JUST HAD ONE CLIENT WHO WAS A PROBATION CLIENT AND WE MET
7 REGULARLY.

8 BUT IT HAS BEEN 11 YEARS AGO SINCE IT HAPPENED.
9 MOST OF THE KIDS I HAVE WORKED WITH ARE EMOTIONALLY DISTURBED,
10 NOT CRIMINALLY INVOLVED.

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1 MR. BARENS: HOW MANY CASES HAVE YOU BEEN INVOLVED IN
2 WHERE THERE WAS AN ALLEGED INSTANCE OF CHILD MOLESTATION?

3 MS. GRALINSKI: MOLESTATIONS, TWO AND PROBABLY ABOUT --
4 BETWEEN LIKE, SAY, FIVE OR TEN OF SUSPECTED PHYSICAL ABUSE,
5 NOT MOLESTATION.

6 MR. BARENS: WERE ANY OR ALL OF THOSE CASES IN THE
7 LITIGATION PROCESS WHEN YOU WERE INVOLVED IN THEM?

8 MS. GRALINSKI: NO. ACTUALLY, THEY WERE JUST IN THE
9 REPORTING. IT WAS JUST THE REPORTING TO THE POLICE TO BE
10 INVESTIGATED. AND AS FAR AS I KNOW, NONE OF THEM WERE EVER
11 PROSECUTED.

12 MR. BARENS: I SEE. WERE YOU DISAPPOINTED AS A PERSONAL
13 MATTER? YOU HAD HEARD SOME CASE HISTORIES ON THAT SORT OF
14 THING?

15 MS. GRALINSKI: UH-HUH.

16 MR. BARENS: AND LATER ON, SOMEONE CAME TO YOU, EITHER
17 A PARENT OR AN ADOLESCENT AND TOLD YOU THAT THERE HAD NOT
18 BEEN A PROSECUTION?

19 MS. GRALINSKI: YES. OR USUALLY, WE GET FOLLOW-UP
20 THROUGH THE POLICE DEPARTMENT ON THE RESULTS OF THEIR
21 INVESTIGATION.

22 MR. BARENS: DID ANY INVESTIGATING OFFICERS COME TO YOU
23 AND SAY "BOY, YOU KNOW, HE GOT AWAY WITH SOMETHING HERE AND
24 HE DIDN'T GET PROSECUTED." DID YOU HAVE THAT HAPPEN?

25 MS. GRALINSKI: NO. GENERALLY, IT WAS THAT THEIR
26 INVESTIGATION DIDN'T PROVE OR THEY DIDN'T FEEL THERE WAS
27 ANYTHING TO GO AHEAD WITH.

28 MR. BARENS: DID THEY USE THE EXPRESSION THAT THERE WAS

1 INSUFFICIENT EVIDENCE TO PROCEED?

2 MS. GRALINSKI: I DON'T KNOW THAT THEY NECESSARILY USED
3 THAT PHRASE. BUT THAT IS THE IMPLICATION.

4 MR. BARENS: THAT WAS YOUR UNDERSTANDING OF WHAT WAS
5 GOING ON THERE?

6 MS. GRALINSKI: YES.

7 MR. BARENS: DID YOU HAVE ANY PERSONAL FEELINGS THAT
8 MIGHT HAVE DIFFERED? DID YOU FEEL FRUSTRATED AT ALL WHEN YOU
9 HEARD THAT?

10 MS. GRALINSKI: NO.

11 MR. BARENS: DID YOU HAVE A FEELING -- YOU KNOW, WE ALL
12 GET REALLY UPSET ABOUT CHILD MOLESTATION. DID YOU GET A
13 FEELING WHEN YOU HAD THAT COME TO YOUR ATTENTION, WHERE YOU
14 AUTOMATICALLY WOULD SAY YES, SOMETHING MUST HAVE HAPPENED OR
15 I WOULDN'T BE HEARING THIS STORY?

16 MS. GRALINSKI: WELL, IT IS DIFFERENT WHEN YOU ARE
17 DEALING WITH EMOTIONALLY DISTURBED KIDS. SOMETIMES IT IS HARD
18 TO SORT OUT WHAT REALLY HAPPENED AND WHAT THEY ARE SAYING.
19 I THINK IT IS A DIFFICULT QUESTION TO ANSWER.

20 MR. BARENS: DO YOU HAVE TO BE BECAUSE OF THE APPARENT
21 HANDICAP THESE YOUNG PEOPLE WOULD HAVE, DO YOU HAVE TO BE
22 A BIT MORE SKEPTICAL OR SUSPECT FROM THE VERY FIRST INSTANCE
23 WHEN YOU HEAR THEM TALK ABOUT ANYTHING?

24 MS. GRALINSKI: YES.

25 MR. BARENS: AND SO WHEN YOU WOULD HEAR ABOUT INSTANCES
26 OF CHILD MOLESTATION, WOULD THAT BE WITH THE REPORTING
27 PERSON IN THE FIRST INSTANCE -- WOULD IT BE THE CHILD TALKING
28 TO YOU?

1 MS. GRALINSKI: YES.

2 MR. BARENS: LATER ON, WOULD YOU TALK TO ANYONE THAT
3 WOULD TRY TO ENDORSE THAT POINT OF VIEW OR CORROBORATE IT?

4 MS. GRALINSKI: IT ISN'T MY FUNCTION TO INVESTIGATE.
5 WE DON'T INVESTIGATE. WE REPORT.

6 IF THERE IS ANY SUSPICION OF ABUSE OR MOLESTATION,
7 WE REPORT IT.

8 SOMETIMES IN SOME CASES I SAT IN WHEN THEY HAVE
9 QUESTIONED THE CHILD, WHEN THE POLICE HAVE QUESTIONED THE
10 CHILD, JUST SIMPLY TO BE A SUPPORT TO THE CHILD.

11 MR. BARENS: HOW DO YOU FEEL THOUGH WHEN YOU HEAR THE
12 CHILD TALK? DID YOU HAVE A TENDENCY IN ALL HONESTY, TO
13 THINK THAT PROBABLY IT WAS TRUE, PROBABLY SO AND SO DID THE
14 THING THAT IS BEING DISCUSSED HERE?

15 MS. GRALINSKI: THERE IS ALWAYS THAT POSSIBILITY, YES.

16 MR. BARENS: SURE. ESPECIALLY WHEN YOU ARE HEARING A
17 CHILD SAY SOMETHING, YOU ASSUME A BIT MORE INNOCENCE OR
18 LESS SOPHISTICATION WITH A CHILD.

19 A CHILD AT LEAST, IN MY EXPERIENCE, IS QUITE A
20 BIT MORE CANDID THAN AN ADULT AS A RULE.

21 WHAT YOU HEARD WAS AN ACCUSATION, RIGHT?

22 MS. GRALINSKI: BASICALLY, YES.

23 MR. BARENS: WHAT YOU HAVE HERE IS AN ACCUSATION. WHAT
24 THE GOVERNMENT SAYS IS THAT HE COMMITTED A FIRST DEGREE
25 MURDER DURING A ROBBERY.

26 HOW DO YOU FEEL IN THIS INSTANCE WHEN WE HAVE GOT
27 THIS WHOLE SETTING HERE, A LOT BIGGER SETTING THAN A CHILD
28 COMING TO YOU AND TELLING YOU SOMETHING HAPPENED?

1 YOU HAVE GOT THE GOVERNMENT SAYING SOMETHING
2 HAPPENED AND PUTTING A TRIAL TOGETHER FOR IT ALL. HOW DO YOU
3 FEEL?

4 DO YOU FEEL BECAUSE THERE WAS AN ACCUSATION, THAT
5 SOMETHING MUST HAVE HAPPENED?

6 MS. GRALINSKI: NO.

7 MR. BARENS: ARE YOU COMFORTABLE IN THIS SETTING SAYING
8 THAT JOE HUNT HAS A PRESUMPTION OF INNOCENCE?

9 MS. GRALINSKI: YES.

10 MR. BARENS: THE SAME WAY YOU WOULD IF YOU WERE A
11 DEFENDANT?

12 MS. GRALINSKI: YES.
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1 MR. BARENS: AN ACCUSATION IS NOT EVIDENCE?

2 MS. GRALINSKI: YES.

3 MR. BARENS: ASIDE FROM YOUR EMPLOYMENT WITH
4 EMOTIONALLY DISTURBED CHILDREN, DID YOU HAVE ANY PREVIOUS
5 EMPLOYMENT PRIOR TO STARTING THIS, 12 YEARS AGO?

6 MS. GRALINSKI: NO. I WAS AN ADMINISTRATOR OF A
7 PROGRAM FOR A WHILE. BUT OTHER THAN THAT, IT HAS BEEN MY
8 SOLE PROFESSION.

9 MR. BARENS: WHEN YOU SAY YOU WERE EMPLOYED BY THE
10 COUNTY, WHAT DO YOU MEAN BY THAT?

11 MS. GRALINSKI: INITIALLY WHEN WE STARTED THE PROGRAM
12 12 YEARS AGO, IT WAS A COUNTY MENTAL HEALTH SPONSORED PROGRAM.
13 IT WAS IN CONJUNCTION WITH THE SCHOOL DISTRICT. I WAS
14 EMPLOYED BY THE COUNTY MENTAL HEALTH.

15 SINCE WE HAVE SEPARATED IT, I HAVE BEEN EMPLOYED
16 BY THE SCHOOL DISTRICT. I HAVE BASICALLY DONE THE SAME THING
17 BUT JUST SWITCHED WHO PAYS MY SALARY.

18 MR. BARENS: DO YOU FEEL IN ALL HONESTY, THERE IS ANY-
19 THING ABOUT YOUR RELATIONSHIP WITH POLICE OFFICERS -- YOU HAVE
20 WORKED SOMEWHAT SIDE BY SIDE WITH -- AT LEAST YOU WERE
21 OSTENSIBLY COORDINATING ACTIVITIES, WORKING WITH THE YOUNG
22 PEOPLE OR WITH THE COUNTY OR THE SCHOOL DISTRICT. DO YOU
23 THINK THERE IS ANY IMPACT IT HAS HAD ON YOU PSYCHOLOGICALLY
24 OR PHILOSOPHICALLY THAT MIGHT BIAS YOU FOR THE PROSECUTION
25 IN THIS MATTER?

26 MS. GRALINSKI: NO.

27 MR. BARENS: IS IT BELIEVABLE TO YOU THAT A POLICE
28 OFFICER COULD COME IN HERE AND LIE?

1 MS. GRALINSKI: SURE.

2 MR. BARENS: WOULD YOU CONSIDER HIS MOTIVES IN A CASE?

3 MS. GRALINSKI: SURE.

4 MR. BARENS: WHAT IS A POLICE OFFICER'S APPARENT MOTIVE
5 WHEN HE TESTIFIES?

6 MS. GRALINSKI: THE OBVIOUS ONE MIGHT BE, AS YOU HAVE
7 MENTIONED SEVERAL TIMES, THAT HE WOULD WANT TO SOLVE THE
8 CASE. OTHER THAN THAT, I DON'T KNOW.

9 MR. BARENS: A POLICE OFFICER SOLVES THE CASE BY A
10 CONVICTION. WOULD THAT OSTENSIBLY, BE HIS MOTIVATION?

11 MS. GRALINSKI: IT IS A POSSIBILITY.

12 MR. BARENS: KEEP THAT IN MIND AS YOU LISTEN TO BIASES
13 WHEN YOU ARE CONSIDERING TESTIMONY FROM WITNESSES.

14 MS. GRALINSKI: THAT WOULD BE SOMETHING TO CONSIDER.
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5-1
1 MR. BARENS: HAVE YOU EVER HAD ANY JURY EXPERIENCE
2 BEFORE?

3 MS. GRALINSKI: NO. JUST ONE TIME ON A CIVIL CASE.

4 MR. BARENS: WERE YOU A JUROR THROUGHOUT THE PROCEEDINGS?

5 MS. GRALINSKI: I WAS AN ALTERNATE.

6 MR. BARENS: YOU WERE AN ALTERNATE, SO YOU HEARD THE
7 WHOLE CASE?

8 MS. GRALINSKI: YES.

9 MR. BARENS: DID THE JURY REACH A DECISION?

10 MS. GRALINSKI: YES.

11 MR. BARENS: DID YOU PARTICIPATE IN THE DELIBERATION
12 PROCESS?

13 MS. GRALINSKI: NO.

14 MR. BARENS: DID YOU AGREE WITH THE DECISION THE JURY
15 MADE?

16 MS. GRALINSKI: YES.

17 MR. BARENS: HOW DID YOU FEEL ABOUT THAT EXPERIENCE?

18 MS. GRALINSKI: IT WAS INFORMATIVE.

19 MR. BARENS: WHAT SORT OF A CASE WAS IT?

20 MS. GRALINSKI: IT WAS A QUESTION ABOUT A WALL THAT
21 HAD BEEN BUILT ON SOMEONE'S PROPERTY.

22 MR. BARENS: A PROBLEM OF ENCROACHMENT?

23 MS. GRALINSKI: YES.

24 MR. BARENS: THEY HAD ALL KINDS OF EXPERTS COME IN,
25 OR DID THEY?

26 MS. GRALINSKI: THEY HAD A FEW, YES.

27 MR. BARENS: AND DID EACH SIDE HAVE AN EXPERT?

28 MS. GRALINSKI: YES.

5-2
1 MR. BARENS: AND BOTH SIDES' EXPERTS TALKED ABOUT THE
2 SAME WALL?

3 MS. GRALINSKI: YES.

4 MR. BARENS: AND CAME TO DIFFERENT CONCLUSIONS?

5 MS. GRALINSKI: WELL, NOT SO MUCH THAT THEY TALKED ABOUT
6 THE SAME WALL. THEY TALKED ABOUT THE DIFFERENT VALUE OF THE
7 PROPERTY BECAUSE OF WHERE THE WALL WAS PLACED AND THEY HAD
8 DIFFERENT CONCLUSIONS.

9 MR. BARENS: THEY WERE BOTH TRYING TO EVALUATE A
10 FINANCIAL ASPECT OF PRECISELY THE SAME REAL ESTATE?

11 MS. GRALINSKI: RIGHT.

12 MR. BARENS: THERE WAS NO DOUBT IN ANYBODY'S MIND IN
13 THE COURTROOM THAT THEY WERE TALKING ABOUT THE SAME THING,
14 WAS THERE?

15 MS. GRALINSKI: OH, NO.

16 MR. BARENS: EXACTLY THE SAME THING?

17 MS. GRALINSKI: UH-HUH.

18 MR. BARENS: DID THEY COME TO A SUBSTANTIALLY DIFFERENT
19 CONCLUSION?

20 MS. GRALINSKI: YES.

21 MR. BARENS: ALL RIGHT. DID YOU FEEL IN LISTENING TO
22 THEM THAT EITHER ONE WAS TOTALLY UNREASONABLE?

23 MS. GRALINSKI: NO.

24 MR. BARENS: ALL RIGHT. DID YOU UNDERSTAND FROM THAT
25 EXPERIENCE THAT REASONABLE MINDS LOOKING AT SPECIFICALLY --
26 THAT IS, REALLY LOOKING AT THE SAME FACTS, THE WALL IS
27 LOCATED HERE, I MEAN LOOKING AT THE SAME FACTS THERE, DID
28 YOU SEE HOW REASONABLE MINDS DID SUBSTANTIALLY DIFFER OVER

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1 THE SAME FACTUAL SETTING?

2 MS. GRALINSKI: YES.

3 MR. BARENS: THERE, THEY HAVE AN EVALUATION DIFFERENT
4 IN TERMS OF HOW -- AND YOU HEARD THAT FROM ANOTHER JUROR HERE
5 THAT I RECALL WAS IN THE MORTGAGE BUSINESS -- HOW REASONABLE
6 MINDS COULD SUBSTANTIALLY DIFFER OVER THE SAME FACTS.

7 MS. GRALINSKI: UH-HUH.

8 MR. BARENS: DO YOU UNDERSTAND THAT IF YOU HEAR REASONABLE
9 MINDS IN THIS COURTROOM DIFFER OVER THE SAME FACTS AND YOU
10 COME TO A CONCLUSION LIKE YOU MIGHT HAVE IN THAT CIVIL CASE
11 WHERE YOU ARE LEFT WITH SAYING "IT IS MORE LIKELY ONE WAY
12 OR THE OTHER," DO YOU UNDERSTAND THAT THAT IS NOT THE RESULT
13 WE ARE LOOKING FOR HERE?

14 MS. GRALINSKI: YES.

15 MR. BARENS: MARKEDLY DIFFERENT.

16 MS GRALINSKI: YES.

17 MR. BARENS: I SUPPOSE THE JUDGE IN THAT CASE TOLD YOU
18 THAT THE DECISION HAD TO BE MADE BEYOND A PREPONDERANCE OF
19 THE EVIDENCE, ONE SIDE HAD THE BURDEN OF PROOF TO ESTABLISH
20 THE PREPONDERANCE OF EVIDENCE, THE PLAINTIFF IN THAT INSTANCE?

21 MS. GRALINSKI: YES.

22 MR. BARENS: DO YOU UNDERSTAND IT IS NOTHING LIKE WE
23 ARE GOING TO DO IN THIS COURTROOM?

24 MS. GRALINSKI: YES.

25 MR. BARENS: DID BOTH SIDES -- DID THE PARTIES, THE
26 PLAINTIFF AND THE DEFENDANT BOTH TESTIFY IN THAT CASE?

27 MS. GRALINSKI: NO.

28 MR. BARENS: JUST THE PLAINTIFF?

5-4
1 MS. GRALINSKI: NO. IT WAS JUST -- ACTUALLY, I AM NOT
2 SURE. I DON'T BELIEVE -- I BELIEVE THE DEFENDANT OR THE
3 DEFENDANT'S WIFE TESTIFIED AND THAT WAS ALL.

4 THE PLAINTIFF DID NOT.

5 MR. BARENS: DID IT INFLUENCE YOUR DECISION THAT THE
6 PLAINTIFF DIDN'T TESTIFY?

7 MS. GRALINSKI: NO.

8 MR. BARENS: YOU WERE SATISFIED THAT THE EVIDENCE HAD
9 BEEN APPROPRIATELY AND COMPREHENSIVELY PUT FORWARD TO THE
10 JURY TO MAKE A DECISION WITHOUT THAT?

11 MS. GRALINSKI: YES.
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15-5
1 MR. BARENS: DO YOU HAVE ANY HOBBIES?

2 MS. GRALINSKI: YES.

3 MR. BARENS: WHAT HOBBIES DO YOU HAVE?

4 MS. GRALINSKI: I ENJOY READING, BICYCLE RIDING, WALKING,
5 THEATER.

6 MR. BARENS: IS THERE A PARTICULAR TYPE OF READING YOU
7 LIKE TO ENGAGE IN?

8 MS. GRALINSKI: NO.

9 MR. BARENS: DO YOU READ ANYTHING?

10 MS. GRALINSKI: JUST ABOUT.

11 MR. BARENS: OKAY. WHAT IS THE LAST BOOK YOU READ?

12 MS. GRALINSKI: I BELIEVE IT WAS "WANDERLUST."

13 MR. BARENS: "WANDERLUST"?

14 MS. GRALINSKI: YES.

15 MR. BARENS: WHAT WAS THAT ABOUT, IF IT IS NOT ABOUT
16 THE OBVIOUS.

17 MS. GRALINSKI: WELL, BASICALLY IT IS. IT IS DANIELLE
18 STEELE'S MOST RECENT NOVEL. IT IS JUST ABOUT PEOPLE AND
19 RELATIONSHIPS, A WOMAN WHO LEAVES A SHELTERED HOME AND THEN
20 GOES TRAVELING AROUND EUROPE AND MEETS A MAN. IT IS BASIC
21 ROMANCE-ADVENTURE KIND OF NOVEL.

22 MR. BARENS: AND THE LAST MOVIE YOU SAW?

23 MS. GRALINSKI: "CROCODILE DUNDEE."

24 MR. BARENS: I'LL BET IT HAS BEEN THE NUMBER ONE FILM
25 IN THIS COURTROOM.

26 YOU HAVE A MASTER'S IN WHAT AREA?

27 MS. GRALINSKI: SPECIAL EDUCATION.

28 MR. BARENS: SPECIAL EDUCATION?

5-6
1 AND A BACHELOR'S IN PSYCHOLOGY?

2 MS. GRALINSKI: YES.

3 MR. BARENS: WAS THAT CHILD PSYCHOLOGY?

4 MS. GRALINSKI: NO.

5 PSYCHOLOGY.

6 MR. BARENS: GENERAL PSYCHOLOGY?

7 MS. GRALINSKI: YES.

8 MR. BARENS: DO YOU THINK YOU WOULD BE EMPLOYING ANYTHING
9 YOU LEARNED IN PSYCHOLOGY IN TERMS OF EVALUATING WITNESSES
10 IN THIS COURTROOM?

11 MS. GRALINSKI: NO, NOTHING -- NO AND YES.

12 I MEAN OBVIOUSLY THE PERSON I AM WILL BE INVOLVED
13 IN WHAT I USE IN DETERMINING WHAT IS GOING ON IN THE
14 COURTROOM, BUT IN TERMS OF I AM GOING TO USE SOMETHING
15 THAT WAS TAUGHT IN MY COURSES, NO.

16 MR. BARENS: ONE OF THE THINGS THEY TALKED TO YOU ABOUT
17 IN PSYCHOLOGY WAS THAT WHOLE AREA OF DENIAL FOR CONDUCT.

18 MS. GRALINSKI: YES.

19 MR. BARENS: WOULD THAT IN ANY WAY INFLUENCE YOU TO
20 THINK THAT A DEFENDANT WHO TOOK THE STAND AND SAID, "NOT ONLY
21 DIDN'T I DO IT, I DON'T KNOW IF ANYBODY DID IT," WOULD YOU
22 BELIEVE IN YOUR OWN MIND "WELL, YOU KNOW, THAT IS DENIAL-
23 ACTING OUT"; WOULD YOU HAVE A TENDENCY TO DO THAT?

24 MS. GRALINSKI: NO.

25 I BELIEVE THAT I COULD BE A FAIR PERSON IN THAT
26 I WOULD LOOK AT EVERYONE IN THE SAME WAY.

27 MR. BARENS: SO YOU COULD BE OBJECTIVE ABOUT THAT AND
28 SOMEWHAT DIVORCE YOUR THINKING IN THIS CONTEXT FROM YOUR

1 EDUCATION, BUT RATHER BE EDUCATED SOLELY BY THE PROCESS THAT
2 YOU ARE ENGAGED IN?

3 MS. GRALINSKI: YES.

4 I DON'T FEEL I AM A JUDGMENTAL PERSON.

5 MR. BARENS: I APPRECIATE THAT.

6 IS THERE ANYTHING YOU THINK I OUGHT TO KNOW ABOUT
7 YOU THAT WOULD ASSIST ME IN EVALUATING YOU AS A PROSPECTIVE
8 JUROR IN THIS CASE?

9 (MS. GRALINSKI SHAKES HER HEAD FROM
10 SIDE TO SIDE.)

11 MR. BARENS: HOW DO YOU FEEL ABOUT BEING A JUROR HERE?

12 MS. GRALINSKI: I THINK IT WOULD BE INTERESTING.

13 MR. BARENS: IS IT SOMETHING YOU WOULD LIKE TO DO?

14 MS. GRALINSKI: YES.

15 MR. BARENS: THANK YOU VERY MUCH. WE PASS FOR CAUSE,
16 YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 MR. WAPNER: GOOD AFTERNOON, MRS. GRALINSKI.

19 MR. GRALINSKI: YES.

20 MR. WAPNER: NOT BEING A JUDGMENTAL PERSON, COULD YOU
21 MAKE A DECISION ON A CASE LIKE THIS?

22 MS. GRALINSKI: YES.

23 MR. WAPNER: IF YOU WENT INTO THE JURY ROOM, IT WOULDN'T
24 BE EIGHT, THREE AND ONE, YOU BEING THE ABSTENTION, WOULD IT?

25 MS. GRALINSKI: NO.

26 BY BEING NON-JUDGMENTAL, I JUST MEANT I WOULDN'T
27 BE JUDGING ONE PERSON DIFFERENTLY THAN ANOTHER; THAT I WOULDN'T
28 BE SAYING BECAUSE A PERSON WAS ACCUSED OF SOMETHING HE WOULD

1 MOST LIKELY DO SOMETHING THAN, RATHER, A PERSON THAT IS NOT
2 ACCUSED.

3 MR. WAPNER: OKAY. DO YOU HAVE ANY PROBLEM USING THE
4 SAME SCALE. TO EVALUATE THE TESTIMONY OF ALL WITNESSES?

5 MS. GRALINSKI: NO.

6 MR. WAPNER: YOU GOT YOUR UNDERGRADUATE WORK FROM
7 CLARKE COLLEGE?

8 MS. GRALINSKI: CLARKE UNIVERSITY.

9 MR. WAPNER: WHERE IS THAT?

10 MS. GRALINSKI: IN WOOSTER, MASSACHUSETTS.

11 MR. WAPNER: ARE YOU FROM MASSACHUSETTS ORIGINALLY?

12 MS. GRALINSKI: YES.

13 MR. WAPNER: WHAT BROUGHT YOU TO CALIFORNIA?

14 MS. GRALINSKI: WANDERLUST.

15 MR. BARENS: OKAY. AND YOU STILL TRAVEL A LOT LIVING
16 IN SANTA MONICA AND WORKING IN SIMI VALLEY?

17 MS. GRALINSKI: YES, I COMMUTE A LOT.

18 MR. WAPNER: EXPLAIN TO ME WHAT YOU MEAN BY THE FACT
19 THAT THE CHILDREN YOU WORK WITH ARE SERIOUSLY EMOTIONALLY
20 DISTURBED.

21 MS. GRALINSKI: THE MAJORITY OF THEM HAVE PSYCHIATRIC
22 DIAGNOSES. THE SCHOOL MAKES A DISTINCTION BETWEEN KIDS WHO
23 ARE JUST EMOTIONALLY DISTURBED AND SERIOUSLY EMOTIONALLY
24 DISTURBED IN TERMS OF THEIR FUNCTIONING WITHIN A SCHOOL
25 SETTING.

26 MR. WAPNER: TELL ME WHAT YOU DO ON A DAY-TO-DAY BASIS;
27 WHAT IS A TYPICAL DAY FOR YOU?

28 MS. GRALINSKI: THERE ARE NO TYPICAL DAYS.

1 THE COURT: DO YOU HAVE TO TAKE EIGHT HOURS? IS SHE
2 GOING TO TELL US WHAT SHE DOES OVER AN EIGHT-HOUR PERIOD?

3 MS. GRALINSKI: I CAN SUMMARIZE.

4 THE COURT: GO AHEAD.

5 MS. GRALINSKI: I DO SOME ACADEMIC TEACHING, ALSO SOME
6 COUNSELING OF THE STUDENTS IF THEY HAVE PROBLEMS, AND SOME
7 OF THE KIDS THAT ARE IN REGULAR CLASSES, IF THEY HAVE PROBLEMS
8 IN THOSE CLASSES EITHER WITH TEACHERS OR ACADEMIC WORK OR
9 OTHER STUDENTS, I WOULD HELP THEM SORT THROUGH WHATEVER THE
10 PROBLEM IS AND I TRY TO REACH SOME KIND OF A SOLUTION.

11 I AM INVOLVED IN CONTACTSWITH PARENTS, WITH
12 WORKING WITH PARENTS AS FAR AS PROBLEMS THE KIDS MIGHT HAVE.

13 MR. WAPNER: HAVE YOU BEEN DOING THAT FOR 11 YEARS?

14 MS. GRALINSKI: 12.

15 MR. WAPNER: HAVE YOU SEEN ANYTHING ON TELEVISION
16 RECENTLY ABOUT TEACHER BURNOUT? I THINK THERE WAS A SPECIAL
17 ON ONE OF THE NATIONAL NEWS PROGRAMS.

18 MS. GRALINSKI: I HEARD IT WAS ON. NO, I DIDN'T WATCH
19 IT.

20 MR. WAPNER: DO YOU SUFFER FROM ANY OF THAT?

21 MS. GRALINSKI: AT TIMES, YES.

22 IT IS A VERY FRUSTRATING PROFESSION.

23 MR. WAPNER: HAVE YOU EVER THOUGHT ABOUT DOING ANYTHING
24 ELSE?

25 MS. GRALINSKI: YES.

26 MR. WAPNER: WHAT?

27 MS. GRALINSKI: I ACTUALLY, ALONG THE SAME LINES, I
28 WOULD LIKE TO GO TO AND DO DOCTORAL STUDY IN THE SAME FIELD.

1 MR. WAPNER: AND THEN GO BACK TO TEACHING?

2 MS. GRALINSKI: NO, NO.

3 MR. WAPNER: DID THE JURY PEOPLE JUST GET YOUR NAME
4 WRONG OR WAS IT ORIGINALLY JOSEPHINE AND YOU CHANGED IT?

5 MS. GRALINSKI: YES, I CHANGED IT TO J. HEIDI.

6 MR. WAPNER: WAS THERE ANY PARTICULAR REASON THAT YOU
7 CHANGED IT?

8 MS. GRALINSKI: I HAVE NEVER BEEN CALLED THAT. WE WERE
9 NAMED AFTER OUR GRANDPARENTS, MY SISTER AND I, THERE WERE
10 TWO OF US. I WAS NEVER CALLED BY THE NAME JOSEPHINE.
11 I WAS ALWAYS CALLED BY THE NAME HEIDI. THEY WANTED A THIRD
12 ONE AND DIDN'T HAVE ONE.

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6A-1
1 MR. WAPNER: SO THAT IS THE NAME EVERYBODY CALLED YOU
2 AND YOU JUST MADE IT OFFICIAL, IS THAT IT?

3 MS. GRALINSKI: YES.

4 MR. WAPNER: AS A RESULT OF EITHER CONTACT WITH POLICE
5 OFFICERS DURING YOUR WORK OR JUST GENERAL POLITICAL OPINIONS,
6 DO YOU HAVE ANY OPINION ABOUT THE CRIMINAL JUSTICE SYSTEM?

7 MS. GRALINSKI: NO.

8 MR. WAPNER: YOU HAVE NOT GIVEN IT MUCH THOUGHT, ONE
9 WAY OR ANOTHER?

10 MS. GRALINSKI: NO.

11 MR. WAPNER: HAVE YOU FORMED ANY OPINION OF THE POLICE
12 OFFICERS THAT YOU WORKED WITH?

13 MS. GRALINSKI: NO.

14 MR. WAPNER: HAS YOUR BOYFRIEND INDICATED ANY KNOWLEDGE
15 OR INTEREST IN THIS CASE, AS FAR AS FILMS OR MOVIES ARE
16 CONCERNED?

17 MS. GRALINSKI: NO. HE IS INVOLVED IN POST-PRODUCTION,
18 WHICH IS AFTER THE FILM IS MADE.

19 MOSTLY, THEY DO THE NEGATIVE CUTTING AND THE SOUND
20 EFFECTS AND THINGS LIKE THAT. THEY ARE NOT INVOLVED IN MAKING
21 OF FILMS.

22 MR. WAPNER: YOU HAVE NEVER SAT ON A CRIMINAL CASE BEFORE?

23 MS. GRALINSKI: NO.

24 MR. WAPNER: DO YOU UNDERSTAND THAT THE PRESUMPTION
25 OF INNOCENCE DOESN'T MEAN A PERSON IS INNOCENT?

26 MS. GRALINSKI: YES.

27 MR. WAPNER: THAT THAT IS SOMETHING THAT STAYS WITH
28 THE DEFENDANT DURING YOUR DELIBERATIONS UNTIL YOU DECIDE THE

5A-2
1 EVIDENCE PROVES OTHERWISE?

2 MS. GRALINSKI: YES.

3 MR. WAPNER: IN THE CIVIL CASE THAT YOU SAT ON,
4 MR. BARENS' QUESTION TO YOU WAS, DID YOU THINK THAT EITHER
5 ONE OF THEM WAS COMPLETELY UNREASONABLE.

6 MS. GRALINSKI: UH-HUH.

7 MR. WAPNER: YOU SAID NO, CORRECT?

8 MS. GRALINSKI: UH-HUH.

9 MR. WAPNER: YOU HAVE TO SAY YES OR NO.

10 MS. GRALINSKI: YES.

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11 MR. WAPNER: ALL RIGHT. AND DID YOU THINK THAT ONE OF
12 THEM WAS MORE REASONABLE AND ONE WAS LESS REASONABLE?

13 MS. GRALINSKI: WELL, IT WAS NOT SO MUCH A QUESTION OF
14 BEING REASONABLE OR NOT. THEY WERE PUTTING A MONETARY VALUE ON
15 PROPERTY. AND THEY BASED IT ON LOTS OF DIFFERENT FACTS AND
16 FIGURES AND ESTIMATES OF HOUSES IN THE NEIGHBORHOOD AND ALL
17 DIFFERENT SORTS OF THINGS LIKE THAT.

18 SO, THEY EACH DREW ON A DIFFERENT SET OF FACTS
19 TO COME UP WITH THE INFORMATION AND THEY GAVE IT TO HIM.

20 MR. WAPNER: SO BASICALLY, WHAT HAPPENED IS THAT YOU
21 COULD TAKE ALL OF THE SAME FACTS THAT THEY USED AND COME TO
22 YOUR OWN CONCLUSIONS?

23 MS. GRALINSKI: ALMOST, YES.

24 MR. WAPNER: HOW DO YOU FEEL ABOUT THE IDEA THAT YOU
25 CAN HAVE A MURDER PROSECUTION IN THIS STATE AND THE BODY HAS
26 NEVER BEEN RECOVERED?

27 MS. GRALINSKI: THAT'S CORRECT.

28 MR. WAPNER: DO YOU HAVE ANY OPINION OF CIRCUMSTANTIAL

1 EVIDENCE OR DID YOU BEFORE YOU CAME INTO THE COURTROOM?

2 MR. BARENS: YOUR HONOR, I WOULD LIKE TO OBJECT FOR THE
3 RECORD TO COUNSEL'S STATEMENT ABOUT THE BODY NOT BEING
4 RECOVERED.

5 NOW, THERE HAS NEVER BEEN ESTABLISHED THAT THERE
6 IS A BODY TO BEGIN WITH.

7 MR. WAPNER: I AM NOT ASKING ABOUT THIS CASE.

8 THE COURT: ALL RIGHT, JUST GENERALLY.

9 MR. BARENS: I AM SURE THAT THERE COULD HAVE BEEN A
10 REASONABLE IMPLICATION THAT HE MIGHT HAVE BEEN TALKING ABOUT
11 THIS CASE. THANK YOU, YOUR HONOR.

12 MR. WAPNER: HOW DO YOU FEEL ABOUT THE IDEA THAT YOU
13 CAN HAVE A MURDER PROSECUTION IN THE STATE WHERE THE BODY HAS
14 NEVER BEEN RECOVERED?

15 MS. GRALINSKI: ALL RIGHT.

16 MR. WAPNER: OKAY. HAVE YOU EVER BEEN THE VICTIM OF
17 A THEFT OR ANY KIND OF A CON SCHEME?

18 MS. GRALINSKI: OTHER THAN BREAK-INS IN THE CAR, NO.

19 MR. WAPNER: HOW MANY TIMES HAS YOUR CAR BEEN BROKEN
20 INTO?

21 MS. GRALINSKI: LOTS. IT RAN A REGULAR PATH.

22 MR. WAPNER: HAVE YOU EVER REPORTED IT TO THE POLICE?

23 MS. GRALINSKI: YES.

24 MR. WAPNER: AND HAS ANYONE EVER BEEN APPREHENDED?

25 MS. GRALINSKI: NO.

26 MR. WAPNER: HOW DO YOU FEEL ABOUT THE JOB THE POLICE
27 HAVE DONE?

28 MS. GRALINSKI: THEY DID WHAT THEY CAN.

1 MR. WAPNER: AND EVERY TIME IT HAPPENS TO YOU, DO YOU
2 REPORT IT?

3 MS. GRALINSKI: WE JUST MAIL IN FORMS, NOW.

4 MR. WAPNER: AND IS IT THE KIND OF CAR? IS IT THE KIND
5 OF CAR, IS THAT IT?

6 MS. GRALINSKI: NO, IT IS THE STREET. IT IS JUST --
7 I DON'T KNOW. PEOPLE SEEM TO PERIODICALLY COME THROUGH OUR
8 STREET AND SECOND STREET AND JUST HIT THE TRUNKS OF CARS AND
9 GET RADIOS FROM CARS. IT IS ABOUT EVERY OTHER MONTH.

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1 MR. WAPNER: THAT IS THE SANTA MONICA POLICE DEPARTMENT
2 THAT HANDLES THAT?

3 MS. GRALINSKI: YES.

4 MR. WAPNER: DO YOU HAVE ANY BROTHERS OR SISTERS?

5 MS. GRALINSKI: ONE SISTER.

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

7 MS. GRALINSKI: NO.

8 MR. WAPNER: BACK IN MASSACHUSETTS?

9 MS. GRALINSKI: YES.

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

11 MS. GRALINSKI: OH, USUALLY ABOUT ONCE A MONTH.

12 MR. WAPNER: AND ARE YOUR PARENTS LIVING BACK IN
13 MASSACHUSETTS?

14 MS. GRALINSKI: YES.

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

16 MS. GRALINSKI: ABOUT THE SAME, ABOUT ONCE A MONTH.
17 SOMETIMES IT IS MORE OFTEN THAN THAT.

18 MR. WAPNER: DO YOU FEEL YOU ARE CLOSE TO YOUR FAMILY?

19 MS. GRALINSKI: YES.

20 MR. WAPNER: HOW OFTEN DO YOU GO BACK AND VISIT THEM?

21 MS. GRALINSKI: WELL, I GO BACK ONCE A YEAR. LATELY,
22 THEY HAVE BEEN COMING OUT A LOT. THE WINTERS SEEM TO BE
23 GETTING WORSE, SO THEY VISIT A LOT.

24 MR. WAPNER: OKAY. HAVE YOU HEVER HAD A SERIOUS
25 DISCUSSION WITH A FRIEND WHERE YOU TOOK A POSITION AND
26 ULTIMATELY CHANGED IT BECAUSE YOU WERE CONVINCED YOU WERE WRONG?

27 MS. GRALINSKI: YES.

28 MR. WAPNER: DO YOU THINK YOU ARE THE KIND OF PERSON

1 WHO, AFTER LISTENING TO ALL OF THE EVIDENCE IN THIS CASE AND
2 DELIBERATING WITH THE OTHER JURORS, IF YOU INITIALLY TAKE A
3 POSITION AND DECIDE THAT IT IS INCORRECT, YOU CAN CHANGE YOUR
4 MIND?

5 MS. GRALINSKI: YES.

6 MR. WAPNER: AND IF YOU TAKE A POSITION AND YOU DECIDE
7 THAT YOUR POSITION IS CORRECT, CAN YOU HOLD FAST TO IT?

8 MS. GRALINSKI: YES.

9 MR. WAPNER: DID YOU LISTEN TO THE ANSWERS THAT WERE
10 GIVEN TO ALL OF THE EXAMPLES THAT WE HAD ABOUT THE PIE AND
11 THE BOAT AND THE COKE BOTTLE AND ALL THAT STUFF?

12 MS. GRALINSKI: YES.

13 MR. WAPNER: AND DID YOU FORM ANY OPINIONS ABOUT THE
14 ANSWERS THAT WERE GIVEN?

15 MS. GRALINSKI: YES.

16 MR. WAPNER: DID YOU FEEL THAT THEY ALL SEEMED REASONABLE
17 TO YOU?

18 MS. GRALINSKI: NO.

19 MR. WAPNER: SOME OF THEM SEEMED A LITTLE BIT FAR-FETCHED
20 TO YOU?

21 MS. GRALINSKI: LESS LIKELY. SOME SEEMED LESS LIKELY
22 THAN OTHERS, YES.

23 MR. WAPNER: SOME PEOPLE GAVE ANSWERS YOU WOULDN'T
24 NECESSARILY HAVE GIVEN?

25 MS. GRALINSKI: YES OR I WOULD HAVE QUESTIONED YOU KNOW,
26 WHAT THEY WERE SAYING. I WOULD HAVE WANTED MORE INFORMATION
27 TO COME UP WITH SOME OF THE ANSWERS THAT THEY HAD COME UP WITH.

28 MR. WAPNER: LIKE THE HELICOPTERS?

6-7

1 MS. GRALINSKI: YES. THAT WAS THE ONE I THOUGHT OF
2 INITIALLY, YES.

3 MS. WAPNER: OKAY. THANK YOU. I WILL PASS FOR CAUSE,
4 YOUR HONOR.

5 THE COURT: ALL RIGHT. IT IS THE PEOPLE'S PEREMPTORY.

6 MR. WAPNER: YOUR HONOR, THE PEOPLE ACCEPT THE JURY AS
7 PRESENTLY CONSTITUTED.

8 THE COURT: THE DEFENSE?

9 MR. BARENS: JUST A MOMENT, YOUR HONOR. COULD WE STEP
10 OUT THE DOOR FOR A MOMENT? COULD THE DEFENSE STEP OUTSIDE?

11 THE COURT: YES.

12 MR. BARENS: COULD WE STEP OUT IN THE HALLWAY?

13 THE COURT: YES.

14 MR. BARENS: THANK YOU.

15 (PAUSE.)

16 MR. BARENS: THANK YOU FOR THE TIME. THE DEFENSE WOULD
17 ASK THE COURT TO THANK AND EXCUSE JUROR NUMBER 12, MR.
18 MANTECON.

19 THE COURT: THANK YOU.

20 THE CLERK: WENDELL ROMBERG, R-O-M-B-E-R-G.

21 THE COURT: WILL YOU TELL THE YOUNG MAN NEXT TO YOU THAT
22 WE STIPULATED TO USING ALL OF THEM BEFORE WE USED ANY NEW
23 JURORS?

24 ALL RIGHT, MR. ROMBERG, A LONG TIME AGO -- YOU
25 ARE THE LAST OF THE MOHICANS BY THE WAY, AREN'T YOU?

26 MR. ROMBERG: YES.

27 THE COURT: A LONG TIME AGO, YOU TOLD US THAT YOU OR
28 SOME MEMBER OF YOUR FAMILY HAD BEEN THE VICTIM OF SOME KIND

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1 OF A THEFT OR CRIME OF SOME KIND?

2 MR. ROMBERG: YES. I WAS BURGLARIZED.

3 THE COURT: HOW LONG AGO WAS THAT?

4 MR. ROMBERG: 1975.

5 THE COURT: SO THAT WAS INVESTIGATED BY THE POLICE?

6 MR. ROMBERG: YES.

7 THE COURT: AND UNFORTUNATELY, THE BURGLAR WAS NEVER
8 CAUGHT?

9 MR. ROMBERG: YES.

10 THE COURT: WERE YOU SATISFIED WITH THE WAY THE
11 INVESTIGATION WENT DOWN?

12 MR. ROMBERG: NO. I HAVE SOME RESERVATIONS ABOUT IT.

13 THE COURT: WHAT RESERVATIONS? THEY DIDN'T CATCH HIM?

14 MR. ROMBERG: WELL, THAT AND IT SEEMED LIKE TO ME THAT --
15 I DON'T KNOW, DIDN'T SEEM LIKE THEY GAVE A VERY GOOD EFFORT.

16 THE COURT: HOW DO YOU KNOW THAT?

17 MR. ROMBERG: WELL, I DON'T KNOW. IT WAS JUST THE WAY
18 I FELT ABOUT IT.

19 THE COURT: YOU HAVE TO TELL US WHAT THE BASIS OF YOUR
20 FEELING IS.

21 MR. ROMBERG: WELL, WHEN THEY WERE TAKING THE REPORT,
22 THEY DIDN'T TAKE ANY FINGERPRINTS AND NO ITEMIZATION OF WHAT
23 WAS TAKEN. I JUST DIDN'T FEEL -- IT WAS JUST CUT AND DRIED
24 TO ME.

25 THE COURT: WHAT WAS BURGLARIZED, YOUR HOME?

26 MR. ROMBERG: YES, MY APARTMENT.

27 THE COURT: ALL RIGHT. WELL, WILL THAT IN ANY WAY
28 PREJUDICE YOU AGAINST THE PROSECUTION HERE OR AGAINST POLICE

1 OFFICERS WHO MAY TESTIFY?

2 MR. ROMBERG: I DON'T THINK SO.

3 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
4 SAME GENERAL QUESTIONS WHICH WERE ASKED OF THE OTHER JURORS,
5 WOULD YOUR ANSWERS BE ANY DIFFERENT OR SUBSTANTIALLY THE SAME?

6 MR. ROMBERG: SUBSTANTIALLY THE SAME.

7 THE COURT: ALL RIGHT. WHAT DO YOU DO, MR. ROMBERG?

8 MR. ROMBERG: I AM A SERVICE ANALYST FOR GENERAL
9 TELEPHONE.

10 THE COURT: GENERAL TELEPHONE?

11 MR. ROMBERG: YES.

12 THE COURT: YOUR COLLEAGUE WAS HERE, MR. DIPAOLO, DO
13 YOU KNOW HIM?

14 MR. ROMBERG: I RECOGNIZED HIM, YES.

15 THE COURT: THE FACT THAT HE WAS EXCUSED, WOULD THAT
16 IN ANY WAY PREJUDICE YOU AGAINST THE PARTYWHO EXCUSED HIM?

17 MR. ROMBERG: NO.

18 THE COURT: WHAT KIND OF WORK DO YOU DO, YOU SAY?

19 MR. ROMBERG: I AM A SERVICE ANALYST FOR THE ELECTRONIC
20 TELEPHONE SYSTEMS FROM COMPUTERS THROUGH THE EQUIPMENT. I
21 SUPPORT THAT REPAIR GROUP FOR THE AREA OF GENERAL TELEPHONE.

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1 THE COURT: ARE YOU MARRIED?

2 MR. ROMBERG: NO. I AM SINGLE.

3 THE COURT: WHERE DO YOU LIVE?

4 MR. ROMBERG: I LIVE IN VENICE.

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

7 MR. ROMBERG: YES, I HAVE.

8 THE COURT: WHAT KIND OF CASE WAS THAT?

9 MR. ROMBERG: IT WAS AN INDECENT EXPOSURE.

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

11 MR. ROMBERG: YES, IT DID.

12 THE COURT: WHATEVER YOU MIGHT HAVE HEARD IN THAT CASE
13 OR ANY IMPRESSIONS OR REACTIONS YOU GOT, YOU WILL FORGET ABOUT
14 THAT AND JUST BE GUIDED BY THE EVIDENCE IN THIS CASE, WOULD
15 YOU NOT?

16 MR. ROMBERG: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT, THE FACT THAT YOU HAVE BEEN A
18 VICTIM, WOULD THAT IN ANY WAY PREJUDICE YOU AGAINST THE
19 DEFENDANT WHO HAS BEEN CHARGED WITH A CRIME HERE?

20 MR. ROMBERG: IT WOULDN'T.

21 THE COURT: ALL RIGHT. WHAT FORMAL EDUCATION DO YOU
22 HAVE?

23 MR. ROMBERG: I HAVE HIGH SCHOOL AND THEN SEVERAL
24 TECHNICAL TRAINING CLASSES WITH THE TELEPHONE COMPANY OVER
25 THE YEARS.

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

27 MR. BARENS: THANK YOU, YOUR HONOR.

28 GOOD AFTERNOON, MR. ROMBERG. LAST BUT NOT LEAST,

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1 EH, BY THE WAY?

2 MR. ROMBERG: I GUESS SO.

3 MR. BARENS: YOU WOULD THINK YOUR NAME STARTED WITH
4 A Z.

5 THE COURT: NO, IT IS ROMBERG.

6 MR. BARENS: I KNOW IT IS. THAT WAS A BIT OF AMUSEMENT.

7 THE COURT: LABEL IT NEXT TIME, I DIDN'T RECOGNIZE IT.
8 IF YOU INTEND IT AS SUCH, THEN I WILL KNOW.

9 (LAUGHTER IN COURTROOM.)

10 MR. BARENS: THAT IS MY NORMAL MINOR ALPHABET JOKE,
11 YOUR HONOR.

12 HOW LONG AGO WAS YOUR EXPERIENCE ON THAT INDECENT
13 EXPOSURE CASE?

14 MR. ROMBERG: THAT WAS AROUND 1970, I WOULD THINK, '72,
15 SOMEWHERE AROUND THERE. QUITE A WHILE AGO.

16 MR. BARENS: WHAT COURT WERE YOU IN FOR THAT?

17 MR. ROMBERG: HERE IN SANTA MONICA.

18 MR. BARENS: WERE YOU A JUROR THROUGHOUT THE PROCESS
19 ON THAT?

20 MR. ROMBERG: YES, I WAS.

21 MR. BARENS: AND WAS THAT THE ONLY JURY YOU HAVE EVER
22 PARTICIPATED?

23 MR. ROMBERG: YES, I BELIEVE, YES.

24 I WAS ON ANOTHER PANEL BUT I WASN'T ON THE JURY.

25 THAT IS THE ONLY JURY.

26 MR. BARENS: WERE YOU DECLINED AS A JUROR ON ANY OTHER
27 CASES?

28 MR. ROMBERG: NO.

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1 MR. BARENS: JUST THAT, YOU NEVER GOT --

2 MR. ROMBERG: YES.

3 MR. BARENS: -- THE OPPORTUNITY TO GET CALLED?

4 MR. ROMBERG: LIKE HERE.

5 MR. BARENS: THAT IS A BAD JOKE.

6 HOW DID YOU FEEL ABOUT THAT EXPERIENCE OF BEING
7 ON A JURY THAT TIME?

8 MR. ROMBERG: IT WAS MY FIRST TIME. I FELT IT WAS VERY
9 INFORMATIVE AND I BELIEVE JUSTICE WAS SERVED.

10 MR. BARENS: DID THE DEFENDANT TESTIFY IN THAT CASE?

11 MR. ROMBERG: TO TELL YOU THE TRUTH, I CAN'T REALLY
12 RECALL. IT WAS A LONG TIME AGO.

13 I BELIEVE HE DID.

14 MR. BARENS: MADE A BIG IMPRESSION.

15 YOU THINK HE DID?

16 MR. ROMBERG: YES, I BELIEVE HE DID.

17 MR. BARENS: DID YOU FEEL THAT THE DEFENDANT HAD BEEN
18 CANDID IN HIS TESTIMONY?

19 MR. ROMBERG: YES, FROM WHAT I RECALL, YEAH. I BELIEVE --
20 I REALLY CAN'T RECALL THE EXACT THING OTHER THAN -- THE
21 PARTICULARS.

22 MR. BARENS: LET ME ASK YOU THIS: DID YOU HAVE AN
23 OPINION IN YOUR OWN MIND ABOUT HOW THE DEFENDANT WOULD
24 TESTIFY BEFORE HE TOOK THE STAND?

25 MR. ROMBERG: I DON'T BELIEVE SO, NO.

26 MR. BARENS: YOU DON'T FEEL THAT YOU HAD SOME INHERENT
27 THOUGHT IN YOUR MIND THAT YOU ANTICIPATED, "WELL, IF HE TAKES
28 THE STAND HE IS PROBABLY GOING TO SAY SO AND SO?"

1 MR. ROMBERG: I DON'T BELIEVE SO. IT IS PRETTY HARD.
2 I CAN'T RECALL. IT IS SO LONG AGO, I REALLY CAN'T. I CAN'T
3 PULL THAT EXACT INFORMATION FROM MY MIND.

4 MR. BARENS: AFTER HEARING THE PROSECUTION'S CASE HERE,
5 WILL YOU HAVE SOME BELIEF IN YOUR OWN MIND, AS YOU SIT HERE
6 NOW NOT HAVING HEARD IT, THAT YOU MIGHT ANTICIPATE "WELL,
7 IF THEY HAD SAID SO AND SO IN THIS CASE, HE IS PROBABLY GOING
8 TO GET UP ON THE STAND AND SAY SO AND SO IN HIS OWN DEFENSE";
9 WOULD YOU BE DOING THAT, DO YOU THINK?

10 MR. ROMBERG: NO, I DON'T THINK SO.
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1 MR. BARENS: YOU WOULDN'T REALLY THINK THAT WAS THE
2 APPROPRIATE THING TO DO, WOULD YOU?

3 WOULDNT YOU, INSTEAD OF ANTICIPATING THE TESTIMONY,
4 WANT TO JUST HEAR IT AS IT WAS RECEIVED?

5 MR. ROMBERG: YES.

6 MR. BARENS: IT WOULD BE KIND OF A MISTAKE IN THIS
7 SETTING TO ASSUME ANYTHING OR PREJUDGE ANYTHING BEFORE YOU
8 HEARD THE EVIDENCE, WOULDN'T IT?

9 MR. ROMBERG: THAT'S TRUE.

10 MR. BARENS: IN THE CASE YOU WERE A JUROR ON BEFORE,
11 WAS IT A LENGTHY MATTER OR FAIRLY BRIEF?

12 MR. ROMBERG: NO. IT WAS QUITE SHORT. I THINK IT WAS
13 THREE DAYS TOTAL.

14 MR. BARENS: AND WAS IT A FAIRLY BRIEF JURY DELIBERATION
15 PROCESS?

16 MR. ROMBERG: I THINK IT TOOK MAYBE A DAY TO COMPLETE.
17 WE STARTED LIKE IN THE AFTERNOON AND THE NEXT -- ABOUT ONE
18 DAY PROBABLY TO COMPLETE.

19 MR. BARENS: DID YOUR OPINION ON THE GUILT OR INNOCENCE
20 OF THE DEFENDANT CHANGE DURING THAT TIME PERIOD OR DID YOU
21 PRETTY MUCH HAVE THE SAME POINT OF VIEW THRUHOUT?

22 MR. ROMBERG: I HAD THE SAME POINT OF VIEW THRUHOUT.

23 MR. BARENS: AND OBVIOUSLY, A UNANIMOUS VERDICT WAS
24 IN FACT REACHED?

25 MR. ROMBERG: YES.

26 MR. BARENS: DID YOU UNDERSTAND THE CONCEPT OF BEYOND
27 A REASONABLE DOUBT IN TRYING TO MAKE YOUR DECISION?

28 MR. ROMBERG: I THINK SO, YES.

1 MR. BARENS: WHAT DID YOU FEEL IN RETROSPECT, WAS THERE
2 A PARTICULAR THING THAT SWAYED YOUR DECISION ONE WAY OR THE
3 OTHER, WITHOUT TELLING ME WHICH WAY IT SWAYED YOU, WAS THERE
4 ANYTHING IN PARTICULAR THAT SWAYED YOUR DECISION IN THAT?

5 MR. ROMBERG: JUST THE TESTIMONY GIVEN BY THE PEOPLE.

6 MR. BARENS: BY ALL OF THE WITNESSES?

7 MR. ROMBERG: YES.

8 MR. BARENS: NOW IN THAT --

9 MR. ROMBERG: KIND OF A SIMPLE CASE. IT WAS KIND OF
10 A SIMPLE THING AS FAR AS WHAT I RECALL. THERE WAS, I THINK,
11 JUST A COUPLE OF POLICE OFFICERS TESTIFIED AND THAT WAS ABOUT
12 IT. I THINK THAT WAS IT.

13 MR. BARENS: WERE THESE POLICE OFFICERS TESTIFYING TO
14 SOMETHING THEY CLAIMED THEY HAD SEEN THEMSELVES?

15 MR. ROMBERG: YES.

16 MR. BARENS: AND WAS THERE ANY WITNESS FOR --

17 OBVIOUSLY, THE DEFENSE IN THIS INSTANCE
18 TESTIFIED THAT THEIR OBSERVATIONS WERE INACCURATE?

19 MR. ROMBERG: I DON'T RECALL.

20 MR. BARENS: HOW ABOUT THE DEFENDANT HIMSELF?

21 MR. ROMBERG: YES, I BELIEVE HE WAS THE ONLY DEFENSE
22 THEY HAD.

23 MR. BARENS: AND HE DISPUTED THEIR OBSERVATIONS?

24 MR. ROMBERG: YES.

25 MR. BARENS: OKAY. THAT IS WHAT WE CALL DIRECT EVIDENCE.
26 IN OTHER WORDS, THESE POLICE OFFICERS SAYING "WE DIRECTLY
27 SAW THE FOLLOWING CONDUCT OCCUR"; ISN'T THAT PRETTY MUCH WHAT
28 YOU HAD THERE?

1 MR. ROMBERG: YES, SIR.

2 MR. BARENS: NOW, COULD YOU UNDERSTAND THAT WE COULD
3 HAVE OCCASION HERE WHERE NOT A SOUL IN THE WORLD IS EVER
4 GOING TO WALK IN AND SAY THEY SAW ANYBODY KILLED?

5 MR. ROMBERG: YES.

6 MR. BARENS: WHAT YOU ARE GOING TO HAVE HERE IS A
7 SITUATION WHERE IT IS AT ALL NOTHING LIKE THAT PRIOR TRIAL.
8 IT IS ALL THIS INDIRECT CIRCUMSTANTIAL EVIDENCE WHICH IS TOLD
9 TO YOU AND YOU ARE ASKED TO MAKE A CONCLUSION FROM INFERENCES,
10 REASONABLY DRAWN FROM THAT DATA.

11 MR. ROMBERG: I SEE.

12 MR. BARENS: NOW BEFORE YOU CAME TO MAKING A DECISION
13 BEYOND A REASONABLE DOUBT IN THAT SETTING, WOULD YOU WANT
14 TO HEAR ALL OF THE EVIDENCE THERE WAS ON BOTH SIDES OF THE
15 QUESTION?

16 MR. ROMBERG: YES.

17 MR. BARENS: ALL RIGHT. DO YOU FEEL THAT THE FACT THAT
18 JOE HUNT SITS DOWN THERE ACCUSED OF A MURDER IN ANY WAY MAKES
19 YOU BELIEVE HE IS GUILTY OF SOMETHING?

20 MR. ROMBERG: NO, SIR.

21 MR. BARENS: YOU DON'T?

22 MR. ROMBERG: NO, SIR.

23 MR. BARENS: YOU SAY THAT HONESTLY TO ME?

24 MR. ROMBERG: YES, SIR.

25 MR. BARENS: ARE YOU COMFORTABLE WITH THE PRESUMPTION
26 OF INNOCENCE?

27 MR. ROMBERG: YES, I AM.

28 MR. BARENS: ASIDE FROM THE JURY TRIAL THAT YOU

1 PARTICIPATED IN, WHILE YOU WERE ON YOUR OTHER TOUR OF DUTY,
2 DID YOU HAVE OCCASION TO OBSERVE ANY TRIAL?

3 MR. ROMBERG: NO.

4 MR. BARENS: YOU DIDN'T SIT IN ON ANY PARTIAL TRIALS?

5 MR. ROMBERG: NO.

6 THAT WAS THE ONLY TRIAL EXPERIENCE I HAD.

7 MR. BARENS: HAVE YOU EVER BEEN A WITNESS IN A CASE?

8 MR. ROMBERG: I WAS A WITNESS TO AN ACCIDENT IN DETROIT,
9 MICHIGAN, WHEN I WAS LIKE 15, 14, 15 YEARS OLD.

10 I WITNESSED AN ACCIDENT AND THEN I DON'T RECALL
11 IF I HAD TO BE -- IF I EVEN TESTIFIED BUT I WAS IN A COURTROOM.

12 I THINK I DID, YES, I DID TESTIFY.

13 MR. BARENS: DO YOU REMEMBER WHICH SIDE CALLED YOU IN
14 THAT CASE?

15 MR. ROMBERG: NO, I DON'T RECALL. I JUST KNOW I GOT
16 SUBPOENAED.

17 MR. BARENS: OKAY. HOW DID YOU THINK THE LAWYERS DID
18 ON THAT INDECENT EXPOSURE CASE, DO YOU THINK BOTH SIDES
19 FAIRLY REPRESENTED THEIR CLIENT?

20 MR. ROMBERG: YES, I DID.

21 MR. BARENS: NOTHING ABOUT THE WAY THE COUNSEL CONDUCTED
22 THEMSELVES THAT CAUSED YOU ANY CONCERN?

23 MR. ROMBERG: NO, NOT THAT I RECALL.

24 MR. BARENS: DO YOU HAVE ANY HOBBIES, SIR?

25 MR. ROMBERG: YES, I LIKE GOLFING. I LIKE BOWLING.
26 I PLAYED ICE HOCKEY. BASEBALL.

27 MR. BARENS: ALL RIGHT. THE LAST BOOK YOU READ?

28 MR. ROMBERG: EITHER THE "THORNBIRDS" OR "THE AGONY
29 AND THE ECSTASY."

1 MR. BARENS: ALL RIGHT, SIR, WHAT WAS THE LAST MOVIE
2 YOU SAW?

3 MR. ROMBERG: USUALLY I RENT VCR'S. IT MIGHT HAVE BEEN
4 DR. ZHIVAGO.

5 MR. BARENS: MR. ROMBERG, HAVE YOU EVER BEEN MARRIED?

6 MR. ROMBERG: NO.

7 MR. BARENS: YOU ARE NOT THE ONLY GUY IN HERE LIKE THAT.
8 ALL RIGHT. THANK YOU VERY MUCH FOR YOUR TIME. WE PASS FOR
9 CAUSE, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MR. WAPNER: GOOD AFTERNOON, MR. ROMBERG.

12 MR. ROMBERG: GOOD AFTERNOON.

13 MR. WAPNER: YOU HAD THE BENEFIT OF HEARING ALL OF THOSE
14 EXAMPLES FROM ALL OF THE ANSWERS FROM ALL OF THE OTHER PEOPLE,
15 RIGHT?

16 MR. ROMBERG: YES.

17 MR. WAPNER: ALL RIGHT. DID YOU FEEL LIKE ALL OF THOSE
18 ANSWERS WERE REASONABLE TO YOU IN YOUR MIND?

19 MR. ROMBERG: NO.

20 MR. WAPNER: SOME OF THEM SEEMED MORE REASONABLE THAN
21 OTHERS?

22 MR. ROMBERG: YES.

23 MR. WAPNER: DID SOME OF THEM SEEM FAR-FETCHED TO YOU?

24 MR. ROMBERG: I WOULD SAY, YES.

25 MR. WAPNER: YOU GREW UP IN THE DETROIT AREA?

26 MR. ROMBERG: NO. I GREW UP IN NORTHERN MICHIGAN. I
27 USED TO GO THERE FOR SUMMERS, FOR EMPLOYMENT. MY BROTHERS
28 AND SISTERS ARE DOWN THERE.

1 MR. WAPNER: YOU DIDN'T LEARN HOW TO PLAY ICE HOCKEY
2 IN SOUTHERN CALIFORNIA, THOUGH?

3 MR. ROMBERG: NO.

4 MR. WAPNER: HAVE YOU HAD ANY OTHER EXPERIENCES WITH
5 POLICE OFFICERS OTHER THAN THE ONES WHO CAME TO YOUR HOUSE,
6 THAT YOU FELT LEFT A BAD TASTE IN YOUR MOUTH?

7 MR. ROMBERG: SPEEDING TICKETS DON'T MAKE ME HAPPY.

8 MR. WAPNER: OKAY. HAVE YOU GOTTEN ANY TICKETS YOU
9 THOUGHT YOU DIDN'T DESERVE?

10 MR. ROMBERG: NO, NOT REALLY. NO.

11 MR. WAPNER: HAVE YOU GOTTEN ANY TICKETS THAT YOU
12 DECIDED YOU WERE GOING TO FIGHT?

13 MR. ROMBERG: NO.

14 MR. WAPNER: HOW DID YOU FEEL ABOUT THE CONCEPT OF
15 CIRCUMSTANTIAL EVIDENCE, GENERALLY?

16 MR. ROMBERG: IT IS OKAY.

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

19 MR. ROMBERG: JUST BURGLARIZED. AS TO A THEFT, I HAD
20 MY BICYCLE RIPPED OFF ONCE AT WORK.

21 MR. WAPNER: SO WHEN YOU WERE WORKING HERE AT GENERAL
22 TELEPHONE IN SANTA MONICA --

23 MR. ROMBERG: YES.

24 MR. WAPNER: ARE YOUR PARENTS STILL LIVING?

25 MR. ROMBERG: NO, THEY ARE NOT.

26 MR. WAPNER: WHEN THEY WERE LIVING, DID YOU TALK TO THEM
27 FAIRLY OFTEN?

28 MR. ROMBERG: WELL, MY FATHER PASSED AWAY WHEN I WAS

1 16. I WAS STILL IN SCHOOL.

2 MY MOTHER PASSED AWAY IN 1975. YES, I TALKED TO
3 HER AT LEAST ONCE A MONTH.

4 SHE CAME OUT HERE FOR THE WINTER SOMETIMES AND
5 THEN WOULD GO BACK.

6 MR. WAPNER: DO YOU HAVE ANY BROTHERS AND SISTERS?

7 MR. ROMBERG: YES. I HAVE FOUR BROTHERS AND TWO SISTERS.

8 MR. WAPNER: DO ANY OF THEM LIVE IN THE LOS ANGELES
9 AREA?

10 MR. ROMBERG: YES. I HAVE AN APARTMENT WITH MY BROTHER,
11 WHO LIVES THERE WITH ME. WE LIVE TOGETHER IN THE APARTMENT.

12 MR. WAPNER: AND DO YOU SEE ANY OF YOUR OTHER BROTHERS
13 AND SISTERS FROM TIME TO TIME?

14 MR. ROMBERG: YES.

15 MR. WAPNER: HOW OFTEN?

16 MR. ROMBERG: PROBABLY A COUPLE OF TIMES A YEAR. THEY
17 COME OUT HERE. THEY ARE ALL ADULTS. THEY JUST TRAVEL BACK
18 AND FORTH.

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

21 THE COURT: ALL RIGHT. IT IS THE PEOPLE'S PEREMPTORY.

22 MR. WAPNER: WE WOULD ASK THE COURT TO THANK AND EXCUSE
23 MR. ROMBERG.

24 THE COURT: THANK YOU, SIR.

25 THE CLERK: MARINETTE KUBECK, K-U-B-E-C-K.

26 THE COURT: MISS KUBECK, SINCE YOU HAVE BEEN IN THE
27 COURTROOM WHILE WE WERE IN THE PROCESS OF IMPANELING THE JURY,
28 YOU HEARD ALL THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND

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1 GIVEN UP TO THIS POINT?

2 MS. KUBECK: YES.

3 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
4 OF YOU, WOULD YOUR ANSWERS BE ANY DIFFERENT OR SUBSTANTIALLY
5 THE SAME?

6 MS. KUBECK: SUBSTANTIALLY THE SAME. WE DIDN'T HEAR
7 THE BOAT STORY.

8 THE COURT: YES, I KNOW. AS THE LIMEY SAID, "YOU AIN'T
9 MISSED MUCH."

10 BUT WHAT YOU DID HEAR, YOU WOULD GENERALLY ANSWER
11 THE SAME WAY, WOULDN'T YOU?

12 MS. KUBECK: YES.

13 THE COURT: ALL RIGHT. LET ME ASK YOU, DID YOU TELL
14 US THE OTHER DAY THAT YOU WERE OR A MEMBER OF YOUR FAMILY HAD
15 BEEN IDENTIFIED WITH LAW ENFORCEMENT WORK OF SOME KIND?

16 MS. KUBECK: YES.

17 THE COURT: WHO WAS THAT?

18 MS. KUBECK: I HAD TWO BROTHERS-IN-LAW WHO WERE POLICEMEN.
19 BUT THEY ARE NO LONGER BROTHER-IN-LAW.

20 THE COURT: WHAT?

21 MS. KUBECK: NO LONGER BROTHERS-IN-LAW.

22 THE COURT: THEY WERE YOUR BROTHERS-IN-LAW?

23 MS. KUBECK: YES.

24 THE COURT: LOS ANGELES POLICE DEPARTMENT?

25 MS. KUBECK: ONE WAS. MY SISTER DIVORCED HIM ABOUT 20
26 YEARS AGO. BUT THEY ARE STILL VERY FRIENDLY.

27 SO I HAVE NO ANIMOSITY TOWARD HIM OR MY OTHER
28 BROTHER-IN-LAW. MY SISTER DIED. WE ARE STILL VERY FRIENDLY.

1 THEY ARE THE UNCLES OF MY NEPHEWS.

2 THE COURT: WHERE IS HE A POLICE OFFICER?

3 MS. KUBECK: ONE WAS IN NEW YORK AND ONE WAS IN SANTA
4 MONICA.

5 THE COURT: NEW YORK'S FINEST?

6 MS. KUBECK: YES.

7 THE COURT: WOULD THAT IN ANY WAY, PREDISPOSE YOU TO
8 FAVOR THE TESTIMONY OF POLICE OFFICERS, IF THEY WERE
9 TESTIFYING HERE? WOULD YOU JUDGE THEIR TESTIMONY BY THE SAME
10 STANDARDS AS YOU WOULD ANY OTHER WITNESS?

11 MS. KUBECK: NO. I THINK POLICE OFFICERS ARE ALL
12 DIFFERENT, JUST LIKE PEOPLE.

13 THE COURT: EXACTLY. ALL RIGHT.

14 AND WHAT DO YOU DO, PLEASE?

15 MS. KUBECK: I RETIRED FROM GENERAL TELEPHONE COMPANY
16 TWO YEARS AGO.

17 THE COURT: RIGHT NEXT DOOR HERE?

18 MS. KUBECK: UH-HUH.

19 THE COURT: WHAT WAS YOUR JOB THERE?

20 MS. KUBECK: I WAS A CONSTRUCTION COORDINATOR AND OUT-
21 SIDE PLANNER WHEN I LEFT.

22 THE COURT: AND WHAT WAS YOUR FORMAL EDUCATION?

23 MS. KUBECK: ABOUT TWO YEARS OF COLLEGE.

24 THE COURT: AND THERE IS A MR. KUBECK?

25 MS. KUBECK: YES.

26 THE COURT: WHAT DOES HE DO?

27 MS. KUBECK: HE JUST RETIRED FROM PUBLISHING AT THE
28 UNIVERSITY OF CALIFORNIA PRESS.

1 THE COURT: WHERE DO YOU LIVE?

2 MS. KUBECK: TOPANGA.

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

5 MS. KUBECK: NO, NEVER.

6 THE COURT: AND HAVE YOU EVER BEEN A VICTIM OF ANY KIND
7 OF --

8 MS. KUBECK: NEVER.

9 THE COURT: ALL RIGHT. I THINK MAYBE WE'LL TAKE A TEN-
10 MINUTE RECESS AT THIS TIME. LADIES AND GENTLEMEN, WE WILL
11 TAKE A SHORT, TEN-MINUTE RECESS.

12 (RECESS.)

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1 THE COURT: STIPULATED THE DEFENDANT IS PRESENT,
2 COUNSEL ARE PRESENT AND THE PROSPECTIVE JURORS ARE PRESENT.
3 ALL RIGHT.

4 MR. BARENS: YOUR HONOR, THE DEFENSE WOULD PASS FOR
5 CAUSE AND ACCEPT THE JURY AS PRESENTLY CONSTITUTED.

6 MR. WAPNER: MAY I EXAMINE MRS. KUBECK, YOUR HONOR?

7 THE COURT: ANY QUESTIONS?

8 MR. BARENS: I WOULD PASS THE WITNESS (SIC) AND ACCEPT
9 THE JURY.

10 THE COURT: ALL RIGHT.

11 MR. WAPNER: MRS. KUBECK, TELL ME A LITTLE BIT MORE
12 ABOUT YOUR TWO FORMER BROTHER-IN-LAWS WHO WERE IN LAW
13 ENFORCEMENT.

14 WHAT ABOUT THE ONE WHO WAS LIVING IN LOS ANGELES?

15 MS. KUBECK: NO. HE IS NOT LIVING IN LOS ANGELES.

16 HE LIVES UP NORTH.

17 MR. WAPNER: HE USED TO WORK FOR LAPD?

18 MS. KUBECK: NO.

19 HE WORKED FOR SANTA MONICA.

20 MR. WAPNER: OKAY. AND HOW LONG DID HE WORK FOR
21 SANTA MONICA P.D.?

22 MS. KUBECK: WELL, HE RETIRED SO -- I REALLY DON'T
23 KNOW -- MAYBE TWENTY YEARS. I DON'T KNOW.

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1 MR. WAPNER: IT WAS AT LEAST DURING PART OF THE TIME
2 HE WAS MARRIED TO YOUR SISTER?

3 MS. KUBECK: YES.

4 MR. WAPNER: AND DO YOU KNOW WHAT TYPES OF JOBS HE HAD
5 WITH THE POLICE DEPARTMENT?

6 MS. KUBECK: HE WAS ON A THREE-WHEELER. HE LOVED THAT.
7 HE GOT STUCK WITH THE JAIL DUTY. THAT I REMEMBER.
8 THOSE ARE THE KINDS OF HIGHLIGHTS. THAT IS ALL
9 I REMEMBER.

10 MR. WAPNER: DID HE TALK TO YOU ABOUT HIS EXPERIENCES
11 WORKING IN THE JAIL?

12 MS. KUBECK: NOT REALLY. I THINK IT WAS A DUTY HE WAS
13 NOT CRAZY ABOUT BECAUSE HE DIDN'T GET TO GO OUT ON THAT
14 THREE-WHEELER. THAT IS THE IMPRESSION I GOT.

15 MR. WAPNER: DID YOU FORM SOME IMPRESSION OF POLICE
16 OFFICERS, BASED ON POLICE OFFICERS IN GENERAL, BASED ON TALKING
17 WITH HIM?

18 MS. KUBECK: TALKING WITH HIM? I MET SOME OF THEM. I
19 LIKED SOME OF THEM. I DIDN'T LIKE SOME OF THEM.

20 JUST LIKE PEOPLE, SOME WERE DOPES AND SOME WERE
21 INTELLIGENT. SOME WERE WHATEVER. IT WAS A MIXTURE.

22 MR. WAPNER: ALL RIGHT. AND THE BROTHER-IN-LAW THAT
23 WORKED FOR THE NEW YORK POLICE DEPARTMENT, HOW OFTEN DID YOU
24 SEE OR TALK TO HIM?

25 MS. KUBECK: WE SAW THEM ABOUT EVERY TWO OR THREE YEARS.
26 MY SISTER WAS MARRIED TO HIM.

27 MR. WAPNER: IF THERE IS A NEW YORK POLICE OFFICER WHO
28 TESTIFIES IN THIS CASE, HOW IS THAT GOING TO AFFECT YOU ONE

1 WAY OR THE OTHER? DO YOU HAVE ANY OPINIONS ABOUT NEW YORK
2 POLICE OFFICERS GENERALLY, BASED ON YOUR EXPERIENCE WITH ONE?

3 MS. KUBECK: I THINK THEY ARE FUNNIER THAN SANTA MONICA
4 POLICE OFFICERS.

5 MR. WAPNER: OKAY. WHAT DOES YOUR HUSBAND DO FOR THE
6 UC PRESS?

7 MS. KUBECK: HE IS RETIRED. HE WAS MANAGING EDITOR.

8 MR. WAPNER: AND FORGIVE MY IGNORANCE, BUT WHAT IS A
9 MANAGING EDITOR?

10 MS. KUBECK: HE SOLICITS MANUSCRIPTS. HE SEES IT
11 THROUGH FROM THE INCEPTION OF THE MANUSCRIPTS, GETTING IT
12 PASSED BY THE EDITORIAL COMMITTEE AND THEN SEES THEM THROUGH
13 PUBLICATION. THEY PUBLISH SCHOLARLY BOOKS.

14 MR. WAPNER: HAVE YOU EVER SERVED ON A JURY BEFORE?

15 MS. KUBECK: NEVER.

16 MR. WAPNER: WOULD YOU CONSIDER YOURSELF OPINIONATED?

17 MS. KUBECK: OPINIONATED? IN SOME AREAS, PROBABLY.

18 MR. WAPNER: HAVE YOU EVER BEEN IN A SERIOUS DISCUSSION
19 WITH A FRIEND WHERE YOU TOOK ONE POSITION AND CHANGED IT
20 BECAUSE YOU FELT THAT YOUR INITIAL POSITION WAS WRONG?

21 MS. KUBECK: OF COURSE. I AM SURE I HAVE.

22 MR. WAPNER: AND IF YOU ARE IN THE JURY ROOM DELIBERATING
23 ON THIS CASE AND YOU TAKE ONE VIEW OF THE EVIDENCE AND AFTER
24 TALKING WITH ALL OF THE OTHER PEOPLE, YOU DECIDE THAT YOUR
25 INITIAL POSITION WAS NOT CORRECT, DO YOU THINK YOU COULD CHANGE
26 YOUR MIND?

27 MS. KUBECK: OF COURSE.

28 MR. WAPNER: IF YOU FELT THAT YOUR INITIAL POSITION WAS

1 CORRECT, COULD YOU HOLD FAST TO YOUR VIEW?

2 MS. KUBECK: IF I WOULD HAVE STRONG CONVICTIONS, YES.

3 I WOULD HOLD FAST TO MY VIEWS.

4 MR. WAPNER: OKAY. HOW LONG HAVE YOU LIVED IN TOPANGA?

5 MS. KUBECK: SIX YEARS.

6 MR. WAPNER: WHERE DID YOU LIVE BEFORE THAT?

7 MS. KUBECK: MALIBU.

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1 MR. WAPNER: AS A CONSTRUCTION SUPERVISOR FOR THE PHONE
2 COMPANY, WHAT DID YOU DO?

3 MS. KUBECK: WELL, BASICALLY, I WAS IN CHARGE OF THE
4 RECORD KEEPING OF THE RECORD MAPS AND KEEPING RECORDS OF THE
5 CABLES, ALPHABETIZING MAPS WITH WIRES, UNDERGROUND CABLES,
6 OVERHEAD WIRES, CABLES.

7 MR. WAPNER: KEEPING RECORDS OF WHERE THE CABLE WAS?

8 MS. KUBECK: AND WHERE IT GOES INTO THE GROUND AND WHERE
9 IT IS PUT ON THE POLE.

10 THEY HAVE TO KNOW WHERE ALL OF THAT STUFF IS FOR
11 TAX REASONS AND ALL OF THAT.

12 MR. WAPNER: ARE YOU FROM CALIFORNIA ORIGINALLY?

13 MS. KUBECK: NO.

14 MR. WAPNER: WHERE ARE YOU FROM?

15 MS. KUBECK: TEXAS.

16 MR. WAPNER: WHAT PART?

17 MS. KUBECK: EL PASO.

18 MR. WAPNER: HOW LONG HAVE YOU BEEN HERE IN CALIFORNIA?

19 MS. KUBECK: 39 YEARS.

20 MR. WAPNER: THAT IS PRETTY CLOSE TO A NATIVE.

21 MS. KUBECK: UH-HUH.

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

24 MS. KUBECK: NO.

25 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
26 OF A CRIME WHATSOEVER?

27 MS. KUBECK: NEVER.

28 MR. WAPNER: DO YOU HAVE ANY CHILDREN?

1 MS. KUBECK: YES.

2 MR. WAPNER: HOW MANY?

3 MS. KUBECK: ONE BOY, 25.

4 MR. WAPNER: WHAT DOES HE DO?

5 MS. KUBECK: HE IS A TRUCK DRIVER.

6 MR. WAPNER: BASED IN LOS ANGELES?

7 (MS. KUBECK SHAKES HER HEAD UP AND DOWN.)

8 MR. WAPNER: YOU HAVE TO SAY YES.

9 MS. KUBECK: OH, YES.

10 MR. WAPNER: AND DOES HE LIVE WITH YOU?

11 MS. KUBECK: NO.

12 HE IS MARRIED.

13 MR. WAPNER: OKAY. AND DOES HE HAVE ANY KIDS?

14 MS. KUBECK: NO.

15 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO HIM?

16 MS. KUBECK: OH, I TALK TO HIM ABOUT EVERY WEEK, SEE
17 HIM BIRTHDAYS, CHRISTMAS, THANKSGIVING, THINGS LIKE THAT AND
18 WHENEVER HE WANTS A REAL GOOD MEAL.

19 (LAUGHTER IN COURTROOM.)

20 MR. WAPNER: WOULD YOU SAY YOU ARE CLOSE TO HIM?

21 MS. KUBECK: VERY.

22 WASN'T ALWAYS, BUT I AM NOW.

23 MR. WAPNER: IF HE LEAVES TOWN ON VACATION, DOES HE
24 USUALLY CALL YOU?

25 MS. KUBECK: NO.

26 MR. WAPNER: HOW DO YOU FEEL ABOUT THE CONCEPT OF
27 CIRCUMSTANTIAL EVIDENCE GENERALLY?

28 MS. KUBECK: I -- I WAS NOT AWARE UNTIL I CAME TO, YOU

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1 KNOW, THE COURTHOUSE THAT IT HAD THE AMOUNT OF WEIGHT THAT
2 IT DOES BUT --

3 MR. WAPNER: AND IF THE JUDGE TELLS YOU THAT BOTH DIRECT
4 AND CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE AS A MEANS OF
5 PROOF AND NEITHER ONE IS ENTITLED TO ANY GREATER WEIGHT THAN
6 THE OTHER, CAN YOU FOLLOW THAT?

7 MS. KUBECK: YES. I BELIEVE IN THE LAW, YES.

8 MR. WAPNER: OKAY. DO YOU THINK YOU UNDERSTAND WHAT
9 CIRCUMSTANTIAL EVIDENCE IS?

10 MS. KUBECK: OH, YES, I UNDERSTAND IT. NOT ALL OF THE
11 IMPLICATIONS, THE LEGAL IMPLICATIONS, NO. BUT YES, I UNDERSTAND.

12 MR. WAPNER: BUT BASICALLY, IT IS GETTING DIRECT
13 EVIDENCE ABOUT ONE OR TWO OR THREE FACTS AND PUTTING THAT
14 TOGETHER AND FROM THAT DIRECT EVIDENCE OF THOSE FACTS,
15 INFERRING THAT ANOTHER FACT IS TRUE; CAN YOU APPRECIATE THAT?

16 MS. KUBECK: YES.

17 MR. WAPNER: DO YOU MAKE A DISTINCTION IN YOUR MIND
18 BETWEEN THINGS THAT ARE POSSIBLE AND THINGS THAT ARE PROBABLE
19 OR REASONABLE?

20 MS. KUBECK: ANYTHING IS POSSIBLE AND REASONABLE IS
21 JUDGMENTAL.

22 MR. WAPNER: TELL ME ABOUT SOME OF YOUR HOBBIES.

23 MS. KUBECK: MY HOBBIES?

24 MR. WAPNER: YES.

25 MS. KUBECK: WELL, I GARDEN. WE TRAVEL. I READ AND
26 ENTERTAIN.

27 MR. WAPNER: OKAY. WHAT KIND OF TRAVELING DO YOU DO?

28 MS. KUBECK: WELL, WE LIKE TO TRAVEL ON FREIGHTERS.

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MR. WAPNER: WHERE DID YOU TRAVEL ON FREIGHTERS?

MS. KUBECK: SOUTH AMERICA, THE FAR EAST, AFRICA.

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1 MR. WAPNER: OKAY. I AM TRYING TO THINK OF AN EXAMPLE
2 FROM ANY OF YOUR HOBBIES OR YOUR EMPLOYMENT ABOUT REASONABLE
3 VERSUS POSSIBLE THINGS.

4 DID YOU HAVE ANYTHING TO DO WITH HEAVY CABLES,
5 LARGE SPOOLS OF HEAVY CABLE AND STUFF LIKE THAT?

6 MS. KUBECK: WE KEPT TRACK OF THEM.

7 MR. WAPNER: ALL RIGHT. AND WHAT WOULD ONE OF THOSE
8 LARGE SPOOLS OF CABLE -- DO YOU HAVE ANY IDEA HOW MUCH THEY
9 WEIGHED?

10 MS. KUBECK: NO.

11 MR. WAPNER: WOULD IT BE POSSIBLE FOR ONE MAN TO PICK
12 THEM UP, DO YOU THINK?

13 MS. KUBECK: NO. WELL, DON'T FORGET THAT A LARGE SPOOL
14 OF CABLE HAS DIFFERENT SIZED CABLE ON IT. THERE ARE ALSO
15 DIFFERENT FOOTAGES OF CABLE.

16 MR. WAPNER: MEN COME IN DIFFERENT SIZES AND SHAPES AND
17 STRENGTHS, RIGHT?

18 MS. KUBECK: USUALLY. I THINK THEY USED A MACHINE.
19 ALL I DID WAS TRACK THE CABLE.

20 MR. WAPNER: OKAY. IF YOU HAD A SPOOL OF CABLE SITTING
21 OUT THERE FOR EXAMPLE AND LET'S SAY IT WEIGHED 300 POUNDS AND
22 THE PHONE COMPANY JUST HIRED SOMEONE WHO WAS A 150-POUND
23 PERSON AND YOU SAW HIM AND HE LOOKED LIKE YOUR BASIC, AVERAGE,
24 PERSON, HE DIDN'T LOOK LIKE CHARLES ATLAS, HE JUST LOOKED LIKE
25 YOUR AVERAGE GUY, WOULD YOU SAY IT IS POSSIBLE THAT HE COULD
26 LIFT THAT THING OF CABLE?

27 MS. KUBECK: POSSIBLE?

28 MR. WAPNER: POSSIBLE?

1 MS. KUBECK: SURE. A MAN CAN LIFT 300 POUNDS.

2 MR. WAPNER: WOULD YOU SAY THAT IF --

3 MS. KUBECK: SOMETIMES.

4 MR. WAPNER: IF YOU LOOKED AT THAT PERSON AND SOMEBODY
5 SAID TO YOU, "IS IT REASONABLE THAT HE WOULD BE ABLE TO LIFT
6 THAT"? WHAT WOULD YOU SAY?

7 MS. KUBECK: I DON'T KNOW.

8 MR. WAPNER: DO YOU HAVE ANY OPINION?

9 MS. KUBECK: IS IT REASONABLE? NOW YOU ARE TALKING
10 ABOUT A 150-POUND MAN LIFTING TWICE HIS WEIGHT?

11 MR. WAPNER: RIGHT, AN AVERAGE GUY. HE DOESN'T LOOK
12 LIKE A BODY-BUILDER OR ANYTHING. HE IS JUST AN AVERAGE GUY.

13 MS. KUBECK: YOU KNOW, I DON'T KNOW HOW MUCH A MAN
14 CAN LIFT, WHETHER A MAN CAN LIFT TWICE HIS WEIGHT.

15 I WOULD HAVE TO HAVE SOMEBODY TELL ME. MOST
16 WEIGHT-LIFTERS CAN LIFT TWICE THEIR WEIGHT -- I DON'T KNOW.
17 I DON'T KNOW ABOUT WEIGHTS AND A MAN'S WEIGHT TO KNOW THAT.

18 MR. WAPNER: OKAY. WE ARE OUT OF THE SHIPPING BUSINESS.
19 WERE YOU SITTING HERE -- I DON'T REMEMBER WHEN WE HAD THE
20 EXAMPLE ABOUT THE GARDENING AND THE FROST AND ALL OF THAT
21 STUFF.

22 MS. KUBECK: YES. THE LADY WAS SITTING HERE. SOME OF
23 HER PLANTS DIED AND THE OTHERS DIDN'T.

24 MR. WAPNER: RIGHT. IN THAT CASE, DO YOU THINK IT IS
25 REASONABLE THAT THE FROST KILLED THE PLANTS?

26 MS. KUBECK: REASONABLE IF THERE WAS A FROST AT NIGHT?

27 MR. WAPNER: WELL FIRST OF ALL, WE ARE IN SOUTHERN
28 CALIFORNIA.

1 MS. KUBECK: OKAY.

2 MR. WAPNER: AND YOU HAVE GOT A SITUATION WHERE YOU ARE
3 A GARDENER, RIGHT?

4 MS. KUBECK: UH-HUH. I AM A GOOD ONE, TOO.

5 MR. WAPNER: OKAY. AND YOUR PLANTS ARE ALL FINE. THEN
6 YOU GET UP THE NEXT DAY AND YOU FIND THAT THERE IS A PLANT THAT
7 IS DEAD. THE ONES ON EITHER SIDE OF IT ARE OKAY.

8 WOULD YOU THINK IT IS REASONABLE THAT THERE WAS
9 A FROST OR SOMETHING LIKE THAT KILLED THAT PLANT?

10 MS. KUBECK: I WOULD LOOK FOR A GOPHER FIRST.

11 MR. WAPNER: WHY?

12 MS. KUBECK: BECAUSE THE ONES ON EITHER SIDE OF IT ARE
13 HEALTHY.

14 MR. WAPNER: IT WOULDN'T BE REASONABLE TO THINK THAT
15 IT WAS A FROST AND IT WOULD MORE LIKELY KILL ALL THE PLANTS?

16 MS. KUBECK: NOT NECESSARILY.

17 MR. BARENS: EXCUSE ME, YOUR HONOR. WE ARE JUST USING
18 THE "MORE LIKELY" WORDS HERE. THAT IS MISLEADING TO A
19 JURY THAT IS HEARING ABOUT REASONABLE DOUBT.

20 WE DON'T WANT TO GIVE THE IMPRESSION THAT WE ARE
21 TRYING TO FIND WHAT IS MORE LIKELY IN THIS COURTROOM.

22 MR. WAPNER: I AM ASKING ABOUT STATE OF MIND.

23 THE COURT: I WILL SUSTAIN THE OBJECTION.

24 MR. BARENS: THANK YOU, YOUR HONOR.

25 MR. WAPNER: IN YOUR MAKING A DETERMINATION IN THAT
26 SITUATION AS TO WHAT HAPPENED TO THAT PLANT, IF THERE WAS
27 ONLY ONE PLANT THAT WAS DAMAGED, DO YOU THINK THAT THE MOST
28 REASONABLE THING IS THAT SOMETHING HAPPENED TO THAT PARTICULAR

1 PLANT, AS OPPOSED TO SOMETHING LIKE A FROST THAT MIGHT DAMAGE
2 ALL OF THE PLANTS? RIGHT?

3 MS. KUBECK: YES, BASED ON MY KNOWLEDGE. I WOULD HAVE
4 TO BRING MY KNOWLEDGE INTO THAT.

5 MR. WAPNER: OKAY. WOULDN'T IT MAKE SENSE TO YOU, BE
6 A REASONABLE THING THAT IF THERE IS FROST, IT MIGHT DAMAGE
7 ALL THE PLANTS AND NOT JUST ONE?

8 MS. KUBECK: THAT DOESN'T ALWAYS HAPPEN.

9 MR. WAPNER: TELL ME WHY IS THAT?

10 MS. KUBECK: WHY?

11 MR. WAPNER: YES.

12 MS. KUBECK: I DON'T KNOW. BUT SOME PLANTS ARE MORE
13 EXPOSED TO FROST THAN OTHERS.

14 SOME HAVE OTHER PLANTS OVER THEM THAT PROTECT THEM
15 FROM A FROST. I DON'T KNOW WHAT TO SAY.

16 THE COURT: I THINK YOU STARTED THE WRONG SUBJECT.

17 MR. WAPNER: I WISH I WAS BACK IN THE BOAT. THAT IS
18 ALL I CAN SAY. IT WAS MY BOAT. NOW WE ARE IN YOUR GARDEN.

19 WE HAVE BEEN SOMEWHAT CIRCUMSCRIBED BY THE JUDGE
20 IN THE EXAMPLES WE CAN USE HERE.

21 THE COURT: AND PROPERLY SO.

22 MR. WAPNER: OF COURSE, YOUR HONOR. NO ONE SEEMED MUCH
23 TO LIKE THE BOATING. BUT PEOPLE WERE A LITTLE BIT MORE
24 TAKEN WITH JOHNNY AND THE CHERRY PIE. SO, LET ME ASK YOU THIS.
25 IF YOU HAVE A SITUATION WHERE MRS. JONES MAKES A CHERRY PIE
26 AND SHE SITS IT OUT ON THE TABLE IN THE KITCHEN AND SHE GOES
27 AWAY INTO ANOTHER ROOM AND THERE ARE ONLY TWO PEOPLE IN THE
28 HOUSE, THERE IS MRS. JONES AND HER SON, JOHNNY AND A LITTLE

1 WHILE LATER SHE COMES BACK INTO THE KITCHEN AND THERE IS A
2 PIECE OF PIE MISSING AND SO, SHE CALLS JOHNNY AND HERE COMES
3 JOHNNY AND HE HAS GOT CHERRY PIE ALL OVER HIS FACE AND HE HAS
4 GOT CHERRY PIE ALL OVER HIS SHIRT.

5 SHE SAYS, "DID YOU EAT THE PIE?" AND HE SAYS,
6 "NO."

7 ALL RIGHT. DO YOU HAVE AN OPINION AS TO WHAT
8 HAPPENED TO THE PIECE OF PIE?

9 MS. KUBECK: JOHNNY NEVER TOLD A LIE BEFORE? I AM HIS
10 MOTHER AND HE SWEARS HE DIDN'T DO IT?

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1 MR. WAPNER: SWEARSTHAT HE DIDN'T DO IT.

2 MS. KUBECK: WELL, I SUPPOSE I COULD HAVE HIS STOMACH
3 PUMPED TO CHECK IT.

4 (LAUGHTER IN COURTROOM.)

5 MS. KUBECK: I MEAN IF IT IS A MATTER OF LIFE OR DEATH,
6 I SUPPOSE THAT IS WHAT I WOULD HAVE TO DO, WOULDN'T I?

7 I AM NOT BEING FUNNY BUT INSTEAD OF BEING OBVIOUS.

8 THE COURT: DO YOU THINK WE OUGHT TO ABANDON THAT, TOO?

9 MR. WAPNER: WELL, ACTUALLY I THINK IT IS KIND OF
10 ENLIGHTENING.

11 LET'S GO ONE STEP BACK FOR A SECOND. FORGET THAT
12 YOU ASKED HIM, OKAY? AND FORGET THAT HE SAID ANYTHING. LET'S
13 TAKE THAT OUT OF THE EXAMPLE JUST FOR THE TIME BEING.

14 MS. KUBECK: AND I AM A NORMAL MOTHER AND HE IS A NORMAL
15 LITTLE BOY?

16 MR. WAPNER: RIGHT.

17 MS. KUBECK: I WOULD SAY HE ATE THE CHERRY PIE.

18 MR. WAPNER: DO YOU HAVE ANY DOUBT ABOUT THAT IN YOUR
19 MIND?

20 MS. KUBECK: DO I HAVE ANY DOUBT THAT HE ATE THE CHERRY
21 PIE?

22 THE COURT: HE MEANS DO YOU HAVE ANY REASONABLE DOUBT?

23 MR. WAPNER: WELL, FIRST OF ALL, ANY DOUBT AND THEN
24 ANY REASONABLE DOUBT.

25 MS. KUBECK: I HAVE BEEN WITH JOHNNY ALL DAY AND I AM
26 TIRED AND I HAVE HAD IT, YES, HE ATE THE CHERRY PIE.

27 MR. WAPNER: FORGET ABOUT WHETHER YOU HAVE BEEN WITH
28 HIM ALL DAY AND YOU ARE TIRED.

3- 1 I JUST WANT TO KNOW WHETHER IT APPEARS TO YOU
2 THAT HE ATE THE PIE.

3 MR. BARENS: YOUR HONOR, I OBJECT. THE QUESTION HAS
4 NOW BECOME RHETORICAL RATHER THAN OBJECTIVE. HE HAS HER IN
5 A CORNER HERE.

6 THE COURT: I WILL SUSTAIN THE OBJECTION.

7 MR. BARENS: THANK YOU, YOUR HONOR.

8 THE COURT: YOU CAN ASK HER FURTHER QUESTIONS ABOUT
9 THAT IF YOU WANT TO. I ONLY SUSTAINED THAT OBJECTION TO THAT
10 PARTICULAR QUESTION.

11 MR. WAPNER: OKAY. WELL I WASN'T SURE EXACTLY WHAT
12 THE COURT WAS SAYING.

13 FIRST OF ALL, DO YOU UNDERSTAND THAT IN MAKING
14 A DETERMINATION OF WHAT HAPPENED TO THAT PIECE OF PIE, THAT
15 THAT IS A CIRCUMSTANTIAL EVIDENCE REASONING PROCESS?

16 MS. KUBECK: YES, YES.

17 MR. WAPNER: BECAUSE YOU NEVER SAW ANYBODY EAT THE PIE,
18 RIGHT?

19 (MS. KUBECK NODS HER HEAD.)

20 MS. KUBECK: THE DEDUCTION IS THAT HE ATE THE PIE.

21 MR. WAPNER: YOU ARE NOT REALLY COMFORTABLE WITH THAT,
22 ARE YOU?

23 MS. KUBECK: HOW OLD IS JOHNNY?

24 (LAUGHTER IN COURTROOM.)

25 MR. WAPNER: LET ME ASK YOU THIS QUESTION: WHAT
26 DIFFERENCE DOES IT MAKE TO YOU HOW OLD HE IS? WHY DO YOU
27 WANT TO KNOW THAT?

28 MS. KUBECK: BECAUSE SOME LITTLE CHILDREN DON'T KNOW

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1 THE DIFFERENCE BETWEEN THE TRUTH AND A LIE.

2 MR. WAPNER: LET'S PUT OUT OF THIS EXAMPLE THAT YOU
3 EVEN ASKED HIM THE QUESTION OR THAT HE SAID HE DIDN'T DO IT.

4 YOU ARE JUST TRYING TO MAKE A DETERMINATION BASED
5 ON THE FACTS, FORGET THAT HE SAID ANYTHING, OKAY?

6 MS. KUBECK: AND I AM 15 OR 20 MILES FROM ANY OTHER
7 PERSON, CAN I BRING THAT IN, TOO?

8 MR. WAPNER: WHY DO YOU WANT TO BRING THAT IN?

9 MS. KUBECK: BECAUSE HE DIDN'T BRING A FRIEND IN WHO
10 CAME IN AND ATE THE PIE WITH HIM.

11 MR. WAPNER: SAY HE HAD A FRIEND IN THERE WHO ALSO ATE
12 THE PIE, WOULD THAT MAKE ANY DIFFERENCE TO YOU WHO ELSE DID
13 IT?

14 MS. KUBECK: NO. I SUPPOSE JOHNNY IS GUILTY EVEN IF
15 HE DID.

16 MR. WAPNER: I'M NOT TRYING TO FIND OUT IF JOHNNY IS
17 GUILTY OR INNOCENT. NOBODY HAS CHARGED HIM WITH ANY CRIME,
18 ONLY WHAT IS GOING ON IN YOUR MIND.

19 MS. KUBECK: I HAVE TO BE VERY SURE, LET'S PUT IT THAT
20 WAY.

21 MR. WAPNER: THANK YOU, MRS. KUBECK.

22 THE COURT: PASS FOR CAUSE?

23 MR. WAPNER: YES, YOUR HONOR.

24 THE COURT: ACCEPT THE JURY?

25 MR. WAPNER: WE WOULD ASK THE COURT TO EXCUSE
26 MRS. KUBECK, PLEASE. THANK YOU.

27 THE COURT: ALL RIGHT. THANK YOU, MRS. KUBECK.

28 THE CLERK: PATRICIA R. WARBURTON, W-A-R-B-U-R-T-O-N.

23-4
1 IS THAT MISS OR MRS.?

2 MS. WARBURTON: MISS.

3 THE COURT: ARE YOU READY FOR THE USUAL QUESTION?

4 MS. WARBURTON: YES.

5 THE COURT: YOU HEARD ALL OF THE QUESTIONS AND ANSWERS
6 WHICH WERE ASKED AND GIVEN?

7 MS. WARBURTON: YES.

8 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED
9 OF YOU, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME, EXCEPT
10 FOR THE CHERRY PIE?

11 (LAUGHTER IN COURTROOM.)

12 MS. WARBURTON: SUBSTANTIALLY THE SAME, YES.
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1 THE COURT: ALL RIGHT. WHAT DO YOU DO, PLEASE?

2 MS. WARBURTON: A BUS DRIVER.

3 THE COURT: BUS DRIVER?

4 MS. WARBURTON: YES.

5 THE COURT: YOU ARE THE FIRST ONE I HAVE EVER HAD IN
6 MY COURT THROUGH ALL OF THE YEARS I HAVE BEEN A JUDGE.

7 WHICH COMPANY DO YOU DRIVE FOR?

8 MS. WARBURTON: HERTZ RENT-A-CAR.

9 THE COURT: THEY HAVE BUSES, DO THEY, TOO?

10 MS. WARBURTON: YES, FOR COURTESY BUSES IN AIRPORTS.

11 THE COURT: I SEE, YES.

12 HOW LONG HAVE YOU BEEN WITH THEM?

13 MS. WARBURTON: TWO AND A HALF YEARS.

14 THE COURT: WHAT FORMAL EDUCATION DID YOU RECEIVE?

15 MS. WARBURTON: A BA IN ANIMAL SCIENCE.

16 THE COURT: DID YOU HAVE A JOB BEFORE YOU HAD THAT OF
17 DRIVING A BUS?

18 MS. WARBURTON: SELF-EMPLOYED, FARM. I WAS A PARTNER
19 ON A FARM.

20 THE COURT: ON A FARM?

21 MS. WARBURTON: YES.

22 THE COURT: HERE IN CALIFORNIA?

23 MS. WARBURTON: NO.

24 UTAH.

25 THE COURT: WHAT DID YOU RAISE?

26 MS. WARBURTON: SHEEP, MAINLY. I HAD A LITTLE OF
27 PIGS AND CATTLE.

28 NO DUCKS.

1 (LAUGHTER IN COURTROOM.)

2 THE COURT: ANOTHER VERY UNUSUAL OCCUPATION.

3 WHERE DO YOU LIVE?

4 MS. WARBURTON: HERMOSA BEACH.

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

7 MS. WARBURTON: NO.

8 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY CRIME?

9 MS. WARBURTON: NO.

10 THE COURT: ALL RIGHT, THANK YOU.

11 MR. BARENS: THANK YOU, YOUR HONOR.

12 IF YOU THINK I AM GOING TO ASK YOU A BUNCH OF
13 SOPHISTICATED FARM QUESTIONS, YOU ARE WRONG. YOU GOT ME THERE.

14 OKAY, MS. WARBURTON, YOU ARE SINGLE, ARE YOU?

15 MS. WARBURTON: YES.

16 MR. BARENS: ALL RIGHT. HE ALWAYS INSISTS I ASK THE
17 SAME QUESTION ABOUT WHETHER YOU HAVE A STEADY BOYFRIEND OR
18 NOT.

19 MS. WARBURTON: YES, I DO.

20 MR. BARENS: AND WHAT DOES HE DO?

21 MS. WARBURTON: CARPENTER.

22 MR. BARENS: ALL RIGHT. HAVE YOU EVER BEEN MARRIED?

23 MS. WARBURTON: NO.

24 MR. BARENS: WHAT DID YOU DO ON THE FARM?

25 MS. WARBURTON: FED THE ANIMALS.

26 MR. BARENS: FED THE ANIMALS? YOU PROBABLY DIDN'T FEED
27 THEM CHERRY PIE.

28 YOU FED THE ANIMALS AND YOU RAISED CROPS OR

1 SOMETHING LIKE THAT?

2 MS. WARBURTON: NO. I BOUGHT THE HAY AND THE GRAIN.

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

4 MS. WARBURTON: TEN YEARS.

5 MR. BARENS: AND WHAT SCHOOL DID YOU GO TO IN UTAH?

6 MS. WARBURTON: UTAH STATE.

7 MR. BARENS: DID YOU HAVE A PARTICULAR REASON WHY YOU
8 WENT INTO FARMING AFTER YOU GOT OUT OF COLLEGE?

9 MS. WARBURTON: WELL, I STARTED IN HIGH SCHOOL. I WAS
10 A MEMBER OF THE FFA AND STARTED -- IT STARTED FROM A PROJECT
11 AND IT JUST GREW AND I PURCHASE SOME LAND AND --

12 MR. BARENS: DID YOU COMMERCIALY FARM? DID YOU DO
13 IT AS A COMMERCIAL ENTERPRISE?

14 MS. WARBURTON: NO.

15 MR. BARENS: I DIDN'T GET THAT FEELING.

16 WHY DID YOU DO THE FARMING?

17 MS. WARBURTON: I RAISED ANIMALS FOR SHOW.

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1 MR. BARENS: ALL RIGHT. ANY PARTICULAR TYPE OF ANIMAL?

2 MS. WARBURTON: SHEEP, SUFFOLKS.

3 MR. BARENS: WHY DID YOU DECIDE TO LEAVE THE FARM?

4 MS. WARBURTON: WELL, I WAS A PARTNER. AND THE PARTNER-
5 SHIP CAME OUT OF A RELATIONSHIP. IT DIDN'T WORK OUT. SO,
6 ONE OF US HAD TO LEAVE.

7 MR. BARENS: IT WAS NOT QUITE GET OUT OF DODGE, BUT KIND
8 OF SIMILAR. SO YOU LEFT THE FARM AND CAME TO LOS ANGELES?

9 MS. WARBURTON: RIGHT.

10 MR. BARENS: WAS THERE A PARTICULAR REASON THAT WOULD
11 MAKE YOU GO FROM UTAH TO LOS ANGELES? WAS THERE SOME PARTICULAR
12 THING YOU PLANNED ON DOING WHEN YOU CAME TO SOUTHERN CALIFORNIA?

13 MS. WARBURTON: MY BROTHER LIVED OUT HERE. HE HAD
14 ASKED ME FOR A WHILE TO COME OUT AND SEE WHAT THE WORLD WAS
15 ALL ABOUT. AND I FINALLY TOOK HIM UP ON IT.

16 MR. BARENS: AND DID YOU HAVE A JOB IN MIND OR HAD YOU
17 EMPLOYMENT WHEN YOU FIRST CAME TO CALIFORNIA?

18 MS. WARBURTON: NO.

19 MR. BARENS: WHAT DOES YOUR BROTHER DO?

20 MS. WARBURTON: HE IS AN ENGINEER.

21 MR. BARENS: IS HE YOUR ONLY SIBLING?

22 MS. WARBURTON: I HAVE AN OLDER SISTER ALSO.

23 MR. BARENS: WHERE IS SHE?

24 MS. WARBURTON: ARIZONA.

25 MR. BARENS: WHAT DOES SHE DO?

26 MS. WARBURTON: A COUNSELOR FOR HIGH SCHOOL.

27 MR. BARENS: ALL RIGHT. DID YOU GROW UP IN UTAH?

28 MS. WARBURTON: YES.

1 MR. BARENS: AND SO, YOUR FAMILY, DO THEY STILL RESIDE
2 IN UTAH?

3 MS. WARBURTON: MY MOTHER DIED. MY FATHER STILL LIVES
4 THERE, YES.

5 MR. BARENS: WHAT WAS YOUR FATHER'S OCCUPATION?

6 MS. WARBURTON: HE WAS IN THE ARMY FOR A WHILE. THEN
7 HE HAD A GOVERNMENT JOB AT THE ARMY BASE WHERE I LIVED.

8 MR. BARENS: AND SO YOU GREW UP ESSENTIALLY, ON AN ARMY
9 BASE?

10 MS. WARBURTON: NO. THE ARMY WAS BEFORE I ARRIVED.

11 MR. BARENS: AND THEN HE WAS IN PRIVATE INDUSTRY
12 ANCILLARY TO A MILITARY JOB?

13 MS. WARBURTON: CORRECT.

14 MR. BARENS: OKAY. YOU HAVE A DEGREE IN ANIMAL SCIENCE?

15 MS. WARBURTON: YES.

16 MR. BARENS: AND I HAVE NO IDEA WHAT YOU TOOK IN SCHOOL.
17 I AM A FOOL.

18 AFTER YOU GOT OUT OF COLLEGE IN ANIMAL SCIENCE,
19 DID YOU TAKE ANY POSTGRADUATE COURSES?

20 MS. WARBURTON: I TOOK -- I HAVE TAKEN CLASSES OVER AT
21 EL CAMINO IN RADIOLOGY AND A COMPUTER SCIENCE CLASS.

22 MR. BARENS: ARE THEY PREPARATORY TO ANY SORT OF
23 CAREER TRANSITION YOU ARE PLANNING AT THIS POINT?

24 MS. WARBURTON: IT IS POSSIBLE.

25 MR. BARENS: WHAT WOULD YOU LIKE TO DO IF YOU WERE TO
26 MAKE THE TRANSITION FROM DRIVING THE HERTZ VEHICLE?

27 MS. WARBURTON: WELL, RIGHT NOW I AM PUTTING IN AN
28 APPLICATION FOR THE GOVERNMENT AS A GOVERNMENT COMMODITIES

1 RATER.

2 IF THAT DOESN'T GO THROUGH, I AM STILL GOING TO
3 CONTINUE MY EDUCATION OVER AT EL CAMINO AND MAYBE AS A
4 RADIOLOGY TECHNICIAN.

5 MR. BARENS: A COMMODITIES RATER BEING A PERSON WHO
6 PLACES SOME KIND OF VALUATION ON A PARTICULAR PRODUCT, FARM
7 PRODUCT OR SOMETHING?

8 MS. WARBURTON: YES.

9 MR. BARENS: WERE YOU EVER INVOLVED IN ANY COMMODITIES
10 TRADING?

11 MS. WARBURTON: NO.

12 MR. BARENS: AS A RESULT OF YOUR INVOLVEMENT IN SCHOOL,
13 DID YOU GET INTO COMMODITIES ACTIVITIES? WERE THERE ANY
14 CLASSES ON THAT IN TRADING COMMODITIES OR FINANCING
15 COMMODITIES?

16 MS. WARBURTON: NO.

17 MR. BARENS: ALL RIGHT. DO YOU HAVE ANY HOBBIES?

18 MS. WARBURTON: SNOW SKIING, WATER SKIING, RIDING HORSES.

19 MR. BARENS: DO YOU READ AT ALL?

20 MS. WARBURTON: A LITTLE.

21 MR. BARENS: WHAT WERE THE LAST BOOKS YOU READ?

22 MS. WARBURTON: "JUMPER." IT IS ABOUT PROFESSIONAL
23 JUMPERS IN ENGLAND.

24 MR. BARENS: OKAY. AND WHAT ABOUT THE LAST MOVIE YOU
25 SAW?

26 MS. WARBURTON: RIGHT NOW ON THE VCR, I AM IN THE MIDDLE
27 OF "GONE WITH THE WIND."

28 MR. BARENS: ALL RIGHT. IN THIS SELECTION PROCESS, IT

1 HAS BEEN GONE WITH THE WIND. IT IS ABOUT THE SAME WAY.

2 HOW DID YOU FEEL ABOUT PROSPECTIVELY BEING A JUROR
3 ON THIS CASE?

4 MS. WARBURTON: I FEEL COMFORTABLE WITH IT. GOOD.

5 MR. BARENS: IS THERE SOMETHING HERE THAT YOU THINK WOULD
6 BE INTERESTING TO DO?

7 MS. WARBURTON: VERY.

8 MR. BARENS: HOW DID YOU FEEL ABOUT THE PRESUMPTION OF
9 INNOCENCE WHICH THE DEFENDANT HAS IN THIS CASE?

10 MS. WARBURTON: OKAY. INNOCENT UNTIL PROVEN GUILTY,
11 IF GUILTY.

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1 MR. BARENS: RIGHT. YOU HESITATE WITH THAT? DO YOU
2 THINK IT IS JUST SOME SORT OF NICETY THAT WE OBSERVE HERE
3 BECAUSE SOME RULE SAYS WE SHOULD DO IT OR DO YOU PERSONALLY
4 ENDORSE IT?

5 MS. WARBURTON: NO. I PESONALLY ENDORSE IT. BUT YOU
6 SAID THAT WHEN I WAS UP THERE AND YOU PUT SOME OTHER WORDS
7 IN IT WHEN I WAS UP THERE IN THAT STAND.

8 MR. BARENS: PERISH THE THOUGHT THAT I SHOULD PUT WORDS
9 INTO YOUR MOUTH.

10 DO YOU RECALL WHAT THE WORD WAS?

11 MS. WARBURTON: "IF" OR SOMETHING.

12 MR. BARENS: WAS IT ANYTHING ABOUT REASONABLE DOUBT OR
13 BEYOND A REASONABLE DOUBT?

14 MS. WARBURTON: NO. IT WAS WHEN I SAID "UNTIL PROVEN
15 GUILTY."

16 MR. BARENS: YES, UNTIL PROVEN GUILTY SOUNDS LIKE YOU
17 ARE MAKING AN ASSUMPTION.

18 WE ARE JUST GOING THROUGH THE PROCESS IN A HURRY
19 AND WE ARE GOING TO GO ALONG AND PROVE HIM GUILTY. WE SHOULD
20 PROBABLY LISTEN TO THE EVIDENCE FIRST. CORRECT?

21 MS. WARBURTON: CORRECT.

22 MR. BARENS: I ASK YOU, DID YOU HAVE SOME FEELING THAT
23 WE ARE JUST GOING THROUGH SOME FORMALITY? WE ARE OBSERVING
24 THIS AND IT IS SOMEWHERE BETWEEN THE ACCUSATION AND THE GALLOWES?
25 OR DOES THIS HAVE SUBSTANCE?

26 MS. WARBURTON: YES. IT HAS SUBSTANCE.

27 MR. BARENS: IT IS A FOR-REAL THING? IS THERE A DOUBT
28 IN YOUR MIND? DO YOU FEEL THAT THERE IS SOME LINGERING

1 SUSPICION IN YOUR MIND THAT THIS YOUNG MAN WOULDN'T BE HERE
2 UNTLESS HE WAS PROBABLY GUILTY OF SOMETHING?

3 MS. WARBURTON: NO.

4 MR. BARENS: YOU DON'T FEEL THAT WAY AT ALL?

5 MS. WARBURTON: NO.

6 MR. BARENS: DO YOU THINK YOU ARE OPEN-MINDED ON THAT?

7 MS. WARBURTON: VERY.

8 MR. BARENS: ALL RIGHT. HOW ABOUT THE FACT THAT THE
9 DEFENDANT MIGHT NOT TESTIFY? DO YOU FEEL THE DEFENDANT SHOULD
10 HAVE SOME INCUMBENT DUTY ON HIM TO COME FORWARD IF HE IS
11 INNOCENT AND TELL YOU HE IS INNOCENT?

12 MS. WARBURTON: NO.

13 MR. BARENS: YOU DO FEEL COMFORTABLE WITH THAT?

14 MS. WARBURTON: YES.

15 MR. BARENS: IF HE DID TESTIFY, DO YOU THINK HE COULD
16 TESTIFY HONESTLY AND CANDIDLY?

17 MS. WARBURTON: OF COURSE.

18 MR. BARENS: NOW, YOU WERE NOT A BENEFICIARY OF ANY OF
19 THE HYPOTHETICALS WE HAD IN HERE. AND WE HAVE BEEN A BIT
20 RESTRICTED NOW IN WHAT WE CAN DO ON THESE HYPOTHETICALS, MUCH
21 TO OUR DISAPPOINTMENT, I CAN TELL YOU.

22 YOUR HONOR, I HAD INDICATED TO YOUR HONOR THAT
23 I SELECTED --

24 THE COURT: GO AHEAD. THE DROPPING BOTTLE?

25 MR. BARENS: I WAS GOING TO DO A BRIEFER ONE. I WAS
26 GOING TO DO THE METEORITE.

27 THE COURT: GO AHEAD.

28 MR. BARENS: THANK YOU, YOUR HONOR. IT IS ONLY BECAUSE

1 I THOUGHT IT MIGHT BE --

2 THE COURT: GO AHEAD.

3 MR. BARENS: LET'S SAY YOU WERE OUT -- WELL, YOU DON'T
4 HAVE A GARDEN ON A FARM. YOU HAVE A FARM AREA THERE OR
5 WHATEVER. IT IS A CROP AREA?

6 MS. WARBURTON: LAND.

7 MR. BARENS: LAND. OKAY, YOU HAVE LAND. YOU HAVE AN
8 OBVIOUS THING. THAT'S RIGHT, LAND IS DIRECT EVIDENCE. LAND.

9 OKAY, AND ON THE LAND ONE DAY, AS YOU HOE THE
10 LAND --

11 MS. WARBURTON: PLOW.

12 MR. WAPNER: IS THIS A CITY BOY OR WHAT?

13 MR. BARENS: I WAS JUST TESTING THE JUROR, MR. WAPNER.
14 BUT, THAT'S ALL RIGHT. I KNEW THAT.

15 ALL RIGHT. YOU ARE PLOWING. YOU ENCOUNTER A
16 TYPE OF ROCK YOU HAVE NEVER SEEN BEFORE. AND YOU HAVE JUST
17 NEVER SEEN IT BEFORE. YOU ARE CURIOUS A BIT.

18 AND I COME ALONG AND I SAY TO YOU THAT IT IS A
19 METEORITE. IT IS A PIECE OF A METEORITE AND THAT IS WHAT IT
20 IS, RIGHT THERE IN THE MIDDLE OF UTAH ON THE LAND.

21 AND YOU AS A FARM PERSON SAID, WELL, IT IS
22 OBVIOUSLY A ROCK OF SOME SORT. BUT TO IMMEDIATELY CONCLUDE
23 IT IS A METEORITE -- HOW WOULD YOU FEEL ABOUT THAT? I COME
24 ALONG AND I SAY TO YOU THAT IT IS A METEORITE. HOW DO YOU
25 FEEL?

26 WHAT DO YOU THINK YOUR LIKELY RESPONSE TO THAT
27 IS GOING TO BE?

28 MS. WARBURTON: WELL, YOU HAVE YOUR OPINION. I AM NOT

1 REALLY SURE IT IS A ROCK BECAUSE NOW YOU HAVE PUT DOUBT IN
2 MY MIND.

3 MR. BARENS: NO, NO. LET'S STIPULATE THAT THERE IS A
4 ROCK THERE. IT IS A ROCK.

5 MS. WARBURTON: IT IS A ROCK?

6 MR. BARENS: ABSOLUTELY.

7 MR. WARBURTON: A ROCK?
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1 MR. BARENS: UH-HUH.

2 MS. WARBURTON: OKAY. IT IS A ROCK. HOW DO YOU FEEL
3 ABOUT THE ROCK?

4 MR. BARENS: WELL, NO. YOU MUST COOPERATE WITH ME TO
5 DO THIS. HOW DO YOU FEEL THAT I TELL YOU IT IS A METEORITE?
6 I SAY TO YOU THAT IT IS A METEORITE, MS. WARBURTON. AS WE
7 STAND IN THE MIDDLE OF THE FIELD, I -- WELL, YOU DON'T EVEN
8 BELIEVE I AM THERE. BUT, WE ARE THERE.

9 AND I SAY THAT IT IS A METEORITE. HOW DO YOU FEEL
10 AT THAT POINT?

11 MS. WARBURTON: FINE, IF THAT IS THE WAY YOU ARE FEELING.

12 MR. BARENS: BUT, WHAT DO YOU THINK? DO YOU THINK IT
13 IS A TRUTHFUL STATEMENT?

14 MS. WARBURTON: IT IS POSSIBLE.

15 MR. BARENS: IT IS POSSIBLE? HOW DO YOU FEEL ABOUT IT
16 IN TERMS OF REASONABLE PROBABILITIES?

17 MS. WARBURTON: WELL, REASONABLE? IT MAY BE. I DON'T
18 KNOW. IT COULD BE.

19 MR. BARENS: IT COULD BE? WHAT DO WE NEED TO DO?

20 MS. WARBURTON: WE NEED TO BRING IN A SPECIALIST THAT
21 WOULD PROVE TO ME OR TO YOU THAT IT IS A ROCK OR A METEORITE.

22 MR. BARENS: THEY WOULD GIVE US EVIDENCE OF SOME SORT?

23 MS. WARBURTON: CORRECT.

24 MR. BARENS: AND A PERSON WOULD COME IN AND GIVE EVIDENCE
25 AND THEN YOU WOULD BOTH KNOW. NOW, LET'S SAY THAT THE
26 EVIDENCE WAS THAT WE BROUGHT SOME PROFESSOR FROM BYU OR
27 WHATEVER, OVER THERE. THEY SAID ABSOLUTELY, IT IS A
28 METEORITE. NOW, WOULDN'T YOU AGREE IN THE FIRST INSTANCE,

1 THAT IT IS HIGHLY IMPROBABLE THAT IT IS A METEORITE WHEN WE
2 ARE STANDING THERE ON THE LAND? IS THAT CORRECT?

3 MS. WARBURTON: CORRECT.

4 MR. BARENS: AND LATER ON, IF IT WERE ESTABLISHED TO
5 HAVE BEEN A METEORITE -- BY THE WAY, YOU NEVER ENCOUNTERED
6 ANYTHING LIKE THAT ON THE FARM, DID YOU?

7 MS. WARBURTON: NO.

8 MR. BARENS: ALL RIGHT. LATER ON WHEN IT IS ESTABLISHED
9 THROUGH SOME SCIENTIFIC PROCESS AS BEING A METEORITE, YOU ARE
10 A BIT SURPRISED.

11 MS. WARBURTON: OF COURSE.

12 MR. BARENS: SO, HERE WE HAVE A SOMEWHAT TYPICAL EVENT
13 WITH A HIGHLY UNUSUAL ANSWER, DON'T WE?

14 MS. WARBURTON: YES.

15 MR. BARENS: AND WHEN WE HAVE HAD THAT TESTIMONY BY
16 THIS PROFESSOR OR WHOMEVER QUALIFIES THIS ROCK AS A METEORITE,
17 IT IS THEREFORE BECOMING REASONABLE, IS IT NOT?

18 MS. WARBURTON: YES.

19 MR. BARENS: DO YOU UNDERSTAND FROM THIS AWKWARDLY
20 DONE EXAMPLE, THAT AN UNUSUAL ANSWER TO AN APPARENTLY TYPICAL
21 SITUATION, CANNOT ONLY BE REASONABLE, BUT TRUE?

22 MS. WARBURTON: YES.

23 MR. BARENS: WOULD YOU ONLY BE LOOKING FOR SOME TYPICAL
24 AND OBVIOUS ANSWER IN THIS COURTROOM OR WOULD YOU WANT TO
25 LISTEN TO ALL OF THE EVIDENCE?

26 MS. WARBURTON: I WOULD LISTEN TO ALL OF THE EVIDENCE.

27 MR. BARENS: WOULD IT MAKE YOU UNCOMFORTABLE IF YOU HAD
28 TO TRY TO ACCEPT IN YOUR MIND, AN UNUSUAL ANSWER AS BEING

1 REASONABLE?

2 MS. WARBURTON: IF THERE WAS EVIDENCE TO BACK IT UP,
3 NO. I WOULD ACCEPT IT.

4 MR. BARENS: ALL RIGHT. EARLIER ON, YOU PROBABLY HEARD
5 SOME JURORS ASKED IF THEY COULD ACCEPT THAT THE GOVERNMENT
6 COULD BRING A MURDER CHARGE WITH NO BODY. AND WHAT WOULD YOUR
7 ANSWER TO THAT BE?

8 MS. WARBURTON: WELL, I WOULD HAVE TO LISTEN TO ALL THE
9 EVIDENCE.

10 MR. BARENS: ALL RIGHT. AND THEN YOU HEARD HIM SAY YOU
11 KNOW, THE BODY HAS NOT BEEN RECOVERED. DID YOU HEAR THAT
12 STATEMENT?

13 MS. WARBURTON: YES.

14 MR. BARENS: NOW, BY THAT, DID YOU COME TO SOME CONCLUSION
15 BEFORE YOU WERE CALLED UP HERE TO SIT AS A JUROR, PROSPECTIVE
16 JUROR, THAT THERE WAS IN FACT, SOME SORT OF A BODY?

17 MS. WARBURTON: COULD YOU SAY THAT AGAIN, PLEASE?

18 MR. BARENS: DID YOU COME TO SOME SORT OF A CONCLUSION
19 BY THAT QUESTION, THAT THERE WAS IN FACT, SOME SORT OF A BODY
20 IN THE CASE?

21 MS. WARBURTON: YES, BEFORE I HEARD THAT, I SUSPECTED
22 THAT THERE WOULD BE A BODY.

23 MR. BARENS: RIGHT. WELL NOW, YOU HAVE HEARD THE
24 PROSECUTOR SAY WELL, THEY HAVE NOT RECOVERED THE BODY. HOW
25 DO YOU FEEL ABOUT THAT? DID YOU HEAR THAT?

26 MS. WARBURTON: YES.

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1 MR. BARENS: DO YOU FEEL FROM THAT THAT THERE IS A BODY
2 IN FACT?

3 MS. WARBURTON: WELL, I DON'T KNOW THAT.

4 MR. BARENS: YOU DON'T KNOW, DO YOU?

5 MS. WARBURTON: NO.

6 MR. BARENS: ALL RIGHT. THE MERE FACT THAT A QUESTION
7 IS ASKED ISN'T EVIDENCE, IS IT?

8 MS. WARBURTON: NO.

9 MR. BARENS: DO YOU HAVE ANY SUSPICION IN YOUR MIND
10 THAT THERE IS A BODY OUT THERE SOMEWHERE THAT WE ARE NOT TELLING
11 YOU ABOUT YET?

12 MS. WARBURTON: I DON'T KNOW. I HAVEN'T HEARD.

13 MR. BARENS: YOU DON'T KNOW ONE WAY OR THE OTHER, DO
14 YOU?

15 MS. WARBURTON: NO.

16 MR. BARENS: YOU HAVE TO LISTEN TO THE EVIDENCE OF
17 WHETHER ANYBODY HAD EVIDENCE AS TO WHETHER THERE IS A BODY
18 OR NOT. WE PROBABLY WILL HAVE TO DO THAT BEFORE WE START
19 THINKING ABOUT WHETHER THERE IS A MURDER OR NOT.

20 MS. WARBURTON: RIGHT.

21 MR. BARENS: QUITE SO.

22 NOW, DO YOU HAVE ANY QUESTIONS ABOUT THIS PROCESS
23 OR FEEL THERE IS ANYTHING I OUGHT TO KNOW ABOUT YOU AS AN
24 INDIVIDUAL THAT WOULD HELP ME RELATE TO YOU AS A JUROR IN
25 THIS CASE?

26 MS. WARBURTON: I AM VERY OPEN-MINDED.

27 THE COURT REPORTER: I AM SORRY?

28 MS. WARBURTON: I SAID I AM A RESPONSIBLE-TYPE PERSON.

1 I WILL LISTEN TO ALL OF THE FACTS.

2 MR. BARENS: THANK YOU VERY MUCH. WE PASS FOR CAUSE,
3 YOUR HONOR.

4 THE COURT: ALL RIGHT, MR. WAPNER.

5 MR. WAPNER: THANK YOU, YOUR HONOR.

6 GOOD AFTERNOON, MS. WARBURTON.

7 MS. WARBURTON: HI.

8 MR. WAPNER: DID YOU HEAR THE ANSWERS OF YOUR
9 PREDECESSOR ABOUT THE PIE?

10 MS. WARBURTON: YES.

11 MR. WAPNER: WHAT DID YOU THINK ABOUT THAT?

12 MS. WARBURTON: THE PIE -- WELL, WHAT DID I THINK OF
13 HER ANSWERS?

14 MR. WAPNER: WELL, FIRST I WILL ASK YOU: WHAT DO YOU
15 THINK HAPPENED TO --

16 MS. WARBURTON: OH.

17 MR. WAPNER: -- TO THE PIECE OF CHERRY PIE?

18 MS. WARBURTON: OH, WELL, HE COULD HAVE ATE IT OR HE
19 COULD HAVE -- SOMEONE ELSE COULD HAVE. MAYBE HE WENT NEXT
20 DOOR TO THE NEIGHBOR'S AND SHE ALSO HAD CHERRY PIE.

21 IS THAT WHAT YOU ARE LOOKING FOR?

22 MR. WAPNER: WELL, WHAT I AM LOOKING FOR IS HOW YOU
23 ANALYZE IT. I AM NOT LOOKING FOR ANY PARTICULAR ANSWER. THERE
24 IS NO RIGHT OR WRONG ANSWER.

25 WHAT I AM LOOKING FOR IS HOW YOU GO ABOUT THINKING
26 THIS THROUGH.

27 MS. WARBURTON: OKAY. HE COULD HAVE HAD THE PIECE OF
28 PIE BUT MAYBE HE DIDN'T.

25-3
1 MR. WAPNER: WHY WOULD YOU SAY HE DIDN'T?

2 MS. WARBURTON: LIKE SHE SAID, MAYBE HE WENT NEXT DOOR
3 AND HAD SOMETHING AND THAT IS THE REASON IT IS ON HIS FACE.

4 MR. WAPNER: WHAT HAPPENED TO THE PIECE THAT WAS IN
5 THE PIE THAT WAS MISSING?

6 MS. WARBURTON: MAYBE SOMEBODY ELSE ATE IT.

7 WASN'T THERE SOMEONE ELSE IN THE HOUSE?

8 MR. WAPNER: NO, THERE WAS NO ONE ELSE IN THE HOUSE,
9 JUST HIM AND HIS MOTHER.

10 WHY WOULD YOU SAY THAT MAYBE SOMEBODY ELSE ATE
11 IT?

12 MS. WARBURTON: WELL, I THOUGHT THERE WAS ONE OTHER
13 PERSON IN THE HOUSE THAT --

14 THE COURT: HE WANTS TO KNOW THE DIFFERENCE BETWEEN
15 POSSIBILITY AND PROBABILITY, ALL RIGHT?

16 IS IT POSSIBLE THAT SOME THIRD PERSON CAME IN
17 AND ATE THE PIE?

18 MS. WARBURTON: IT IS POSSIBLE.

19 THE COURT: WITH HIS FACE FULL OF THE STUFF?

20 OR IS IT PROBABLE THAT HE IS THE ONE THAT ATE
21 IT?

22 THAT IS WHAT HE WANTS TO KNOW.

23 MS. WARBURTON: IT IS PROBABLE THAT HE ATE THE PIE.

24 MR. WAPNER: WHEN YOU LOOK AT THAT SITUATION, WHAT IS
25 REASONABLE TO YOU?

26 MS. WARBURTON: IT IS REASONABLE THAT HE ATE IT.

27 MR. WAPNER: OKAY. WHAT MADE YOU THINK THAT HE MIGHT
28 HAVE GONE NEXT DOOR?

5-4
1 MS. WARBURTON: HE IS A LITTLE BOY. ANYTHING IS POSSIBLE

2 MR.. WAPNER: OKAY. DO YOU MAKE A DISTINCTION IN YOUR
3 MIND BETWEEN THE IDEA THAT ANYTHING IS POSSIBLE AND WHAT IS
4 REASONABLE?

5 MS. WARBURTON: YES.

6 MR. WAPNER: YOU SOUND GRUDGING ABOUT THAT. WHY IS
7 THAT?

8 MS. WARBURTON: WELL, YES --

9 THE COURT REPORTER: WHAT?

10 MS. WARBURTON: YES.

11 MR. WAPNER: WITH THE METEOR IN THE FIELD, IF YOU WALKED
12 UP TO THIS LARGE THING AND LOOKED AT IT AND IT LOOKED LIKE
13 LOTS AND LOTS AND LOTS OF OTHER ROCKS THAT YOU HAD SEEN IN
14 THAT FIELD THAT YOU HAD LIVED AT OR NEAR FOR TEN YEARS, WOULD
15 THAT HAVE AN EFFECT ON YOUR INITIAL OPINION IN TERMS OF
16 WHETHER YOU THOUGHT IT WAS A ROCK OR SOMETHING ELSE?

17 MS. WARBURTON: WELL, I WOULD THINK IT WAS A ROCK UNTIL
18 I WAS SHOWN IT WAS WRONG, UNTIL IT WAS PROVED TO ME WRONG.

19 MR. WAPNER: WHEN YOU FIRST SAW IT, IF IT SEEMED IT
20 WAS DIFFERENT WOULD THAT CAUSE YOU TO QUESTION WHAT IT WAS?

21 MS. WARBURTON: YES.

22 MR. WAPNER: IF YOU WERE THERE BY YOURSELF AND
23 MR. BARENS HADN'T HAPPENED BY YET AND YOU SAW THESE THINGS AND
24 IT LOOKED LIKE EVERY OTHER ROCK YOU HAD SEEN IN THE FIELD FOR
25 TEN YEARS, WOULD IT GIVE YOU ANY REASON TO QUESTION WHAT IT
26 WAS?

27 MS. WARBURTON: NO, BUT JUST THAT -- YOU KNOW, HE MAY
28 KNOW SOMETHING I DON'T.

25-5
1 MS. MICKELL: NOT ABOUT FARMING.

2 MR. BARENS: STIPULATED.

3 MR. WAPNER: DO YOU UNDERSTAND THAT EXAMPLE WITH THE
4 CHERRY PIE IS AN EXAMPLE, IT IS AN EXAMPLE OF WHAT WE CALL
5 CIRCUMSTANTIAL EVIDENCE?

6 MS. WARBURTON: YES.

7 MR. WAPNER: SO THAT IF IT IS PROVED TO YOU BEYOND A
8 REASONABLE DOUBT THAT THERE WAS A PIE, THAT IT WAS WHOLE AND
9 THEN THERE WAS A PIECE MISSING, THAT JOHNNY THEN HAD PIE ALL
10 OVER HIS FACE AND ALL OVER HIS SHIRT AND THAT THOSE ARE
11 CIRCUMSTANCES FROM WHICH YOU CAN MAKE A DEDUCTION OR
12 INFERENCE THAT CERTAIN THINGS HAPPENED.

13 MS. WARBURTON: YES.
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5A-1
1 MR. WAPNER: OKAY. THERE ARE A LOT OF PIECES OF DIRECT
2 EVIDENCE: THAT THE PIE WAS THERE, WHOLE, THEN THAT THE PIE
3 WAS THERE WITH THE PIECE MISSING, THAT JOHNNY HAD THE PIE
4 ON HIS FACE AND ON HIS SHIRT. THAT IS ALL DIRECT EVIDENCE;
5 DO YOU UNDERSTAND THAT?

6 MS. WARBURTON: YES.

7 MR. WAPNER: THE FACT OF WHO ATE THE PIE, WHEN YOU ARE
8 BEING ASKED TO MAKE THAT DETERMINATION, YOU ARE BEING ASKED
9 TO MAKE THAT BASED ON CIRCUMSTANTIAL EVIDENCE; DO YOU
10 APPRECIATE THAT?

11 MS. WARBURTON: YES.

12 MR. WAPNER: BEFORE YOU CAME INTO THIS COURTROOM TO
13 SIT ON THIS CASE, HAD YOU EVER HEARD THE EXPRESSION CORPUS
14 DELICTI?

15 MS. WARBURTON: NO.

16 MR. WAPNER: HAD YOU SEEN THAT ON TELEVISION OR ANYTHING
17 LIKE THAT?

18 YOU HADN'T SEEN THAT ON TELEVISION OR ANYTHING?

19 (MS. WARBURTON SHAKES HER HEAD FROM
20 SIDE TO SIDE.)

21 MR. WAPNER: BY SHAKING YOUR HEAD, YOU MEAN NO?

22 MS. WARBURTON: NO.

23 MR. WAPNER: HOW OLD WERE YOU WHEN YOUR MOTHER DIED?

24 MS. WARBURTON: 23.

25 MR. WAPNER: WERE YOU CLOSE TO HER?

26 MS. WARBURTON: YES.

27 MR. WAPNER: AND ARE YOU CLOSE TO YOUR FATHER NOW?

28 MS. WARBURTON: YES.

25A-2

1 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO HIM?

2 MS. WARBURTON: I SEE HIM THREE OR FOUR TIMES A YEAR
3 AND TALK TO HIM MAYBE TWO OR THREE TIMES A WEEK.

4 MR. WAPNER: DO YOU CALL HIM? DOES HE CALL YOU?

5 MS. WARBURTON: BOTH.

6 MR. WAPNER: DOES HE LIVE IN UTAH STILL?

7 MS. WARBURTON: YES.

8 MR. WAPNER: WHAT IS THIS BOOK "JUMPERS" ALL ABOUT?

9 MS. WARBURTON: IT IS ABOUT -- IT IS OVER IN ENGLAND,
10 PROFESSIONAL JUMPERS WHERE THEY GO TO AND JUMP THE HORSES.
11 I FORGET WHAT THEY ARE CALLED. YOU HAVE SEEN THEM ON
12 TV, THOUGH.

13 MR. WAPNER: IT IS HORSE JUMPING, THOUGH?

14 MS. WARBURTON: RIGHT.

15 MR. WAPNER: YOU SAID PROFESSIONAL JUMPERS, I DIDN'T
16 KNOW EXACTLY WHAT THAT MEANT.

17 DO YOU UNDERSTAND THE FACT THAT SOMEONE IS
18 PRESUMED TO BE INNOCENT DOESN'T MEAN THEY ARE INNOCENT?

19 MS. WARBURTON: IT IS POSSIBLE.

20 MR. WAPNER: OKAY. YOU HAVE NEVER SAT ON ANOTHER TRIAL;
21 IS THAT RIGHT?

22 MS. WARBURTON: NO.

23 MR. WAPNER: DO YOU READ THE PAPERS OCCASIONALLY?

24 MS. WARBURTON: OCCASIONALLY.

25 NOT AS MUCH AS I SHOULD.

26 THE COURT REPORTER: "NOT AS MUCH AS I SHOULD?"

27 MS. WARBURTON: SHOULD.

28 MR. WAPNER: AND YOU HAVE READ OR HEARD ABOUT PEOPLE

5A-3
1 BEING CONVICTED IN THE COURTS OF THIS COUNTRY EVERY DAY?

2 MS. WARBURTON: YES.

3 MR. WAPNER: DO YOU UNDERSTAND THAT ALL OF THOSE PEOPLE,
4 WHEN THEY WENT TO COURT INITIALLY, WERE PRESUMED TO BE
5 INNOCENT?

6 MS. WARBURTON: YES.

7 MR. WAPNER: SO THE PRESUMPTION OF INNOCENCE, ALTHOUGH
8 VERY IMPORTANT AND MAYBE A LYNCHPIN OF OUR JUDICIAL SYSTEM,
9 IS ALWAYS A PROCEDURAL DEVICE WHICH REQUIRES THE PROSECUTION
10 TO PROVE SOMEONE GUILTY BEYOND A REASONABLE DOUBT BEFORE HE
11 CAN BE CONVICTED; DO YOU UNDERSTAND THAT?

12 MS. WARBURTON: YES.

13 MR. WAPNER: IT DOESN'T MEAN THAT EVERYONE WHO COMES
14 INTO COURT AND PLEADS NOT GUILTY IS INNOCENT OR ELSE WE
15 WOULDN'T NEED TRIALS; DO YOU APPRECIATE THAT?

16 MS. WARBURTON: RIGHT.

17 MR. WAPNER: AS YOU SIT THERE NOW, DO YOU THINK YOU
18 HAVE A BIAS TOWARDS ONE SIDE OR THE OTHER IN THIS CASE?

19 MS. WARBURTON: NO.

20 MR. WAPNER: WE HAD ONE OF THE OTHER PEOPLE SAY TODAY
21 WHILE YOU WERE HERE THAT EVERYBODY HAS CERTAIN BIASES; WOULD
22 YOU GO ALONG WITH THAT STATEMENT AS A GENERAL STATEMENT?

23 MS. WARBURTON: IT IS POSSIBLE.

24 I DON'T KNOW HOW OTHER PEOPLE FEEL.

25 MR. WAPNER: OKAY. WHEN I SAY CERTAIN BIASES, I MEAN
26 BIAS IS A WORD THAT HAS GENERALLY NEGATIVE CONNOTATIONS, BUT
27 EVERYBODY--IF YOU THINK OF IT IN TERMS OF LIKING CERTAIN
28 THINGS OR NOT LIKING CERTAIN THINGS, IT COULD BE AS SIMPLE,

5A 4
1 FOR EXAMPLE, AS LIKING VANILA ICE CREAM AND NOT LIKING
2 CHOCOLATE, ALTHOUGH THAT IS NOT WHAT WE ARE TALKING ABOUT
3 HERE. BUT DO YOU UNDERSTAND THAT IS THE TYPE OF THING THAT
4 I AM TALKING ABOUT WHEN I AM TALKING ABOUT A BIAS?

5 MS. WARBURTON: YES.
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26A-1

1 MR. WAPNER: OKAY. DO YOU HAVE ANY OPINIONS ON SUBJECTS
2 ONE WAY OR ANOTHER, STRONG FEELINGS ON SUBJECTS ONE WAY OR
3 ANOTHER, THAT YOU THINK WOULD AFFECT YOU IN DECIDING THIS
4 CASE, ANY PARTICULAR BIASES THAT WOULD AFFECT YOU IN DECIDING
5 THIS CASE?

6 MS. WARBURTON: NO.

7 MR. WAPNER: I AM QUITE TROUBLED AND I HOPE THE JUDGE
8 WILL FORGIVE ME FOR GOING BACK TO THIS. BUT WHY WERE YOU
9 SEEKING -- I AM GOING BACK YOU KNOW, TO THE KID WITH THE PIE.
10 WHY ARE YOU THINKING THAT HE WOULD HAVE GONE NEXT DOOR OR
11 SOMETHING LIKE THAT?

12 MS. WARBURTON: WHY? IT IS POSSIBLE. I MEAN THE
13 EVIDENCE -- I GUESS YOU SAID THE EVIDENCE IS THAT THE PIE
14 WAS MISSING AND IT WAS ALL OVER.

15 BUT, IT WAS NOT PROVEN THAT HE ATE THE PIE. SO,
16 THERE ARE OTHER ALTERNATIVES THAT --

17 MR. WAPNER: WHAT WOULD IT TAKE IN THAT SITUATION TO
18 PROVE TO YOU THAT HE ATE THE PIE?

19 MS. WARBURTON: FOR HIM TO COME FORWARD AND SAY THAT
20 HE ATE THE PIE OR FOR SOMEONE TO PROVE THAT HE ATE IT.

21 MR. WAPNER: IS THE FACT THAT HE HAS GOT PIE ON HIS
22 FACE AND THE PIE IS MISSING AND THERE IS NO ONE ELSE IN THE
23 HOUSE, DOES THAT PROVE IT TO YOU? WHAT MORE PROOF DO YOU
24 WANT?

25 MS. WARBURTON: HIM TO TELL ME, I GUESS. HE IS A LITTLE
26 BOY.

27 MR. WAPNER: NOW, THE LITTLE BOY SAID -- HE IS STANDING
28 THERE AND THE PIE IS MISSING. NOBODY IS IN THE HOUSE. HE

26A-2

1 HAS GOT THE PIE ON HIS FACE AND THE PIE ON HIS SHIRT.

2 HE SAYS THAT HE DIDN'T DO IT. HE SAYS THAT HE
3 DIDN'T EAT THE PIE. NOW WHAT?

4 MS. WARBURTON: OKAY. I WOULD HAVE TO BELIEVE HIM.

5 MR. WAPNER: WHY?

6 MS. WARBURTON: BECAUSE THAT IS WHAT HE TOLD ME.

7 MR. WAPNER: IS THERE ANY EVIDENCE TO SAY THAT HE IS
8 NOT TELLING YOU THE TRUTH?

9 MS. WARBURTON: YES THERE IS.

10 MR. WAPNER: WHY WOULD YOU BELIEVE HIM DESPITE THAT
11 EVIDENCE?

12 MS. WARBURTON: WELL, HOPEFULLY, HE WOULD BE TELLING
13 ME THE TRUTH.

14 MR. WAPNER: DO YOU THINK THAT EVERY WITNESS WHO TAKES
15 THAT STAND AND SWEARS TO TELL THE TRUTH, TELLS THE TRUTH?

16 MS. WARBURTON: WELL, I WOULD HOPE THEY WOULD.

17 MR. WAPNER: DO YOU THINK THAT THEY DO?

18 MS. WARBURTON: NO.

19 MR. WAPNER: DO YOU THINK THAT IF EVERY WITNESS WHO
20 GOT ON THE STAND IN EVERY COURT IN THIS COUNTRY ALWAYS TOLD
21 THE TRUTH, WE WOULD NEED COURTROOMS?

22 MS. WARBURTON: HUH-UH.

23 MR. WAPNER: IS THAT NO?

24 MS. WARBURTON: NO.

25 MR. WAPNER: YOU WON'T EVER GET A WITNESS ON THE STAND
26 WITH CHERRY PIE ON HIS FACE AND SHIRT. DO YOU UNDERSTAND
27 THAT?

28 MS. WARBURTON: YES.

26B
1 MR. WAPNER: ARE YOU GOING TO BE ABLE TO MAKE A
2 DETERMINATION IN YOUR MIND AS TO WHICH WITNESSES ARE TELLING
3 THE TRUTH AND WHICH WITNESSES AREN'T, EVEN THOUGH YOU MAY
4 NOT HAVE, FIGURATIVELY SPEAKING, THE CHERRY PIE ON THE FACE
5 AND ON THE SHIRT TO HELP YOU MAKE UP YOUR MIND?

6 MS. WARBURTON: I THINK SO.

7 MR. WAPNER: YOUR JOB AS A JUROR IS GOING TO BE AS A
8 JUDGE OF THE FACTS. ARE YOU COMFORTABLE WITH THAT?

9 MS. WARBURTON: YES.

10 MR. WAPNER: SO, YOU HAVE TO DETERMINE WHICH WITNESSES
11 ARE TELLING THE TRUTH AND WHICH WITNESSES AREN'T. DO YOU
12 UNDERSTAND THAT?

13 MS. WARBURTON: YES.

14 MR. WAPNER: CAN YOU DO THAT?

15 MS. WARBURTON: YES.

16 MR. WAPNER: I PASS FOR CAUSE, YOUR HONOR.

17 MR. BARENS: ONE MOMENT, YOUR HONOR.

18 (PAUSE.)

19 MR. BARENS: THE DEFENSE AT THIS TIME WOULD THANK AND
20 EXCUSE JUROR NUMBER 5, MR. DUNDORE.

21 THE COURT: WELL, THAT LEAVES US WITH ONLY ONE MAN ON
22 THE JURY.

23 MR. BARENS: IT APPEARS THAT WAY. IT DOES.

24 THE COURT: ALL RIGHT.

25 MR. BARENS: IT IS THE LUCK OF THE DRAW, YOUR HONOR.

26 THE COURT: ALL RIGHT.

27 THE CLERK: MS. KARIN FELTS, F-E-L-T-S.

28 THE COURT: MISS FELTS, I THINK THAT YOU TOLD US THE

1 OTHER DAY -- IT SEEMS LIKE THE OTHER DAY -- THAT YOU OR SOME
2 MEMBER OF YOUR FAMILY HAVE BEEN ENGAGED OR WAS ENGAGED IN
3 THE LAW ENFORCEMENT WORK OF SOME KIND?

4 MS. FELTS: MY FATHER WAS A POLICEMAN WHEN I WAS A VERY
5 LITTLE GIRL. MY AUNT IS AN ATTORNEY.

6 THE COURT: SHE WAS NOT ENGAGED IN LAW ENFORCEMENT WORK,
7 WAS SHE?

8 MS. FELTS: NO.

9 THE COURT: WHAT POLICE DEPARTMENT WAS YOUR FATHER IN?

10 MS. FELTS: HE WAS WITH THE ALBUQUERQUE POLICE
11 DEPARTMENT IN NEW MEXICO.

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1 THE COURT: HOW LONG WAS HE A POLICE OFFICER?

2 MS. FELTS: WELL, HE WAS A POLICEMAN UNTIL I WAS 11.
3 SO IT WAS PROBABLY ABOUT 13 YEARS.

4 THE COURT: THE FACT THAT HE WAS A POLICE OFFICER, WOULD
5 THAT IN ANY WAY HAVE YOU FAVOR THE TESTIMONY OF A POLICE
6 OPFFICER OR FAVOR THE PROSECUTION IN THIS CASE?

7 MS. FELTS: NO, SIR.

8 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
9 SAME GENERAL QUESTIONS WHICH WERE ASKED OF OTHER JURORS,
10 WOULD YOUR ANSWERS BE ANY DIFFERENT OR SUBSTANTIALLY THE SAME?

11 MS. FELTS: SUBSTANTIALLY THE SAME.

12 THE COURT: WHAT DO YOU DO, PLEASE?

13 MS. FELTS: I AM A CUSTOMER SERVICE REPRESENTATIVE FOR
14 PACIFIC BELL.

15 THE COURT: ANOTHER PHONE COMPANY?

16 MS. FELTS: COMPETITION.

17 THE COURT: AND ARE YOU MARRIED?

18 MS. FELTS: YES I AM.

19 THE COURT: WHAT DOES YOUR HUSBAND DO?

20 MS. FELTS: HE IS A SONG WRITER.

21 THE COURT: VERY INTERESTING. WE SHOULD GIVE HIM A
22 LITTLE PUBLICITY.

23 MS. FELTS: HE IS NOT A BIG-TIME SONG WRITER YET.

24 THE COURT: ALL RIGHT. IS HE EMPLOYED BY SOMEBODY OR
25 IS HE FREE-LANCE?

26 MS. FELTS: SELF-EMPLOYED.

27 THE COURT: WHERE DO YOU LIVE?

28 MS. FELTS: WOODLAND HILLS.

1 THE COURT: HAVE YOU EVER SAT ON A JURY IN A CRIMINAL
2 CASE BEFORE?

3 MS. FELTS: NO, SIR.

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

5 MR. BARENS: THANK YOU, YOUR HONOR.

6 GOOD AFTERNOON, MS. FELTS.

7 MS. FELTS: HI.

8 MR. BARENS: MS. FELTS, OBVIOUSLY, I WOULD BE LESS THAN
9 CANDID IF I WAS NOT CONCERNED THAT GROWING UP WITH A POLICEMAN
10 MIGHT HAVE GIVEN YOU A CERTAIN ORIENTATION ABOUT FELLOWS THAT
11 DO WHAT I DO FOR A LIVING.

12 MS. FELTS: I WAS 11 WHEN HE RESIGNED FROM THE POLICE
13 DEPARTMENT AND MY PARENTS WERE DIVORCED AT THAT TIME.

14 WE DIDN'T HAVE ANY FURTHER CONTACT WITH HIM,
15 EXCEPT SPORADICALLY AS I WAS GROWING UP.

16 MR. BARENS: I SEE. DO YOU KNOW WHAT EMPLOYMENT HE
17 OBTAINED SUBSEQUENT TO THAT?

18 MS. FELTS: HE BOUGHT HIS OWN CONSTRUCTION COMPANY.

19 MR. BARENS: I SEE. SO, YOU COULD TELL ME AS YOU DID
20 HIS HONOR, THAT THAT WOULD NOT BIAS OR INFLUENCE YOU AT ALL
21 AS A JUROR?

22 MS. FELTS: THAT'S RIGHT.

23 MR. BARENS: ALL RIGHT. AND YOUR MOTHER HAD WHAT
24 EMPLOYMENT?

25 MS. FELTS: WHEN I WAS GROWING UP, SHE WAS A WAITRESS.
26 AND RIGHT NOW, SHE MANAGES A MOTEL.

27 MR. BARENS: I SEE. AFTER HIGH SCHOOL, YOU WENT WHERE?

28 MS. FELTS: AFTER HIGH SCHOOL?

1 MR. BARENS: YES.

2 MS. FELTS: I WENT TO WORK FOR THE PHONE COMPANY.

3 MR. BARENS: YOU DIDN'T DO ANY IMMEDIATE COLLEGE WORK
4 OR CITY COLLEGE WORK OF ANY TYPE RIGHT AFTER HIGH SCHOOL?
5 YOU WENT RIGHT INTO THE PHONE COMPANY AT THAT JUNCTURE?

6 MS. FELTS: YES I DID.

7 MR. BARENS: AND AFTER THAT, DID YOU EVER GO BACK TO
8 TAKE ANY MORE CLASSES OR WHAT NOT?

9 MS. FELTS: YES.

10 MR. BARENS: WHAT SORT OF THINGS DID YOU TAKE?

11 MS. FELTS: I GO SPORADICALLY WHEN I HAVE THE TIME.
12 I HAVE TAKEN A POLITICAL SCIENCE CLASS. I JUST DROPPED AN
13 ACCOUNTING CLASS. I JUST TOOK A MATH CLASS AND A PSYCHOLOGY
14 CLASS.

15 THIS HAS BEEN OVER A PERIOD OF 16 YEARS.

16 MR. BARENS: I SEE. WERE ANY OF THOSE CLASSES
17 CALCULATED TO POSSIBLY ASSIST YOU IN A JOB TRANSITION?

18 MS. FELTS: POSSIBLY.

19 MR. BARENS: ALL RIGHT. DID YOU HAVE ANY INTEREST IN
20 DOING SOMETHING ELSE WITH YOUR BUSINESS LIFE?

21 MS. FELTS: HONESTLY, I WOULD LIKE TO GO TO LAW SCHOOL
22 ONE OF THESE DAYS.

23 MR. BARENS: YOU WOULD LIKE TO GO TO LAW SCHOOL? WHY?

24 MS. FELTS: IT IS SOMETHING THAT I HAVE ALWAYS WANTED
25 TO DO. THE LAW FASCINATES ME.

26 MR. BARENS: COULD YOU BE ANY MORE SPECIFIC? IS THERE
27 A PARTICULAR TYPE OF LAW THAT FASCINATES YOU?

28 MS. FELTS: NO. I AM JUST INTERESTED IN OUR SYSTEM

1 AND HOW IT WORKS.

2 MR. BARENS: IN THE WORKING OF THE LAW APPLIED TO HUMAN
3 CONDUCT AND OBSERVATIONS OF CONSTITUTIONAL PRECEDENTS?

4 MS. FELTS: YES.

5 MR. BARENS: WHAT IS YOUR IMPRESSION OF IT AS YOU SIT
6 THERE NOW AS A CITIZEN IN THIS COUNTRY? DO YOU THINK THE
7 LEGAL SYSTEM IS WORKING?

8 MS. FELTS: I DO.

9 MR. BARENS: YOU DO? AND SPECIFICALLY, OBVIOUSLY, I
10 AM REFERENCING YOUR OPINION ON THE CRIMINAL SYSTEM.

11 DO YOU HAVE SOME IMPRESSION THAT TOO MANY BAD
12 GUYS ARE GETTING OFF?

13 MS. FELTS: I THINK SOME FALL THROUGH THE CRACKS, YES.
14 BUT I THINK THAT WE ARE DOING THE BEST WE CAN.

15 MR. BARENS: WHY IS IT YOU THINK SOME -- YOU KNOW, I
16 MEAN, THE GUYS ARE FALLING THROUGH THE CRACKS? JURORS HAVE
17 TO SAY THEY WERE NOT GUILTY OR NOT PROVEN?

18 MS. FELTS: THAT'S RIGHT.

19 MR. BARENS: WHAT DO YOU THINK THAT IS ALL ABOUT?

20 MS. FELTS: I THINK IT IS BASED ON JUDGMENT, MORAL
21 JUDGMENTS AND EMOTIONAL JUDGMENTS. I THINK A LOT OF THINGS
22 ENTER INTO IT.

23 MR. BARENS: WELL, HERE YOU HAVE A SITUATION WHERE YOU
24 ARE TOLD YOU ARE SUPPOSED TO MAKE A DETERMINATION BASED ON
25 THE EVIDENCE. THAT IS, I LIKE TO USE THE WORD "DEMONSTRATED"
26 IN THE COURTROOM, EITHER EVIDENCE WHICH IS DEMONSTRATED ONE
27 WAY OR ANOTHER OR IT IS IMPLICIT.

28 DO YOU HAVE A SNEAKING SUSPICION THAT A LOT OF

1 JURIES DON'T DO THAT?

2 MS. FELTS: I THINK SOMETIMES.

3 MR. BARENS: DO YOU THINK THAT THEY LET SOME SORT OF
4 EMOTIONAL PLAY COME INTO IT?

5 MS. FELTS: I THINK IT IS NATURAL.

6 MR. BARENS: THAT IS JUST THE WAY PEOPLE ARE?

7 MS. FELTS: (NODS HEAD UP AND DOWN.)

8 MR. BARENS: IF YOU WERE A JUROR, WOULD YOU FEEL SOME
9 SORT OF AN OBLIGATION TO MAKE SURE THAT THE OTHER JURORS DIDN'T
10 HAVE ANY EMOTION IN THEIR DECISION?

11 MS. FELTS: YES I WOULD.

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1 MR. BARENS: YOU WOULD?

2 MS. FELTS: I WOULD TRY.

3 MR. BARENS: YOU DON'T THINK THAT EMOTION HAS ANYTHING
4 TO DO WITH MAKING A DECISION ABOUT WHAT IS TRUE OR NOT?

5 MS. FELTS: IN WHICH INSTANCE? IN THIS INSTANCE?

6 MR. BARENS: YES, IN DECIDING, FOR INSTANCE, THE WORD
7 REASONABLE, YOU DON'T THINK YOUR EMOTIONS PLAY OR HAVE A VALUE
8 FACTOR IN MAKING A REASONABLE DECISION?

9 MS. FELTS: I DON'T THINK THAT IT SHOULD BE ALLOWED.

10 I THINK THAT WE SHOULD BE VERY CAREFUL IN OUR
11 DECISION-MAKING PROCESS.

12 MR. BARENS: IN OTHER WORDS, DO YOU HAVE SOME FEELING
13 THAT THIS SYSTEM EITHER IS OR SHOULD BE MORE SCIENTIFIC IN
14 NATURE?

15 MS. FELTS: IN THIS PARTICULAR INSTANCE, YES.

16 MR. BARENS: NOW IT IS POSSIBLE, YOU KNOW, AND IN FACT,
17 I DARE SAY THERE ARE PEOPLE ATTEMPTING TO DO THIS IN NEVADA
18 NOW, TO PROGRAM COMPUTERS WITH ALL OF THESE STATISTICAL DATA
19 FROM ALL OF THE CRIMINAL TRIALS, LET'S SAY THE MURDER TRIALS,
20 THEY HAVE PROGRAMMED ALL OF THAT STUFF IN THERE AND GET
21 PROBABILITY STUDIES DONE WHERE A COMPUTER COULD DO THIS. AND
22 WE JUST DON'T HAVE JURIES ANYMORE. YOU WOULD JUST GET ALL
23 OF THESE HISTORICAL DATA BANKS ASSEMBLED AND YOU JUST PUT ALL
24 THAT STUFF IN THERE WITH THE FACTS OF THE CASE AND BASED ON
25 THE STATISTICAL PROBABILITY, BASED ON EVERY CASE KNOWN TO MAN
26 THAT HAS BEEN REPORTED, WE SAY TO THE COMPUTERS "YOU DECIDE.
27 WE DON'T NEED THE JUDGE. CERTAINLY DON'T NEED THE JURY AND
28 WE GET RID OF THE LAWYERS."

1 WHAT DO YOU THINK ABOUT THAT KIND OF A SYSTEM?

2 MS. FELTS: NO, I DON'T THINK THAT IS A GOOD IDEA.

3 IT IS TOO COLD.

4 MR. BARENS: TOO COLD?

5 MS. FELTS: THERE ARE LOTS OF VARIABLES THAT COULD ENTER
6 INTO IT.

7 MR. BARENS: WOULD YOU NOT CONCEDE THAT SOME OF THE
8 VARIABLES IN MAKING AN EVALUATION IS THAT IT REALLY ISN'T A
9 TOTALLY SCIENTIFIC CONCLUSION THAT YOU CAN COME TO WHEN YOU
10 ARE EVALUATING FACTS, WHEN YOU HAVE TO SAY TO YOURSELF, "WELL,
11 IT IS BELIEVABLE OR NOT BELIEVABLE BEYOND A REASONABLE DOUBT."

12 MS. FELTS: I AGREE.

13 MR. BARENS: THE PROBLEM IS I CAN'T QUANTIFY TO YOU WHAT
14 CONSTITUTES BEYOND A REASONABLE DOUBT. WE KNOW IT IS --

15 WOULD YOU AGREE THAT IT IS NOT A 51-49 THING?

16 MS. FELTS: YES.

17 MR. BARENS: DO YOU AGREE WITH THAT?

18 MS. FELTS: UH-HUH.

19 MR. BARENS: DO YOU THINK THAT IS FAIR?

20 MS. FELTS: BEYOND A REASONABLE DOUBT?

21 MR. BARENS: NO.

22 MS. FELTS: GIVE ME THE QUESTION AGAIN. I AM SORRY.

23 MR. BARENS: BEYOND A REASONABLE DOUBT IS NOT A
24 51-49 JUDGMENT.

25 MS. FELTS: TOTAL?

26 MR. BARENS: NO -- WELL, TOTAL, I DON'T KNOW WHAT TOTAL
27 WOULD LOOK LIKE AND I DON'T THINK THE JUDGE WOULD INSTRUCT
28 YOU THAT.

1 BEYOND A REASONABLE DOUBT, THOUGH, COULD WE AGREE,
2 IS NOT A 51-49 JUDGMENT?

3 MS. FELTS: YES.

4 MR. BARENS: WOULD YOU DO 51 PERCENT BUT NO MORE OR
5 52 PERCENT, OR WHATEVER IF YOUR JUDGMENT SAID IT LOOKS LIKE
6 HE IS MORE LIKELY GUILTY BUT 49 OR 48 PERCENT OF YOU IS SAYING
7 "IT LOOKS LIKE HE IS PROBABLY NOT GUILTY"; ISN'T THAT IN FACT
8 THE OTHER SIDE OF THAT?

9 MR. FELTS: UH-HUH.

10 MR. BARENS: WHAT DO WE DO?

11 MS. FELTS: GO WITH THE DEFENDANT.

12 MR. BARENS: THAT IS DEFINITELY NOT BEYOND A REASONABLE
13 DOUBT.

14 (PROSPECTIVE JUROR FELTS NODS HER HEAD
15 UP AND DOWN.)

16 MR. BARENS: NOW FACTORS IN HUMANS PERSUADE THEM THAT
17 THINGS ARE REASONABLE AND NOT REASONABLE.

18 IS IT YOUR STATE OF MIND THAT YOU WOULD NEVER
19 ALLOW ANY EMOTIONAL FEELINGS YOU HAD TO INFLUENCE THE DECISION
20 YOU WOULD MAKE IN THIS TYPE OF A SETTING?

21 MR. WAPNER: YOUR HONOR, I HAVE AN OBJECTION TO THAT. I
22 THINK THE COURT WILL INSTRUCT THE JURORS NOT TO CONSIDER ANY
23 KIND OF SYMPATHY, PASSION, PREJUDICE ONE WAY OR THE OTHER
24 IN MAKING THEIR DECISION AND TO THE EXTENT THAT MR. BARENS
25 IS SUGGESTING THAT --

26 THE COURT: STAY AWAY FROM THAT, SYMPATHY, BECAUSE WE
27 HAVE AN INSTRUCTION WHICH SAYS SYMPATHY SHOULD NOT BE
28 CONSIDERED.

1 MR. BARENS: DID I SAY ANYTHING ABOUT SYMPATHY?

2 THE COURT: NO.

3 MR. BARENS: I WAS TALKING ABOUT EMOTIONS. I HAVE MANY
4 OTHER EMOTIONS BESIDES SYMPATHY AND I AM SURE YOU DO AS WELL,
5 MRS. FELTS.

6 MS. FELTS: UH-HUH.

7 MR. BARENS: WHAT I AM SUBMITTING TO YOU IS, ALTHOUGH
8 I CONCUR THAT THE LAW SAYS WE ARE NOT TO LET SYMPATHY RULE
9 OUR JUDGMENTS HERE, CERTAINLY THE LAW DOESN'T SAY TO YOU "FOLKS,
10 BE LITTLE PARTS OF A COMPUTER WHEN YOU GO IN THERE AND FORGET
11 YOUR EXPERIENCE IN LIFE AND FORGET ANY FEELINGS YOU HAVE ABOUT
12 FOR THE WAY PEOPLE ARE WHEN THEY ARE UP ON THE STAND TESTIFYING,"
13 BECAUSE I SUBMIT TO YOU, YOU ARE GOING TO GET FEELINGS ABOUT
14 THEM AND I SUGGEST THEY ARE TOTALLY LEGITIMATE FOR YOU TO
15 CONSIDER YOUR FEELINGS ABOUT PEOPLE'S BIASES, ABOUT PEOPLE'S
16 PERCEPTIONS, ORIENTATIONS, MOTIVES, KNOWLEDGE, ABILITY TO
17 COMMUNICATE, ALL OF YOUR FEELINGS ABOUT THAT ARE TOTALLY
18 LEGITIMATE FOR YOU TO CONSIDER IN MAKING A DECISION; WOULD
19 YOU AGREE WITH THAT?

20 MS. FELTS: YES, I WOULD.

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1 MR. BARENS: HAVE YOU EVER WATCHED A TRIAL BEFORE?

2 MS. FELTS: NO.

3 MR. BARENS: AND SO IS THIS YOUR FIRST CONTACT WITH
4 LAWYERS IN A FORMAL SETTING?

5 MS. FELTS: YES, OTHER THAN INTERACTING WITH MY AUNT.

6 MR. BARENS: WHAT INTERACTION DO YOU HAVE WITH YOUR
7 AUNT?

8 MS. FELTS: WELL, OTHER THAN BEING MY AUNT, SHE IS AN
9 ATTORNEY.

10 MR. BARENS: I KNOW THAT.

11 BUT I MEAN WHAT SORT OF INTERACTION DO YOU HAVE
12 WITH HER?

13 MS. FELTS: AS FAR AS THE LAW IS CONCERNED, I HAVEN'T
14 HAD A LOT OF THAT OTHER THAN HER EXCITEMENT. SHE IS A BRAND
15 NEW ATTORNEY. SHE IS VERY EXCITED ABOUT JUST HAVING PASSED
16 THE BAR AND ENTERING PRACTICE, SO WE HAVE BEEN GETTING A LOT
17 OF INPUT FROM HER.

18 MR. BARENS: WHAT SORT OF PRACTICE IS SHE ENGAGED IN?

19 MS. FELTS: SHE WANTS TO -- SHE IS SPECIALIZING IN
20 FAMILY PRACTICE, FAMILY LAW.

21 MR. BARENS: WOULD YOU LIKE TO BE A PROSECUTOR?

22 MS. FELTS: I DON'T KNOW.

23 MR. BARENS: HAS IT CROSSED YOUR MIND?

24 MS. FELTS: POSSIBLY. I DON'T REALLY KNOW. I REALLY
25 DON'T KNOW ENOUGH ABOUT IT NOW.

26 IT IS SOMETHING I WOULD LIKE TO PURSUE.

27 MR. BARENS: EVER CROSS YOUR MIND TO BE A DEFENSE LAWYER?

28 MS. FELTS: AGAIN, POSSIBLY.

1 MR. BARENS: IS EITHER ONE OF THOSE TWO CHOICES MORE
2 LIKELY?

3 IF I WERE TO TELL YOU MAGICALLY THAT HIS HONOR
4 JUST SAID YOU ARE A JUDGE -- NOT A JUDGE -- YOU ARE A LAWYER --
5 THERE USED TO BE A WAY A JUDGE COULD SAY YOU WERE
6 A LAWYER, THERE WAS SOME PROCEDURE, AS I RECALL, YEARS AGO.

7 WHAT ABOUT THAT, LET'S SAY HIS HONOR CONFERS UPON
8 YOU A MEMBERSHIP IN THE STATE BAR AT THIS POINT IN TIME AND
9 YOU ARE GIVEN A CHOICE OF BEING A PROSECUTOR OR A DEFENSE
10 LAWYER, WHICH WAY DO YOU THINK YOU WOULD GO?

11 MS. FELTS: I REALLY DON'T KNOW. I DON'T HAVE ENOUGH
12 EDUCATION OR ENOUGH INPUT TO GIVE YOU AN ANSWER TO THAT.

13 MR. BARENS: WELL, I APPRECIATE THAT.

14 IT SEEMS TO ME --

15 MS. FELTS: PROBABLY DEFENSE.

16 MR. BARENS: PROBABLY DEFENSE?

17 MS. FELTS: POSSIBLY, YES.

18 MR. BARENS: POSSIBLY?

19 MS. FELTS: I DON'T KNOW.

20 MR. BARENS: POSSIBLY BUT WE DON'T KNOW.

21 YOU MAY ONE DAY FIND OUT.

22 WHAT SORT OF HOBBIES DO YOU HAVE?

23 MS. FELTS: I READ. I WORK IN MY YARD, CHASE MY KIDS.
24 I TRY TO GET INVOLVED WITH THE CHILDRENS' ACTIVITIES.

25 MR. BARENS: DO YOU READ ANYTHING IN PARTICULAR?

26 MS. FELTS: I AM ONE OF THOSE PEOPLE THAT READS THREE
27 OR FOUR BOOKS AT A TIME. I GET BORED WITH ONE, PUT IT DOWN
28 AND START ANOTHER ONE.

1 MR. BARENS: IS THERE A PARTICULAR TYPE OF BOOK YOU WOULD
2 MORE LIKELY READ IN TERMS OF NOVELS OR MYSTERIES OR NON-FICTION?

3 MS. FELTS: I LEAN TOWARD NOVELS. I LIKE JAMES MICHENER.

4 MR. BARENS: ALL RIGHT. THE LAST MOVIE YOU SAW THAT
5 WAS YOUR CHOICE?

6 MS. FELTS: MY CHOICE?

7 MR. BARENS: NOT THE CHILDREN.

8 MS. FELTS: I WAS JUST GOING TO SAY IT WAS "AN AMERICAN
9 TAIL" WHICH I TOOK MY DAUGHTER TO OVER THE HOLIDAYS.

10 MR. BARENS: WAS THAT YOUR CHOICE?

11 MS. FELTS: YES, YES.

12 MR. BARENS: WHAT WAS IT AGAIN THAT YOUR HUSBAND DOES?

13 MS. FELTS: HE IS A SONG WRITER, MUSICIAN.

14 MR. BARENS: THAT IS RIGHT.

15 DID HE DO ANYTHING BEFORE THAT?

16 MS. FELTS: NO.

17 HE WAS IN THE SERVICE.

18 MR. BARENS: I SEE.

19 HAS YOUR HUSBAND EVER BEEN ON A JURY?

20 MS. FELTS: NO.

21 MR. BARENS: AS A PROSPECTIVE MAYBE POSSIBLE LAWYER,
22 DO YOU FEEL INCLINED THAT YOU WOULD LIKE TO BE A JUROR ON THIS
23 CASE?

24 MS. FELTS: I THINK I WOULD, YES.

25 MR. BARENS: YOU WOULD LIKE TO EXPERIENCE THAT?

26 MS. FELTS: YES, SIR.

27 MR. BARENS: HAVE YOU HAD ANY LAW CLASSES?

28 MS. FELTS: NO, NO.

1 MR. BARENS: HAVE YOU DONE ANY INDEPENDENT READING THAT
2 MIGHT PREPARE YOU FOR LAW SCHOOL?

3 MS. FELTS: SOME OVER THE YEARS. LIKE I SAID, I READ
4 A LOT OF BOOKS.

5 MR. BARENS: WAS THERE ANYTHING IN PARTICULAR YOU READ
6 THAT YOU FELT WAS APROPOS OF PREPARING YOU FOR A LAW SCHOOL
7 CIRRICULUM?

8 MS. FELTS: I AM READING A BOOK RIGHT NOW. IT IS CALLED
9 "A CURING KILL " -- I JUST STARTED IT. I KNOW VERY LITTLE
10 ABOUT IT OTHER THAN IT IS A LADY WHO WON A CASE AGAINST A
11 PSYCHIATRIST.

12 MR. BARENS: OH, YES.

13 MS. FELTS: I AM TRYING TO REMEMBER THE LADY'S NAME BUT
14 I CAN'T.

15 AGAIN, I JUST STARTED THE BOOK, I JUST STARTED
16 READING IT.

17 MR. BARENS: WHY DO YOU THINK THAT PARTICULAR BOOK WOULD
18 HELP YOU IN THE EVENT YOU DECIDE TO BE A LAWYER?

19 MS. FELTS: I DON'T KNOW. THE BOOK WAS RECOMMENDED TO
20 ME AS BEING A VERY INTERESTING BOOK.

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28A-1
1 THE COURT: ARE YOU GOING TO BE MUCH LONGER? IT IS
2 4:30.

3 MR. BARENS: COULD WE RESUME TOMORROW MORNING?

4 THE COURT: PARDON ME?

5 MR. BARENS: I WILL RESUME TOMORROW.

6 THE COURT: YOU WILL RESUME TOMORROW?

7 MR. BARENS: IF YOU WISH, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 THE CLERK: 10:30, YOUR HONOR.

10 THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE AN
11 ADJOURNMENT AT THIS TIME. WE WILL RESUME TOMORROW MORNING
12 AT 10:30.

13 I WILL ASK YOU AGAIN PLEASE TO GO INTO THE JURY
14 ASSEMBLY ROOM. WHEN WE ARE READY FOR YOU, WE'LL ASK YOU TO
15 COME IN. GOOD NIGHT.

16 (THE PROSPECTIVE JURORS EXIT THE
17 COURTROOM.)

18 MR. BARENS: I HAVE SOMETHING THAT IS NOT SUBSTANTIVE,
19 JUST A PROCEDURAL MATTER, YOUR HONOR. YOUR HONOR, AS I AM
20 SURE IT WILL NOT COME AS ANY SURPRISE TO YOU, THE DEFENSE
21 WILL BE FILING A MOTION IN RESPONSE TO LAST THURSDAY'S
22 SEIZURE AND SEARCH BUSINESS AT THE ROBERTS' RESIDENCE.

23 WE HAVE ADVISED MR. WAPNER THAT WHAT WE WOULD
24 LIKE TO DO AT THIS JUNCTURE, IS TO HAVE SOMEWHAT OF AN
25 OMNIBUS MOTION NEXT TUESDAY WHERE WE WOULD HAVE THAT MOTION
26 HEARD IN CONJUNCTION WITH THE KARNY DISCOVERY MOTION, INSTEAD
27 OF DOING THEM PIECEMEAL, DOING ONE TOMORROW AND ONE TUESDAY.

28 SO, WE CAN HEAR THE --

1 THE COURT: CAN'T WE HEAR KARNY TOMORROW? CAN'T WE?

2 MR. BARENS: I WOULD PREFER YOUR HONOR -- THERE ARE
3 IMPLICATIONS, YOUR HONOR, FOR ME IN ONE THAT WOULD RELATE
4 TO THE OTHER. WE WOULD WANT TO ADDRESS THEM CONJUNCTIVELY
5 IN ONE SETTING.

6 THE COURT: ALL RIGHT. I WOULD LIKE YOU GENTLEMEN IF
7 YOU WOULD PLEASE, ALSO TO BRIEF FOR ME THE QUESTION AS TO
8 WHETHER OR NOT WHEN THERE ARE RECORDS OR ANYTHING DOWN HERE
9 IN LOS ANGELES COUNTY, THE JUDGE IN ANOTHER COUNTY HAS THE
10 POWER TO SUBPOENA RECORDS AND HAVE THEM SEIZED DOWN HERE.

11 MR. BARENS: JURISDICTIONALLY?

12 THE COURT: I WAS JUST WONDERING WHETHER OR NOT THAT
13 SUBPOENA IN SAN MATEO COUNTY WOULD BE EFFECTIVE IN SEIZING
14 PROPERTY WHICH IS DOWN HERE.

15 MR. BARENS: IT COULD BE EFFECTIVE AB INITIO?

16 (PAUSE.)

17 MR. BARENS: YOUR HONOR, IT IS A VERY VALID POINT.

18 THE COURT: WOULD YOU LOOK INTO IT? I HAVE NOT HAD
19 A CHANCE TO DO IT MYSELF.

20 MR. BARENS: ABSOLUTELY, YOUR HONOR. WE WILL THEREFORE,
21 PROCEED AS EXPEDITIOUSLY AS POSSIBLE WITH BOTH, COME NEXT
22 TUESDAY YOUR HONOR AT 10:30.

23 THE COURT: ALL RIGHT. IS IT AGREEABLE TO YOU TO
24 CONTINUE THE MATTERS, THE TWO MOTIONS TO TUESDAY? WE WILL
25 HAVE A JURY BEFORE THAT TIME, MAYBE.

26 MR. BARENS: YOUR HONOR, I SUSPECT THAT WE WOULD.

27 MR. WAPNER: YOUR HONOR, I TOLD THE COURT WHEN WE FIRST
28 DISCUSSED THIS, THAT I WANT TO HAVE THOSE MOTIONS BE STARTED

1 BEFORE THE SWEARING IN OF THE JURY.

2 THE COURT: BEFORE THE SWEARING IN?

3 MR. WAPNER: CORRECT. SO IF TUESDAY IS -- IT IS ALL
4 RIGHT WITH ME. BUT I WANT TO MAKE IT CLEAR THAT I AM NOT
5 AGREEING WE SHOULD HAVE SOME KIND OF A GENERALIZED HEARING
6 WHERE ALL OF THESE MOTIONS ARE THROWN INTO A POT AND
7 EVERYTHING IS DISCUSSED.

8 IF TUESDAY IS THE DAY FOR THE MOTIONS, THAT IS
9 OKAY. BUT AS FAR AS I AM CONCERNED, THERE IS A DEFINITE
10 DISTINCTION BETWEEN THE DISCOVERY MOTION TO OBTAIN POLICE
11 REPORTS OF AN ALLEGED HOMICIDE IN HOLLYWOOD AND THAT SHOULD
12 BE HEARD FIRST AND SEPARATELY. THEN --

13 THE COURT: WELL, LET ME TELL YOU NOW. I HAVE READ
14 YOUR PAPERS ON THAT MOTION WITH RESPECT TO THE SUBPOENA
15 ON THE KARNY MATTER.

16 NOW, I AM OF THE OPINION THAT THERE SHOULD BE
17 AN IN CAMERA HEARING WHERE THE RESPONSIBLE PEOPLE WHO HAVE
18 ALL OF THE FACTS, WOULD COME INTO CHAMBERS AND ADVISE ME
19 EXACTLY WHAT IT IS THAT THEY HAVE, SO THAT I COULD MAKE AN
20 INDEPENDENT INVESTIGATION AND TELL YOU WHETHER OR NOT I THINK
21 THERE IS ANY BASIS FOR THE MOTION.

22 THAT IS DESCRIBED BY THE CASES THAT YOU HAVE
23 SUBMITTED, THAT THAT MAY BE DONE AND THE LAW SAYS OF COURSE,
24 THE JUDGE MAY HAVE AN IN CAMERA HEARING AND DETERMINE WHETHER
25 OR NOT -- WHAT SHOULD BE DONE ON A MOTION WHICH WAS MADE
26 FOR INSPECTION OF THOSE RECORDS.

27 THAT I THINK, IS THE PROPER PROCEDURE. I WILL
28 TELL YOU THIS NOW. I WILL GRANT THE IN CAMERA MOTION FOR

1 ME TO EXAMINE THOSE RECORDS AND HAVE WHOEVER IS RESPONSIBLE
2 FOR THEM AND HAS KNOWLEDGE OF THE FACTS, BRING THOSE RECORDS
3 INTO MY CHAMBERS AND I WILL LOOK THEM OVER THERE AND DETERMINE
4 AT THIS PARTICULAR POINT WHETHER OR NOT THOSE PAPERS SHOULD
5 BE MADE AVAILABLE.

6 MR. BARENS: CATEGORICALLY, THE POLICE SAY THAT HE IS
7 NOT IN ANY WAY -- HE IS NOT IN ANY WAY INVOLVED AT THIS TIME.

8 THE COURT: AT THIS TIME ON THIS HOLLYWOOD MOTEL MURDER?
9 I WANT THEM -- THEY WILL HAVE TO PRODUCE TO ME EVERYTHING
10 THAT THEY MIGHT HAVE WHICH MIGHT BEAR ON WHO, IF ANYBODY,
11 IS RESPONSIBLE, WHOM THEY SUSPECT, IF THERE IS ANY SUSPECT
12 AND WHETHER OR NOT KARNY MAY BE ONE OF THEM AND ANY EVIDENCE
13 THEY MAY HAVE WHICH LEADS THEM -- LEADS HIM TO THE ALLEGED
14 MURDER WHICH TOOK PLACE.

15 MR. BARENS: WE DID WANT YOUR HONOR, AN EVIDENTIARY
16 HEARING ON THE MATTER, WITH AN OPPORTUNITY TO EXAMINE. AND
17 WE COULD DO SO.

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1 THE COURT: NO. I THINK UNDER THE LAW, I HAVE A RIGHT
2 TO LOOK AT IT IN CAMERA TO SEE WHETHER OR NOT THERE IS ANY
3 POSSIBLE BASIS FOR THE MOTION TO EXAMINE THE RECORDS THAT
4 THEY MIGHT HAVE AND WHAT INVOLVEMENT IF ANY, KARNY HAS IN
5 THAT PARTICULAR ALLEGED MURDER.

6 MR. BARENS: WELL, I AM TROUBLED, YOUR HONOR.
7 I APPRECIATE THE GOOD FAITH OF YOUR HONOR'S OFFER IN THIS
8 INSTANCE.

9 I WILL BE CANDID IN TELLING YOU WHAT TROUBLES
10 ME. THERE IS -- THE DEFENSE HAS A THEORY -- THE PROBLEM I
11 AM HAVING IN ARTICULATING THIS RIGHT NOW, YOUR HONOR, IS THAT
12 TO DIVULGE THE THEORY, WOULD ALERT THE PROSECUTION AT THIS
13 TIME AS TO A MAJOR ELEMENT OF THE DEFENSE.

14 THE COURT: THERE IS NO QUESTION OF THEORY. IT IS A
15 QUESTION OF WHAT PROOF THEY MAY HAVE TO SHOW THAT HE IS A
16 LEGITIMATE SUSPECT IN A MURDER THAT MAY BE USED POSSIBLY BY
17 YOU, IF HE TAKES THE STAND AND YOU CROSS-EXAMINE HIM ON THAT.

18 AND THE CASES HAVE INDICATED THAT IF HE HAS BEEN
19 ACCUSED, IF HE HAS BEEN CHARGED, YOU CAN USE IT.

20 IF HE HAS NOT BEEN CHARGED, THERE IS NO EVIDENCE
21 TO LINK HIM TO ANY KIND OF MURDER AND NO -- WELL, TO GIVE
22 YOU ACCESS TO THOSE RECORDS WHEN AN INVESTIGATION IS GOING
23 DOWN AND IS CONFIDENTIAL, WOULD BE UNFAIR AND IMPROPER.

24 MR. BARENS: COULD YOUR HONOR CONSIDER THAT THERE COULD
25 BE EVIDENCE THAT YOUR HONOR WOULD SEE THAT IN SOME WAY COULD
26 SHOW A MODUS OPERANDI ON THE PART OF MR. KARNY IN THAT
27 ALLEGED HOMICIDE? IF YOUR HONOR WOULD IMAGINE FOR A MOMENT --
28 FOR A MOMENT YOUR HONOR -- THAT IF MR. LEVIN BE DEAD, THE

1 POSSIBILITY THAT MR. KARNY COULD HAVE BEEN HIS ASSASSIN. WE
2 CERTAINLY KNOW THAT KARNY ADMITS IN ORDER TO GET AN IMMUNITY
3 DEAL, THAT HE COMMITTED A HOMICIDE IN NORTHERN CALIFORNIA.

4 THE COURT: HE PARTICIPATED IN IT.

5 MR. BARENS: YES, PARTICIPATED. THAT HAD A CERTAIN
6 LOOK TO IT, LET'S SAY. THERE WAS A CERTAIN MODUS OPERANDI
7 PRESENT.

8 THERE YOUR HONOR I BELIEVE, THAT YOU MAY SEE THAT
9 ALTHOUGH THERE MIGHT NOT HAVE BEEN ENOUGH TO CHARGE HIM WITH
10 A MURDER IN THE HOLLYWOOD CASE, THERE IS A MODUS OPERANDI.

11 THE COURT: WHAT RELATIONSHIP BETWEEN THE ESLAMINIA
12 CASE AND THE ALLEGED HOLLYWOOD MOTEL CASE, IS THERE?

13 MR. BARENS: I WILL BET THAT YOUR HONOR IS GOING TO
14 SEE THERE ARE SOME FACTS THERE THAT LOOK AN AWFUL LOT LIKE
15 WHAT YOUR HONOR MIGHT HAVE HEARD ABOUT SAN FRANCISCO --

16 THE COURT: A KIDNAPPING AND A DESIRE TO EXTORT MONEY
17 FROM SOMEBODY?

18 MR. BARENS: HOW ABOUT THE BUSINESS ABOUT THE FELLOW
19 BEING IN A TRUNK, YOUR HONOR? THAT WAS PURCHASED IN
20 HOLLYWOOD BY MR. KARNY. HOW ABOUT IF THIS GUY IS IN A TRUNK
21 PURCHASED BY MR. KARNY?

22 THE COURT: THE ONE IN HOLLYWOOD?

23 MR. BARENS: YES, YOUR HONOR.

24 THE COURT: WELL, THAT IS WHAT I WANT TO FIND OUT, ALL
25 OF THE FACTS. MERELY BECAUSE THERE IS A TRUNK INVOLVED IN
26 BOTH CASES, DOESN'T NECESSARILY MEAN HE IS INVOLVED IN THIS
27 MURDER IN HOLLYWOOD.

28 MR. BARENS: IT IS A HECK OF A COINCIDENCE, YOUR HONOR.

1 THE COURT: WELL, THERE ARE SO MANY COINCIDENCES. YOU
2 CAN'T CHARGE ANYBODY WITH A COINCIDENCE.

3 MR. BARENS: I DON'T PLAN TO DO THAT. BUT I AM SAYING
4 THAT --

5 THE COURT: I AM NOT MAKING ANY JUDGMENT ON THIS
6 PARTICULAR MATTER. ALL I WANT TO DO IS TELL YOU NOW, WHAT
7 MY THINKING IS.

8 MY THINKING IS THIS AND IT IS ON THE BASIS OF ---
9 THERE WEREN'T ANY AFFIDAVITS PRODUCED. BUT, IT IS ON THE
10 BASIS OF THE OPPOSITION TO YOUR PARTICULAR MOTION. THESE
11 ARE THE FACTS IN THE CASE AND THEY SAY THAT THERE ISN'T THE
12 SLIGHTEST SUSPICION THAT KARNY DID ANYTHING.

13 THESE POLICE OFFICERS, THE INVESTIGATING OFFICERS
14 WANT TO UNCOVER THE CRIME. AS FAR AS THEY ARE CONCERNED,
15 THERE ISN'T THE SLIGHTEST EVIDENCE TO LINK KARNY WITH THIS
16 PARTICULAR MURDER.

17 ALL I AM SAYING TO YOU IS -- ALL RIGHT. LET ME
18 SEE ALL OF THE EVIDENCE YOU HAVE GOT. I WILL SEE WHETHER
19 OR NOT THERE IS ANY RELATIONSHIP.

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1 MR. BARENS: YOUR HONOR, FOR A PERIOD OF MONTHS, HE WAS
2 A SUSPECT. THEY HAD SOMETHING TO MAKE HIM A SUSPECT. THEN
3 SUDDENLY --

4 THE COURT: WHO SAID HE IS A SUSPECT?

5 MR. BARENS: YOUR HONOR, THEY SAID HE WAS A SUSPECT.

6 THE COURT: NO, NO.

7 MR. WAPNER: NO, I NEVER DID.

8 THE COURT: THEY SAY TO THE CONTRARY.

9 MR. BARENS: IN THE FIRST INSTANCE, WHEN MR. WAPNER
10 WALKED IN --

11 THE COURT: GIVE ME THOSE PAPERS, WILL YOU, PLEASE?

12 MR. BARENS: WHEN MR. WAPNER WALKED INTO CHAMBERS IN
13 THE FIRST INSTANCE A MONTH OR SIX WEEKS AGO, HE SAID TO YOUR
14 HONOR --

15 MR. WAPNER: EXCUSE ME, YOUR HONOR. THAT WAS A SEALED
16 TRANSCRIPT. I DON'T KNOW IF IT IS STILL SEALED OR NOT.

17 AND I WILL APOLOGIZE TO THE COURT AND MR. BARENS
18 FOR INTERRUPTING, BUT I AM NOT SURE, UNLESS IT HAS BEEN
19 UNSEALED, THAT IT IS PROPER TO EVEN DISCUSS THAT.

20 NOTWITHSTANDING THE FACT THAT MR. BARENS IS MIS-
21 QUOTING WHAT I SAID.

22 THE COURT: ALL RIGHT. NOW LOOK, I AM JUST TELLING YOU
23 NOW HOW I AM DISPOSED TO TREAT THIS MOTION. THE CASES
24 CATEGORICALLY INDICATE THAT AT THE VERY MOST, IF THE COURT
25 HAS ANY DOUBT ABOUT IT, WHAT THE COURT SHOULD DO IS TO
26 CONDUCT AN IN CAMERA HEARING AND THIS IS WHAT I PROPOSE TO
27 DO. THAT IS HOW I AM GOING TO DISPOSE OF YOUR MOTION.

28 MR. BARENS: I UNDERSTAND THAT, YOUR HONOR.

29-2

1 COULD I RESPECTFULLY -- YOUR HONOR IS AWARE THAT
2 THE DEFENSE HAS A LEGAL RIGHT TO FILE A REBUTTAL TO THE PAPER
3 WORK WE RECEIVED THIS AFTERNOON PRIOR TO YOUR HONOR'S RULING.

4 THE COURT: OF COURSE, CERTAINLY, I WILL. I DIDN'T KNOW
5 THAT YOU WANTED IT. IF YOU WANT IT, CERTAINLY I WILL ENTERTAIN
6 ANY REBUTTAL PAPERS THAT YOU WANT TO FILE.

7 MR. BARENS: WE ABSOLUTELY WILL FILE A RESPONSIVE
8 DOCUMENT TO THESE PAPERS AND ASK YOUR HONOR --

9 ALTHOUGH WE APPRECIATE YOUR HONOR'S CANDOR AND
10 WISDOM IN THE ORIENTATION YOU HAVE REFLECTED TO DATE, WE
11 SIMPLY ASK THAT YOU RESERVE FINAL JUDGMENT UNTIL YOU BOTH
12 RECEIVE OUR PLEADING AND HEARD OUR ARGUMENT.

13 THE COURT: LET ME SEE, THIS IS WHAT IT SAYS HERE:

14 "ON JANUARY 7, 1987, COUNSEL FOR
15 DEFENDANT HUNT AND THE DISTRICT ATTORNEY WERE
16 SENT A DECLARATION PREPARED BY DETECTIVE ANTONIO
17 DIAZ, THE INVESTIGATING OFFICER IN THE HOLLYWOOD
18 HOMICIDE, STATING THAT DEAN KARNY WAS NOT A
19 SUSPECT IN THAT HOMICIDE."

20 YOU HAVE A COPY OF THAT, DO YOU?

21 MR. BARENS: I DO. QUITE SO, YOUR HONOR. I HAD THAT
22 COPY OF THAT LAST FRIDAY, I BELIEVE.

23 THE COURT: WELL, I AM WILLING TO EVEN GO BEYOND THAT.
24 THAT, OF COURSE, WILL BE CONCLUSIVE, IF HE IS NOT A SUSPECT
25 THERE IS NOTHING AT ALL THAT YOU CAN GET.

26 I WILL GO BEYOND THAT. I WANT TO SEE WHAT THEY
27 HAVE SO AS TO HAVE ME CONCLUDE WHETHER OR NOT THERE ARE ANY
28 SIMILAR CIRCUMSTANCES.

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1 MR. BARENS: I RIGHT WELL DON'T BELIEVE THEY ARE
2 TELLING US THE TRUTH, JUDGE.

3 THE COURT: HOW CAN I DETERMINE THAT THEN?

4 MR. BARENS: YOU WILL IF YOUR HONOR --

5 THE COURT: IF THEY HAVE IN AN AFFIDAVIT SAID THERE ISN'T
6 ANYTHING AT ALL WHICH CONNECTS HIM WITH IT, HOW CAN I GO
7 BEYOND THAT?

8 MR. BARENS: THEN HOW DID THAT START OUT, TO BEGIN WITH?

9 THE COURT: I DON'T KNOW. I DON'T HAVE ANY IDEA.

10 THAT IS WHY I SAID IF I HAD AN IN CAMERA HEARING,
11 I WILL GET ALL THE FACTS AND GET ALL OF THE DOCUMENTATION.

12 MR. BARENS: AGAIN, YOUR HONOR, I AM NOT DISPUTING YOUR
13 HONOR AT ALL.

14 I AM SIMPLY SAYING -- AND I FEEL FOR THE RECORD
15 THAT THE COURT IS ACTING TOTALLY IN GOOD FAITH IN CONFORMING
16 WITH ITS JUDICIAL OBLIGATION IN THIS INSTANCE.

17 I AM SIMPLY SAYING I FEEL INCUMBENT IN HAVING THE
18 ORIENTATION THAT COUNSEL SHOULD PARTICIPATE IN AN EVIDENTIARY
19 HEARING ON THAT.

20 I FEEL IT IS OBLIGATORY TO THIS COUNSEL TO FILE
21 PAPERS THAT CONNECT HIM.

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1 THE COURT: I WILL PERMIT YOU TO DO THAT, OBVIOUSLY,
2 CERTAINLY. WHEN DO YOU WANT TO FILE IT?

3 MR. BARENS: I WILL HAVE MINE FILED IN A TIMELY MANNER,
4 I WILL HAVE IT FILED ON THE DISTRICT ATTORNEY AND THE COURT
5 IN A TIMELY MANNER IN ORDER TO HAVE A HEARING ON TUESDAY.

6 THE COURT: WAIT A MINUTE. THIS IS TUESDAY.

7 MR. BARENS: ACTUALLY, YOUR HONOR, WE SAID --

8 THE COURT: THIS IS TUESDAY. YOU WANT A WEEK TO REPLY
9 TO AN AFFIDAVIT THAT I HAVE HERE?

10 MR. BARENS: ACTUALLY, WE SAID WE WANT TO COMBINE THIS
11 MATTER.

12 THE COURT: I DON'T THINK THERE IS ANY RELATIONSHIP TO
13 THE TWO MATTERS.

14 MR. BARENS: TO THE CONTRARY.

15 THE COURT: ONE IS ENTIRELY DIFFERENT.

16 MR. BARENS: IF THEY AREN'T ENTIRELY DIFFERENT, I WANT
17 YOUR HONOR TO CONSIDER THE FACT THAT THE HOLLYWOOD POLICE
18 DEPARTMENT AND THE SAME OFFICERS THAT ARE INVESTIGATING THE
19 KARNY ALLEGED HOMICIDE IN HOLLYWOOD WERE SEARCHING AT MR.
20 HUNT'S HOUSE LAST THURSDAY.

21 THE COURT: WELL, THAT IS ALL RIGHT.

22 MR. BARENS: IT IS ALL RIGHT?

23 THE COURT: SURE.

24 I KNOW YOU MADE THAT STATEMENT TO ME. SO WHAT?

25 MR. BARENS: WELL, YOUR HONOR, I DON'T THINK IT IS
26 SIMPLY A COINCIDENCE, YOUR HONOR, THAT THE OFFICERS WHO WERE
27 INVESTIGATING THE KARNEY HOMICIDE JUST HAPPENED TO BE THERE
28 ON A WARRANT ISSUED BY SOME FELLOW IN SAN MATEO AND WHO HAPPENED

1 TO SHOW UP AT THE ROBERTS' HOUSE.

2 I AM ALSO AWARE OF CERTAIN OTHER EVIDENCE, YOUR
3 HONOR, THAT I AM NOT AT LIBERTY TO TELL THE COURT AT THIS
4 MOMENT.

5 THE COURT: I THINK THIS ANTONIO DIAZ, WHO WAS THE
6 DETECTIVE WHO WAS IN CHARGE OF THAT, WAS HE CONNECTED ALSO
7 WITH THE SEARCH THAT WENT ON?

8 MR. BARENS: YOUR HONOR, I AM NOT SPECIFICALLY ADVISED
9 OTHER THAN HE WAS ONE OF THE OFFICERS PRESENT AT THE HOUSE.

10 THE COURT: NOW LOOK --

11 MR. BARENS: WHAT IS HE DOING UP THERE?

12 THE COURT: YOU MAKE A REPLY TO THAT AS QUICKLY AS YOU
13 CAN, WILL YOU, PLEASE?

14 MR. BARENS: I WILL DO SO.

15 THE COURT: I WILL TELL YOU MY PRESENT THINKING IS --
16 MY PRESENT THINKING IS THAT INSTEAD OF MAKING AN OUTRIGHT
17 DENIAL OF THE MOTION WHICH I, ON THE BASIS OF THE PAPERS BEFORE
18 ME, COULD DO -- COULD DO. THE BASIS IS THEY SAY "NO, HE IS
19 NOT A SUSPECT." AND IF THE POLICE SAY HE IS NOT A SUSPECT,
20 THAT IS THE END OF IT.

21 HOWEVER, TO BE PERFECTLY SURE THAT THEY ARE NOT
22 KEEPING ANYTHING FROM ME, THAT IS WHY I SUGGESTED THAT AN IN
23 CAMERA HEARING WOULD BE THE BEST THING TO DO.

24 MR. BARENS: AGAIN, UNLESS YOUR HONOR THINKS I AM
25 DEBATING WITH YOUR HONOR, I SIMPLY WANT THE OPPORTUNITY TO
26 FILE MY PAPERS IN THE HOPE IT MIGHT MODIFY YOUR HONOR'S
27 POINT OF VIEW. THAT IS ALL I AM SAYING.

28 THE COURT: CERTAINLY.

1 YOU TRY TO GET IT FOR ME EARLIER THAN NEXT TUESDAY.

2 MR. BARENS: ALL RIGHT. I WILL DO IT AS FAST AS I
3 CAN.

4 THE COURT: I WANT TO HAVE THIS IN CAMERA LONG BEFORE
5 THAT, IF I CAN.

6 MR. BARENS: YOUR HONOR, I WILL BETTER ADVISE YOUR HONOR
7 BY TOMORROW MORNING.

8 THE COURT: VERY GOOD.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 MR. WAPNER: YOUR HONOR, WE ARE NOT HAVING THE IN
11 CAMERA HEARING OR ANY HEARINGS ON THE MOTION TOMORROW; IS THAT
12 CORRECT?

13 THE COURT: THAT'S CORRECT.

14 MR. WAPNER: THANK YOU.

15 THE COURT: I WANT TO READ ANY PAPERS, I WILL READ ANY
16 PAPERS THAT I WILL RECEIVE. YOU WILL FURNISH ME THE REPLY
17 PAPERS AND THEN I WILL MAKE UP MY MIND.

18 MR. BARENS: THANK YOU, YOUR HONOR.

19 (AT 4:45 P.M. AN ADJOURNMENT WAS TAKEN
20 UNTIL WEDNESDAY, JANUARY 14, 1987 AT
21 10:30 A.M.)

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