

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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Entered by
Date

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

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
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LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 34 OF 101
(PAGES 5092 TO 5156, 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

WEDNESDAY, JANUARY 14, 1987

VOLUME 34

PAGES 5092 TO 5286 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

1 SANTA MONICA, CALIFORNIA; WEDNESDAY, JANUARY 14, 1987; 10:45 A.M.
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE
3 (APPEARANCES AS NOTED ON TITLE PAGE.)
4

5 THE COURT: STIPULATED THE DEFENDANT IS PRESENT, COUNSEL
6 ARE PRESENT. THE PROSPECTIVE JURORS ARE PRESENT, AGAIN WITH
7 THE EXCEPTION OF -- WHAT IS HIS NAME?

8 THE CLERK: VENICE MURRAY.

9 THE COURT: VENICE MURRAY.

10 YOU MAY PROCEED.

11 THIS IS THE SECOND TIME HE HASN'T BEEN HERE AND
12 WE WILL EXCLUDE HIM AS A JUROR.

13 GO AHEAD. WHAT HAVE WE GOT NEXT?

14 MR. BARENS: YOUR HONOR, I --

15 THE COURT: WHAT DO WE HAVE?

16 MR. BARENS: YOUR HONOR, I HAD CONCLUDED MY EXAMINATION
17 AND PASS FOR CAUSE.

18 THE COURT: THANK YOU.

19 MR. BARENS: THANK YOU, YOUR HONOR.

20 MR. WAPNER: GOOD MORNING, MRS. FELTS.

21 MS. FELTS: HI.

22 MR. WAPNER: HOW ARE YOU?

23 MS. FELTS: I AM FINE, THANK YOU.

24 MR. WAPNER: YOU HAVE HEARD THE QUESTIONS I HAVE ASKED
25 ALL OF THE OTHER JURORS?

26 MS. FELTS: YES.

27 MR. WAPNER: YOU WERE SPARED THE NAUTICAL ADVENTURE THAT
28 ALL OF THE OTHER JURORS WERE TREATED TO.

1 HOW DID YOU FEEL ABOUT THE EXAMPLE WITH THE CHERRY
2 PIE, DID YOU FOLLOW THAT?

3 MS. FELTS: YES, I DID.

4 MR. WAPNER: DID YOU UNDERSTAND THAT THAT WAS --

5 MS. FELTS: YES.

6 MR. WAPNER: -- A CIRCUMSTANTIAL EVIDENCE REASONING
7 PROCESS?

8 MS. FELTS: YES.

9 MR. WAPNER: DO YOU HAVE ANY OPINION AS TO WHO ATE THE
10 PIE?

11 MS. FELTS: I -- IF THERE IS NOTHING ELSE GOING ON AND
12 IT IS JUST THE CHILD AND MYSELF AND THE PIE AND IT IS ALL OVER
13 HIS FACE, I WOULD HAVE TO ASSUME THAT THE CHILD ATE IT.

14 MR. WAPNER: OKAY. WOULD THERE BE OTHER THINGS THAT
15 YOU WOULD WANT TO KNOW?

16 MS. FELTS: IF THE CHILD SAID "NO, I DIDN'T," I WOULD
17 ASK HIM HOW IT GOT ON HIS SHIRT AND ON HIS FACE.

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1 MR. WAPNER: OKAY. YOU WOULD ENGAGE IN A LITTLE CROSS-
2 EXAMINATION, MAYBE?

3 MS. FELTS: YES.

4 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
5 OF THEFT OR CON SCHEME?

6 MS. FELTS: NO.

7 (PROSPECTIVE JUROR MURRAY ENTERS THE
8 COURTROOM.)

9 THE COURT: YOU ARE EXCUSED FROM ANY KIND OF FURTHER
10 JURY DUTY.

11 MR. MURRAY: OKAY.

12 THE COURT: SORRY.

13 MR. WAPNER: HAVE YOU READ ANYTHING IN THE PAPERS
14 RECENTLY ABOUT IMMUNITY?

15 MS. FELTS: NO.

16 MR. WAPNER: HAVE YOU HEARD ANY DISCUSSIONS ABOUT WHAT
17 IS GOING ON IN WASHINGTON ABOUT THE POSSIBILITY OF GIVING
18 OLIVER NORTH IMMUNITY TO TESTIFY AND THINGS LIKE THAT?

19 MS. FELTS: NO.

20 MR. WAPNER: YOU DIDN'T SEE THAT ARTICLE ABOUT THE
21 MURDER THAT OCCURRED OF THE BASKETBALL PLAYER A YEAR AGO OR
22 SO, WHERE THEY WERE GIVING IMMUNITY TO SOMEONE, TO TESTIFY
23 AGAINST SOMEONE ELSE?

24 MS. FELTS: I PROBABLY DID BUT I DON'T REMEMBER.

25 MR. WAPNER: DO YOU HAVE ANY FEELINGS ABOUT WITNESSES
26 WHO TESTIFY UNDER GRANTS OF IMMUNITY, GENERALLY?

27 MS. FELTS: NO.

28 MR. WAPNER: HOW MANY KIDS DO YOU HAVE?

1 MS. FELTS: TWO.

2 MR. WAPNER: HOW OLD ARE THEY?

3 MS. FELTS: I HAVE A 13-YEAR-OLD SON AND A SIX-YEAR-OLD
4 DAUGHTER.

5 MR. WAPNER: KEEP YOUR VOICE UP.

6 MS. FELTS: A 13-YEAR-OLD SON AND A SIX-YEAR-OLD
7 DAUGHTER.

8 MR. WAPNER: THEY ARE BOTH IN SCHOOL?

9 MS. FELTS: YES.

10 MR. WAPNER: YOU SAID THAT YOU WERE VERY INVOLVED WITH
11 THEM. WHAT KINDS OF THINGS DO YOU DO WHEN YOU ARE SPENDING
12 TIME WITH YOUR CHILDREN?

13 MS. FELTS: MY SON IS VERY ACTIVE IN SPORTS IN SCHOOL.

14 MY DAUGHTER HAS DANCE LESSONS. RIGHT NOW, SHE
15 IS PRACTICING FOR A BALLET SHOW AT THE END OF THE YEAR THAT
16 WE ARE INVOLVED IN.

17 MR. WAPNER: HAVE YOU EVER BEEN IN A SERIOUS DISCUSSION
18 WITH A FRIEND OR RELATIVE, TAKEN A POSITION, LISTENED TO WHAT
19 THAT PERSON HAD TO SAY AND THEN CHANGED YOUR MIND?

20 MS. FELTS: YES.

21 MR. WAPNER: IF YOU WERE IN THE JURY ROOM, DO YOU THINK
22 YOU COULD DO THE SAME THING, IF YOU TOOK A POSITION AND YOU
23 DISCUSSED IT WITH THE OTHER JURORS AND DECIDED THAT YOUR
24 INITIAL POSITION WAS INCORRECT?

25 MS. FELTS: YES.

26 MR. WAPNER: ON THE OTHER HAND, IF YOU DECIDED YOUR
27 INITIAL POSITION WAS STILL RIGHT, COULD YOU HOLD FAST TO THAT?

28 MS. FELTS: YES.

1 MR. WAPNER: IF YOU HEAR THIS WHOLE CASE AND YOU DECIDE
2 THAT THE EVIDENCE PROVES BEYOND A REASONABLE DOUBT THAT THERE
3 WAS A MURDER AND THAT THE DEFENDANT DID IT AND YOU ALSO COME
4 TO THE CONCLUSION THAT YOU DON'T LIKE THE PERSON WHO WAS
5 KILLED, IS THAT GOING TO AFFECT YOUR VERDICT IN ANY WAY?

6 MS. FELTS: NO.

7 MR. WAPNER: THE BACKGROUND OF THE PERSON WHO WAS KILLED,
8 WHETHER YOU LIKED HIM OR YOU DIDN'T LIKE HIM, SHOULDN'T MAKE
9 ANY DIFFERENCE AS TO WHETHER A CRIME WAS COMMITTED AND WHO
10 DID IT?

11 MS. FELTS: THAT'S RIGHT.

12 MR. WAPNER: THANK YOU VERY MUCH. I WILL PASS FOR CAUSE,
13 YOUR HONOR.

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

15 MR. WAPNER: WE ASK THE COURT TO THANK AND EXCUSE
16 MS. WARBURTON, JUROR NUMBER 12.

17 THE COURT: YES. THANK YOU, MS. WARBURTON.

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1 THE CLERK: DAVID NAISTAT. NAISTAT?

2 MR. NAISTAT: NAISTAT.

3 THE CLERK: N-A-I-S-T-A-T.

4 THE COURT: MR. NAISTAT, I THINK THAT SOMETIME AGO YOU
5 TOLD US THAT YOU OR SOME MEMBER OF YOUR FAMILY ARE IDENTIFIED
6 WITH LAW ENFORCEMENT WORK OF SOME KIND?

7 MR. NAISTAT: WELL, I WORK INDIRECTLY IN THE AREA OF
8 LAW ENFORCEMENT. I AM AN INVESTIGATOR FOR THE FEDERAL
9 DEPOSIT INSURANCE CORPORATION AND IN THAT CAPACITY, I
10 PERIODICALLY WORK WITH LAW ENFORCEMENT, PRINCIPALLY THE F.B.I.

11 THE COURT: BECAUSE OF YOUR EXPERIENCE YOU HAVE HAD,
12 I SUPPOSE THAT IS OVER A PERIOD OF YEARS; IS THAT RIGHT?

13 MR. NAISTAT: WELL, I HAVE BEEN WITH THE F.D.I.C.
14 FOR ABOUT A YEAR OR MORE.

15 THE COURT: WOULD THAT IN ANY WAY -- WOULD YOUR
16 EMPLOYMENT IN ANY WAY PREDISPOSE YOU TO FAVOR ONE SIDE OVER
17 THE OTHER IN THIS CASE?

18 MR. NAISTAT: I DON'T BELIEVE SO.

19 THE COURT: OTHER THAN THAT, IF I WERE TO ASK YOU THE
20 SAME GENERAL QUESTIONS WHICH WERE ASKED OF THE OTHER JURORS
21 WHILE YOU WERE IN ATTENDANCE HERE, WOULD YOUR ANSWERS BE
22 ANY DIFFERENT OR WOULD THEY BE SUBSTANTIALLY THE SAME?

23 MR. NAISTAT: SUBSTANTIALLY THE SAME.

24 THE COURT: I THINK YOU INDICATED TO US WHAT THE NATURE
25 OF YOUR EMPLOYMENT IS.

26 TELL US YOUR EDUCATIONAL BACKGROUND, IF YOU WILL,
27 PLEASE.

28 MR. NAISTAT: I HAVE A BACHELOR'S DEGREE IN BUSINESS

1 FROM RUTGERS UNIVERSITY IN NEW JERSEY AND I DID SOME GRADUATE
2 WORK AT USC.

3 THE COURT: THERE IS A MRS. NAISTAT, IS THERE?

4 MR. NAISTAT: NO. I AM SINGLE.

5 THE COURT: WHERE DO YOU LIVE?

6 MR. NAISTAT: MAR VISTA.

7 THE COURT: HAVE YOU EVER SERVED ON A JURY ON ANY
8 CRIMINAL MATTER UNTIL THIS TIME?

9 MR. NAISTAT: YES, I HAVE SERVED ON A NUMBER OF JURIES
10 OVER THE YEARS.

11 THE COURT: ANY INVOLVING CRIMINAL ACTIONS?

12 MR. NAISTAT: MINOR CRIMINAL ACTIONS, YES.

13 THE OCURT: YOU MEAN IN MUNICIPAL COURT?

14 MR. NAISTAT: YES.

15 THE COURT: AND IN THOSE ACTIONS, THE JURIES REACHED
16 VERDICTS?

17 MR. NAISTAT: IN SEVERAL, YES AND I GUESS IN SEVERAL,
18 NO.

19 THE COURT: ALL RIGHT. HAVE YOU EVER BEEN A VICTIM OF
20 ANY KIND OF A CRIME?

21 MR. NAISTAT: A NUMBER OF YEARS AGO I HAD TWO CARS
22 STOLEN IN ONE MONTH.

23 THE COURT: BECAUSE OF THOSE EXPERIENCES, WOULD THAT
24 IN ANY WAY AFFECT YOU IN JUDGING THE GUILT OR INNOCENCE OF
25 THE DEFENDANT WHO IS CHARGED WITH A DIFFERENT TYPE OF A
26 CRIME?

27 MR. NAISTAT: I DON'T BELIEVE SO.

28 THE COURT: ALL RIGHT, GO AHEAD.

1 MR. BARENS: THANK YOU, YOUR HONOR.

2 GOOD MORNING, MR. NAISTAT.

3 MR. NAISTAT: GOOD MORNING.

4 MR. BARENS: HOW MANY TIMES HAVE YOU BEEN A JUROR?

5 MR. NAISTAT: TO TELL YOU THE TRUTH, I HAVE LOST COUNT.
6 I WOULD SAY PROBABLY FOUR OR FIVE.

7 MR. BARENS: FOUR OR FIVE? WERE THOSE ALL --

8 WELL, WHAT COURTS WERE YOU IN?

9 MR. NAISTAT: IT WAS ALL MUNICIPAL OR TRAFFIC COURT,
10 MINOR STUFF.

11 MR. BARENS: WERE THEY DRUNK DRIVING CASES?

12 MR. NAISTAT: ONE WAS DRUNK DRIVING. ONE WAS DRIVING
13 UNDER THE INFLUENCE OF PCP.

14 MR. BARENS: WAS THAT THE MOST SERIOUS MATTER IN WHICH
15 YOU WERE A JUROR?

16 MR. NAISTAT: CRIMINAL-WISE, YES.

17 MR. BARENS: IN ADDITION THERETO, HAVE YOU BEEN A JUROR
18 ON A CIVIL CASE AS WELL?

19 MR. NAISTAT: YES, AT LEAST ONCE THAT I CAN RECALL.

20 MR. BARENS: HOW IS IT YOU KEEP GETTING CALLED AS A
21 JUROR, ANY IDEA?

22 MR. NAISTAT: I KEEP ASKING MYSELF THAT. I DON'T KNOW.

23 MR. BARENS: WELL, AT LEAST YOU ARE MOVING UP.

24 MR. NAISTAT: THAT'S RIGHT.

25 MR. BARENS: ON THE DRIVING UNDER THE INFLUENCE OF PCP,
26 YOU WERE A JUROR THROUGHOUT THAT PROCESS?

27 MR. NAISTAT: YES.

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

1 MR. NAISTAT: YES.

2 MR. BARENS: AND IN REACHING THAT VERDICT, WERE YOU OF
3 THE SAME MIND, SO FAR AS HOW YOU VOTED FROM THE TIME YOU
4 INITIALLY RETIRED UNTIL THE TIME THE BALLOT WAS CAST?

5 MR. NAISTAT: YES.

6 MR. BARENS: HOW DID YOU FEEL ABOUT THAT CASE, HOW DID
7 YOU FEEL ABOUT YOUR EXPERIENCE ON THAT CASE?

8 MR. NAISTAT: I FELT JUSTICE WAS SERVED.

9 MR. BARENS: AND DID THE DEFENDANT TESTIFY IN THAT
10 CASE?

11 MR. NAISTAT: I DON'T RECALL, TO TELL YOU THE TRUTH.

12 MR. BARENS: ON ANY OF THE CASES WHEREIN YOU WERE A
13 JUROR, DID THE DEFENDANT TESTIFY?

14 MR. NAISTAT: I BELIEVE SO.

15 MR. BARENS: DO YOU HAVE A SENSE AS TO TODAY, AS TO HOW
16 YOU FELT ABOUT THAT DEFENDANT AFTER HE TESTIFIED, AS TO
17 WHETHER OR NOT HE HAD BEEN CREDIBLE?

18 MR. NAISTAT: WELL, I GUESS I FOUND WITNESSES, SOME
19 CREDIBLE, SOME NOT CREDIBLE OR INCREDIBLE, DEPENDING ON HOW
20 YOU WANT TO SAY IT.

21 I CAN'T GENERALIZE ABOUT THAT.

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1 MR. BARENS: LET ME ASK YOU THIS. WELL SPECIFICALLY,
2 IN TERMS OF A DEFENDANT WHO TESTIFIED, DID YOU FIND THE
3 DEFENDANTS THERE CREDIBLE OR NOT WHEN YOU LISTENED TO THEM?

4 MR. NAISTAT: IN SOME CASES, YES.

5 MR. BARENS: DID YOU FIND THAT YOU HAD A FEELING AS
6 TO WHAT THEY MIGHT SAY OR WHAT THEIR POSITION MIGHT BE,
7 BEFORE THEY TESTIFIED THAT WAS SOMEWHAT VALIDATED BY WHAT
8 THEY SAID, ONCE THEY DID TESTIFY?

9 MR. NAISTAT: NO. I THINK I HAD A TOTALLY OPEN MIND
10 BEFORE I HEARD THEM. I JUST BASED MY REACTION ON WHAT THEY
11 SAID.

12 MR. BARENS: HOW DID YOU FEEL IN THE CASE ABOUT THE
13 PCP PERSON? HOW DID YOU FEEL ABOUT THE WAY THE LAWYERS
14 PRESENTED THEIR POSITIONS IN THAT CASE?

15 MR. NAISTAT: WELL, I AM MUCH MORE IMPRESSED WITH THE
16 COUNSEL I AM WITNESSING HERE THAN ANY PRIOR COUNSELS.

17 I DON'T THINK THAT I FELT IN ANY OF MY PRIOR JURY
18 SERVICE THAT THE DEFENDANTS WERE WELL SERVED BY THEIR
19 COUNSELS.

20 MR. BARENS: THANK YOU, SIR. IN THAT CASE, WAS THAT
21 AN OBSERVATIONS CASE, WHERE THEY HAD THE POLICE OFFICERS WHO
22 HAD OBSERVED THE DEFENDANT'S CONDUCT IN A CERTAIN MANNER AND
23 THEN THEY TESTIFIED ABOUT THE CONCLUSIONS THEY REACHED ON
24 THOSE OBSERVATIONS?

25 MR. NAISTAT: THAT HAPPENED ON OCCASION. IT WAS AT
26 LEAST ONE OCCASION, THAT I CAN RECALL.

27 MR. BARENS: I AM REFERENCING NOW THE PCP CASE. WAS
28 THAT THE WAY THAT WENT DOWN OR WAS HE ACTUALLY FOUND IN

1 POSSESSION OF CONTRABAND?

2 MR. NAISTAT: HE WAS NOT TO MY RECOLLECTION, FOUND IN
3 POSSESSION OF CONTRABAND. THE POLICE OFFICERS DID TESTIFY,
4 YES.

5 MR. BARENS: AND DID THEY HAVE ANY FORENSIC MATERIAL
6 AVAILABLE, BY WAY OF ANY KIND OF TEST THAT HAD BEEN DONE,
7 LIKE A BLOOD TEST OR SOMETHING LIKE THAT?

8 MR. NAISTAT: I BELIEVE SO.

9 MR. BARENS: DID YOU FIND THE PRESENCE OF THE -- AND
10 I ASK YOU THIS AS TO YOUR STATE OF MIND, REFLECTING ON THE
11 MATTER, NOT SO MUCH AS YOU MIGHT HAVE FELT AT THE MOMENT.
12 ALL RIGHT?

13 SIR, DID YOU FIND THAT THE PRESENCE OF THAT BLOOD
14 TEST WAS OUTCOME DETERMINATIVE IN YOUR MIND?

15 MR. NAISTAT: NOT EXCLUSIVELY. IT CERTAINLY CARRIED
16 WEIGHT. THERE WERE OTHER FACTORS.

17 MR. BARENS: CAN YOU REMEMBER WHAT ANY OTHER FACTOR
18 WAS THAT HAD A BEARING FOR YOU IN THAT CASE?

19 MR. NAISTAT: WELL, THE OFFICERS' TESTIMONY ABOUT WHAT
20 TRANSPIRED, THE LACK OF ANY REPUTATION BY THE DEFENSE OF A
21 LOT OF THE ALLEGATIONS, THE FACTS AS TO DAMAGE TO THE CAR.
22 I CAN'T REMEMBER ALL OF THE ELEMENTS.

23 MR. BARENS: DO YOU RECALL NOW WHETHER OR NOT THE
24 DEFENDANT TESTIFIED IN THAT MATTER?

25 MR. NAISTAT: I AM NOT REALLY SURE.

26 MR. BARENS: YOUR SENSE IS THAT THE DEFENSE FAILED TO
27 REFUTE SOME OR ALL OR ANY OF THE ALLEGATIONS OF THE PEOPLE
28 IN THAT CASE? DOES THAT SUGGEST TO YOU THAT PERHAPS, THE

1 DEFENSE DID NOT TESTIFY?

2 MR. NAISTAT: HE MAY VERY WELL HAVE NOT TESTIFIED. BUT
3 I AM JUST NOT SURE.

4 MR. BARENS: ALL RIGHT. IF HE DIDN'T, I DON'T KNOW
5 WHAT THOSE FOLKS HAD IN MIND, WITH ALL THAT EVIDENCE COMING
6 IN.

7 DO YOU UNDERSTAND THAT A DEFENDANT COULD TESTIFY
8 AND NOT BE ABLE TO REFUTE WHAT HAPPENED TO AN ALLEGED VICTIM
9 BECAUSE THE DEFENDANT MIGHT NOT KNOW?

10 MR. NAISTAT: WELL, I FULL WELL REALIZE THAT.

11 MR. BARENS: IN OTHER WORDS, DO YOU UNDERSTAND THE DEFENSE
12 COULD SAY WELL, I DIDN'T DO ANYTHING TO THIS ALLEGED VICTIM
13 BUT IF YOU ARE SAYING SO AND SO HAPPENED TO HIM, I DON'T KNOW.
14 I WAS NOT INVOLVED WITH HIM.

15 MR. NAISTAT: CERTAINLY THAT IS POSSIBLE.

16 MR. BARENS: ALL RIGHT. WOULD THAT BE ONE OF THOSE
17 THINGS THAT YOU WOULD HAVE AN OPINION, AS YOU SIT HERE TODAY,
18 THAT WOULD BE UNREASONABLE TO YOU?

19 MR. NAISTAT: NO.

20 MR. BARENS: ALL RIGHT. NOW, HOW DO YOU FEEL ABOUT
21 THE PRESUMPTION OF INNOCENCE THAT THE DEFENDANT COMES HERE
22 WITH?

23 MR. NAISTAT: I AM EXTREMELY COMFORTABLE WITH IT.

24 MR. BARENS: YOU DON'T THINK IT IS JUST SOME
25 PROCEDURAL NICETY THAT WE HAVE SET UP FOR PEOPLE, BEFORE WE
26 CAN CONVICT THEM?

27 MR. NAISTAT: ABSOLUTELY NOT.

28 MR. BARENS: BUT IT IS A SUBSTANTIVE RIGHT?

1 MR. NAISTAT: DEFINITELY.

2 MR. BARENS: NOW, TALK TO ME ABOUT YOUR EMPLOYMENT WHICH
3 YOU KNOW, HAS SOME CONCERN FOR ME.

4 WHAT PRECISELY, WOULD YOU DO IN YOUR EMPLOYMENT?

5 MR. NAISTAT: WELL, TO MAKE IT SIMPLE, I SPECIALIZE
6 BASICALLY IN INVESTIGATING ON A POST-MORTEM BASIS, YOU MIGHT
7 SAY, WHAT HAPPENED TO BANKS THAT HAVE FAILED.

8 AND MY EMPHASIS IS REALLY TO ASCERTAIN WHAT CAUSED
9 THE BANK TO FAIL, WHO WAS CULPABLE FOR IT AND TO FORWARD
10 FINDINGS TO THE F.D.I.C. ATTORNEYS IN WASHINGTON.

11 THE MOTIVATION, REALLY TO SOME EXTENT, IS TO
12 ASSIST THE FBI WITH ANY CRIMINAL PROSECUTIONS. BUT MORE
13 GENERALLY, IT IS TO ENABLE THE F.D.I.C. TO MAKE CLAIMS AGAINST
14 BANKERS' BLANKET BOND INSURANCE POLICIES AND TO PURSUE
15 DIRECTORS AND OFFICERS AND LIABILITY CLAIMS AS A MEANS OF
16 RECOUPING MONEY FOR THE F.D.I.C.

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1 MR. BARENS: AND INDEED, WHEN YOU GO TO COMMENCE YOUR
2 INVESTIGATION FROM THE TOP, YOU GO IN THERE ALMOST WITH AN
3 ASSUMPTION THAT SOMEBODY IS CULPABLE OF SOMETHING?

4 MR. NAISTAT: NO. THAT IS NOT CORRECT. THERE ARE BANKS
5 TODAY THAT FAIL BECAUSE OF ECONOMIC CONDITIONS, WHERE REALLY,
6 NOBODY CAN BE FOUND CULPABLE.

7 MR. BARENS: ISN'T ONE OF THE FIRST THINGS YOU LOOK
8 FOR HOWEVER, IS TO SEE WHETHER OR NOT SOMEBODY IS CULPABLE
9 OF SOMETHING? WE GO IN THERE AND WE SEE IF THERE ARE ANY
10 LOANS TO DIRECTORS OR UNREPAID LOANS THAT WERE MADE TO
11 BROTHERS-IN-LAW OR REAL ESTATE ADVENTURES THAT INVOLVED THE
12 DIRECTORS OBLIQUELY?

13 MR. NAISTAT: THAT IS A PART OF THE INVESTIGATION,
14 CERTAINLY. YES.

15 MR. BARENS: YOU ALSO DO THAT, DON'T YOU?

16 MR. NAISTAT: STANDARD PROCEDURE.

17 MR. BARENS: AND IN DOING THAT, YOU HAVE AVAILABLE TO
18 YOU THE RESOURCES OF THE FBI PEOPLE?

19 MR. NAISTAT: ON OCCASION.

20 MR. BARENS: LOOKING FOR ALL THOSE TITLE 18 VIOLATIONS
21 AND ALL OF THE OTHER THINGS? LET ME ASK YOU THIS. HOW DO
22 YOU FEEL ABOUT THOSE FBI PERSONNEL YOU WORKED WITH?

23 MR. NAISTAT: I HAVE FOUND THAT SOME WERE COMPETENT
24 AND I HAVE FOUND THAT SOME WERE HIGHLY INCOMPETENT, IN MY
25 JUDGMENT.

26 MR. BARENS: BUT YOU DID FIND SOME THAT WERE HONEST
27 AND SOME LESS THAN HONEST?

28 MR. NAISTAT: I NEVER HAVE REALLY FOCUSED ON THAT

1 QUESTION.

2 MR. BARENS: I ASK YOU TO AT THIS POINT. DO YOU THINK
3 ALL THOSE FBI PEOPLE, THAT THEY ARE ALL HONEST?

4 MR. NAISTAT: I DOUBT IT. THERE WAS A CONVICTION
5 RECENTLY OF AN FBI AGENT.

6 MR. BARENS: HE SOLD SECRETS TO THE RUSSIANS?

7 MR. NAISTAT: TRUE.

8 MR. BARENS: WHILE ON THE PAYROLL OF THE UNITED STATES?

9 MR. NAISTAT: THAT'S TRUE.

10 MR. BARENS: LIED?

11 MR. NAISTAT: THAT'S TRUE.

12 MR. BARENS: OVER A LONG PERIOD OF TIME. DO YOU THINK
13 IT WOULD BE IMPOSSIBLE FOR YOU TO BELIEVE THAT PERHAPS DURING
14 THE INVESTIGATION, AN FBI AGENT YOU WERE WORKING WITH, COULD
15 DEVELOP A SECRET AGENDA OF SOME SORT, PERHAPS IN CONSIDERATION
16 FOR SOME REMUNERATION BEING PAID BY A PROSPECTIVE PERSON WHO
17 MIGHT BE INDICTED AS A RESULT OF THAT?

18 MR. NAISTAT: CERTAINLY IT IS CONCEIVABLE.

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1 MR. BARENS: IT CERTAINLY WOULD NOT BE SOMETHING BEYOND
2 THE REALM OF REASONABLENESS, WOULD IT?

3 MR. NAISTAT: NO.

4 MR. BARENS: HOW MANY YEARS HAVE YOU BEEN DOING THIS?

5 MR. NAISTAT: OH, JUST LESS THAN A YEAR AND A HALF.

6 MR. BARENS: LESS THAN A YEAR AND A HALF?

7 MR. NAISTAT: YES.

8 MR. BARENS: WELL, I KNOW YOU WEREN'T A PROFESSIONAL
9 JUROR BEFORE THAT. WHAT DID YOU DO THEN?

10 THE COURT: WHAT DO YOU MEAN BY PROFESSIONAL JUROR?

11 MR. BARENS: IT WAS A MOMENT OF HUMOR, YOUR HONOR.

12 (LAUGHTER IN COURTROOM.)

13 THE COURT: DESIGNATE IT AS SUCH SO I KNOW WHEN YOU ARE
14 JOKING AND WHEN YOU ARE NOT JOKING.

15 MR. BARENS: THAT WAS A DESIGNATED, SOMEWHAT REMOTE,
16 MOMENT OF HUMOR.

17 THE COURT: QUESTIONABLE, I WOULD SAY.

18 MR. BARENS: INDEED QUESTIONABLE.

19 WHAT DID YOU DO PRIOR TO THE LAST YEAR AND A HALF?

20 MR. NAISTAT: WELL, BASICALLY, I HAVE SPENT THE LAST
21 18 -- OR PRIOR TO THIS EMPLOYMENT, I HAVE SPENT THE LAST 18
22 PLUS YEARS IN COMMERCIAL BANKING IN THE LOS ANGELES AREA.

23 MR. BARENS: IN THAT CAPACITY, YOU DID WHAT AS A
24 COMMERCIAL BANKER?

25 MR. NAISTAT: I HAD MANY DIFFERENT JOBS, REALLY. I DID
26 BRANCH BANKING. I TAUGHT CREDIT. I HANDLED NATIONAL ACCOUNTS,
27 TRAVELED NATIONALLY. VARIOUS -- I HAVE HAD VARIOUS
28 RESPONSIBILITIES.

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1 MR. BARENS: WAS THERE SOMETHING IN PARTICULAR THAT
2 QUALIFIED YOU TO TRANSITION FROM THAT EMPLOYMENT TO YOUR
3 PRESENT JOB?

4 MR. NAISTAT: WELL, I OBSERVED A LOT OF WHAT MAKES A
5 COMMERCIAL BANK OPERATE AND WHAT ITS INNER-WORKINGS ARE.

6 MR. BARENS: WAS THERE ANYTHING IN PARTICULAR THAT
7 MOTIVATED THE CHANGE FROM COMMERCIAL BANKING TO THIS MORE,
8 WHAT I WOULD GENERALLY CALL, INVESTIGATORY ACTIVITY?

9 MR. NAISTAT: WELL, I SAW A LOT OF PROBLEMS CROPPING
10 UP IN THE INDUSTRY. IT IS NO SECRET THAT THE INDUSTRY IS
11 HAVING DIFFICULT TIMES. AND I FELT THAT JOINING THE
12 REGULATORY BODY WAS A GOOD CAREER MOVE.

13 MR. BARENS: IN YOUR PRESENT WORK, DO YOU SEE A LOT OF
14 SITUATIONS WITH THESE BANKS WHERE THERE ARE FAIRLY
15 SOPHISTICATED CON SITUATIONS INVOLVED?

16 MR. NAISTAT: I OBSERVED THAT QUITE REGULARLY, YES.

17 MR. BARENS: DO YOU SEE SITUATIONS WHERE THE APPEARANCE
18 OF REALITY AND THE SUBSTANCE OF REALITY ARE MARKEDLY
19 DIFFERENT?

20 MR. NAISTAT: IT HAPPENS FROM TIME TO TIME TO BE TRUE,
21 YES.

22 MR. BARENS: ONE THING YOU COULD NOT DO IN YOUR JOB,
23 I PRESUME, IS JUST ACCEPT PREDICTABLE, IF IT LOOKS LIKE
24 SOMETHING -- OH, THAT IS PROBABLY WHAT IT IS AND WE WILL LEAVE
25 IT AT THAT -- YOU CAN'T REALLY APPROACH YOUR JOB ON THAT
26 BASIS, CAN YOU?

27 MR. BAISTAT: NO.

28 WHAT YOU SEE IS NOT ALWAYS WHAT YOU GET, THAT IS

1 TRUE.

2 MR. BARENS: AND THE SIMPLE, OBVIOUS, WHAT I MIGHT
3 GENERALLY CALL REASONABLE ANSWER IN THOSE SITUATIONS USUALLY
4 ISN'T ACCEPTABLE, IS IT?

5 MR. NAISTAT: IT MAY END UP BEING ACCEPTABLE. IT MAY
6 NOT.

7 MR. BARENS: IT IS A GOOD POSSIBILITY, WHEN YOU SEE ALL
8 OF THESE INNOCENT LOOKING REAL ESTATE LOANS THAT THE BANK
9 CAN'T RECOVER, THAT THEY ARE SOMETHING OTHER THAN INNOCENT
10 LOOKING REAL ESTATE LOANS?

11 MR. NAISTAT: THAT HAS BEEN KNOWN TO HAPPEN.

12 MR. BARENS: I WILL BET, NOT JUST ONCE IN A WHILE.

13 WHAT I AM GETTING TO ON THAT, IS BEFORE YOU CAN
14 COME TO A CONCLUSION ABOUT WHAT IS REASONABLE, EVEN BASED ON
15 LEGITIMATE APPEARING DOCUMENTATION, LEGITIMATE APPEARING
16 TRANSACTIONS, YOU HAVE TO KNOW ALL OF THE UNDERLYING FACTS.

17 MR. NAISTAT: THAT'S RIGHT, AND DEVELOPING A THOROUGH
18 AND COMPREHENSIVE DATA BASE IS VERY IMPORTANT, THAT'S TRUE.

19 MR. BARENS: AND LOOKING AT THE BIASES OR MOTIVATIONS
20 OF THE PLAYERS IN THOSE TRANSACTIONS?

21 MR. NAISTAT: THAT IS VALUABLE ALSO, YES.

22 MR. BARENS: DO YOU HAVE ANY EXPERIENCE WITH COMMODITIES
23 OR SECURITIES TRADING?

24 MR. NAISTAT: WELL, I INVEST IN THE STOCK MARKET PLACE
25 AND I HAVE SEEN IN MY PROFESSIONAL WORK SOME INTERESTING
26 SPECULATIONS IN THE COMMODITIES MARKET, YES.

27 MR. BARENS: WOULD IT BE POSSIBLE FOR YOU TO BELIEVE
28 THAT A COMMODITIES ACCOUNT COULD BE TRADED AND THAT SOMEONE

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1 COULD HAVE AN ARRANGEMENT WITH THE HOUSE, THAT ALTHOUGH IT
2 APPEARED LIKE THEY WERE TRADING A MAJOR ACCOUNT, THAT THERE
3 WAS REALLY NO MONEY INVOLVED AT ALL, THAT THEY WERE JUST
4 GOING THROUGH AN EXERCISE TO SEE HOW I WOULD PERFORM AS A
5 TRADER, BUT THERE WOULD BE NO REAL STAKES INVOLVED, EVEN
6 THOUGH ALL OF THE PAPER WORK WOULD LOOK LIKE THERE WAS
7 MILLIONS INVOLVED IN THIS DEAL; WOULD THAT BE SOMETHING YOU
8 BELIEVE COULD OCCUR IN REALITY?

9 MR. NAISTAT: IT IS CONCEIVABLE.

10 IT CERTAINLY APPEARS HIGHLY IRREGULAR.

11 MR. BARENS: IRREGULAR, INDEED.

12 UNREASONABLE?

13 MR. NAISTAT: ATYPICAL.

14 MR. BARENS: ATYPICAL?

15 IS ATYPICAL EQUATED WITH IMPOSSIBLE?

16 MR. NAISTAT: NO.

17 MR. BARENS: RIGHT.

18 IT IS VERY LIKELY THAT YOU WOULD ACTUALLY HEAR
19 TESTIMONY, IF YOU WERE CALLED ON THIS CASE TO SERVE AS A
20 JUROR, WHERE A BROKERAGE HOUSE WOULD SAY THEY IN FACT DID
21 THAT, THAT IS ACTUALLY WHAT WENT DOWN; WOULD YOU FIND THAT
22 IMPOSSIBLE TO BELIEVE?

23 MR. NAISTAT: NO.

24 MR. WAPNER: YOUR HONOR --

25 MR. BARENS: I AM SORRY. I WILL WITHDRAW THAT QUESTION
26 TO AVOID THE OBJECTION.

27 MR. WAPNER: THANK YOU.

28 MR. BARENS: THAT QUESTION IS WITHDRAWN, SIR.

1 ALL RIGHT. DO YOU HAVE ANY SPECIAL TRAINING
2 IN POLICE WORK OR INVESTIGATION WORK COEFFICIENT TO YOUR
3 HAVING THE PRESENT JOB?

4 MR. NAISTAT: WELL, I HAVE TAKEN SOME COURSE WORK
5 INTERNALLY WITHIN THE F.D.I.C.

6 MR. BARENS: HOW ABOUT WITH THE F.B.I.?

7 MR. NAISTAT: NO.

8 MR. BARENS: YOU HAVE NOT BEEN TO THE F.B.I. TO ANY OF
9 THEIR TRAINING SEMINARS OR PROGRAMS?

10 MR. NAISTAT: NO.

11 MR. BARENS: YOUR ACTUAL EMPLOYER IS THE F.D.I.C.?

12 MR. NAISTAT: THAT'S CORRECT.

13 MR. BARENS: HOW DO YOU PERCEIVE THEM TO BE? DO YOU
14 PERCEIVE THEM TO BE A BRANCH OF THE FEDERAL GOVERNMENT?

15 MR. NAISTAT: FOR ALL INTENTS AND PURPOSES, YES.

16 MR. BARENS: AND DO YOU CONSIDER YOURSELF IN YOUR
17 PERSONAL PERCEPTION INVOLVED WITH LAW ENFORCEMENT?

18 MR. NAISTAT: IT IS NOT THE PRIMARY THRUST, WHAT I AM
19 RESPONSIBLE FOR, BUT I HAVE SOME INVOLVEMENT, YES.

20 MR. BARENS: AND YOU ARE --

21 THE COURT REPORTER: PARDON ME?

22 MR. BARENS: YOU ARE ADJUNCTIVE TO LAW ENFORCEMENT, IN
23 FACT, AREN'T YOU?

24 MR. NAISTAT: I BELIEVE SO.

25 MR. BARENS: COULD YOU TELL ME TRUE THAT THAT WOULD NOT
26 GIVE YOU ANY BIAS TOWARDS THE PROSECUTION THAT WOULD PROBABLY
27 PERCEIVE THEMSELVES SOMEHOW INVOLVED IN LAW ENFORCEMENT?

28 MR. NAISTAT: I DON'T BELIEVE I HAVE ANY BIAS IN THAT

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1 DIRECTION.

2 MR. BARENS: YOU WOULD NOT?

3 MR. NAISTAT: I DON'T THINK SO.

4 MR. BARENS: ALL RIGHT. YOU SAY THAT WITHOUT HESITATION,
5 SIR?

6 MR. NAISTAT: OH, ABSOLUTELY.

7 MR. BARENS: ALL RIGHT. DO YOU HAVE ANY HOBBIES?

8 MR. NAISTAT: I HAVE LOTS OF HOBBIES.

9 I REALLY ENJOY CAMPING AND HIKING AND BIKING AND
10 SWIMMING AND READING AND VARIOUS OTHER MATTERS.

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1 MR. BARENS: ANY PARTICULAR TYPE OF READING YOU DO?

2 MR. NAISTAT: WELL, BASICALLY, I DON'T HAVE THAT MUCH
3 TIME SO I GENERALLY FOCUS ON TECHNICAL MATERIALS, THE WALL
4 STREET JOURNAL, L.A. TIMES, BUSINESS WEEK, BARRONS AND SO
5 FORTH.

6 MR. BARENS: YOU NEVER READ ANYTHING ABOUT THIS CASE,
7 DID YOU, IN ANY OF THOSE PUBLICATIONS?

8 MR. NAISTAT: NO.

9 I HAVE BEEN IN OKLAHOMA FOR THE LAST THREE MONTHS,
10 WHICH MAY ACCOUNT FOR THAT.

11 BUT NO, I HAVEN'T.

12 MR. BARENS: ALL RIGHT, SIR, DID YOU EVER GO TO LAW
13 SCHOOL?

14 MR. NAISTAT: NO.

15 MR. BARENS: DID YOU EVER TAKE ANY LAW COURSES?

16 MR. NAISTAT: YES, I HAVE TAKEN BUSINESS LAW AND SOME
17 OTHER COMMERCIAL ORIENTED LAW COURSES.

18 MR. BARENS: DO YOU BELONG TO ANY ORGANIZATIONS OR GROUPS?

19 MR. NAISTAT: THE SIERRA CLUB AND THE (UNINTELLIGIBLE)
20 EXPLORERS CLUB, THOSE ARE THE PRINCIPAL ONES, AND A SINGLES
21 OUTING CLUB.

22 MR. BARENS: HAVE YOU EVER BEEN MARRIED?

23 MR. NAISTAT: NO.

24 MR. BARENS: DO YOU HAVE A REGULAR STEADY GIRLFRIEND?

25 I DON'T MEAN TO PRY BUT --

26 MR. NAISTAT: NO, I DON'T.

27 MR. BARENS: WE PASS FOR CAUSE, YOUR HONOR.

28 THANK YOU, SIR.

1 THE COURT: ALL RIGHT, MR. WAPNER.

2 MR. WAPNER: THANK YOU, YOUR HONOR.

3 GOOD MORNING.

4 IS IT -- IT IS NAISTAT?

5 MR. NAISTAT: VERY GOOD.

6 MR. WAPNER: I REMEMBER I WROTE IT OUT PHONETICALLY THE
7 FIRST TIME.

8 DO YOU HAVE AN OPINION ABOUT WHO ATE THE PIECE
9 OF PIE?

10 I AM GOING TO WEAR THIS ONE OUT, TOO. THEY ARE
11 TIRED OF BOTH SO I AM GOING TO RUN THIS ONE INTO THE GROUND,
12 JUST TO BE FAIR.

13 MR. NAISTAT: WELL, TO MY RECOLLECTION, THE WAY YOU SET
14 UP THE EXAMPLE, I WOULD HAVE TO -- I WOULD HAVE TO STRONGLY
15 SUSPECT THE BOY, RECOGNIZING THAT, YOU KNOW, MAYBE YOU DIDN'T
16 FEED ME ALL THE DATA THERE IS TO BE HAD.

17 MR. WAPNER: BUT IN THE EXAMPLE THAT WAS THERE, IT
18 APPEARED TO YOU THAT THE BOY PROBABLY ATE THE PIE?

19 MR. NAISTAT: CERTAINLY APPEARED THAT WAY.

20 MR. WAPNER: HAVE YOU EVER BEEN ON ANY INVESTIGATION
21 THAT HAD TO DO WITH EITHER BANK FRAUDS OR CUSTOMERS
22 PERPETRATING FRAUDS ON THE BANK?

23 MR. NAISTAT: THAT IS MY BUSINESS.

24 MR. WAPNER: OKAY. AND IS THERE ANY PARTICULAR AREA,
25 GEOGRAPHICAL AREA THAT YOU ARE ASSIGNED TO COVER?

26 MR. NAISTAT: WELL, MOSTLY I WORK IN THE WESTERN U.S.
27 HOWEVER, AS I MENTIONED A FEW MINUTES AGO, I WAS IN OKLAHOMA
28 FOR THREE MONTHS JUST RECENTLY.

1 MR. WAPNER: HAVE YOU HAD ANY DEALINGS -- DO YOU HAVE
2 ANY DEALINGS WITH BANKS THAT HAVE NOT FAILED BUT MAY BE UNDER-
3 GOING PROBLEMS FOR SOME REASON?

4 MR. NAISTAT: GENERALLY, NO.

5 MR. WAPNER: WHERE DID YOU WORK? AT WHAT BANKS DID YOU
6 WORK BEFORE YOU CAME TO THE F.D.I.C.?

7 MR. NAISTAT: MY PRIMARY EMPLOYMENT WAS WITH FIRST
8 INTERSTATE BANK FOR OVER 15 YEARS.

9 MR. WAPNER: WAS THAT WHERE YOU WERE WORKING JUST
10 BEFORE COMING TO THE F.D.I.C.?

11 MR. NAISTAT: NO.

12 I WAS WORKING FOR AN INDEPENDENT BANK.

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1 MR. WAPNER: WHAT BANK WAS THAT?

2 MR. NAISTAT: NATIONAL BANK OF CALIFORNIA.

3 MR. WAPNER: HAVE YOU EVER DONE ANY INVESTIGATION OF
4 CHECK KITING OR ANYTHING LIKE THAT?

5 MR. NAISTAT: MOST DEFINITELY.

6 MR. WAPNER: OKAY. ANYTHING INVOLVING WIRE TRANSFERS,
7 PEOPLE DOING CHECK KITING BY DOING WIRE TRANSFERS?

8 MR. NAISTAT: NO, ALTHOUGH I AM FAMILIAR WITH THAT
9 CONCEPT.

10 MR. WAPNER: ALL RIGHT. HAVE YOU DONE ANY SPECULATING
11 IN THE COMMODITIES MARKET?

12 MR. NAISTAT: NO.

13 MR. WAPNER: ANY REASON THAT YOU HAVE CHOSEN TO STICK
14 TO STOCKS AND STAY AWAY FROM COMMODITIES?

15 MR. NAISTAT: WELL, COMMODITIES FUTURES ARE EXTREMELY
16 RISKY. COMMODITY OPTIONS HAVE RISKS BUT LIMITS AS TO HOW
17 MUCH YOU CAN LOSE.

18 BUT I HAVE NOT TRANSACTED BUSINESS IN EITHER AREA.

19 MR. WAPNER: ARE YOU FAMILIAR WITH A COMMODITY OR STOCK
20 TRADING APPROACH THAT INVOLVED SPREADS OR SOMETHING CALLED
21 BUTTERFLY SPREADS?

22 MR. NAISTAT: I AM FAMILIAR WITH THE CONCEPT OF SPREADS.
23 I AM NOT SURE I KNOW WHAT A BUTTERFLY SPREAD IS.

24 MR. WAPNER: DO YOU HAVE ANY BROTHERS AND SISTERS?

25 MR. NAISTAT: YES. I HAVE ONE BROTHER, ONE STEPSISTER
26 AND ONE STEPBROTHER.

27 MR. WAPNER: AND DO THEY LIVE LOCALLY?

28 MR. NAISTAT: MY STEPBROTHER LIVES HERE IN LOS ANGELES.

1 MY REAL BROTHER IS IN MINNEAPOLIS AND MY STEPSISTER IS IN
2 FLORIDA.

3 MR. WAPNER: YOUR BROTHER WHO IS IN MINNEAPOLIS, HOW
4 OFTEN DO YOU TALK TO HIM?

5 MR. NAISTAT: PROBABLY A COUPLE OF TIMES A MONTH.

6 MR. WAPNER: AND YOUR STEPBROTHER THAT LIVES HERE, HOW
7 OFTEN DO YOU SEE OR TALK TO HIM?

8 MR. NAISTAT: JUST A FEW TIMES A YEAR.

9 MR. WAPNER: HOW ABOUT YOUR STEPSISTER IN FLORIDA?

10 MR. NAISTAT: JUST A FEW TIMES A YEAR.

11 MR. WAPNER: ARE YOUR FOLKS STILL LIVING?

12 MR. NAISTAT: YES.

13 MR. WAPNER: WHERE DO THEY LIVE?

14 MR. NAISTAT: WELL, MY MOTHER LIVES HERE, IN LOS ANGELES.
15 MY STEPFATHER IS HERE, IN LOS ANGELES. MY REAL FATHER IS
16 IN TEXAS.

17 MR. WAPNER: AND HOW OFTEN DO YOU SEE OR TALK TO YOUR
18 MOTHER AND STEPFATHER?

19 MR. NAISTAT: I SEE MY MOTHER AND TALK TO HER EVERY
20 WEEK. MY REAL FATHER, I SEE VERY RARELY.

21 MR. WAPNER: DO YOU KNOW AN AGENT IN THE FBI NAMED
22 NANCY UNDERWOOD?

23 MR. NAISTAT: NO, I DON'T.

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

26 MR. NAISTAT: WELL, AS I MENTIONED EARLIER, I HAD TWO
27 CARS STOLEN IN ONE MONTH, YEARS AGO.

28 THEY STOLE MY CAR AND THEN THEY STOLE THE RENTAL

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1 CAR THAT I GOT FROM THE INSURANCE COMPANY.

2 MR. WAPNER: AND DID YOU MAKE REPORTS OF BOTH OF THOSE
3 TO THE POLICE?

4 MR. NAISTAT: YES I DID.

5 MR. WAPNER: WERE YOU SATISFIED WITH HOW THOSE CASES
6 WERE HANDLED BY THE POLICE?

7 MR. NAISTAT: WELL, I GOT MY CAR BACK. THE RENTAL CAR,
8 I DIDN'T CARE ABOUT.

9 MR. WAPNER: DO YOU USE THE GENERAL CONCEPT OF
10 CIRCUMSTANTIAL EVIDENCE IN YOUR DAILY WORK?

11 MR. NAISTAT: I WOULD SAY SO.

12 MR. WAPNER: PUTTING THE PIECES OF DIRECT EVIDENCE
13 TOGETHER AND TRYING TO DRAW INFERENCES OR DEDUCTIONS FROM
14 THOSE PIECES TO COME TO OTHER CONCLUSIONS?

15 MR. NAISTAT: I WOULD SAY SO.

16 MR. WAPNER: HAVE YOU EVER BEEN INVOLVED IN A SERIOUS
17 DISCUSSION WITH A FRIEND OR A RELATIVE WHERE YOU TOOK ONE
18 POSITION AND DECIDED THAT IT WAS WRONG AND THEN CHANGED YOUR
19 MIND?

20 MR. NAISTAT: IT HAPPENS FREQUENTLY.

21 MR. WAPNER: DO YOU DO THAT IN THE JURY ROOM OR COULD
22 YOU IF YOU WERE CONVINCED THAT YOUR INITIAL POSITION WAS
23 ERRONEOUS?

24 MR. NAISTAT: I BELIEVE SO.

25 MR. WAPNER: HAS THAT EVER HAPPENED TO YOU IN THE JURY
26 ROOM IN ANY OF THE CASES YOU HAVE BEEN ON?

27 MR. NAISTAT: I HAVE BEEN SWAYED IN TERMS OF SEEING
28 CERTAIN FACTS, YES. I AM NOT SURE MY VOTE CHANGED BUT I DID

1 SEE FACTS DIFFERENTLY.

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

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

5 MR. BARENS: THANK YOU, YOUR HONOR. WE WOULD ASK THE
6 COURT TO THANK AND EXCUSE MR. NAISTAT.

7 THE COURT: I WAS NOT SURPRISED AT THAT, EITHER.

8 MR. BARENS: WE WOULD APPRECIATE IT IF YOUR HONOR
9 WOULDN'T COMMENT.

10 THE COURT: I WILL MAKE WHATEVER COMMENT I WANT TO.
11 I WON'T BE GUIDED BY WHAT YOU THINK I SHOULD OR SHOULD NOT
12 DO.

13 I DON'T WANT TO HAVE ANY COMMENTS FROM YOU. THANK
14 YOU VERY MUCH, MR. NAISTAT.

15 MR. BARENS: COULD WE APPROACH?

16 THE COURT: NO. PICK THE NEXT JUROR, PLEASE.
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1 THE CLERK: DONALD R. BUSHNELL, B-U-S-H-N-E-L-L.

2 THE COURT: MR. BUSHNELL, YOU, TOO HAVE HEARD ALL OF
3 THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

4 MR. BUSHNELL: YES.

5 THE COURT: WERE I TO ASK YOU THE SAME GENERAL QUESTIONS,
6 WOULD YOUR ANSWERS BE ANY DIFFERENT OR SUBSTANTIALLY THE SAME?

7 MR. BUSHNELL: SUBSTANTIALLY THE SAME.

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

9 MR. BUSHNELL: I AM RETIRED AT THE PRESENT TIME. I
10 DO PART-TIME WORK OCCASIONALLY.

11 THE COURT: YOU DO WHAT?

12 MR. BUSHNELL: PART-TIME WORK OCCASIONALLY.

13 THE COURT: WHAT TYPE OF WORK DID YOU DO?

14 MR. BUSHNELL: WELL, I WAS FORMERLY WITH THE CITY OF
15 LOS ANGELES, TRAFFIC SIGNALS, IN A SUPERVISORY CAPACITY. THEN,
16 WHEN I RETIRED --

17 THE COURT REPORTER: PLEASE KEEP YOUR VOICE UP.

18 THE COURT: THAT WAS YOUR REGULAR JOB BEFORE YOU RETIRED?

19 MR. BUSHNELL: YES.

20 THE COURT: THEN YOU CARRIED ON WITH THAT?

21 MR. BUSHNELL: YES. AND THEN IN A PART-TIME STANCE
22 WITH THE WARREN SEICKE ASSOCIATES COMPANY, A TRAFFIC
23 ENGINEERING ASSOCIATES COMPANY FOR CULVER CITY.

24 THE COURT REPORTER: HOW DO YOU SPELL THAT?

25 MR. BUSHNELL: WARREN SEICKE, S-E-I-C-K-E.

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

27 MR. BUSHNELL: THERE IS.

28 THE COURT: AND DOES SHE HAVE ANY EMPLOYMENT OUTSIDE

1 THE HOME?

2 MR. BUSHNELL: AT THE PRESENT TIME, SHE IS RETIRED AS
3 A RETAIL CLERK FROM MARKET BASKET SOME YEARS AGO. AND AT
4 THE PRESENT TIME, SHE IS BABY-SITTING MY GRANDDAUGHTER.

5 THE COURT: WHERE DO YOU LIVE?

6 MR. BUSHNELL: CULVER CITY.

7 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

8 MR. BUSHNELL: I HAVE COMPLETED HIGH SCHOOL AND
9 ATTENDED TRADE SCHOOLS FOR ABOUT THREE DIFFERENT TYPES OF
10 CLASSES.

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

13 MR. BUSHNELL: YES.

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

15 MR. BUSHNELL: IT WAS A CASE IN BEVERLY HILLS REGARDING
16 A BURGLARY OF A CAR.

17 THE COURT: DID THE JURY REACH A VERDICT IN THAT CASE?

18 MR. BUSHNELL: YES.

19 THE COURT: ALL RIGHT. I DID ASK YOU WHERE YOU LIVED,
20 DID I NOT?

21 MR. BUSHNELL: YES, CULVER CITY.

22 THE COURT: YES. THANK YOU VERY MUCH. GO AHEAD.

23 MR. BARENS: THANK YOU, YOUR HONOR.

24 GOOD MORNING, MR. BUSHNELL?

25 MR. BUSHNELL: GOOD MORNING.

26 MR. BARENS: MR. BUSHNELL, THE PRIOR JURY EXPERIENCE
27 YOU HAD WAS A CAR BURGLARY, AS OPPOSED TO A CAR THEFT?

28 MR. BUSHNELL: IT WAS A BURGLARY OF A CAR.

1 MR. BARENS: WERE YOU A JUROR THROUGHOUT THE PROCESS?

2 MR. BUSHNELL: I WAS.

3 MR. BARENS: HOW DID YOU FEEL ABOUT YOUR EXPERIENCE
4 ON THAT JURY?

5 MR. BUSHNELL: IT WAS EDUCATIONAL.

6 MR. BARENS: EDUCATIONAL? THE COURT INSTRUCTED YOU
7 OR PERHAPS YOU HEARD FROM COUNSEL FIRST, WHICHEVER WAY IT
8 WENT, THAT THE DEFENDANT HAD A PRESUMPTION OF INNOCENCE IN
9 THAT CASE?

10 MR. BUSHNELL: YES.

11 MR. BARENS: WERE YOU COMFORTABLE WITH THAT?

12 MR. BUSHNELL: YES.

13 MR. BARENS: I SEEM TO RECALL WHEN WE QUESTIONED YOU
14 EARLIER ON YOUR POINTS OF VIEW ON THE OTHER SUBJECT, THAT
15 YOU HAD SOME MISGIVINGS OR BELIEFS THAT BECAUSE THE DEFENDANT
16 WAS PRESENT AND CHARGED WITH A CRIME, THAT THERE MIGHT BE
17 SOMETHING, SOME REASON TO BELIEVE THAT HE HAD DONE SOMETHING
18 WRONG?

19 MR. BUSHNELL: YES. I THINK I DID SAY THAT.

20 MR. BARENS: HAVE YOU RECONSIDERED THAT STATEMENT OR
21 COULD YOU TELL US HOW YOU FEEL ABOUT THAT, AS YOU SIT THERE
22 NOW?

23 MR. BUSHNELL: WELL, IF A MAN HAS BEEN BROUGHT TO COURT,
24 THERE MUST BE SOME REASON FOR IT. WHETHER HE IS GUILTY OR
25 NOT, THAT IS ANOTHER THING.

26 MR. BARENS: SO, TO RELIEVE WHATEVER ANXIETY I MIGHT
27 HAVE IN THAT AREA, WHAT YOU ARE SAYING TO ME IS THAT YOU
28 DON'T NECESSARILY THINK HE IS GUILTY OF A CRIME BECAUSE HE

1 IS HERE?

2 MR. BUSHNELL: NO, NOT NECESSARILY.

3 MR. BARENS: DO YOU HESITATE ON THAT, SIR?

4 MR. BUSHNELL: NO.

5 MR. BARENS: ARE YOU COMFORTABLE WITH THE CONCEPT OF
6 THE PRESUMPTION OF INNOCENCE?

7 MR. BUSHNELL: YES.

8 MR. BARENS: DO YOU LOOK AT IT AS SOMETHING
9 SUBSTANTIVE OR PROCEDURAL?

10 MR. BUSHNELL: PROCEDURAL.

11 MR. BARENS: IT IS JUST SOMETHING WE DO ON OUR WAY TO
12 THE CONVICTION PROCESS?

13 MR. BUSHNELL: UH-HUH.

14 MR. BARENS: INDEED? IS THAT CORRECT?

15 MR. BUSHNELL: THAT'S RIGHT.

16 MR. BARENS: THAT IS YOUR BELIEF, ISN'T IT?

17 MR. BUSHNELL: UH-HUH.

18 MR. BARENS: WELL, HOW DID YOU FEEL ABOUT THE DEFENDANT
19 IN THE CASE -- WITHOUT TELLING ME HOW YOU VOTED, DID YOU HAVE
20 THE SAME ATTITUDE ABOUT HIS GUILT OR INNOCENCE WHEN THE
21 TRIAL STARTED, ON ITS VERY FIRST MOMENT, AS YOU DID WHEN YOU
22 WENT INTO THE JURY ROOM TO DELIBERATE?

23 MR. BUSHNELL: NO. I HAD NO FEELINGS ONE WAY OR THE
24 OTHER. I HAD TO LISTEN TO THE EVIDENCE PRESENTED TO COME
25 TO A CONCLUSION.

26 MR. BARENS: AND DID YOUR ATTITUDE DURING THE DELIBERATION
27 PROCESS CHANGE OR WAS IT FAIRLY CONSISTENT FROM START TO
28 FINISH?

1 MR. BUSHNELL: AS FAR AS I WAS CONCERNED, FROM WHAT
2 I HEARD, IT WAS CONSISTENT.

3 MR. BARENS: I MEAN, YOUR MIND DIDN'T CHANGE FROM THE
4 TIME YOU STARTED TO DELIBERATE UNTIL YOU ENDED?

5 MR. BUSHNELL: NO IT DID NOT.

6 MR. BARENS: ALL RIGHT, SIR. ASIDE FROM THAT INSTANCE
7 OF JURY EXPERIENCE, HAVE YOU HAD ANY OTHER JURY EXPERIENCE?

8 MR. BUSHNELL: YES. I SERVED TIME DOWNTOWN AT THE
9 L.A. COURTS. I WAS IMPANELED THERE A COUPLE OF TIMES BUT
10 THEN WAS EXCUSED.

11 MR. BARENS: WERE THOSE ON CRIMINAL JURIES?

12 MR. BUSHNELL: NO. THIS ONE WAS A CIVIL CASE WITH THE
13 MARIO LANZA CASE IN RELATION TO THE ROYALTIES BY THE FAMILY.

14 MR. BARENS: WERE YOU EVER IMPANELED BEFORE IN A
15 CRIMINAL CASE, WITH THE EXCEPTION OF THE BEVERLY HILLS MATTER,
16 SIR?

17 MR. BUSHNELL: I DON'T KNOW HOW IT WOULD BE CLASSIFIED.
18 ONE PANEL I SERVED ON IN BEVERLY HILLS, HAD TO DO WITH AN
19 ASSAULT ON A TOPLESS DANCER. I DON'T KNOW IF IT WOULD BE
20 CALLED CRIMINAL OR MISDEMEANOR OR WHAT.

21 MR. BARENS: WELL, IT COULD DEPEND, MR. BUSHNELL, BASED
22 ON THE AGGRAVATION, WHETHER IT WAS A MISDEMEANOR OR A FELONY.
23 IT SOUNDS LIKE IT WAS A CRIMINAL MATTER TO ME, HOWEVER.

24 MR. BUSHNELL: YES. I GOT A LITTLE IDEA LIKE THAT,
25 TOO.

26 MR. BARENS: ALTHOUGH IT COULD HAVE BEEN THE SUBJECT
27 OF A CIVIL SUIT, AS WELL. DID YOU SERVE ON THAT JURY?

28 MR. BUSHNELL: I DID.

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MR. BARENS: DID THAT JURY COME TO A CONCLUSION?

MR. BUSHNELL: YES IT DID.

MR. BARENS: MR. BUSHNELL, SO I CAN BETTER UNDERSTAND,
WAS THE OBJECTIVE OF THAT TRIAL TO REACH A GUILT OR INNOCENCE
VERDICT OR WAS THAT LOOKING FOR A MONETARY AWARD OF SOME KIND?

MR. BUSHNELL: NO. IT WAS NOT MONETARY. IT WAS FOR
EITHER GUILTY OR NOT GUILTY ON THE ASSAULT.

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1 MR. BARENS: OKAY. AND YOU WERE A JUROR THROUGHOUT ON
2 THAT TRIAL?

3 MR. BUSHNELL: UH-HUH.

4 MR. BARENS: WAS YOUR IMPRESSION OF THE VIRTUE OF THE
5 PROCESS OF THE JURY DELIBERATION AND THE TRIAL SITUATION ANY
6 DIFFERENT ON THAT JURY EXPERIENCE THAN IT WAS FROM THE
7 CAR BURGLARY EXPERIENCE?

8 MR. BUSHNELL: YES.

9 I WANS'T VERY IMPRESSED WITH THE MANNER IN WHICH
10 THE SHERIFF'S DEPARTMENT HANDLED THEIR DEPARTMENT, THEIR END,
11 I SHOULD SAY THE REPORTING, AND SO FORTH, I WAS A LITTLE --
12 I COULDN'T UNDERSTAND WHY THEY HANDLED IT THE WAY THEY DID.

13 MR. BARENS: COULD YOU BE ANY MORE SPECIFIC ON WHAT YOU
14 MEAN BY THAT?

15 MR. BUSHNELL: YES.

16 THE FIRST UNIT RESPONDED TO THE CALL AT THE NIGHT-
17 CLUB, WHICH WAS UP ON SANTA MONICA BOULEVARD, CAME IN TO
18 QUELL A DISTURBANCE AND THE SECOND UNIT ARRIVED AND THEY TOOK
19 THE REPORT INSTEAD OF THE FIRST UNIT AND, THEREFORE, THERE
20 WAS SOME LOST INFORMATION, I FELT, THAT SHOULD HAVE BEEN MADE
21 BY THE FIRST UNIT RESPONDING.

22 MR. BARENS: I SEE.

23 WAS THERE ANYTHING ELSE, OTHER THAN THE MECHANICS
24 OF HOW THE POLICE CONDUCTED THE INVESTIGATION ON THAT CASE,
25 THAT GAVE YOU ANY DIFFERENT IMPRESSION BETWEEN THE TWO
26 JURY EXPERIENCES?

27 MR. BUSHNELL: NO.

28 MR. BARENS: OTHER THAN THAT, YOU WERE SATISFIED?

1 MR. BUSHNELL: YES.

2 THE COURT REPORTER: IS THAT ANSWER YES?

3 MR. BUSHNELL: YES.

4 PARDON ME:

5 MR. BARENS: DID THE DEFENDANT TESTIFY IN BOTH OF THOSE
6 CASES?

7 MR. BUSHNELL: IT HAS BEEN SO MANY YEARS AGO, THAT IS
8 A LITTLE HARD TO REMEMBER NOW.

9 NO, NEITHER ONE OF THEM DID IN THOSE CASES.

10 MR. BARENS: NEITHER?

11 MR. BUSHNELL: NEITHER.

12 MR. BARENS: DID YOU FEEL THAT THAT HAD MUCH OF AN IMPACT
13 ON THE DECISION THAT YOU ULTIMATELY MADE?

14 MR. BUSHNELL: NO.

15 MR. BARENS: YOU DIDN'T?

16 MR. BUSHNELL: NO.

17 MR. BARENS: YOU DIDN'T HAVE A FEELING OF MISGIVING OR
18 FRUSTRATION OR LACK OF INPUT BECAUSE THE DEFENDANT DIDN'T TAKE
19 THE STAND?

20 MR. BUSHNELL: NO.

21 MR. BARENS: DID YOU FEEL THE DEFENDANT WAS CONCEDED
22 ANY ISSUES BY NOT TAKING THE STAND?

23 MR. BUSHNELL: WELL, I DIDN'T GIVE IT A THOUGHT AT THAT
24 TIME.

25 I HONESTLY DON'T KNOW ON THAT.

26 MR. BARENS: ALL RIGHT. DO YOU EXPECT THE DEFENDANT
27 TO TESTIFY IN A CRIMINAL TRIAL?

28 MR. BUSHNELL: WELL, I THINK IT WOULD BE TO HIS ADVANTAGE

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1 TO BUT, OF COURSE, THAT IS COUNSEL'S DECISION WHETHER HE SHOULD
2 OR NOT, OR HIS.

3 MR. BARENS: NOW, IF A DEFENDANT DID TESTIFY, COULD YOU
4 BELIEVE AND UNDERSTAND THAT THAT DEFENDANT COULD BE TELLING
5 THE TRUTH OR WOULD YOU FEEL "WELL, WITH HIS NECK IN THE
6 NOOSE ALMOST, HE PROBABLY WON'T TELL THE TRUTH"?

7 MR. BUSHNELL: I THINK IF HE IS UNDER OATH, HE WOULD
8 BE TELLING THE TRUTH PRETTY GOOD.

9 MR. BARENS: YOU WOULD BE ABLE TO DO THAT OPEN-
10 MINDEDLY, MR. BUSHNELL?

11 MR. BUSHNELL: OH, YES.

12 MR. BARENS: ASIDE FROM THE TWO CRIMINAL JURY EXPERIENCES
13 YOU HAVE TOLD ME ABOUT, WERE THERE ANY OTHER CRIMINAL JURY
14 EXPERIENCES YOU HAVE HAD, SIR?

15 MR. BUSHNELL: NO.

16 ONE WAS A TRAFFIC ON A CITATION THE ATTORNEY WAS
17 FIGHTING.

18 MR. BARENS: HE REPRESENTED HIMSELF?

19 MR. BUSHNELL: YES, HE DID.

20 MR. BARENS: ALL RIGHT. HOW DID YOU FEEL ABOUT COUNSEL
21 ON THOSE TWO OTHER CASES, HOW DID YOU FEEL ABOUT THE JOB THAT
22 WAS DONE BY THE LAWYERS IN BOTH CASES?

23 MR. BUSHNELL: I THINK THEY DID A SUBSTANTIAL JOB IN
24 HANDLING THEIR SIDE OF IT.

25 MR. BARENS: ALL RIGHT. DID YOU HAVE SOME MISGIVINGS
26 ABOUT EITHER OF THE DEFENSE COUNSEL THAT DIDN'T HAVE THEIR
27 WITNESSES TESTIFY -- I AM SORRY -- THEIR DEFENDANT TESTIFY,
28 THEIR CLIENT?

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1 MR. BUSHNELL: WOULD YOU REPEAT THAT?

2 MR. BARENS: SURE.

3 DID YOU HAVE ANY MISGIVINGS ABOUT THE JUDGMENT
4 OF THE DEFENSE COUNSEL IN THOSE CASES, IN THOSE TWO CASES IN
5 THE INSTANCES WHERE THEY DID NOT HAVE THEIR CLIENTS TESTIFY?

6 MR. BUSHNELL: NO.

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1 MR. BARENS: YOU FELT THERE WAS NOTHING THAT THEY HADN'T
2 THAT THEY HADN'T SOLD THEM DOWN THE RIVER OR HAD NOT DONE
3 THEIR HOMEWORK OR SOMETHING LIKE THAT?

4 MR. BUSHNELL: NO, I DIDN'T GET THAT IMPRESSION.

5 MR. BARENS: NOW, WHAT DO WE DO IN A SITUATION WHERE
6 IF THE DEFENDANT TESTIFIES AND HE TOLD YOU HE WASN'T SURE WHAT
7 HAPPENED, COULD YOU LOOK AT A SITUATION WHERE THE DEFENDANT
8 MIGHT SAY "I JUST DON'T KNOW" AND THE DEFENDANT HASN'T PROVEN
9 ANYTHING TO YOU BY THAT FACT, COULD YOU ACCEPT IT AS A
10 LEGITIMATE FORM OF TESTIMONY BY A DEFENDANT?

11 MR. BUSHNELL: YES.

12 MR. BARENS: COULD YOU IN A SITUATION, WHERE THE
13 DEFENDANT DOESN'T PROVE ANYTHING, DO YOU THINK THAT A DEFENDANT
14 HAS AN OBLIGATION TO PROVE SOMETHING?

15 MR. BUSHNELL: WELL, I THINK THAT IF IT WAS TO HIS
16 BENEFIT, HE WOULD TRY TO PROVE IT, YES.

17 MR. BARENS: MY QUESTION ACTUALLY WENT TO, MR. BUSHNELL,
18 IF THE DEFENDANT HAD AN OBLIGATION TO PROVE SOMETHING.

19 MR. BUSHNELL: OBLIGATION -- I AM SORRY -- NO, I DON'T
20 THINK SO.

21 MR. BARENS: WHO HAS THE OBLIGATION OF PROOF?

22 MR. BUSHNELL: THE PROSECUTOR HAS THE OBLIGATION.

23 MR. BARENS: AND ARE YOU FAMILIAR WITH THE STANDARD TO
24 WHICH THEY MUST MEET IN ORDER TO SUSTAIN THAT BURDEN?

25 MR. BUSHNELL: NO.

26 MR. BARENS: WELL, YOU WOULD BE INSTRUCTED BY HIS HONOR
27 THAT THAT STANDARD WOULD BE BEYOND A REASONABLE DOUBT.

28 MR. BUSHNELL: OH, YES.

1 MR. BARENS: YOU PROBABLY WOULD NOW RECALL HAVING HEARD
2 THAT IN THOSE PREVIOUS CASES.

3 MR. BUSHNELL: YES.

4 MR. BARENS: DO YOU UNDERSTAND THAT IT IS NOT A MORE
5 LIKELY GUILTY THAN NOT TYPE OF CASE?

6 MR. BUSHNELL: I UNDERSTAND THAT, YES.

7 MR. BARENS: NOT A PREPONDERANCE OF THE EVIDENCE.

8 MR. BUSHNELL: YES.

9 MR. BARENS: IT RAISES IT TO SOME HIGHER THRESHOLD.

10 MR. BUSHNELL: YES.

11 I AM SORRY.

12 MR. BARENS: THANK YOU, MR. BUSHNELL.

13 MR. BUSHNELL, YOU WOULD CONCEDE, WOULD YOU, THAT
14 IT DOESN'T SHOCK YOU THAT THE GOVERNMENT CAN COME FORWARD WITH
15 A MURDER TRIAL ON A CASE WHERE THEY HAD NO BODY?

16 MR. BUSHNELL: NO, IT WOULDN'T SHOCK ME A BIT.

17 MR. BARENS: WOULD IT STILL BE AN ISSUE IN YOUR MIND
18 AS TO WHETHER OR NOT IN FACT THERE WAS ANY BODY?

19 THE COURT: YOU MEAN WHETHER THERE WAS A MURDER?

20 MR. BARENS: YES, WHETHER THERE WAS A DEAD BODY IS WHAT
21 I MEAN BY THAT, OF COURSE.

22 THERE PROBABLY WAS A BODY IN THE FIRST INSTANCE
23 WALKING AROUND, MAYBE STILL.

24 MR. BUSHNELL: WELL, IT DOES MAKE YOU STOP AND THINK,
25 WONDERING JUST EXACTLY WHAT THE CIRCUMSTANCES ARE, BUT YOU
26 CAN'T TELL UNTIL YOU HEAR ALL OF THE EVIDENCE PRESENTED.

27 MR. BARENS: ALL RIGHT, BUT THE FACT THAT YOU COULD COME
28 IN HERE AND HEAR THAT THERE IS A MURDER TRIAL GOING ON AND

1 THE GOVERNMENT SAYS "WELL, YOU KNOW, WE DON'T HAVE THE BODY,"
2 WOULD THAT NECESSARILY MAKE YOU BELIEVE THAT THERE IS A BODY?

3 MR. BUSHNELL: NOT NECESSARILY.

4 MR. BARENS: ALL RIGHT. YOU WOULD WAIT UNTIL YOU HEARD
5 EVIDENCE IN THE FIRST INSTANCE, WOULDN'T YOU, AS TO WHETHER
6 THERE IS A BODY TO BEGIN WITH, BEFORE WE START DETERMINING
7 WHETHER IT IS A MURDERED BODY; IS THAT CORRECT, SIR?

8 MR. BUSHNELL: CORRECT.

9 MR. BARENS: NOW, IN YOUR EMPLOYMENT, WHAT DID YOU DO
10 OVER THE YEARS, SIR?

11 MR. BUSHNELL: WELL, MY EMPLOYMENT WITH THE CITY OF
12 L.A. WAS THE INSTALLATION, REPAIR AND MAINTENANCE OF TRAFFIC
13 SIGNALS AND THEN IN A SUPERVISORY CAPACITY IN THE LATTER
14 YEARS, WHICH ENCOMPASSED THE ENTIRE CITY OF L.A.

15 MR. BARENS: HOW MANY YEARS DID YOU DO THAT FOR, SIR?

16 MR. BUSHNELL: THIRTY YEARS.

17 MR. BARENS: DID YOU WORK REGULARLY WITH THE POLICE
18 PEOPLE?

19 MR. BUSHNELL: WE WERE AFFILIATED WITH THEM, YES, FROM
20 TIME TO TIME BECAUSE WE HAD TO HAVE HELP IN DIRECTING TRAFFIC
21 WHEN A TRAFFIC SIGNAL MALFUNCTIONED OR SHUT DOWN, IN ORDER
22 TO MAKE THE NECESSARY REPAIRS OR IF THERE WAS A MODERNIZATAION
23 TO MOVE SIGNALS, AND THIS SORT OF THING.

24 MR. BARENS: AND IN WORKING WITH THEM ON A FREQUENT
25 BASIS, DO YOU FEEL IN ANY WAY YOU HAVE DEVELOPED ANY SORT
26 OF A BIAS THAT YOU ARE AWARE OF THAT MIGHT MAKE YOU MORE
27 PRONE TO BELIEVE THE TESTIMONY OF A POLICEMAN?

28 MR. BUSHNELL: NO.

1 MR. BARENS: YOU DO NOT FEEL THAT, SIR?

2 MR. BUSHNELL: HUH-UH.

3 (PROSPECTIVE JUROR BUSHNELL SHAKES HEAD
4 FROM SIDE TO SIDE.)

5 MR. BARENS: NOW EARLIER ON, THE LAST PROSPECTIVE JUROR
6 THAT SAT WHERE YOU ARE, TALKED ABOUT WHETHER OR NOT HE HAD
7 BEEN GIVEN ALL OF THE DATA. I THINK ONE OF HIS COMMENTS WAS
8 "WELL, IT WOULD DEPEND ON WHETHER WE HAD GOTTEN SUFFICIENT
9 DATA."

10 DO YOU UNDERSTAND THAT DURING A TRIAL, YOU GET
11 A CERTAIN AMOUNT OF DATA FROM THE WITNESSES AND YOU MAY WELL
12 COME TO A -- COME TO HAVING AN IMPRESSION THAT YOU DON'T HAVE
13 ENOUGH DATA; IS THAT BELIEVABLE THAT THAT COULD HAPPEN?

14 MR. BUSHNELL: YES, THAT IS TRUE.

15 MR. BARENS: NOW, AS YOU ARE SITTING THERE AND YOU GO
16 IN TO DELIBERATE AND PERHAPS SOME OTHER JURORS LOOK AT IT THE
17 SAME WAY YOU DO AND SAY, "WELL, WE DIDN'T HEAR ANY TESTIMONY
18 AT ALL ABOUT SO ON AND SO ON OR THIS ISSUE OR THAT ISSUE OR
19 NOT," AND YOU REALIZE THAT AT THAT POINT IN TIME THAT WHAT
20 YOU SEE HERE IS ALL YOU GET?

21 MR. BUSHNELL: THAT'S CORRECT.

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1 MR. BARENS: ANY DATA THAT YOU ARE LACKING, YOU CAN'T
2 SPECULATE ABOUT IT?

3 MR. BUSHNELL: THAT'S CORRECT.

4 MR. BARENS: YOU CAN'T JUST ASSUME THE EXISTENCE OF
5 FACTS THAT WERE NOT DEMONSTRATED IN THE COURTROOM?

6 MR. BUSHNELL: THAT'S CORRECT.

7 MR. BARENS: DO YOU UNDERSTAND THAT?

8 MR. BUSHNELL: I UNDERSTAND.

9 MR. BARENS: SO IF YOU DON'T HAVE THE DATA ON WHICH
10 TO MAKE A DECISION IN SOME AREA, WHAT DO YOU DO?

11 MR. BUSHNELL: YOU HAVE TO EVALUATE THE EVIDENCE GIVEN
12 TO YOU AND IF IT IS NOT SUFFICIENT, YOU HAVE TO GO IN FAVOR
13 OF THE DEFENDANT. YOU HAVE NO CHOICE.

14 MR. BARENS: NOT GUILTY OR NOT PROVEN?

15 MR. BUSHNELL: THAT'S CORRECT.

16 MR. BARENS: IN OTHER WORDS, IF IT IS NOT PROVEN IN
17 EVERY ELEMENT OF THE ALLEGATION THAT THE GOVERNMENT BRINGS
18 FORWARD, IT IS NOT GUILTY, ISN'T IT?

19 MR. BUSHNELL: YES.

20 MR. BARENS: DO YOU HAVE ANY HOBBIES, SIR?

21 MR. BUSHNELL: I HAVE GOT A FEW OF THEM. I HAVE AN
22 INTEREST IN COLLECTING PROMOTIONAL COINS AND MEDALLIONS. AND
23 I AM INTERESTED IN COLLECTING MAPS OF VARIOUS TYPES.

24 I PIDDLE AROUND IN PHOTOGRAPHY A LITTLE BIT.
25 I AM INTERESTED IN HISTORICAL DATA IN THE LOCAL AREA.
26 I COLLECT IT.

27 MR. BARENS: ARE YOU A MEMBER OF ANY ORGANIZATIONS OR
28 GROUPS?

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1 MR. BUSHNELL: CURRENTLY, NO.

2 MR. BARENS: WERE YOU PREVIOUSLY?

3 MR. BUSHNELL: I WAS FORMERLY WITH THE ELKS.

4 MR. BARENS: WERE YOU ACTIVE?

5 MR. BUSHNELL: I TRIED TO BE ACTIVE BUT I COULDN'T BE.
6 I WITHDREW FINALLY.

7 MR. BARENS: I SEE. DID YOU MENTION THAT YOU HAVE
8 CHILDREN, MR. BUSHNELL?

9 MR. BUSHNELL: YES. I HAVE TWO CHILDREN, A BOY 35 AND
10 A DAUGHTER 30.

11 MR. BARENS: AND HOW IS YOUR SON EMPLOYED, SIR?

12 MR. BUSHNELL: HE IS A PROPRIETOR OF CULVER COMMUNITY
13 CHURCH CHRISTIAN BOOKSTORE. HE ALSO WORKS FOR THE CHRISTIAN
14 SCHOOL THERE, AS WELL.

15 MR. BARENS: AND YOUR DAUGHTER, SIR?

16 MR. BUSHNELL: SHE IS HEAD CASHIER FOR THE BOYS MARKET
17 IN FOX HILLS.

18 MR. BARENS: HOW DO YOU FEEL ABOUT THE WAY THE
19 CRIMINAL JUSTICE SYSTEM WORKS IN THIS COUNTRY?

20 MR. BUSHNELL: I THINK IT WORKS WELL, BUT I THINK THERE
21 ARE SOME WEAK SPOTS.

22 I THINK THERE ARE SOME LAWS THAT SHOULD BE
23 REWRITTEN A LITTLE TIGHTER THAN THEY ARE. THERE SHOULD BE
24 SOME LOOPHOLES WHICH SHOULD BE LOOKED INTO.

25 MR. BARENS: COULD YOU BE ANY MORE SPECIFIC? FOR
26 INSTANCE, IF YOU WERE A LEGISLATOR AND YOU HAD THE ABILITY
27 TO INTRODUCE MODIFICATIONS TO THE PENAL CODE, WHAT WOULD YOU
28 SUGGEST?

3A-3
1 MR. BUSHNELL: WELL, IT WOULD DEPEND UPON WHAT CODE
2 YOU ARE LOOKING INTO. I WOULD SAY IN ORDER TO TRY TO NARROW
3 DOWN THE LOOPHOLES, THERE ARE MANY DIFFERENT PENAL CODES AND
4 IT WOULD TAKE A LOT OF STUDY ON THAT, IN MY OPINION.

5 MR. BARENS: WHEN YOU ANSWERED MY PREVIOUS QUESTION
6 SIR AND INDICATED THAT YOU FELT THAT THERE WERE TOO MANY
7 LOOPHOLES IN THE SYSTEM, WHAT CAME TO MIND?

8 MR. BUSHNELL: JUST GENERALLY SPEAKING.

9 MR. BARENS: I MIGHT LIKE TO KNOW ABOUT THEM.

10 MR. BUSHNELL: I FIGURED YOU WOULD.

11 MR. BARENS: INDEED, IF THERE ARE SUCH, WHEN YOU SAY
12 THAT, THEN YOU SAY THAT IT IS SOMEWHAT OF A GENERALIZATION.
13 THAT IS JUST A FEELING THAT YOU HAVE ABOUT THE SYSTEM?

14 MR. BUSHNELL: YES.

15 MR. BARENS: YOU DON'T HAVE ANYTHING IN PARTICULAR IN
16 MIND, DO YOU?

17 MR. BUSHNELL: NOTHING PARTICULAR, NO.

18 MR. BARENS: ANYTHING YOU SAW DURING YOUR EXPERIENCE
19 AS A JUROR ON A COUPLE OF CRIMINAL CASES THAT MADE YOU THINK
20 THAT SOMEONE WAS DUCKING THROUGH A LOOPHOLE?

21 MR. BUSHNELL: WELL, DUE TO THE FACT THAT THE OTHER
22 JURY TIME WAS SO LONG AGO, I DON'T RECALL AT THIS TIME.

23 MR. BARENS: HAVE YOU SEEN ANY LOOPHOLES SO FAR IN THIS
24 COURTROOM?

25 MR. BUSHNELL: NO, BECAUSE THIS HAS BEEN STRICTLY A
26 QUESTION AND ANSWER SESSION AT THE PRESENT TIME.

27 MR. BARENS: DO YOU THINK THAT THERE MIGHT BE ANYTHING
28 TO DO WITH THE PRESUMPTION OF INNOCENCE THAT WOULD MAKE IT

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1 ANALOGOUS TO A LOOPHOLE?

2 MR. BUSHNELL: I DON'T KNOW.

3 MR. BARENS: YOU ARE NOT SURE ABOUT THAT, ARE YOU?

4 MR. BUSHNELL: NO.

5 MR. BARENS: DO YOU THINK MAYBE GEORGE WASHINGTON AND
6 BENJAMIN FRANKLIN AND THOMAS JEFFERSON AND THE MILLIONS OF
7 PERSONS THAT DIED IN PRESERVATION OF THE CONSTITUTIONAL
8 SYSTEM -- DO YOU THINK THAT THEY WERE THINKING ABOUT
9 LOOPHOLES?

10 MR. BUSHNELL: I DOUBT IT VERY MUCH.

11 MR. BARENS: ME TOO. AND WHEN THEY STARTED OUT THE
12 WHOLE BUSINESS OVER HERE, THAT WE WERE GOING TO HAVE A
13 PRESUMPTION OF INNOCENCE AND THEY THREW A GUY IN JAIL AND
14 CHARGED HIM WITH A CRIME, WHAT DO YOU THINK?

15 MR. BUSHNELL: YES.

16 MR. BARENS: DO YOU THINK THEY WERE THINKING ABOUT
17 CREATING A LOOPHOLE FOR BAD GUYS?

18 MR. BUSHNELL: NO. I THINK THESE THINGS WERE DISCOVERED
19 AS TIME WENT ON AND COUNSEL, IN THE STUDY OF THEIR CASES,
20 CAME UP WITH IDEAS THAT MIGHT MAKE IT AND TRIED IT AND FOUND
21 OUT THAT IT WORKED.

22 SO THEREFORE, IT BECAME KNOWN BY OTHER COUNSELORS
23 AND THIS HAS HAPPENED.

24 MR. BARENS: AND YOU THINK THAT THE PRESUMPTION OF
25 INNOCENCE TODAY IS REALLY SOME SORT OF A CONSTRUCT THAT THE
26 CRIMINAL DEFENSE BAR HAS MANIPULATED OVER THE CENTURIES INTO
27 ANOTHER LOOPHOLE?

28 MR. BUSHNELL: NO.

1 MR. BARENS: WHAT DO YOU THINK ABOUT THE PRESUMPTION
2 OF INNOCENCE, SIR?

3 THE COURT: IF IT IS A PART OF THE LAW, WILL YOU FOLLOW
4 IT?

5 MR. BUSHNELL: ABSOLUTELY. YES.

6 THE COURT: WITHOUT ANY MENTAL RESERVATIONS?

7 MR. BUSHNELL: NO. IF IT IS A PART OF THE LAW, I WOULD
8 DEFINITELY FOLLOW IT. YES.

9 MR. BARENS: THOUGH YOU WOULD FOLLOW IT THROUGH, WOULD
10 YOU HAVE RESERVATIONS ABOUT IT?

11 MR. BUSHNELL: NO.

12 MR. BARENS: YOU WOULDN'T LOOK AT IT AS SOME NICETY
13 OR JUST SOME LANGUAGE, THINGS WE HAVE PROFFERED UP TO YOU?

14 MR. BUSHNELL: NO. IT WOULD BE THE LAW. THAT WOULD
15 BE IT.

16 MR. BARENS: THANK YOU, MR. BUSHNELL. WE RESERVE ON
17 THE JUROR.

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1 THE COURT: ALL RIGHT. MR. WAPNER?

2 MR. WAPNER: THANK YOU. GOOD MORNING, MR. BUSHNELL.

3 MR. BUSHNELL: GOOD MORNING.

4 MR. WAPNER: DOES THAT SEAT FEEL A LITTLE BIT WARM TO
5 YOU AS YOU SIT DOWN IN IT?

6 MR. BUSHNELL: YES.

7 MR. WAPNER: FIFTEEN PEOPLE HAVE BEEN SITTING THERE
8 BEFORE YOU.

9 MR. BUSHNELL: I FIGURED THAT.

10 MR. WAPNER: DO YOU THINK THAT THE PEOPLE WHO WERE
11 DYING FOR THE CONSTITUTION, WERE PROBABLY THINKING MORE ABOUT
12 FOXHOLES THAN LOOPHOLES, WHERE THEY WERE?

13 MR. BUSHNELL: NO. WHEN THEY WROTE UP THE CONSTITUTION,
14 THEY WERE THINKING ABOUT THE LAWS THAT THEY WANTED TO
15 ESTABLISH IN THOSE DAYS.

16 MR. WAPNER: I WAS JUST TALKING ABOUT THE PEOPLE WHO
17 DIED FOR IT SINCE THEN.

18 MR. BUSHNELL: I WISH YOU WOULD REPHRASE THAT QUESTION.

19 MR. WAPNER: THAT'S OKAY. PROBABLY WAS NOT FAIR BECAUSE
20 I DIDN'T IDENTIFY IT TO THE JUDGE AS BEING SOMEWHAT NON-
21 SERIOUS.

22 ONE OF THE THINGS THAT IS SOMEWHAT IMPORTANT IS
23 THAT ALL OF THE EVIDENCE THAT YOU GET WILL BE IN THE FORM OF
24 TESTIMONY OF WITNESSES OR WRITINGS OR MATERIAL OBJECTS. DO
25 YOU UNDERSTAND THAT?

26 MR. BUSHNELL: YES. I UNDERSTAND.

27 MR. WAPNER: AND WHEN MR. BARENS TALKED ABOUT GETTING
28 THE DATA IN THE COURTROOM, YOU UNDERSTAND THAT WHEN YOU GO

1 INTO THE JURY ROOM TO DELIBERATE, YOU WILL HAVE ALL OF THE
2 DATA THAT YOU ARE GOING TO GET?

3 MR. BUSHNELL: YES.

4 MR. WAPNER: AND THE JUDGE IS GOING TO TELL YOU THAT
5 ONCE YOU HAVE GONE INTO THE JURY ROOM AND YOU HAVE ALL OF THE
6 EVIDENCE, IF YOU DECIDE THAT YOU NEED SOMETHING ELSE, YOU
7 CAN'T GO OUT AND FIND IT ON YOUR OWN. DO YOU UNDERSTAND THAT?

8 MR. BUSHNELL: I UNDERSTAND.

9 MR. WAPNER: DO YOU ACCEPT THAT?

10 MR. BUSHNELL: I ACCEPT IT.

11 MR. WAPNER: OKAY. FOR EXAMPLE, YOU MIGHT BE HEARING
12 A CASE ABOUT A TRAFFIC ACCIDENT AND THE PEOPLE MIGHT BE
13 TALKING ABOUT WHERE THE TRAFFIC SIGNALS WERE.

14 AND THE TRIAL MAY BE A YEAR AFTER THE FACT. AND
15 IF THE JUROR WENT OUT TO THE INTERSECTION, SOMEBODY FROM YOUR
16 OLD DEPARTMENT MIGHT HAVE MOVED THE SIGNALS IN THE MEANTIME.

17 MR. BUSHNELL: THAT'S CORRECT.

18 MR. WAPNER: OKAY. SO THAT IS WHY THE JUDGE TELLS YOU,
19 ALL OF THE EVIDENCE THAT YOU GET HAS TO BE IN THE COURTROOM.
20 YOU DON'T HAVE ANY PROBLEM WITH THAT, DO YOU?

21 MR. BUSHNELL: I HAVE NO PROBLEM WITH IT.

22 MR. WAPNER: OKAY. DO YOU THINK THAT EVERYBODY WHO
23 TESTIFIES IN A COURTROOM UNDER OATH ALWAYS TELLS THE TRUTH?

24 MR. BUSHNELL: WELL, THEY ARE UNDER OATH. THEY SHOULD
25 BE TELLING THE TRUTH.

26 BUT I IMAGINE THAT THERE IS A SMALL PERCENTAGE
27 THAT WOULD GO THE OTHER ROUTE.

28 MR. WAPNER: ALL RIGHT. THE FACT THAT SOMEBODY SHOULD

1 BE DOING IT DOESN'T ALWAYS MEAN THAT THEY DO DO IT, RIGHT?

2 MR. BUSHNELL: THAT'S CORRECT.

3 MR. WAPNER: OKAY. THANK YOU. I PASS FOR CAUSE, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT.

6 MR. BARENS: WE HAVE RESERVED.

7 THE COURT: YES.

8 MR. BARENS: MAY WE APPROACH?

9 THE COURT: SURE.

10 MR. BARENS: THANK YOU.

11 (THE FOLLOWING PROCEEDINGS WERE HELD AT
12 THE BENCH:)

13 MR. BARENS: YOUR HONOR MIGHT RECALL DURING THE HOVEY,
14 I HAD PROBLEMS WITH THIS PROSPECTIVE JUROR BELIEVING THAT THERE
15 WAS SOMETHING ABOUT THE ACCUSATION THAT WAS TANTAMOUNT TO
16 EVIDENCE. AND I QUESTIONED HIM AGAIN ON THIS SUBJECT. AND
17 HE DID IN MY OPINION, SHOW SOME RESERVATION ABOUT THE FACT
18 THAT MR. HUNT WAS HERE AT ALL BEING TANTAMOUNT -- THAT HE MUST
19 HAVE DONE SOMETHING. I THINK THAT WAS THE EXPRESSION THAT
20 WAS USED.

21 OF MORE CONCERN TO ME YOUR HONOR, WAS HIS SPECIFIC
22 RESPONSE TO MY QUESTION WHEN I SAID TO HIM, "DO YOU BELIEVE
23 THAT THE PRESUMPTIN OF INNOCENCE IS JUST SOMETHING WE SAY HERE
24 ON OUR WAY TO CONVICTION"? AND HE SAID YES.

25 THE COURT: WELL, I ASKED HIM SPECIFICALLY BECAUSE YOU
26 ASKED THAT QUESTION, WHETHER OR NOT HE WOULD ACCEPT THE
27 PRESUMPTION OF INNOCENCE AS PART OF THE LAW AND HE WOULD FOLLOW
28 IT AND HE SAID YES.

1 MR. BARENS: WELL, I THINK -- THANK YOU FOR YOUR INQUIRY.
2 BUT YOUR HONOR, I THINK THE OVERWHELMING SENSE ONE GOT FROM
3 HIS TESTIMONY IS THAT HE WAS NOT WILLING TO ACCEPT THE
4 PRESUMPTION OF INNOCENCE AT ALL. BUT RATHER, IN REPEATED
5 RESPONSES, HE AT ONE TIME REFERRED TO IT AS A LOOPHOLE. ANOTHER
6 TIME, HE THOUGHT IT WAS MERELY A DEVICE EXTENDED ON THE WAY
7 TO CONVICTION.

8 AND ON EVERY OCCASION EXCEPT WHEN YOUR HONOR SPOKE
9 TO HIM, HE SHOWED RESERVATIONS ABOUT THE FIFTH AMENDMENT.

10 HE SAID THAT THE FACT THAT A DEFENDANT WOULD
11 TESTIFY, WELL, HE WOULD ONLY TESTIFY IF THERE WAS -- IF HE
12 DIDN'T THERE WAS A PRESUMPTION THAT WAS NUGATORY AND --

13 THE COURT: YES?

14 MR. WAPNER: YOUR HONOR, FIRST OF ALL, ALTHOUGH THE COURT
15 HEARD HIS TESTIMONY, MY RECOLLECTION IS THAT HE DIDN'T TALK
16 ABOUT THE PRESUMPTION OF INNOCENCE AS A LOOPHOLE. HE WAS
17 TALKING ABOUT GENERAL THINGS IN THE LAW, ABOUT LOOPHOLES.

18 I THINK COUNSEL IS CONFUSING THAT. THAT IS ONE
19 THING.

20 SECOND OF ALL, I DON'T THINK THE RESPONSES OF
21 THIS JUROR RISE TO THE LEVEL OF A CHALLENGE FOR CAUSE BECAUSE
22 I BELIEVE THAT HE FITS INTO A GENERAL CATEGORY OF PEOPLE WHO
23 HOLD THE OPINION THAT DEFENDANTS ARE JUST NOT PLUCKED OUT OF
24 THE AIR AND BROUGHT INTO THE COURTROOM. THERE MUST BE SOME
25 REASON THAT THERE IS A TRIAL.

26 AND I THINK THAT THAT IS WHAT HE IS TRYING TO
27 EXPRESS. IT IS FAIRLY CLEAR TO ME FROM HIS ANSWERS ABOUT
28 HIS PRIOR JURY EXPERIENCE, WHEN HE TALKED ABOUT DEFICIENCIES

1 IN THE TESTIMONY OF POLICE OFFICERS, THAT THE PEOPLE HAD DONE
2 SOMETHING WRONG AND THAT THE DEFENDANT PROBABLY DIDN'T TESTIFY
3 AND MORE LIKELY THAN NOT, IT WAS A NOT GUILTY VERDICT.

4 AND THOUGH THAT IS AN ASSUMPTION ON MY PART, IT
5 IS BASED ON EXPERIENCE AND I WOULD SAY THAT BASED ON THE
6 TOTALITY OF HIS RESPONSES, THERE IS NOT A SUFFICIENT BASIS
7 TO CHALLENGE HIM FOR CAUSE.

8 THE COURT: I WILL DENY THE MOTION.

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN
10 OPEN COURT:)

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

3 THE COURT: ALL RIGHT, THE DEFENDANT.

4 MR. BARENS: THANK YOU, YOUR HONOR. YOUR HONOR, WE
5 WOULD ASK THE COURT TO THANK AND EXCUSE MR. BUSHNELL.

6 THE COURT: ALL RIGHT, THANK YOU, MR. BUSHNELL.

7 I WILL READ IT FOR YOU.

8 MS. KAPES: KAPES.

9 THE CLERK: THANK YOU .

10 (LAUGHTER IN COURTROOM.)

11 THE CLERK: K-A-P-E-S IS THE LAST NAME AND HER FIRST
12 NAME IS H-A-R-I-K-L-I-A.

13 IS THAT MRS.?

14 MS. KAPES: MRS.

15 THE COURT: THAT IS KAPES?

16 MS. KAPES: KAPES.

17 THE COURT: ALL RIGHT, MRS. KAPES, THE USUAL QUESTION
18 AND THAT IS: YOU HAVE HEARD ALL OF THE QUESTIONS WHICH WERE
19 ASKED AND ANSWERED AND IF THE GENERAL QUESTIONS WERE ASKED
20 OF YOU, WOULD YOUR ANSWERS BE SUBSTANTIALLY THE SAME?

21 MS. KAPES: SUBSTANTIALLY.

22 THE COURT: WHAT DO YOU DO, PLEASE?

23 MS. KAPES: I AM A HOUSEWIFE AND I ONCE WAS A STUDENT.

24 THE COURT: I AM GOING TO PROMOTE YOU. YOU ARE A
25 HOMEMAKER, ALL RIGHT?

26 MS. KAPES: I GUESS, YES, I AM A HOMEMAKER.

27 THE COURT: A HOUSEWIFE'S ACTIVITIES ARE MUCH MORE
28 LIMITED THAN A HOMEMAKER.

1 MS. KAPES: OKAY, A HOMEMAKER, AND I WAS A STUDENT.

2 THE COURT: YOU ARE A STUDENT?

3 MS. KAPES: YES, I JUST DROPPED OUT.

4 THE COURT: YOU JUST DROPPED OUT FROM BEING A STUDENT?

5 MS. KAPES: BECAUSE I COULDN'T BE EXCUSED SO I DECIDED
6 I WOULD GO AHEAD AND DO MY DUTY AND DO THAT LATER.

7 THE COURT: WHAT WERE YOU STUDYING?

8 MS. KAPES: I -- I WANT TO GET A DEGREE IN REAL ESTATE
9 IN MANAGEMENT, SO I HAVE HAD SOME -- THROUGHOUT THE YEARS,
10 I HAVE STUDIED AND HAVE HAD COURSES AND EVENTUALLY NOW THAT
11 MY CHILDREN ARE GROWING UP, I WANT TO GO BACK TO WORK.

12 THE COURT: WHAT EDUCATIONAL BACKGROUND DO YOU HAVE?

13 MS. KAPES: OTHER THAN HIGH SCHOOL, I HAVE A NUMBER --
14 I HAVE TAKEN CLASSES ALWAYS WITH BUSINESS IN MIND, ALTHOUGH
15 I HAVE HAD A NUMBER OF CLASSES, I HAVE BEEN STUDYING LANGUAGES
16 BECAUSE AT ONE TIME WHEN I WAS YOUNGER, I WANTED TO BE AN
17 INTERPRETER.

18 THE COURT: WHICH LANGUAGES?

19 MS. KAPES: WELL, GREEK, WHICH IS MY MOTHER LANGUAGE
20 AND FRENCH AND RUSSIAN AND SPANISH.

21 THE COURT: YOU REMIND ME OF WHAT ARISTOTLE SAID, HE
22 TOOK ALL KNOWLEDGE TO BE HIS PROVINCE. YOU SEEM TO TAKE ALL
23 LANGUAGES TO BE YOUR PROVINCE. YOU DO VERY WELL.

24 MS. KAPES: I GREW UP IN A MULTI-LINGUAL HOME.

25 THE COURT: IS THERE A MR. KAPES?

26 MS. KAPES: YES.

27 THE COURT: WHAT DOES HE DO?

28 MS. KAPES: HE IS AN ATTORNEY FOR THE STATE, THE

9-3
1 DEPARTMENT OF CORPORATIONS. THEY REGULATE THE SALE OF
2 SECURITIES.

3 THE COURT: WHERE DID HE GET HIS LAW DEGREE?

4 MS. KAPES: UCLA.

5 THE COURT: WHERE DO YOU LIVE?

6 MS. KAPES: I LIVE IN SANTA MONICA.

7 THE COURT: HAVE YOU EVER SERVED AS A JUROR --

8 MS. KAPES: NEVER.

9 THE COURT: -- ON A CRIMINAL CASE?

10 DO YOU HAVE ANY CHILDREN?

11 MS. KAPES: I HAVE TWO, A 17-YEAR-OLD DAUGHTER AND A
12 13-YEAR-OLD SON.

13 THE COURT: THEY BOTH GO TO HIGH SCHOOL, DO THEY?

14 MS. KAPES: WELL, JUNIOR HIGH SCHOOL FOR MY SON.

15 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
16 OF A CRIME?

17 MS. KAPES: I DON'T KNOW IF YOU CAN SAY CRIME. WHEN
18 I WAS YOUNGER, TWO THINGS OCCURRED.

19 MY BROTHER AND I WERE HERE TEN YEARS PRIOR TO
20 MY PARENTS COMING TO THIS COUNTRY AND WE WERE SAVING MONEY
21 TO BRING THEM OVER AND THE BANK THAT I WAS PUTTING THE MONEY,
22 WHERE WE PUT OUR MONEY, BECAUSE THE INTEREST RATE WAS HIGH,
23 FOLDED. THEY WENT INTO RECEIVERSHIP. THEY HAD ALLOWED THEIR
24 INSURANCE TO LAPSE. IT WAS IN THE LATE '50'S, EARLY '60'S.

25 SO WE LOST EVERYTHING WE HAD AND WE HAD TO
26 BEGIN AGAIN. IN FACT, WE HAD TO BORROW A SUM OF MONEY.

27 THEN A FEW YEARS LATER WHEN I WAS ENGAGED, MY
28 FIANCE AND I PUT OUR MONEY INTO AN INVESTMENT, THAT FOR ALL

1 OF THE RESEARCH THAT WE DID AND OTHERS LIKE US, WE THOUGHT
2 IT WOULD BE GOOD, AND WAS INDEED A SCAM AND THE INVESTORS (SIC)
3 ABSCONDED WITH THE MONEY, DISAPPEARED. WE NEVER FOUND THEM
4 SO WE LOST AGAIN.

5 THE COURT: WERE THEY EVER FOUND AND PROSECUTED?

6 MS. KAPES: NEVER.

7 THE COURT: HOW LONG AGO WAS THAT?

8 MS. KAPES: I THINK 25 YEARS AGO, SIR.

9 THE COURT: THIS UNHAPPY EXPERIENCE, OF COURSE, THAT
10 WOULDN'T AFFECT YOU IN EXERCISING YOUR JUDGMENT IN THIS CASE
11 AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT, WOULD IT?

12 MS. KAPES: I HOPE NOT, SIR. I TRY TO THINK OF MYSELF
13 AS BEING HONEST AND FAIR.

14 THE COURT: AND THE INVESTIGATION DONE BY THE AUTHORITIES
15 ON THE SCAM, ARE YOU SATISFIED THAT THEY DID THE BEST THEY
16 COULD?

17 MS. KAPES: NO, SIR.

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1 THE COURT: THEY DIDN'T DO THE BEST THEY COULD?

2 MS. KAPES: I DON'T THINK THEY PURSUED IT FURTHER.
3 THEY FELT THEY COULDN'T --

4 AGAIN, THIS IS 25 YEARS AGO AND I CAN ONLY TELL
5 YOU WHAT I REMEMBER.

6 AND I REMEMBER THAT IT WAS A HOPELESS CASE, THEY
7 FELT. I GUESS THEY LOOKED INTO IT AND THEY COULDN'T FIND THEM.

8 THEY MUST HAVE GONE TO SOME OTHER COUNTRY OR
9 SOMETHING AND IT WAS DROPPED.

10 THE COURT: IN YOUR JUDGMENT, COULD THEY HAVE BEEN
11 FOUND?

12 MS. KAPES: I DON'T THINK SO.

13 THE COURT: WELL, THEN WERE YOU SATISFIED THAT THEY
14 DID THE BEST THEY COULD?

15 MS. KAPES: YOU KNOW, I SHOULDN'T SAY THAT.

16 FROM ALL THAT THEY DID, I DON'T THINK THEY COULD
17 HAVE FOUND THEM.

18 I DON'T KNOW WHETHER THEY WERE LIMITED IN MONEY,
19 I DON'T KNOW.

20 THE COURT: ALL RIGHT.

21 MS. KAPES: BUT I DO REMEMBER I WAS BITTER AT THE TIME.

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

23 MR. BARENS: THANK YOU, YOUR HONOR.

24 GOOD MORNING.

25 MS. KAPES: GOOD MORNING.

26 MR. BARENS: IS IT KAPES?

27 MS. KAPES: KAPES. IT SHOULD HAVE ANOTHER P BUT IT
28 WAS SHORTENED.

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1 MR. BARENS: THANK YOU, MRS. KAPES.

2 MRS. KAPES, I AM INITIALLY INTERESTED IN WHAT
3 YOUR HUSBAND DOES AS A COUNSEL FOR THE DEPARTMENT OF
4 CORPORATIONS.

5 MS. KAPES: YES.

6 MR. BARENS: DOES HE HAVE A PARTICULAR ACTIVITY THERE?

7 MS. KAPES: MR. BARENS, I HAVE TO TELL YOU I AM NOT
8 THAT FAMILIAR, ALTHOUGH I HAVE BEEN MARRIED TO THE MAN
9 20 YEARS, WE DON'T DISCUSS THAT MUCH WHAT HE DOES, OTHER THAN
10 THOSE WHO COME BEFORE HIM TO GET LICENSES TO SELL SHARES IN
11 WHATEVER THEY ARE SELLING.

12 WE REALLY DON'T DISCUSS ANYTHING MUCH SO I AM
13 NOT AWARE.

14 MR. BARENS: COULD YOU TELL ME HONESTLY, DO YOU FEEL
15 THAT THE FACT THAT YOUR HUSBAND IS COUNSEL FOR A STATE
16 AGENCY, WOULD THAT GIVE YOU ANY BIAS WHERE YOU MIGHT BE MORE
17 SUPPORTIVE TOWARD THE PROSECUTION THAN THE DEFENSE?

18 MS. KAPES: NOT MY HUSBAND'S WORK, NO.

19 MR. BARENS: IS THERE ANYTHING ABOUT YOUR BACKGROUND
20 THAT MIGHT GIVE YOU ANY BIAS IN THAT REGARD?

21 (PAUSE.)

22 MS. KAPES: I HAVE BEEN EXAMINING MYSELF, YOU KNOW,
23 MY OWN TRUE FEELINGS. I BELIEVE THAT -- THAT I -- I AM FOR
24 LAW AND ORDER, THAT I FEEL VERY STRONGLY THAT THE LAW SHOULD
25 BE ADHERED TO AND IN THAT RESPECT, I WOULD SAY I AM FOR
26 PURSUING ANY WRONGDOING THAT SEEMS TO BE A FAIR AND OBVIOUS
27 CONCLUSION --

28 MR. BARENS: SURE.

1 MS. KAPES: -- IF THERE IS ANY WRONGDOING OR IF THERE
2 IS ANY DOUBT OF WRONGDOING.

3 MR. BARENS: QUITE SO.

4 OF COURSE, I AM PLEASED THAT YOU STARTED OUT WITH
5 THE "IF" WORD. IF THERE IS WRONGDOING.

6 MS. KAPES: YES, YES.

7 IF I -- IF I WERE IN THAT POSITION, I WOULD WANT
8 SOMEONE TO THINK THAT I WOULD BE THAT WAY ALSO.

9 MR. BARENS: HOW DO YOU FEEL ABOUT THAT PRESUMPTION
10 OF INNOCENCE THAT THE DEFENDANT HAS THE BENEFIT OF IN THIS
11 COURTROOM?

12 MS. KAPES: IT IS RIGHTLY SO. IT SHOULD BE. IT SHOULD
13 BE SO.

14 MR. BARENS: YOU ARE COMFORTABLE WITH THAT?

15 MS. KAPES: YES, SIR.

16 MR. BARENS: BECAUSE LAW AND ORDER IS A CONCEPT WHICH,
17 I WOULD SUBMIT, EVERYONE WOULD ENDORSE, IS CERTAINLY PART
18 OF LAW AND ORDER, THE PROTECTION OF OUR CONSTITUTIONAL RIGHTS.

19 MS. KAPES: YES.

20 MR. BARENS: AND THE PRESERVATION OF THE RIGHTS OF
21 DEFENDANTS IN TRIAL SETTINGS.

22 MS. KAPES: YES.

23 MR. BARENS: IT IS ALL PART OF IT, ISN'T IT?

24 MS. KAPES: YES, SIR.

25 MR. BARENS: IT IS NOT JUST GETTING BAD GUYS OFF THE
26 STREET.

27 MS. KAPES: OH, OF COURSE NOT. NOT ONLY THAT, OF COURSE
28 NOT.

1 MR. BARENS: IT IS THE WHOLE NEXUS OF CONSTITUTIONAL
2 RIGHTS --

3 MS. KAPES: YES.

4 MR. BARENS: -- AS WELL AS CRIMINAL CONDUCT.

5 MS. KAPES: YES.

6 MR. BARENS: HAVE YOU ALWAYS BEEN A HOMEMAKER OR DO
7 YOU HAVE PRIOR EMPLOYMENT?

8 MS. KAPES: WELL, I WORKED PART-TIME AT A TIME WHEN
9 I WAS DOING VOLUNTEER WORK AT SCHOOL AND CHURCH AND HOSPITALS
10 AND EVERYTHING, I WAS ASKED IF I WOULD COME IN NOT THREE TIMES
11 A WEEK BUT FIVE TIMES A WEEK AND THEY WOULD PAY ME AND I SAID
12 YES, SINCE I WAS THERE SO MUCH OF THE TIME. SO I DID WORK
13 AS A TEACHER'S AIDE AND ALSO IN THE LAB SITUATION, I TAUGHT
14 UNDER A SUPERVISOR, MATH, ENGLISH AND READING SKILLS.

15 MR. BARENS: AT WHAT LEVEL WAS THAT?

16 MS. KAPES: GRADE SCHOOL LEVEL.

17 MR. BARENS: GRADE SCHOOL LEVEL?

18 MS. KAPES: UP TO THE SIXTH GRADE IN FACT. ONLY THE
19 SIXTH GRADE.

20 MR. BARENS: DO YOU HAVE A PRIMARY TEACHING DEGREE?

21 MS. KAPES: NO, NO.

22 THE INGLEWOOD SCHOOL SYSTEM HAD HIRED UNDER FEDERAL
23 FUNDING, HIRED A NUMBER OF WORKERS JUST -- AND THEY WERE TESTED
24 TO SEE THEIR ABILITY AND I WAS PUT IN TO A LAB SITUATION WHERE
25 I WOULD INDIVIDUALLY, JUST TO HELP LANGUAGE AND MATH SKILLS
26 SO IN THAT I WAS -- THERE WAS ALWAYS SUPERVISION.

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1 MR. BARENS: AS A MOTHER OF TWO CHILDREN, HOW DO YOU
2 FEEL ABOUT THE CHERRY PIE EXAMPLE THAT MR. WAPNER PUTS FORTH
3 HERE AND WHETHER OR NOT WE ARE GOING TO CONCLUDE THAT JOHNNY
4 IS THE CULPRET IN THAT SITUATION?

5 MS. KAPES: I WOULD SAY JOHNNY IS THE CULPRIT.

6 MR. BARENS: RIGHT OFF THE BAT?

7 MS. KAPES: WELL, I HAVE HEARD IT SO MANY TIMES THAT
8 I HAVE HAD TIME TO DECIDE FOR MYSELF. YES, JOHNNY WAS THE
9 CULPRIT.

10 THERE WERE JUST THE TWO OF US. I WENT INTO THE
11 OTHER ROOM. I CAME BACK. HE HAD IT ON HIS FACE.

12 HE HAD IT ON HIS SHIRT. JOHNNY WANTED THE PIE,
13 SO HE ATE IT. YES, SIR.

14 MR. BARENS: IF YOU WERE A JUROR IN THIS CASE, DO YOU
15 THINK YOU ARE GOING TO HAVE SIMPLISTIC A SITUATION? AND I AM
16 GOING TO TELL YOU THAT THERE IS A DEAD MAN AND THERE IS ONLY
17 ONE GUY IN THE WORLD THAT WAS IN THE PLACE AND HE HAS GOT A
18 LOADED GUN IN HIS HAND AND HE HAS GOT GUN POWDER ALL OVER HIM
19 AND HE HATED THE GUY TO DEATH THAT WAS LYING ON THE FLOOR AND
20 HE HAD EVERY MOTIVE IN THE WORLD TO KILL HIM AND HE TOLD
21 50 PEOPLE THAT HE WAS GOING TO KILL HIM.

22 DO YOU THINK THAT IS WHAT WE ARE GOING TO HAVE
23 HERE?

24 MS. KAPES: WELL, THE CHERRY PIE IS ONE THING.

25 MR. BARENS: RIGHT.

26 MS. KAPES: WE ARE BEING SIMPLISTIC. MURDER IS ANOTHER
27 THING, SIR.

28 AS A JUROR, I WOULD HAVE SOMEBODY'S LIFE IN MY

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1 HANDS. I WOULD NOT BE THAT SIMPLISTIC.

2 SORRY, I CANNOT EXPECT OF MYSELF TO SIMPLY SAY
3 THAT IS WHAT HE DID. IT IS NOT A MOVIE.

4 IT IS NOT THE SAME THING. IT IS NOT SIMPLE. AND
5 I WOULD HAVE TO HAVE ALL OF THE EVIDENCE AND LISTEN TO ALL
6 OF IT THAT WAS AVAILABLE.

7 MR. BARENS: YOU DON'T REALLY THINK ANYWHERE IN THE WORLD,
8 THAT YOU WOULD EVER SEE A TRIAL LOOK ANYTHING LIKE THE BOY
9 WITH THE CHERRY PIE AND HIS MOTHER ALL BY THEMSELVES IN THE
10 HOUSE AND WE ARE GOING TO PUT THIS WHOLE ROOM TOGETHER AND
11 HIRE A JUDGE TO GET ALL THE JURORS AND GET ALL THE LAWYERS
12 AND WE ARE GOING TO HAVE A TRIAL ABOUT SOMETHING LIKE THAT?

13 DO YOU THINK IT WOULD EVER GET TO WHERE WE WOULD
14 HAVE A TRIAL ON FACTS LIKE THAT? IS THAT REASONABLE TO YOU
15 THAT WE IN THIS SYSTEM, WOULD HAVE THAT KIND OF A TRIAL?

16 MS. KAPES: THAT IS A POSSIBILITY. BUT NO, I DON'T THINK
17 THAT THAT IS COMMON OR THE AVERAGE WAY OF --

18 MR. BARENS: WELL MY POINT BEING, MISS KAPES, YOU HAVE
19 HAD AN OPPORTUNITY TO CONSIDER THAT HYPOTHETICAL FOR A COUPLE
20 OF DAYS, NOW. THERE IS NOTHING TO TRY. THE FACTS WERE GIVEN
21 AND IT MADE THE CONCLUSION INEVITABLE. IT MADE ANY OTHER
22 CIRCUMSTANCES VIRTUALLY IMPOSSIBLE. ISN'T THAT TRUE?

23 MS. KAPES: I DON'T FOLLOW YOU. I AM NOT SURE WHAT YOU
24 ARE SAYING.

25 MR. BARENS: WELL, YOU ARE TOLD THAT THERE IS NO OTHER
26 PERSON IN THE WORLD PRESENT EXCEPT FOR THE MOTHER AND JOHNNY.
27 DO YOU HAVE ANY CHOICES ABOUT YOUR VERDICT?

28 MS. KAPES: NOT IN THAT CASE, NO.

1 MR. BARENS: YOU DON'T. NOW, WOULD YOU BE WILLING TO
2 BELIEVE THAT YOU ARE GOING TO HAVE CHOICES IN THIS CASE OR
3 YOU DON'T HAVE A DEFENSE LAWYER HERE TO BEGIN WITH? DO YOU
4 THINK JOHNNY HAS GOT A LAWYER THAT IS ACTUALLY SAYING TO
5 SOMEBODY THAT MY CLIENT DIDN'T TOUCH THE PIE? THERE IS NOBODY
6 ELSE THAT HE COULD LAY THAT OFF ON AND HE IS COVERED WITH
7 CHERRY PIE BUT MY CLIENT DIDN'T DO IT.

8 DO YOU REALLY THINK THAT COULD HAPPEN?

9 THE COURT: WE HAVE NOT GOT A CHERRY PIE CASE. THE
10 DISTRICT ATTORNEY ONLY GAVE THAT AS AN INSTANCE OF WHAT
11 CIRCUMSTANTIAL IS. THAT IS THE ONLY PURPOSE FOR HIS DOING
12 IT.

13 WE DON'T HAVE A PIE CASE HERE; IS THAT CORRECT,
14 MR. WAPNER?

15 MR. WAPNER: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: LET'S NOT ELABORATE. YOU HAVE GONE FAR,
17 FAR AFIELD.

18 MR. BARENS: WELL, I SIMPLY WANT TO MAKE SURE --

19 THE COURT: BECAUSE I TOLD YOU THAT ALL HE DID IT FOR
20 IS TO SHOW THE DIFFERENCE BETWEEN DIRECT EVIDENCE AND
21 CIRCUMSTANTIAL EVIDENCE AND INFERENCES THAT COULD BE DRAWN.
22 THAT IS THE ONLY REASON FOR IT. YOU ARE BLOWING IT WAY OUT
23 OF PROPORTION FROM WHAT COUNSEL INTENDED IT TO BE.

24 LET'S GET ONTO SOMETHING VITAL AND IMPORTANT.

25 MR. BARENS: MY POINT WITH MISS KAPES, IS THE DIFFERENCE
26 BETWEEN A SITUATION WHERE YOU HAVE NO CHOICE ABOUT WHAT IS
27 A REASONABLE DOUBT AND A SITUATION WHERE REASONABLE DOUBT CAN
28 EXIST IN THE FIRST INSTANCE OR I WOULDN'T BE HERE.

1 NOW MISS KAPES, YOU HAVE NEVER BEEN A JUROR
2 BEFORE?

3 MS. KAPES: NO, SIR.

4 MR. BARENS: HAVE YOU EVER WATCHED A TRIAL BEFORE?

5 MS. KAPES: NEVER.

6 MR. BARENS: THIS IS YOUR FIRST TIME?

7 MS. KAPES: THE VERY FIRST TIME.

8 THE COURT: LET ME INTERRUPT YOU. I HAVE ANOTHER MATTER
9 TO TAKE CARE OF. IT IS 12:00 O'CLOCK NOW. WE WILL TAKE A
10 RECESS, IF YOU DON'T MIND.

11 LADIES AND GENTLEMEN, WE WILL TAKE A RECESS UNTIL
12 1:45 THIS AFTERNOON. YOU CAN COME DIRECTLY INTO THE COURTROOM.
13 YOU WON'T HAVE TO GO TO THE JURY ASSEMBLY ROOM.

14 (AT 12:00 NOON RECESS WAS TAKEN UNTIL
15 1:45 P.M. OF THE SAME DAY.)

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1 SANTA MONICA, CALIFORNIA; WEDNESDAY, JANUARY 14, 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: STIPULATED THE DEFENDANT IS PRESENT, COUNSEL
6 ARE PRESENT AND THE JURORS ARE PRESENT AND SEATED IN THE JURY
7 BOX.

8 I THINK WE WERE --

9 MR. BARENS: I WAS PROCEEDING WITH MRS. KAPES, YOUR
10 HONOR.

11 THE COURT: MRS. KAPES, YES.

12 MR. BARENS: THANK YOU, YOUR HONOR.

13 GOOD AFTERNOON, MRS. KAPES.

14 MS. KAPES: HELLO.

15 MR. BARENS: MRS. KAPES, YOU HAD TOLD ME YESTERDAY
16 PRIOR TO THE LUNCH HOUR THAT YOU HAD NEVER HAD ANY PRIOR
17 JURY EXPERIENCE, AS I RECALL.

18 MS. KAPES: NO, I HAVE NOT.

19 MR. BARENS: HAVE YOU EVER BEEN A WITNESS PREVIOUSLY?

20 MS. KAPES: NO.

21 MR. BARENS: HAVE YOU EVER HAD ANY PRIOR CONTACT WITH
22 THIS WHOLE SYSTEM?

23 MS. KAPES: YES.

24 MY HUSBAND AND I WERE INVOLVED IN AN ACCIDENT --
25 OR, RATHER, I WAS INVOLVED. HE WAS A PASSENGER. SOMEONE
26 HIT US ON THE SIDE AND REFUSED TO PAY, SO WE HAD TO GO TO
27 COURT BUT THERE WAS NO JURY BUT A HEARING OF SOME SORT.

28 MR. BARENS: DID YOU HAVE A TRIAL BY A JUDGE OR AN

1 ARBITRATOR?

2 MS. KAPES: BY A JUDGE. BY A JUDGE.

3 IT WASN'T -- IT WAS VERY FAST, AS I REMEMBER.

4 IT WAS JUST A SHORT TRIAL.

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1 MR. BARENS: ALL RIGHT. AND DID YOU THINK THE SYSTEM
2 WORKED PROPERLY IN THAT CONTEXT?

3 MS. KAPES: YES.

4 MR. BARENS: IF YOU WERE THE DEFENDANT THAT I REPRESENTED
5 IN THIS CASE AND WE HAD A JURY OF 12 PEOPLE MADE UP OF
6 PEOPLE WITH YOUR POINT OF VIEW ON THE CRIMINAL JUSTICE SYSTEM
7 AND YOUR POINT OF VIEW JUST IN GENERAL, WOULD YOU BE COMFORTABLE
8 HAVING A JURY OF 12 PEOPLE WITH YOUR POINT OF VIEW, IF YOU
9 WERE A DEFENDANT?

10 MS. KAPES: YES, SIR. I UNDERSTAND YOUR QUESTION. YES,
11 I WOULD.

12 MR. BARENS: YOU FEEL THAT YOU ARE OPEN-MINDED AND
13 WOULD BE WILLING TO BE OBJECTIVE IN LISTENING TO ALL OF THE
14 EVIDENCE?

15 MS. KAPES: YES, SIR.

16 MR. BARENS: AND DO YOU SOMEHOW, HAVE ANY FEELINGS AS
17 ANOTHER JUROR MIGHT HAVE STATED THAT THE SYSTEM IS RIDDLED
18 WITH LOOPHOLES?

19 MS. KAPES: I DON'T KNOW. I HAVE HEARD OF THERE BEING
20 LOOPHOLES, YES. BUT I DON'T KNOW BECAUSE I HAVE NEVER
21 STUDIED THE LAW THAT MUCH.

22 AS FAR AS I KNOW, THE LAW WORKS. IT WORKS SLOWLY
23 BUT IT WORKS.

24 MR. BARENS: NO ONE IS GOING TO DISAGREE WITH THAT,
25 INCLUDING MYSELF.

26 DO YOU UNDERSTAND THAT THE FACT THAT IT WORKS
27 SLOWLY IS NOT PARTICULARLY MY FAULT OR MR. WAPNER'S FAULT?

28 MS. KAPES: YES. I UNDERSTAND.

1 THE COURT: IT MUST BE THE JUDGE'S FAULT.

2 MR. BARENS: OBVIOUSLY, YOUR HONOR HAS DEMONSTRATED AN
3 INTEREST IN EXPEDIENCY, TO SAY THE LEAST.

4 BUT YOU UNDERSTAND THAT THAT IS THE WAY IT IS?

5 MS. KAPES: YES.

6 MR. BARENS: IT EVEN TOOK 800 YEARS TO GET THE WAY IT
7 IS.

8 MR. KAPES: YES.

9 MR. BARENS: DO YOU HAVE ANY HOBBIES?

10 MS. KAPES: I USED TO HAVE HOBBIES. THE ONLY ONE THAT
11 I HAVE THAT I STILL PRACTICE IS READING. I ENJOY READING.

12 TENNIS, MOUNTAIN CLIMBING AND SOME OF THE THINGS
13 I USED TO DO, NO. I DON'T DO THEM ANYMORE.

14 MR. BARENS: IS THERE A PARTICULAR SUBJECT MATTER THAT
15 YOU PREFER READING, AS OPPOSED TO ANY OTHER?

16 MS. KAPES: NO, JUST ANYTHING I CAN GET MY HANDS AT
17 (SIC) FROM ROMANCE TO FACTUAL.

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

19 MS. KAPES: I KNEW YOU WOULD ASK ME THAT. IT WAS EITHER
20 EL AMOUR BRUJO OR CHILDREN OF A LESSER GOD.

21 MR. BARENS: WHAT WAS THE FIRST ONE?

22 MS. KAPES: EL AMOUR BRUJO.

23 MR. BARENS: WHAT WAS THAT ABOUT?

24 MS. KAPES: GYPSY LIFE. IT IS PRESENTED AS A PLAY,
25 ACTUALLY. YOU SEE IT DONE ON A STAGE.

26 IT IS THEIR WAY OF LIFE, CHILDREN PROMISED TO EACH
27 OTHER AND ACTUALLY ABOUT LIFE AND DEATH.

28 AND I THINK THAT IT IS ALSO ABOUT THEIR

12-3

1 SUPERSTITIONS. IT IS NOT SO DEEP A MOVIE THAT IT WOULD HAVE
2 ANY LASTING IMPRESSION ON ME ONE WAY OR THE OTHER.

3 MR. BARENS: ALL RIGHT. IS THERE ANYTHING YOU THINK
4 I OUGHT TO KNOW ABOUT YOU AS A PROSPECTIVE JUROR ON THIS
5 CASE?

6 MS. KAPES: YES, I DO. THE NAMES, WHEN THEY WERE READ,
7 I RECOGNIZED A NAME. AND I MENTIONED IT. I RECOGNIZED THE
8 NAME OF BART ROE AND I MENTIONED IT.

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1 THE COURT: I ASKED YOU ABOUT THAT. I ASKED YOU ABOUT
2 IT --

3 MS. KAPES: RIGHT.

4 THE COURT: -- DIDN'T I?

5 MS. KAPES: AND I BELIEVE WHEN I SAID -- WHEN I WAS
6 QUESTIONED BEFORE, HAD YOU EVER HEARD OF THIS CASE OR THE
7 NAME, AND I SAID NO, I MEANT IT. I HAD NEVER HEARD OF IT.

8 HOWEVER, IN HEARING THAT NAME THE OTHER DAY, I
9 REALIZED THAT I HAD KNEW OF THE CASE, NOT KNOWING PARTICULARS
10 OR NAMES, A FRIEND, A VERY GOOD FRIEND OF MINE HAD INVESTED
11 WITH SOME OTHER FRIENDS, BART ROE BEING ONE OF THEM, AND HAD
12 LOST HER MONEY.

13 I WAS VERY UPSET AND I HAD COMMISERATED WITH HER
14 AND THAT GOES BACK MAYBE TWO YEARS AGO, AND IT DIDN'T RING
15 A BELL OR I DIDN'T TIE IT IN AT ALL UNTIL THE NAME WAS READ
16 TO ME.

17 MR. BARENS: JUST ONE MOMENT.

18 MS. KAPES: YES.

19 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
20 AND THE DEFENDANT.)

21 MR. BARENS: HAD YOU SPOKEN WITH THAT INDIVIDUAL MORE
22 THAN ONCE?

23 MS. KAPES: THEN, YOU MEAN?

24 MR. BARENS: YES.

25 MS. KAPES: MIGHT HAVE.

26 AS I SAID, IT WAS LIKE TWO YEARS AGO. OTHER THINGS
27 HAVE HAPPENED. IT NEVER CAME UP AGAIN.

28 BUT AT THE TIME, SHE COULD HAVE, SHE COULD HAVE

1 SPOKEN TO ME MORE THAN ONCE.

2 I JUST REMEMBER SHE HAD LOST MONEY AND I
3 COMMISERATED WITH HER AND THAT IS IT.

4 MR. BARENS: WHAT MADE YOU THINK THAT INVESTMENT LOSS --
5 DID THAT PERSON TELL YOU WHO SHE HAD INVESTED IT WITH?

6 MS. KAPES: NO. THAT IS WHY I DIDN'T SAY IT WHEN I
7 WAS ASKED IF I KNEW ANYTHING ABOUT THE CASE.

8 MR. BARENS: I SEE.

9 MS. KAPES: JUST WHEN THE NAME, WHEN I HEARD THE NAME
10 I STARTED THINKING ABOUT IT AND I THOUGHT "THIS HAS TO HAVE
11 BEEN THAT."

12 MR. BARENS: I SEE.

13 FROM THAT, THOUGH, YOU WOULDN'T NECESSARILY HAVE
14 SOME SORT OF A BELIEF, WOULD YOU, THAT JOE HUNT CAUSED YOUR
15 FRIEND TO LOSE ANY MONEY, DID YOU?

16 IF YOU DO, TELL ME.

17 MS. KAPES: YES, I AM TRYING TO --

18 (PAUSE IN PROCEEDINGS.)

19 MS. KAPES: I DON'T REMEMBER THE NAME OF --

20 THE COURT: BART ROE, WAS THAT THE NAME? ROE?

21 MS. KAPES: YES, BART ROE.

22 THE COURT: DID HE HAVE ANYTHING TO DO WITH THE LOSS
23 OF THIS MONEY?

24 MS. KAPES: HE INVESTED MONEY.

25 I JUST HEARD THE NAME AS YOU READ THEM.

26 THE COURT: HE INVESTED MONEY FOR YOUR FRIEND?

27 MS. KAPES: NO.

28 FOR HIMSELF AND MY FRIEND AND BART ROE'S SISTER

1 ALSO INVESTED MONEY IN THE SAME.

2 THE COURT: YOU DON'T KNOW WHERE THEY INVESTED THE MONEY,
3 DO YOU?

4 MS. KAPES: NO, NO. I WOULDN'T HAVE KNOWN ANYTHING
5 UNTIL I HEARD.

6 THE COURT: HOW DID YOU CONNECT THAT LOSS OF THAT MONEY
7 WITH THIS PARTICULAR CASE?

8 MS. KAPES: BY THE NAME.

9 I AM JUST SAYING IT MUST HAVE BEEN THAT.

10 THE COURT: BY THE NAME OF WHAT?

11 MS. KAPES: I DON'T KNOW.

12 I AM JUST SAYING BECAUSE OF THAT NAME, I FEEL
13 I SHOULD TELL YOU.

14 THE COURT: OF COURSE, YOU ARE RIGHT IN TELLING US.

15 MR. BARENS: AND I APPRECIATE THIS, QUITE INDEED.

16 WHAT IS THE NAME OF THE LADY YOU ARE REFERENCING?

17 MS. KAPES: HER NAME IS DIANE PEDEN-OBERSTEIN.

18 THE COURT REPORTER: HOW DO YOU SPELL THAT?

19 MS. KAPES: IT IS PEDEN, P-E-D-E-N, OBERSTEIN,
20 O-B-E-R-S-T-E-I-N.

21 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
22 AND THE DEFENDANT.)

23 MR. BARENS: MRS. KAPES, SO YOU DISCUSSED THE FACT THAT
24 MRS. OBERSTEIN HAD LOST SOME MONEY?

25 MS. KAPES: YES.

26 MR. BARENS: AND DID SHE EVER MENTION THE NAME JOE HUNT
27 TO YOU?

28 MS. KAPES: NO.

1 MR. BARENS: DID SHE EVER MENTION BILLIONAIRE BOYS CLUB?

2 MS. KAPES: NO.

3 MR. BARENS: BBC?

4 MS. KAPES: NOTHING.

5 MR. BARENS: DID SHE TELL YOU SHE HAD BEEN SWINDLED?

6 MS. KAPES: YES.

7 MR. BARENS: WHY DID SHE THINK SHE HAD BEEN SWINDLED?

8 MS. KAPES: SHE HAD LOST HER MONEY.

9 MR. BARENS: WELL, I KNOW BUT --

10 MS. KAPES: YES.

11 I DON'T REMEMBER, I HAVE TO BE HONEST AND TELL
12 YOU.

13 I REMEMBER COMMISERATING WITH HER. SHE SAID SHE
14 HAD HEARD ABOUT THAT THEY HAD INVESTED AND SHE THOUGHT SHE
15 WOULD INVEST, TOO, AND --

16 THE COURT: DO YOU KNOW WHAT SHE INVESTED IN?

17 MS. KAPES: NO.

18 SHE WAS UPSET AND THAT IS ALL I REMEMBER.

19 MR. BARENS: DO YOU UNDERSTAND, MRS. KAPES, THAT I MIGHT
20 INVEST IN THE STOCK MARKET WITH MY BROKER AND, SUFFICE IT
21 TO SAY, THIS IS JUST AN EXAMPLE I AM GIVING YOU, AND LOSE
22 MY MONEY REGULARLY BUT I DON'T THINK MY BROKER IS SWINDLING
23 ME.

24 MS. KAPES: OH, ABSOLUTELY.

25 MR. BARENS: HE COULD JUST BE DUMB.

26 MS. KAPES: WE ALSO DID THAT AND WE DIDN'T THINK IT
27 WAS THE BROKER'S FAULT. IT JUST HAPPENED.

28 MR. BARENS: AND DO YOU HAVE ANY MISGIVINGS ABOUT JOE

1 HUNT BEING A BAD GUY OR SOMETHING BECAUSE YOU HAVE HEARD THAT
2 NAME REFERENCED AS A POTENTIAL WITNESS IN THIS CASE AND THE
3 FACT THAT JOE HUNT IS HERE?

4 MS. KAPES: NO.

5 BUT AS I SAID, I WANTED YOU TO KNOW THAT I WAS
6 AWARE OF THE NAME THAT WAS MENTIONED.

7 MR. BARENS: DO YOU THINK THAT MIGHT BIAS YOU IN ANY
8 WAY?

9 MS. KAPES: I DON'T THINK SO.

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1 MR. BARENS: ARE YOU SURE?

2 MS. KAPES: AS SURE AS I CAN BE LOOKING INSIDE ME AND
3 CHECKING MY CONSCIENCE.

4 MR. BARENS: ALL RIGHT. THAT IS ALL I CAN ASK YOU TO
5 DO.

6 LET ME GIVE YOU AN EXAMPLE. SUPPOSING MR. ROE
7 TOOK THE STAND AND SAID THAT HE LOST X DOLLARS AND IN HIS
8 OPINION, HE LOST ALL HIS MONEY BECAUSE JOE HUNT EITHER WAS
9 THE WORST INVESTOR IN THE WORLD OR AN OUT AND OUT THIEF.
10 ALL RIGHT?

11 WOULD THAT MAKE YOU THINK HE COMMITTED A MURDER?

12 MS. KAPES: NO.

13 MR. BARENS: OBVIOUSLY, YOU UNDERSTAND THIS TRIAL DOESN'T
14 HAVE ANYTHING TO DO AT ALL WITH WHETHER ONE IS A GOOD AND
15 PRUDENT INVESTOR?

16 MS. KAPES: I UNDERSTAND THAT.

17 MR. BARENS: THE SOLE QUESTION FOR YOU BECOMES WHETHER
18 SOMEONE HAS BEEN MURDERED. DO YOU UNDERSTAND THAT?

19 MS. KAPES: I UNDERSTAND THAT.

20 MR. BARENS: NOW, YOU WEREN'T HERE DURING ALL THOSE
21 EXAMPLES ABOUT WHETHER WE LIKED THE NATURE OF THE VICTIM.

22 BUT, LET ME WITHOUT HAVING TO PROVIDE AN EXAMPLE,
23 AS YOU DO YOU UNDERSTAND, THAT ONE OF THE THINGS THAT THE
24 JUDGE WILL INSTRUCT YOU IS THAT IRRESPECTIVE OF HOW YOU FEEL
25 ABOUT THE ALLEGED VICTIM, LET'S SAY THIS IS A CASE WHERE
26 SOMETHING HAPPENED TO A PERSON AND YOU JUST HATED THAT PERSON
27 AND THE GUY WAS JUST A TERRIBLE GUY.

28 DO YOU UNDERSTAND THAT YOU CANNOT CONSIDER THAT

1 IN DETERMINING WHETHER OR NOT THE DEFENDANT IN THAT TYPE OF
2 A CASE, IS GUILTY OR NOT? DO YOU UNDERSTAND THAT?

3 MS. KAPES: YES, SIR.

4 MR. BARENS: BY THE SAME TOKEN, IF YOU ABSOLUTELY HATE
5 A GUY, LET'S SAY THAT WE HAD ADOLF HITLER HIMSELF, HERE
6 ON TRIAL. I PROBABLY WOULDN'T BE HIS LAWYER. BUT, LET'S SAY
7 WE HAD HIM HERE.

8 DO YOU UNDERSTAND THAT IF HE WAS ACCUSED OF A
9 ROBBERY, LET'S SAY, WE WOULD HAVE TO DETERMINE WHETHER OR NOT
10 HE DID THAT ROBBERY WITHOUT CONSIDERATION ABOUT HOW WE REALLY
11 FELT ABOUT IT?

12 MS. KAPES: I UNDERSTAND THAT.

13 MR. BARENS: DO YOU THINK AS A JUROR, YOU WOULD BE ABLE
14 TO DO THAT OR WOULD YOU GET CARRIED AWAY WITH THE FACT THAT
15 WE JUST CAN'T WAIT TO SEE HIM SWING?

16 MS. KAPES: WITH A CLEAR CONSCIENCE, I WOULD NOT CONSIDER
17 WHAT HE HAD DONE BEFORE. I WOULD HAVE TO CONSIDER THAT
18 PARTICULAR CRIME AND THAT PARTICULAR INSTANCE.

19 I BELIEVE THAT I AM A FAIR PERSON. I CAN'T TELL
20 YOU THAT 100 PERCENT, I WOULDN'T DO THAT. I CAN ONLY TELL
21 YOU THAT I BELIEVE MYSELF TO BE FAIR AND HONEST AND I WOULD
22 DO MY VERY BEST.

23 MR. BARENS: YOU DON'T EQUATE -- I SHOULD SAY, LOOKING
24 AT -- WOULD YOU BELIEVE IN YOUR MIND THAT REASONABLE MEANS
25 USUAL?

26 MS. KAPES: NO.

27 MR. BARENS: YOU WOULD WANT TO CONSIDER ALL OF THE
28 EVIDENCE BEFORE JUST LOOKING FOR SOME OBVIOUS ANSWER THAT

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1 YOU WERE TOLD YOU SHOULD FIND?

2 MS. KAPES: ABSOLUTELY.

3 MR. BARENS: AND COME TO YOUR OWN DECISION?

4 MS. KAPES: ABSOLUTELY.

5 MR. BARENS: ALL RIGHT. THANK YOU VERY MUCH FOR YOUR
6 TIME. WE PASS FOR CAUSE, YOUR HONOR.

7 THE COURT: ALL RIGHT. MR. WAPNER?

8 MR. WAPNER: THANK YOU. GOOD AFTERNOON, MISS KAPES.

9 IF THERE IS A LIST OF INVESTORS PRESENTED IN THIS
10 CASE AND OF PEOPLE WHO INVESTED WITH JOE HUNT AND IT GETS
11 INTRODUCED AS EVIDENCE IN THE CASE AND IT TURNS OUT -- AND
12 I DON'T KNOW WHETHER IT WILL AT THIS POINT -- WHETHER DIANE
13 PEDEN OBERSTEIN'S NAME IS ON IT AND THEREFORE, YOU CONNECT
14 WHAT SHE HAS TOLD YOU TO THE LOSS, YOU CONNECT WHAT SHE TOLD
15 YOU TO THIS CASE, HOW MIGHT THAT AFFECT YOU, IF AT ALL?

16 MS. KAPES: I WOULD TRY VERY HARD NOT TO BE BIASED, NOT
17 TO LET THAT INTERFERE WITH ME.

18 BUT AS I SAID BEFORE, 100 PERCENT, I DON'T KNOW.
19 I AM A HUMAN BEING. I MIGHT DO IT.

20 I WOULD NOT DO IT CONSCIOUSLY.

21 MR. BARENS: ALL RIGHT. AND DO YOU KNOW WHETHER THE
22 AMOUNT OF MONEY THAT MISS OBERSTEIN OR PEDEN OBERSTEIN LOST
23 WAS A CONSIDERABLE AMOUNT TO HER?

24 MS. KAPES: YES.

25 MR. WAPNER: WAS SHE VERY UPSET ABOUT IT?

26 MS. KAPES: YES.

27 MR. BARENS: HOW MANY TIMES DID YOU TALK TO HER?

28 MS. KAPES: AS I SAID, IT MIGHT HAVE BEEN ONE TIME. IT

14-4

1 MIGHT HAVE BEEN MENTIONED AGAIN ON THE PHONE, MAYBE. I DON'T
2 REMEMBER.

3 I DON'T THINK IT WAS A LOT OF TIMES. IT MIGHT
4 HAVE BEEN ONLY ONCE. IT MIGHT HAVE BEEN A SECOND TIME.

5 MR. WAPNER: DID SHE INVEST AFTER TALKING TO BART ROE?

6 MS. KAPES: I BELIEVE SO BECAUSE SHE HAD SAID SHE HAD
7 INVESTED THROUGH MR. ROE AND HIS SISTER. SO SHE MUST HAVE
8 SPOKEN TO THEM.

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1 MR. WAPNER: WHAT IS HIS SISTER'S NAME, DO YOU REMEMBER?

2 MS. KAPES: SUNNY SHEAR, S-H-E-A-R, I BELIEVE.

3 MR. WAPNER: HOW DO YOU KNOW BART ROE?

4 MS. KAPES: THROUGH DIANE PEDEN OBERSTEIN AND HIS SISTER.
5 THEY HAVE BEEN TO MY HOUSE.

6 IN OTHER WORDS, THROUGH DIANE PEDEN, MOSTLY BUT
7 WE ARE FRIENDLY, WITHOUT BEING FRIENDS BACK AND FORTH.

8 MR. WAPNER: AND WHEN YOU SAY YOU ARE FRIENDLY WITHOUT
9 BEING FRIENDS, CAN YOU ELABORATE ON THAT?

10 MS. KAPES: IN OTHER WORDS, WE DON'T CALL EACH OTHER
11 ON THE PHONE. YES, WE KNOW EACH OTHER.

12 AS I SAID, THEY HAVE BEEN TO MY HOUSE A COUPLE OF
13 TIMES BECAUSE OF PARTIES AND THAT SORT OF THING.

14 MR. WAPNER: IF HE TESTIFIED AS A WITNESS IN THIS CASE,
15 WOULD YOU BE ABLE TO USE THE SAME SCALES OF JUSTICE TO
16 EVALUATE HIS TESTIMONY AS YOU WOULD FOR ANYBODY ELSE?

17 MS. KAPES: YES, SIR.

18 MR. WAPNER: DID YOU EVER TALK TO MR. ROE ABOUT --

19 MS. KAPES: NEVER. I HAVE NEVER TALKED TO HIM ABOUT
20 THAT, IF THAT IS WHAT YOU ARE GOING TO SAY. I JUMPED THE GUN.
21 SORRY.

22 MR. WAPNER: YOU DID JUMP THE GUN.

23 MS. KAPES: SORRY.

24 MR. WAPNER: I THINK WE ARE COMMUNICATING. BUT LET ME
25 ASK YOU ABOUT ANY MONEY THAT HE MAY HAVE INVESTED AND LOST --

26 MS. KAPES: NEVER.

27 MR. WAPNER: DID MISS PEDEN OR IS IT OBERSTEIN?

28 MS. KAPES: I THINK IT IS JUST MRS. OBERSTEIN RIGHT NOW.

1 MR. WAPNER: OKAY. DID SHE TELL YOU THAT SHE HAD BEEN
2 SWINDLED?

3 MS. KAPES: YES. I DON'T KNOW IF SHE USED THAT WORD,
4 USED "SWINDLED".

5 BUT SHE WAS ROOKED OR SWINDLED OR CHEATED. I
6 DON'T REMEMBER THE EXACT WORDS.

7 BUT SHE HAD LOST MONEY THROUGH SOME KIND OF A
8 SCHEME. SOME KIND OF A DEAL THAT JUST WAS NOT FAIR AND
9 HONEST.

10 MR. WAPNER: ALL RIGHT. YOU FELT THE SAME WAY MANY
11 YEARS AGO ABOUT SOMETHING THAT HAPPENED TO YOU, IS THAT RIGHT?

12 MS. KAPES: YES.

13 MR. WAPNER: COULD YOU PUT OUT OF YOUR MIND EVERYTHING
14 THAT MAY HAVE HAPPENED TO YOU ON DECIDING THIS CASE?

15 MS. KAPES: YES.

16 MR. WAPNER: WAS THAT INCIDENT THAT HAPPENED TO YOU
17 INVESTIGATED BY ANY POLICE AGENCY?

18 MS. KAPES: IT MUST HAVE BEEN INVESTIGATED BY SOME LAW
19 ENFORCEMENT AGENCY. I DON'T REMEMBER.

20 IN FACT, ALL OF THE INFORMATION I HAVE RECEIVED,
21 I WAS RECEIVING IT THROUGH MY THEN FIANCE. SO THAT HE WAS THE
22 ONE WHO WAS RECEIVING PERTINENT INFORMATION. AND AFTER
23 MONTHS OR PERHAPS MAYBE A YEAR, HE SAID THAT IT WAS USELESS,
24 IT IS HOPELESS AND THEY WEREN'T ABLE TO COME UP WITH ANYTHING.
25 THAT WAS THE END OF THE CASE.

26 MR. WAPNER: WHEN YOU SAY YOUR "THEN FIANCE" WAS THAT
27 SOMEONE YOU WENT ON TO MARRY?

28 MR. KAPES: NO, I DID NOT. IT ENDED.

1 MR. WAPNER: WHATEVER HAPPENED IN THAT CASE, YOU CAN
2 PUT THAT COMPLETELY OUT OF YOUR MIND IN DECIDING THIS CASE?

3 MS. KAPES: I BELIEVE SO, SIR. YES.

4 MR. WAPNER: HOW DO YOU FEEL ABOUT THE CONCEPT OF
5 CIRCUMSTANTIAL EVIDENCE, GENERALLY?

6 MS. KAPES: I FEEL COMFORTABLE WITH IT. I THINK IT IS
7 RELEVANT.

8 MR. WAPNER: IF THE JUDGE TELLS YOU THAT BOTH DIRECT
9 AND CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE AS A MEANS OF
10 PROOF AND NEITHER ONE IS ENTITLED TO ANY GREATER WEIGHT THAN
11 THE OTHER, CAN YOU FOLLOW THAT INSTRUCTION?

12 MS. KAPES: YES.

13 MR. WAPNER: WE TALKED ABOUT THE DIFFERENCE IN THIS CASE
14 WITH THE CHERRY PIE AND USING THE EXPRESSION THAT IN THIS CASE
15 THAT SOMEONE'S LIFE IS IN YOUR HANDS. DO YOU REMEMBER THAT?

16 MS. KAPES: YES.

17 MR. WAPNER: YOU CAN PROBABLY THINK BACK BECAUSE IT WAS
18 NOT AS LONG FOR YOU AS IT WAS SOME OF THE OTHER PEOPLE, WHEN
19 WE WERE DISCUSSING THE QUESTION OF THE DEATH PENALTY. DO YOU
20 ACCEPT THE FACT THAT WHEN WE ARE DISCUSSING THE QUESTION OF
21 GUILT OR INNOCENCE, THAT YOU CAN'T BE THINKING ABOUT THE
22 FACT THAT YOU HAVE SOMEONE'S LIFE IN YOUR HANDS? YOU CAN'T
23 BE THINKING ABOUT WHAT PUNISHMENT HE WILL GET IF YOU VOTE ONE
24 WAY OR THE OTHER?

25 MS. KAPES: YES.

26 MR. WAPNER: DOES THAT SEEM REASONABLE TO YOU?

27 MS. KAPES: YES.

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15-1
1 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE.

2 MR. BARENS: MAY WE APPROACH THE BENCH BRIEFLY?

3 THE COURT: YES.

4 MR. BARENS: THANK YOU.

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

7 MR. BARENS: YOUR HONOR, AFTER COMPLETING MY EXAMINATION
8 OF THE PROSPECTIVE JUROR, I AM ADVISED BY THE DEFENDANT THAT
9 AFTER THE DISAPPEARANCE OF RON LEVIN, THERE WAS A BUSINESS
10 MEETING WHICH WAS TAPE RECORDED, A COPY OF WHICH TAPE
11 RECORDING MR. WAPNER HAS IN HIS OFFICE, PRESENT AT WHICH WERE
12 THREE OF THE PEOPLE THAT SHE HAS MENTIONED AND DURING WHICH
13 MR. LEVIN AND HIS DISAPPEARANCE WERE DISCUSSED.

14 SHE HAS INDICATED THAT THESE THREE PEOPLE ARE
15 CLOSE FRIENDS OF HERS. I AM MOST DISTRESSED AND CONCERNED
16 BY THE FACT THAT SHE OBVIOUSLY WOULD BE INFLUENCED BY THE
17 FACT THAT SHE IS A CLOSE FRIEND OF THREE PEOPLE WHO, IN ALL
18 LIKELIHOOD, COULD BE WITNESSES AT THIS TRIAL. ONE OF WHOM
19 IS ALREADY ON THE D.A.'S WITNESS LIST.

20 I DARE SAY IT WOULD BE ASKING A LOT OF THIS JUROR
21 TO REMAIN TOTALLY UNBIASED AND NEUTRAL IN LIGHT OF HAVING
22 ONE OF HER OWN FRIENDS, WHO SHE HAS HEARD PROTEST FROM, TO
23 BEGIN WITH, TO TESTIFY IN THIS CASE.

24 MR. WAPNER: I DON'T KNOW WHETHER OR NOT MR. ROE WILL
25 IN FACT TESTIFY AS A WITNESS BUT HE CERTAINLY MIGHT.

26 I THINK THAT MORE LIKELY, HOWEVER, THAT THE LIST
27 OF INVESTORS WOULD BE INTRODUCED OR AT LEAST REFERRED TO,
28 PROBABLY INTRODUCED, AND IT IS LIKELY THAT THIS OBERSTEIN

15-2
1 WOMAN'S NAME WOULD BE ON THE LIST AND, THEREFORE, PROBABLY
2 IT WOULD BECOME APPARENT TO THIS JUROR THAT THE INFORMATION
3 SHE GOT FROM HER FRIENDS ABOUT BEING SWINDLED WOULD BE
4 PERTAINING TO BEING SWINDLED BY JOE HUNT SO IF --

5 THE COURT: WELL, WHAT I THINK I WILL DO THEN IS ASK
6 THE JUROR: SUPPOSE IT TURNS OUT THAT MRS. OBERSTEIN LOST
7 HER MONEY IN A VENTURE IN WHICH THE DEFENDANT WAS A PRINCIPAL,
8 COULD SHE, NONETHELESS, BE A FAIR AND IMPARTIAL JUROR OR DOES
9 SHE FEEL THAT WOULD CARRY --

10 MR. BARENS: YOUR HONOR, COULD I VOICE THIS? LET ME
11 VOICE ANOTHER PROBLEM.

12 THE COURT: DO YOU OBJECT?

13 MR. BARENS: NO. I AM MOST CONTENT WITH THAT, YOUR
14 HONOR.

15 THE OTHER PROBLEM I HAVE IS WITH THIS TAPE
16 RECORDING. I HAVE LITTLE DOUBT THAT THE PROSECUTION IS GOING
17 TO INTRODUCE THE TAPE RECORDING OF THE CONFERENCE WHEREIN
18 MR. LEVIN IS MENTIONED TO THESE PEOPLE.

19 THE COURT: WHICH PEOPLE ARE WE TALKING ABOUT?

20 MR. BARENS: THE SAME PEOPLE.

21 THE COURT: OBERSTEIN?

22 MR. BARENS: YES.

23 THE COURT: AND ROE?

24 MR. BARENS: AND ROE, SUNNI SHEAR AND MR. HUNT MADE
25 SOME STATEMENTS CONCERNING MR. LEVIN ON THIS TAPE RECORDING
26 AND HE MADE SOME STATEMENTS CONJUNCTIVE ABOUT HIS FINANCIAL
27 INVOLVEMENT WITH THE BBC AND HE MADE STATEMENTS CONCERNING --

28 THE COURT: YOU MEAN YOUR CLIENT?

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1 MR. BARENS: LEVIN.

2 THE COURT: LEVIN YOU ARE TALKING ABOUT?

3 MR. BARENS: MR. HUNT MADE REFERENCE TO LEVIN, ET CETERA.

4 I WOULD FIND IT INHERENTLY DIFFICULT TO AVOID
5 IMPACTING THIS JUROR WHEN HER FRIENDS WERE PART OF A LARGE
6 COMMUNITY SHE IS INVOLVED WITH. WE ARE EXPOSED TO THIS.

7 MR. WAPNER: I AM WILLING TO STIPULATE THAT SHE CAN
8 BE EXCUSED.

9 THE COURT: ARE YOU WILLING TO STIPULATE SHE MAY BE
10 EXCUSED?

11 MR. WAPNER: YES.

12 MR. BARENS: I THANK YOU, YOUR HONOR.

13 THE COURT: THERE IS NO PROBLEM THEN.

14 MR. BARENS: THANK YOU, YOUR HONOR.

15 WE THANK THE PEOPLE.

16 THE COURT: ALL RIGHT.

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

19 THE COURT: MRS. KAPES, SINCE IT MIGHT DEVELOP -- I
20 DON'T KNOW THAT IT WILL -- SINCE IT MIGHT DEVELOP THAT YOUR
21 FRIEND, MRS. OBERSTEIN, MIGHT HAVE BEEN INVOLVED IN SOME
22 INVESTMENT THAT YOU MENTIONED WITH MR. ROE AND POSSIBLY THE
23 DEFENDANT, I THINK MAYBE UNDER THE CIRCUMSTANCES WE WILL EXCUSE
24 YOU FROM BEING A JUROR IN THIS CASE.

25 MS. KAPES: ALL RIGHT. THANK YOU.

26 THE COURT: THANK YOU.

27 THE CLERK: MISS TRACEY SAUNDERS, S-A-U-N-D-E-R-S.

28 THE COURT: IS THAT MISS SAUNDERS?

1 MS. SAUNDERS: UH-HUH.

2 THE COURT: PARDON ME?

3 MS. SAUNDERS: YES.

4 THE COURT: SPEAK UP.

5 MS. SAUNDERS: YES.

6 THE COURT: MISS SAUNDERS, YOU, TOO, HAVE HEARD ALL
7 OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

8 MS. SAUNDERS: YES.

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

12 MS. SAUNDERS: SUBSTANTIALLY THE SAME.

13 THE COURT: ALL RIGHT. WHAT DO YOU DO?

14 MS. SAUNDERS: I WORK AS AN I.T.C. WITH THE DEPARTMENT
15 OF CHILDREN SERVICES IN L.A. COUNTY. I WORK FOR L.A. COUNTY.

16 THE COURT: YOU WORK FOR WHOM?

17 MS. SAUNDERS: LOS ANGELES COUNTY, THE COUNTY.

18 THE COURT: WHAT DEPARTMENT IS THAT?

19 MS. SAUNDERS: CHILDRENS SERVICES.

20 THE COURT: WHAT IS THE NATURE OF YOUR JOB?

21 MS. SAUNDERS: I WORK IN DEPENDENCY SERVICES AND I TYPE
22 COURT REPORTS, SUBPOENAS, NOTICES OF HEARINGS, PRISON RELEASE
23 FORMS AND SO FORTH.

24 THE COURT: HAS THAT GOT TO DO WITH PROSECUTIONS OF
25 ANY KIND?

26 MS. SAUNDERS: NO.

27 THE COURT: WHAT IS THE PRISON RELEASE FORM THAT YOU
28 ARE TALKING ABOUT?

1 MS. SAUNDERS: IT IS LIKE IF A CHILD IS BORN UNDER THE
2 COURT, THERE HAS BEEN A COMMITMENT, THE CHILD IS NEGLECTED
3 OR ABUSED AND IS DEPENDENT AND THE COURT HAS TO PAY FOR IT,
4 I TYPE THE RELEASE FORM IF THE PARENT IS INCARCERATED AND
5 IT HAS TO COME TO THE COURT.

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1 THE COURT: ALL RIGHT. I DIDN'T GET THAT. IS THAT
2 MISS OR MRS.?

3 THE CLERK: I AM SORRY. I DIDN'T ASK.

4 IS IT MRS.?

5 MS. SAUNDERS: NO.

6 THE COURT: MISS, YES.

7 MISS OR MS.; IS THAT RIGHT?

8 MS. SAUNDERS: MS.

9 THE COURT: WHERE DO YOU LIVE?

10 MS. SAUNDERS: SANTA MONICA.

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

12 MS. SAUNDERS: OKAY. I HAVE GRADUATED FROM HIGH SCHOOL
13 AND I HAVE BEEN TAKING VARIOUS COURSES AT SANTA MONICA
14 COLLEGE.

15 THE COURT: YES.

16 WHAT COURSES ARE THOSE?

17 MS. SAUNDERS: BUSINESS. I HAVE TAKEN ENGLISH, TYPING,
18 ACCOUNTING.

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

21 MS. SAUNDERS: NO.

22 THE COURT: AND YOU HAVEN'T BEEN THE VICTIM OF ANY KIND
23 OF A CRIME, HAVE YOU, AT ANY TIME?

24 MS. SAUNDERS: MY HOME WAS BURGLARIZED IN OCTOBER OF
25 LAST YEAR.

26 THE COURT: WAS IT INVESTIGATED BY THE POLICE?

27 MS. SAUNDERS: YES.

28 THE COURT: WERE YOU SATISFIED WITH THE WAY THE

1 INVESTIGATION WENT DOWN?

2 MS. SAUNDERS: YES.

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

4 MR. BARENS: THANK YOU, YOUR HONOR.

5 GOOD AFTERNOON, MS. SAUNDERS.

6 MS. SAUNDERS: GOOD AFTERNOON.

7 MR. BARENS: MISS SAUNDERS, HAVE YOU ALWAYS BEEN SINGLE?

8 MS. SAUNDERS: YES, YES. I AM SINGLE.

9 MR. BARENS: DO YOU HAVE A STEADY BOYFRIEND?

10 MS. SAUNDERS: NOT NOW.

11 MR. BARENS: ALL RIGHT. HOW LONG HAVE YOU HAD YOUR
12 JOB WITH L.A. COUNTY?

13 MS. SAUNDERS: TWO AND A HALF YEARS.

14 MR. BARENS: AND WHAT DID YOU DO PRIOR TO THAT?

15 MS. SAUNDERS: I WAS A STUDENT AND I WORKED PART-TIME
16 AT MAY COMPANY AND --

17 THE COURT REPORTER: WHAT WAS THAT?

18 MS. SAUNDERS: AND SEARS.

19 MR. BARENS: ALL RIGHT, PLEASE DO YOUR BEST TO KEEP
20 YOUR VOICE UP, MS. SAUNDERS.

21 MS. SAUNDERS: SURE.

22 MR. BARENS: SO WE CAN ALL HEAR THE ANSWERS.

23 WHAT IS AN I.T.C.?

24 MS. SAUNDERS: INTERMEDIATE TYPIST CLERK.

25 MR. BARENS: I SEE.

26 AND DO YOU HAVE DIRECT CONTACT WITH THE YOUNG
27 PEOPLE THAT WOULD BE GOING TO COURT OR VOICING COMPLAINTS
28 THAT THEY HAVE BEEN ABUSED OR ASSAULTED?

1 MS. SAUNDERS: OCCASIONALLY.

2 I DON'T NECESSARILY QUESTION THE CHILDREN OR
3 ANYTHING, BUT THEY COME INTO THE OFFICE AND SOMETIMES I HELP
4 OUT WITH THE C.S.W., WHICH IS THE CHILDREN'S PLACEMENT WORKER,
5 IF THEY ARE TRYING TO FIND PLACEMENT FOR THE CHILD, I WILL
6 SOMETIMES ASSIST THEM AND FEED THEM AND CHANGE DIAPERS AND
7 SO FORTH.

8 I DON'T QUESTION THE CHILDREN ANY FURTHER.

9 MR. BARENS: IN THAT CONJUNCTION, DO YOU HAVE CONTACT
10 WITH THE DISTRICT ATTORNEYS THAT WOULD BE PROSECUTING THE
11 CHILD ABUSE CASES?

12 MS. SAUNDERS: NO.

13 THE INVESTIGATORS, THOUGH, I WORK DIRECTLY WITH
14 THE INVESTIGATORS.

15 MR. BARENS: AND THE INVESTIGATORS ARE PEOPLE, ARE THEY
16 POLICE PERSONNEL THAT WOULD INVESTIGATE MATTERS?

17 MS. SAUNDERS: NOT -- NOT -- NOT ACTUAL POLICE PERSONNEL.

18 THEY ARE CALLED DEPENDENCY INVESTIGATORS BUT
19 ACTUALLY ARE SOCIAL WORKERS. THEY ARE WITHIN THE COUNTY AND
20 THEY INVESTIGATE THE SITUATION IN THE HOME, AND SO FORTH,
21 AND WRITE UP COURT REPORTS AND QUESTION THE CHILDREN BUT THEY
22 ARE NOT CONSIDERED POLICE INVESTIGATORS.

23 MR. BARENS: DO YOU FOLLOW THE CASE AFTER THAT TO
24 DETERMINE WHETHER THERE IS A PROSECUTION OR NOT, BASED ON
25 THE ALLEGATION?

26 MS. SAUNDERS: NO.

27 MR. BARENS: IN THE JUVENILE COURT SETTING, THE COMPLAINT
28 IS REFERRED TO AS AN ALLEGATION, IS IT NOT? IT IS JUST AN

1 ALLEGATION?

2 MS. SAUNDERS: EXACTLY.

3 MR. BARENS: AND WHEN YOU SEE THOSE ALLEGATIONS, TELL
4 ME TRUE, IS YOUR STATE OF MIND SUCH THAT YOU BELIEVE, WELL,
5 I READ THAT ALLEGATION, WHOEVER THAT IS WHOSE NAME IS ON THE
6 RIGHT SIDE OF THAT CAPTION MIGHT HAVE DONE SOMETHING BAD?

7 MS. SAUNDERS: NOT NECESSARILY, NO.

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1 MR. BARENS: YOU DON'T HAVE ANY EVIDENCE BEFORE YOU?

2 MS. SAUNDERS: NO, I DON'T. SOMETIMES THERE IS A DOCTOR'S
3 REPORT. SOMETIMES THERE IS THE CHILD'S STATEMENT. I ALWAYS
4 GET PERSONAL HISTORIES OF BOTH PARENTS BUT NOT NECESSARILY.

5 MR. BARENS: BEFORE YOU WOULD CONVICT SOMEONE WHOSE
6 NAME IS ON THE RIGHT SIDE OF THAT CAPTION, YOU WOULD PROBABLY
7 WANT TO HEAR WHAT THEY HAD TO SAY?

8 MS. SAUNDERS: YES. I USUALLY HAVE THEIR STATEMENTS.

9 MR. BARENS: I SEE. SO YOU DON'T HAVE ANY PART OF YOUR
10 JOB WHERE YOU NEED TO MAKE A CONCLUSION AND WRITE A
11 RECOMMENDATION OR DO YOU?

12 MS. SAUNDERS: NO, NOT AT ALL.

13 MR. BARENS: ALL RIGHT. DO YOU THINK THERE IS ANYTHING
14 ABOUT YOUR EMPLOYMENT THAT WOULD IN ANY WAY, BIAS YOU IN FAVOR
15 OF THE PROSECUTION BECAUSE THERE IS AN ALLEGATION OR
16 IN THIS INSTANCE, AN ACCUSATION AGAINST MR. HUNT?

17 MS. SAUNDERS: NO.

18 MR. BARENS: DO YOU THINK YOU COULD BE OPEN-MINDED AND
19 REALIZE THAT AN ACCUSATION IS NOT PROOF OF ANYTHING? IT IS
20 JUST AN ACCUSATION?

21 MS. SAUNDERS: RIGHT.

22 MR. BARENS: ALL RIGHT. HOW DO YOU FEEL ABOUT THE
23 PRESUMPTION OF INNOCENCE THAT THE DEFENDANT HAS AS HE SITS
24 IN THIS COURTROOM?

25 MS. SAUNDERS: WELL --

26 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

27 MS. SAUNDERS: YES.

28 MR. BARENS: DO YOU THINK IT IS WORTHWHILE?

1 MS. SAUNDERS: YES.

2 MR. BARENS: IF THE DEFENDANT WERE TO TESTIFY, WHICH
3 I GUESS WOULD BE ANALOGOUS TO THOSE STATEMENTS YOU READ ABOUT
4 THE DEFENDANTS WHO ARE ACCUSED IN THE CASE WORK YOU DO, WOULD
5 YOU NECESSARILY BELIEVE THAT THE DEFENDANT WOULD PROBABLY NOT
6 TELL THE TRUTH BECAUSE HE WAS LOOKING AT A LOT OF TROUBLE?

7 MS. SAUNDERS: NO.

8 MR. BARENS: DO YOU THINK THAT YOU COULD BE OPEN-MINDED
9 ABOUT THAT?

10 MS. SAUNDERS: YES, SIR.

11 MR. BARENS: THE COURSES THAT YOU WERE TAKING AT SANTA
12 MONICA COLLEGE, ARE THEY PREPARATORY TO A CAREER CHANGE THAT
13 YOU HAVE IN MIND?

14 MS. SAUNDERS: WELL, THEY CAN HELP IN MY CAREER. WHAT
15 I AM DOING RIGHT NOW.

16 BUT WHAT I WANT TO DO, NO.

17 MR. BARENS: WHAT IS IT YOU WOULD LIKE TO DO?

18 MS. SAUNDERS: JOURNALISM.

19 MR. BARENS: JOURNALISM?

20 MS. SAUNDERS: YES. I WANT TO WRITE.

21 MR. BARENS: ANY PARTICULAR TYPE OF JOURNALISTIC
22 ACTIVITY YOU ARE INTERESTED IN?

23 MS. SAUNDERS: SPORTS.

24 MR. BARENS: SPORTS? ALL RIGHT. YOU HAVE NEVER BEEN
25 A JUROR BEFORE?

26 MS. SAUNDERS: NO.

27 MR. BARENS: HAVE YOU EVER OBSERVED A TRIAL BEFORE?

28 MS. SAUNDERS: YES. IT WAS REQUIRED IN A CLASS THAT

1 I TOOK AT SANTA MONICA HIGH SCHOOL, A GOVERNMENT COURSE.

2 MR. BARENS: A GOVERNMENT COURSE?

3 MS. SAUNDERS: YES.

4 MR. BARENS: WHAT SORT OF A TRIAL DID YOU OBSERVE?

5 MS. SAUNDERS: IT WAS A MURDER TRIAL.

6 MR. BARENS: A MURDER TRIAL? DID YOU WATCH THE WHOLE
7 TRIAL?

8 MS. SAUNDERS: WE WERE NOT -- WE DIDN'T SEE EVERY DAY.
9 BUT WE OBSERVED QUITE A BIT OF IT, YES.

10 MR. BARENS: DID YOU OBSERVE THE JURY SELECTION PROCESS?

11 MS. SAUNDERS: NO.

12 MR. BARENS: DID YOU OBSERVE MOST OF THE -- I DON'T KNOW
13 IF YOU CAN ANSWER THIS. BUT DO YOU HAVE A SENSE OF WHETHER
14 YOU OBSERVED MOST OF THE TESTIMONY?

15 MS. SAUNDERS: I DON'T KNOW ABOUT MOST OF IT. BUT I
16 OBSERVED SOME OF THE TESTIMONY.

17 MR. BARENS: DID YOU OBSERVE THE DEFENDANT TESTIFYING?

18 MS. SAUNDERS: NO.

19 MR. BARENS: DO YOU KNOW IF THE DEFENDANT TESTIFIED?

20 MS. SAUNDERS: NO, I DON'T.

21 MR. BARENS: DO YOU KNOW HOW THE CASE CAME OUT?

22 MS. SAUNDERS: YES, SIR.

23 MR. BARENS: KNOWING HOW THE CASE CAME OUT, YOU NEVER
24 INQUIRED OR HEARD FROM A CLASSMATE OR ANYTHING AS TO WHETHER
25 THE DEFENDANT TESTIFIED?

26 MS. SAUNDERS: NO.

27 MR. BARENS: OKAY. DID THE JURY REACH A VERDICT?

28 MS. SAUNDERS: YES, THEY DID.

1 MR. BARENS: WAS THAT CASE IN SANTA MONICA HERE?

2 MS. SAUNDERS: YES. AND WE FOUND OUT THE VERDICT BECAUSE
3 THE TEACHER CALLED I GUESS THE COURT, HERE AND THEY GAVE HIM
4 THE VERDICT. AND HE TOLD US WHAT IT WAS.

5 MR. BARENS: BASED ON WHAT YOU OBSERVED IN THE TRIAL,
6 DID YOU AGREE OR DISAGREE WITH THE VERDICT OR DID YOU MAKE
7 A DECISION?

8 MS. SAUNDERS: I COULD NOT MAKE A DECISION.

9 MR. BARENS: WHY IS THAT?

10 MS. SAUNDERS: BECAUSE I DIDN'T HEAR ENOUGH OF THE
11 TESTIMONY.

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1 MR. BARENS: YOU HAD NOT HEARD ALL OF THE EVIDENCE?

2 MS. SAUNDERS: YES, RIGHT.

3 MR. BARENS: WHAT DID YOU THINK OF WHAT YOU DID OBSERVE?
4 WHAT DID YOU THINK OF THE PROCESS?

5 MS. SAUNDERS: WHAT DO YOU MEAN?

6 MR. BARENS: WERE YOU FAVORABLY IMPRESSED OR DID THE
7 SYSTEM APPEAR TO BE WORKING? WHAT DID YOU THINK OF WHAT YOU
8 SAW?

9 MS. SAUNDERS: WELL, WE WERE BASICALLY THERE TO OBSERVE
10 WHAT WAS THE PLAINTIFF AND WHAT WAS THE DEFENDANT AND BAILIFF
11 AND JUST THE COURT SYSTEM, NOT TO OBSERVE THE CASE -- TO WATCH
12 THE CASE. WE WERE NOT GOING TO GIVE A JUDGMENT ON THE CASE
13 OR ANYTHING.

14 MR. BARENS: YOU WERE? I UNDERSTAND THAT. YOU WERE
15 MORE INTERESTED IN OBSERVING WHAT I WILL CALL THE MECHANICAL
16 OPERATION OF THE COURT, THE INTERFACING OF THE JUDGE AND THE
17 PROSECUTOR AND THE DEFENSE AND THE BAILIFF AND YOU KNOW, HOW
18 THE SYSTEM KIND OF MECHANICALLY PROCEEDS?

19 MS. SAUNDERS: RIGHT.

20 MR. BARENS: DID YOU HAVE TO WRITE A PAPER ON THAT
21 AFTERWARDS?

22 MS. SAUNDERS: YES.

23 MR. BARENS: ASIDE FROM YOUR DISCUSSION OF THE MECHANICAL
24 OPERATION OF THE COURTROOM, DID YOU COMMENT IN YOUR PAPER ABOUT
25 THE CASE, PER SE, THE MURDER CASE?

26 MS. SAUNDERS: I DON'T REMEMBER.

27 MR. BARENS: YOU DON'T RECALL?

28 MS. SAUNDERS: NO.

16-6

1 MR. BARENS: WAS THERE ANYTHING ABOUT WHAT YOU OBSERVED
2 IN THAT MURDER CASE, THAT IN ANY WAY, AFFECTS HOW YOU WOULD
3 LOOK AT THIS CASE AS A PROSPECTIVE JUROR?

4 MS. SAUNDERS: NO.

5 MR. BARENS: DID YOU THINK THE LAWYERS IN THAT CASE
6 WERE PROCEEDING PROPERLY, AS YOU COULD JUDGE THEM?

7 MS. SAUNDERS: YES.

8 MR. BARENS: AND DID YOU HAVE ANY QUESTIONS ABOUT THAT
9 CASE THAT YOU LATER ASKED YOUR TEACHER OR ANYONE ELSE?

10 MS. SAUNDERS: I DON'T REMEMBER.

11 MR. BARENS: YOU DON'T RECALL?

12 MS. SAUNDERS: NO.

13 MR. BARENS: WAS THAT THE ONLY INSTANCE IN WHICH YOU
14 WATCHED A TRIAL?

15 MS. SAUNDERS: YES, OTHER THAN JUDGE WAPNER ON THE
16 PEOPLE'S COURT.

17 MR. BARENS: HE IS THE ONE. ALL RIGHT. AND THE FACT
18 THAT YOU HAVE WATCHED JUDGE WAPNER, WHO DOES AN OUTSTANDING
19 JOB WITH THE PEOPLE'S COURT, WOULD THAT IN ANY WAY, BIAS YOU
20 IN FAVOR OF MY COLLEAGUE HERE, BEING SOMEWHAT ASSOCIATED WITH
21 JUDGE WAPNER?

22 MS. SAUNDERS: NO.

23 MR. BARENS: ALL RIGHT. IT IS JUST NOT THE SAME SETTING?

24 MS. SAUNDERS: NOT AT ALL.

25 MR. BARENS: AND ASIDE FROM THAT, IF JUDGE WAPNER RULED
26 AGAINST A CERTAIN PLAINTIFF IN THAT CASE, WOULD YOU NOT HOLD
27 THAT AGAINST MR. WAPNER?

28 MS. SAUNDERS: NO.

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1 MR. BARENS: ALL RIGHT. THEY PROBABLY DON'T EVEN
2 DISCUSS THOSE CASES. OKAY? WHAT IS THE LAST BOOK YOU READ?

3 MS. SAUNDERS: THE COLOR PURPLE.

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

5 MS. SAUNDERS: SOUL MAN.

6 MR. BARENS: DO YOU HAVE A FAVORITE TRACK STAR?

7 MS. SAUNDERS: JESSIE OWENS.

8 MR. BARENS: JESSIE OWENS?

9 MS. SAUNDERS: I ADMIRE HIM, YES.

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

12 MS. SAUNDERS: TO BE TRUTHFUL, I DON'T WANT TO DO IT.

13 MR. BARENS: YOU DON'T WANT TO DO IT?

14 MS. SAUNDERS: NO.

15 MR. BARENS: WHAT IF I WANT YOU TO DO IT? WOULD YOU
16 HOLD IT AGAINST ME?

17 MS. SAUNDERS: I MEAN, I KNOW I REALLY DON'T HAVE A
18 LOT -- TOO MUCH OF A CHOICE. BUT IT IS NOT SOMETHING I WANT
19 TO DO.

20 THE COURT: I DIDN'T HEAR YOU. WHAT DID YOU SAY?

21 MS. SAUNDERS: I DON'T WANT TO DO IT. I DON'T WANT TO
22 BE A JUROR ON THIS CASE.

23 THE COURT: YOU DON'T WANT TO BE A JUROR ON THIS CASE?

24 MS. SAUNDERS: NO.

25 MR. BARENS: WE DON'T HAVE A LOT OF CHOICES LEFT, EITHER
26 WAY THE SYSTEM WORKS.

27 MS. SAUNDERS: I MEAN, IF I WAS CHOSEN, I WOULD BE WILLING
28 TO SERVE, BEING TRUTHFUL AND SO FORTH. BUT IT IS NOT SOMETHING

1 I WANT TO DO.

2 MR. BARENS: SURE. THERE MAY BE OTHERS IN THE ROOM THAT
3 SHARE YOUR POINT OF VIEW.

4 MS. SAUNDERS: I AM SURE THERE IS.

5 MR. BARENS: THE FACT IS, YOU UNDERSTAND THAT AS A
6 CITIZEN IN THIS COUNTRY, THAT IT IS PART OF BEING AN AMERICAN
7 AND IT IS KIND OF ONE OF THOSE REALLY IMPORTANT THINGS WE HAVE
8 TO DO IN THIS COUNTRY?

9 MS. SAUNDERS: EXACTLY.
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1 MR. BARENS: OTHERWISE, THE WHOLE THING BREAKS DOWN.

2 MS. SAUNDERS: I UNDERSTAND THAT. BUT YOU ASKED ME,
3 SO I GAVE YOU MY HONEST ANSWER.

4 MR. BARENS: SURE. NONETHELESS, YOU COULD FAITHFULLY
5 PERFORM YOUR DUTIES HERE?

6 MS. SAUNDERS: YES, I COULD.

7 MR. BARENS: AND YOU COULD DO SO WITHOUT DISTRACTION
8 IN OTHER PARTS OF YOUR LIFE?

9 MS. SAUNDERS: YES.

10 MR. BARENS: AND YOU COULD LISTEN TO AND FOLLOW THE
11 ORDERS OF THE COURT AS FAR AS HOW HIS HONOR INSTRUCTED YOU
12 TO PROCEED?

13 MS. SAUNDERS: YES, I COULD.

14 MR. BARENS: YOU WOULD NOT HOLD IT AGAINST ME WOULD YOU,
15 IF YOU WERE A JUROR HERE?

16 MS. SAUNDERS: NO.

17 MR. BARENS: ALL RIGHT. I THANK YOU. WE PASS FOR CAUSE,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. WAPNER: MR. BARENS SAYS HE HAS A FEW OPTIONS LEFT.
21 I DON'T HAVE ANY. SO, LET ME JUST ASK YOU TO EXPLAIN WHY IT
22 IS THAT YOU DON'T WANT TO BE A JUROR IN THIS CASE.

23 MS. SAUNDERS: OKAY. ALL RIGHT. I WORK FOR LOS ANGELES
24 COUNTY, AS OF RIGHT NOW. I HAVE BEEN OFFERED A POSITION,
25 OKAY? IT WILL START ON THE 26TH OF THIS MONTH.

26 THE COURT: WHAT?

27 MS. SAUNDERS: IT WILL START ON THE 26TH OF THIS MONTH.
28 IT IS A PROMOTION, A BETTER POSITION HERE, WITH THE CITY OF

1 SANTA MONICA.

2 THAT IS BASICALLY WHY I WOULD NOT WANT TO.

3 THE COURT: DO YOU THINK SERVING HERE WILL INTERFERE
4 WITH THAT?

5 MS. SAUNDERS: EXACTLY. I KNOW THAT IT WILL.

6 THE COURT: YOU WOULD RATHER BE EXCUSED, IS THAT IT?

7 MS. SAUNDERS: YES.

8 MR. WAPNER: MAYBE WE SHOULDN'T GO INTO THE PARTICULAR
9 POSITION THAT YOU HAVE AT SANTA MONICA THAT COULD BE A
10 PROMOTION.

11 MS. SAUNDERS: YES, FOR ME. IT IS NOT WITH THE COUNTY.

12 THE COURT: IS THERE A POSSIBILITY THAT YOU WOULD LOSE
13 THAT IF YOU STAYED ON THIS CASE?

14 MS. SAUNDERS: NO. THEY ARE AWARE THAT I AM ON JURY
15 DUTY RIGHT NOW. I TOLD THEM THAT I WAS ON JURY DUTY. BUT
16 I DON'T KNOW HOW THE CITY PAYS YOU KNOW, AS FAR AS IF I WOULD
17 BE PAID FOR BEING ON JURY DUTY AND SO FORTH.

18 SO THAT IS THE BASIC REASON WHY I WOULD NOT WANT
19 TO BE PARTICIPATING.

20 MR. WAPNER: WOULD YOU BE WORKING IN CITY HALL, NEXT
21 DOOR?

22 MS. SAUNDERS: NO, WITH THE SCHOOL BOARD. IT IS ACROSS
23 THE STREET.

24 MR. WAPNER: ACROSS THE STREET? I KNOW THERE IS A
25 SCHOOL BOARD OFFICE. I DIDN'T KNOW IF IT WAS THE ONE --

26 MS. SAUNDERS: YES.

27 MR. WAPNER: THERE IS CONTROVERSY ABOUT THE COUNTY TAKING
28 THAT PROPERTY WHERE THE SCHOOL BOARD IS LOCATED AND BUILDING

1 A NEW COURTHOUSE OR AN ANNEX TO THE COURTHOUSE.

2 MS. SAUNDERS: AND THE SCHOOL BOARD IS MOVING ABOUT
3 SEPTEMBER OF THIS YEAR, ON THE -- TO 16TH AND OLYMPIC, CLOSER
4 TO HOME.

5 MR. WAPNER: OKAY. HOW LONG HAVE YOU BEEN WITH THE
6 COUNTY?

7 MS. SAUNDERS: TWO AND A HALF YEARS.

8 MR. WAPNER: AND DID YOU START AS AN ITC?

9 MS. SAUNDERS: YES.

10 MR. WAPNER: HAVE YOU ALWAYS WORKED WITH THE DEPENDENCY
11 COURTS?

12 MS. SAUNDERS: NO. DEPENDENCY WAS A NEW UNIT THAT HAS
13 COME UP IN WEST LOS ANGELES.

14 I ORIGINALLY STARTED WITH THE SOCIAL WORKERS.
15 I WORKED WITH THE SOCIAL WORKERS WHICH AREN'T INVESTIGATORS.
16 THEY DO THE PLACEMENTS AND A LITTLE BIT OF
17 INVESTIGATION, WHEN THERE IS A PROBLEM.

18 MR. WAPNER: IS THIS ALL IN THE DEPARTMENT OF CHILDREN'S
19 SERVICES?

20 MS. SAUNDERS: EXACTLY. I HAVE ALWAYS BEEN WITH THE
21 DEPARTMENT OF CHILDREN'S SERVICES.

22 MR. WAPNER: AND THE PROSECUTING AGENCY, IF YOU COULD
23 CALL IT THAT, IN THOSE CASES, IS THE COUNTY COUNSEL, RIGHT?

24 MS. SAUNDERS: EXACTLY.

25 MR. WAPNER: YOU DON'T HAVE ANY CONTACT WITH PEOPLE IN
26 THE DISTRICT ATTORNEY'S OFFICE?

27 MS. SAUNDERS: NO.

28 MR. WAPNER: HAVE YOU EVER, DURING YOUR EMPLOYMENT WITH

1 THE COUNTY?

2 MS. SAUNDERS: NO.

3 MR. WAPNER: HOW LONG AGO WAS IT THAT YOU SAW A MURDER
4 CASE IN SANTA MONICA?

5 MS. SAUNDERS: LET'S SEE. IT WOULD HAVE HAD TO HAVE
6 BEEN IN 1980.

7 MR. WAPNER: DO YOU REMEMBER ANYTHING ABOUT THE PERSON
8 WHO PROSECUTED THAT CASE, THE DEPUTY DISTRICT ATTORNEY WHO
9 PROSECUTED THAT CASE?

10 MS. SAUNDERS: NO, I DON'T.

11 MR. WAPNER: DID YOU JUST COME OVER FOR ONE PERIOD DURING
12 THE ONE CLASS THAT YOU HAD?

13 MS. SAUNDERS: WE CAME ABOUT THREE TIMES, I THINK.

14 MR. WAPNER: HOW LONG WOULD YOU STAY EACH TIME?

15 MS. SAUNDERS: ABOUT 45 MINUTES, THE LENGTH OF THE CLASS.

16 MR. WAPNER: OKAY. DID THEY TEACH YOU ANYTHING ABOUT
17 CIRCUMSTANTIAL EVIDENCE IN THAT CLASS?

18 MS. SAUNDERS: NO. BUT I HAVE LISTENED IN HERE.

19 MR. WAPNER: DO YOU HAVE ANY FEELINGS THAT CIRCUMSTANTIAL
20 EVIDENCE IS ANY BETTER OR ANY WORSE THAN ANY OTHER KIND OF
21 EVIDENCE?

22 MS. SAUNDERS: I WOULD SAY CIRCUMSTANTIAL EVIDENCE --
23 BETTER OR WORSE? I WOULD SAY IT IS NOT THE BEST. BUT SOME-
24 TIMES IF WEIGHED, IT COULD SHOW THAT IT COULD BE RIGHT, I GUESS.

25 MR. WAPNER: OKAY. IF THE JUDGE TELLS YOU THAT IT IS
26 JUST AS GOOD AS ANY OTHER KIND OF EVIDENCE, THAT BOTH DIRECT
27 AND CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE MEANS OF PROOF AND
28 NEITHER ONE IS ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER,

1 COULD YOU FOLLOW THAT INSTRUCTION?

2 MS. SAUNDERS: YES. I WOULD HAVE TO.

3 MR. WAPNER: OKAY. DID YOU HEAR THE EXAMPLE ABOUT THE
4 PIE?

5 MS. SAUNDERS: YES.

6 MR. WAPNER: OKAY. I AS THE JUDGE POINTED OUT BEFORE
7 LUNCH, THE PURPOSE, THE MAIN PURPOSE FOR THAT EXAMPLE IS TO
8 EXPLAIN TO JURORS WHO MAY NOT BE AS FAMILIAR AS THE LAWYERS
9 ARE, WHAT CIRCUMSTANTIAL EVIDENCE IS.

10 AND IN THAT EXAMPLE, THERE ARE BOTH PIECES OF
11 DIRECT AND CIRCUMSTANTIAL EVIDENCE.

12 MS. SAUNDERS: UH-HUH.

13 MR. WAPNER: DIRECT EVIDENCE IS EVIDENCE WHERE A PERSON
14 DIRECTLY SEES OR HEARS OR TOUCHES OR SMELLS SOMETHING. IN
15 THE PIE EXAMPLE, THE DIRECT EVIDENCE IS THAT THE PIE WAS
16 BAKED, THAT THE PIE WAS WHOLE AT ONE TIME AND THAT MOTHER CAME
17 BACK. WHEN SHE CAME BACK, THERE WAS DIRECT EVIDENCE THAT THERE
18 IS A PIECE MISSING, RIGHT?

19 MS. SAUNDERS: RIGHT.

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7-1
1 MR. WAPNER: BECAUSE SHE LOOKED AT THE PIE AND THERE
2 WAS A PIECE GONE?

3 MS. SAUNDERS: UH-HUH.

4 MR. WAPNER: ARE YOU WITH ME SO FAR?

5 MS. SAUNDERS: RIGHT.

6 MR. WAPNER: OKAY. BUT IF THE QUESTION AND IF A --
7 AND OF COURSE, YOU WOULDN'T HAVE A JURY ON THAT QUESTION --
8 BUT IF A JURY HAD TO DECIDE THE QUESTION OF WHO ATE THE PIE
9 AND NOBODY SAW ANYONE EAT THE PIE, THEN IN THIS PARTICULAR
10 EXAMPLE YOU WOULD HAVE TO FIGURE IT OUT BY CIRCUMSTANTIAL
11 EVIDENCE, RIGHT?

12 MS. SAUNDERS: UH-HUH.

13 MR. WAPNER: YOU HAVE TO SAY YES.

14 MS. SAUNDERS: YES.

15 MR. WAPNER: OKAY, THANK YOU.

16 AND THE OTHER PIECES OF DIRECT EVIDENCE ARE, OF
17 COURSE, THAT YOU SEE JOHNNY AND HE HAS GOT PIE STAINS ALL
18 OVER HIS SHIRT AND ALL OVER HIS MOUTH, RIGHT?

19 MS. SAUNDERS: RIGHT.

20 MR. WAPNER: OKAY. AND IN THAT CASE, YOU WOULD HAVE
21 TO USE A CIRCUMSTANTIAL EVIDENCE REASONING PROCESS TO DETERMINE
22 WHO ATE THE PIE.

23 MS. SAUNDERS: UH-HUH, RIGHT.

24 MR. WAPNER: DO YOU HAVE AN OPINION, AS YOU SIT THERE
25 NOW, AS TO WHO ATE THE PIE?

26 MS. SAUNDERS: NO -- DO I?

27 MR. WAPNER: YES.

28 MS. SAUNDERS: YES, I WOULD SAY THE LITTLE BOY ATE IT,

7-2
1 BUT THEY HAVE TO BE WEIGHED THE SAME, ALL OF THE EVIDENCE.

2 MR. WAPNER: RIGHT.

3 NOW, IF THE ONLY PERSON WHO WAS THERE WHEN THE
4 PIE WAS EATEN WAS THE PERSON WHO ATE IT AND THE LITTLE BOY
5 COMES IN AND HE SAYS, "I DIDN'T DO IT," AND THERE HE IS SAYING
6 THAT TO YOU AND HE IS STANDING THERE AND THERE HE IS WITH
7 THE PIE ALL OVER HIM, DO YOU NECESSARILY HAVE TO BELIEVE HIM?

8 MS. SAUNDERS: NO.

9 MR. WAPNER: HE IS TELLING YOU "I WAS THERE AND I DIDN'T
10 DO IT," AND THAT COULD BE CONSIDERED DIRECT EVIDENCE, NOT
11 THAT HE SAID HE SAW SOMEONE EATING THE PIE BUT HE IS SAYING
12 "I DIDN'T EAT THE PIE"?

13 MS. SAUNDERS: UH-HUH.

14 MR. WAPNER: THAT DOESN'T NECESSARILY MEAN YOU HAVE
15 TO BELIEVE HIM, RIGHT?

16 MS. SAUNDERS: RIGHT.

17 MR. WAPNER: DO YOU THINK YOU UNDERSTAND CIRCUMSTANTIAL
18 EVIDENCE A LITTLE BETTER AFTER THAT EXAMPLE --

19 MS. SAUNDERS: UH-HUH.

20 MR. WAPNER: -- THAN YOU DID BEFORE?

21 MS. SAUNDERS: YES, DEFINITELY.

22 MR. WAPNER: DO YOU HAVE ANY PROBLEM USING THE SAME
23 STANDARDS, THE SAME SCALES TO EVALUATE THE TESTIMONY OF ALL
24 WITNESSES WHO TESTIFY?

25 MS. SAUNDERS: NO.

26 MR. WAPNER: THAT DOESN'T MEAN THAT YOU HAVE TO BELIEVE
27 EVERY WITNESS OR THAT YOU HAVE TO ASSIGN THE SAME WEIGHT OR
28 VALUE TO THE TESTIMONY OF ALL OF THE WITNESSES.

7-3
1 WHAT IT MEANS IS THAT YOU HAVE TO USE THE SAME
2 SCALE, THE SAME STANDARD TO JUDGE EVERYBODY.

3 MS. SAUNDERS: RIGHT.

4 MR. WAPNER: DO YOU UNDERSTAND THAT?

5 MS. SAUNDERS: YES, I DO.

6 MR. WAPNER: ARE YOU COMFORTABLE WITH THAT?

7 MS. SAUNDERS: YES.

8 MR. WAPNER: YOU DON'T KNOW AT THIS POINT WHETHER THE
9 CITY OF SANTA MONICA WILL PAY YOU IF YOU ARE ON JURY DUTY?

10 MS. SAUNDERS: NO, I DON'T.

11 I DON'T KNOW HOW IT WORKS, NO.

12 MR. WAPNER: DO YOU KNOW WHETHER OR NOT THEY WILL HOLD
13 THE JOB FOR YOU WHILE YOU ARE ON DUTY?

14 MS. SAUNDERS: YES, THE JOB WILL BE MINE, YES.

15 I WAS OFFERED TWO OF THEM SO ONE WILL BE OPEN.

16 MR. WAPNER: IF IT TURNS OUT THAT YOU DON'T LIKE THE
17 VICTIM IN THIS CASE BUT YOU NEVERTHELESS BELIEVE BEYOND A
18 REASONABLE DOUBT THAT HE WAS MURDERED AND THAT THE DEFENDANT
19 DID IT, COULD YOU FIND THE DEFENDANT GUILTY?

20 MS. SAUNDERS: YES.

21 MR. WAPNER: MAY WE APPROACH THE BENCH BRIEFLY?

22 THE COURT: YES.

23 (THE FOLLOWING PROCEEDINGS WERE HELD

24 AT THE BENCH:)

25 MR. WAPNER: MAY I SUGGEST THAT WE GIVE THIS JUROR AN
26 OPPORTUNITY BY WAY OF MAYBE A FIVE-MINUTE RECESS TO MAKE A
27 PHONE CALL TO SEE WHETHER SHE IS GOING TO BE PAID DURING THE
28 PENDENCY OF THIS TRIAL?

7-4
1 I THINK IT IS PROBABLY UNFAIR TO REQUIRE HER TO
2 STAY ON THE CASE IF SHE IS NOT GOING TO BE PAID.

3 MR. BARENS: NOW, YOUR HONOR, SHE HASN'T --

4 THE COURT: I WAS MORE CONCERNED WITH THE FACT THAT
5 SHE SAID THAT ON THIS NEW JOB THAT SHE HAS THAT SHE MIGHT
6 BE -- I DON'T KNOW WHETHER THERE IS ANY JEOPARDY FOR THIS
7 NEW JOB SHE HAS.

8 MR. WAPNER: APPARENTLY THE JOB WILL BE WAITING FOR
9 HER.

10 THE COURT: WELL, THEN THERE IS NO PROBLEM ABOUT THAT.

11 MR. BARENS: SHE SAID -- HE ASKED HER JUST NOW, JUDGE,
12 WILL THE JOB BE THERE AND SHE SAID, "I WAS OFFERED TWO JOBS
13 AND FOR SURE ONE WILL BE THERE."

14 THE COURT: IS SHE CONCERNED ABOUT BEING PAID?

15 MS. BARENS: SHE NEVER MENTIONED THAT AT ALL.

16 MR. WAPNER: MAYBE I SHOULD INQUIRE FURTHER.

17 IT WAS MY UNDERSTANDING THAT SHE WAS GOING TO
18 LEAVE THE COUNTY AND GO TO SANTA MONICA DURING THE PENDENCY
19 OF THE CASE.

20 MR. BARENS: SHE SAID THEY WOULD HOLD THE JOB, YOUR
21 HONOR.

22 THE COURT: WELL, DO YOU WANT TO FIND OUT WHETHER OR
23 NOT SHE IS GOING TO BE PAID? SHE SHOULD KNOW WHETHER SHE
24 IS GOING TO BE PAID FOR THE LENGTH O F TIME SHE IS ON THIS
25 CASE.

26 MR. WAPNER: ALL RIGHT.

27 MR. BARENS: I WOULD LIKE TO NOTE FOR THE RECORD THAT
28 AT NO TIME HAS THIS JUROR SHOWN ANY CONCERN ON THAT SUBJECT.

7-5
1 WHEN YOUR HONOR ASKED FOR HARDSHIP, SHE NEVER VOLUNTEERED
2 ANY HARDSHIP AT ALL.

3 THE COURT: WELL, SHE INDICATED CLEARLY SHE DOESN'T
4 WANT TO BE A JUROR IN THIS CASE AND ONE OF THE REASONS SHE
5 MENTIONED WAS THIS JOB.

6 MR. BARENS: I DON'T THINK HER DESIRE WHETHER OR NOT
7 SHE WANTS TO BE A JUROR OR NOT IS REASON TO EXCUSE HER.

8 THE COURT: YOU CAN ASK THE QUESTION THEN.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10 (THE FOLLOWING PROCEEDINGS WERE HELD

11 IN OPEN COURT:)

12 THE COURT: ANY FURTHER QUESTIONS?

13 MR. WAPNER: YES, I HAVE A FEW.

14 LET ME JUST SEE IF I CAN UNDERSTAND ONE THING.

15 ARE YOU GOING TO REMAIN WITH THE COUNTY AS LONG
16 AS YOU ARE STILL ON JURY DUTY AND THEN NOT GO TO THE NEW JOB
17 UNTIL YOU HAPPEN --

18 MS. SAUNDERS: OKAY. WHAT I HAVE TO TELL YOU, I DIDN'T
19 FILE THE RESIGNATION PAPERS WITH THE COUNTY YET DUE TO THIS
20 CASE BECAUSE I DIDN'T KNOW WHAT THE SITUATION WAS BUT I AM DUE
21 TO START WITH THE CITY ON THE 26TH.

22 THE COURT: WHAT IS THAT?

23 MS. SAUNDERS: THE 26TH OF JANUARY.

24 THE COURT: YOU ARE SUPPOSED TO START THAT JOB?

25 MS. SAUNDERS: WITH THE CITY, YES.

26 THEY KNOW I AM ON JURY DUTY AND I TOLD THEM I
27 WAS ON A PANEL RIGHT NOW FOR A CASE THAT MIGHT GO ON FOR A
28 COUPLE OF MONTHS, THEY ARE AWARE OF THAT.

7-6
1 BUT I DON'T KNOW HOW THEY PAY.

2 THE COURT: YOU DON'T KNOW WHAT?

3 MS. SAUNDERS: I DON'T KNOW IF THEY ARE GOING TO PAY
4 ME BECAUSE I AM A NEW EMPLOYEE.

5 THE COURT: DO YOU WANT TO FIND OUT WHETHER THEY ARE
6 GOING TO DO THAT?

7 MS. SAUNDERS: YES, I WILL.

8 THE COURT: ALL RIGHT.

9 MR. BARENS: MAY I INQUIRE?

10 THE COURT: INQUIRE ABOUT WHAT?

11 MR. BARENS: ON THIS VERY SUBJECT.

12 THE COURT: AS TO WHETHER OR NOT SHE IS GOING TO BE
13 PAID?

14 MR. BARENS: I WANT TO FIND OUT IF THERE IS ANY
15 NECESSITY FOR HER TO LEAVE HER PRESENT JOB PRIOR TO THE TIME
16 THIS CASE ENDS, SINCE THEY HAVE TOLD HER THEY WILL KEEP HER
17 JOB AVAILABLE.

18 THE COURT: WHAT IS YOUR PREFERENCE, DO YOU WANT TO
19 GO TO THIS NEW JOB, IS THAT WHAT YOU WANT TO DO?

20 MS. SAUNDERS: I WANT TO, YES.

21 THE COURT: PARDON ME?

22 MS. SAUNDERS: I DO. I WANT THE NEW JOB. I MEAN YES.

23 THE COURT: WELL, IF YOU GET THE NEW JOB, WILL THEY
24 PERMIT YOU TO STAY HERE FOR THE TIME IT TAKES TO TRY THE CASE?

25 MS. SAUNDERS: YES, BUT I DON'T KNOW IF THEY ARE GOING
26 TO PAY. THEY KNOW I AM ON THE PANEL RIGHT NOW.

27 THE COURT: YOU WANT TO FIND THAT OUT, DO YOU?

28 MS. SAUNDERS: I COULD FIND OUT, YOUR HONOR.

17-7
1 MR. BARENS: COULD YOUR HONOR INQUIRE IF SHE STAYS AT
2 HER PRESENT JOB, WITH THIS JOB BEING HELD FOR HER, WOULD SHE
3 BE PAID ON HER PRESENT JOB?

4 MS. SAUNDERS: AS LONG AS I AM ON THE PRESENT JOB, I
5 AM GOING TO BE PAID, I KNOW THAT.

6 THE COURT: THE QUESTION IS DO YOU WANT TO STAY OR NOT
7 ON YOUR PRESENT JOB?

8 MS. SAUNDERS: IT DOESN'T REALLY MATTER.

9 MR. BARENS: IT DOESN'T MATTER?

10 MS. SAUNDERS: NO.

11 THE COURT: ALL RIGHT, I DON'T THINK WE NEED TO GO ANY
12 FURTHER.

13 DO YOU HAVE ANY QUESTIONS?

14 MR. WAPNER: I AM NOT GOING TO ASK YOU ANY MORE QUESTIONS
15 ABOUT THAT.

16 MS. SAUNDERS: OKAY.

17 MR. BARENS: THANK YOU.

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18A-1
1 MR. WAPNER: I SAID THAT I AM OUT OF OPTIONS AT THIS
2 POINT. SO, IT IS KIND OF OUT OF MY HANDS.

3 HAVE YOU EVER BEEN THE VICTIM OF A THEFT?

4 MS. SAUNDERS: YES. MY HOME WAS BURGLARIZED IN OCTOBER
5 OF LAST YEAR.

6 THE COURT: SHE TOLD US THAT BEFORE.

7 MR. BARENS: JUST FOR THE RECORD, WE WOULD LIKE TO OBJECT
8 TO MR. WAPNER'S PREVIOUS COMMENT ABOUT IT BEING OUT OF HIS
9 HANDS.

10 THE COURT: WELL, LET'S NOT MAKE ANY REFERENCE TO THAT.

11 MR. WAPNER: IT IS NOT IMPORTANT. AND BESIDES THAT,
12 HAVE YOU BEEN THE VICTIM OF ANY KIND OF CON SCHEME OF ANY
13 SORT?

14 MS. SAUNDERS: NO.

15 MR. WAPNER: WHEN MR. BARENS ASKED YOU IF YOU HAD
16 ALWAYS BEEN SINGLE, I THOUGHT YOU SAID "IN A SENSE." I DIDN'T
17 QUITE UNDERSTAND THAT.

18 COULD YOU EXPLAIN THAT TO ME?

19 MS. SAUNDERS: YES. WELL, I HAVE A LITTLE GIRL, FIVE.

20 THE COURT: THAT IS THE ONE THAT HAD THE TOOTHACHE?

21 MS. SAUNDERS: YESTERDAY, YES. AND I HAVE ALWAYS BEEN
22 SINGLE. BUT HER FATHER AND I LIVED TOGETHER FOR FIVE YEARS.

23 MR. WAPNER: AND DID THAT -- I DON'T MEAN TO BE TOO
24 PERSONAL. BUT WAS THAT A RELATIONSHIP THAT ENDED FAIRLY
25 RECENTLY?

26 MR. BARENS: OBJECTION TO THAT QUESTION AND ANY
27 PURSUIT OF THIS.

28 THE COURT: I WILL SUSTAIN THE OBJECTION.

18A-2
1 MR. BARENS: THANK YOU.

2 MR. WAPNER: THE ONLY PURPOSE OF THAT IS TO TRY TO FIND
3 OUT IF THERE ARE ANY JURORS PRESENTLY GOING THROUGH ANY KIND
4 OF EMOTIONAL UPHEAVAL OR ANYTHING LIKE THAT.

5 MS. SAUNDERS: NOTHING LIKE THAT, NO.

6 MR. WAPNER: AND DO YOU HAVE ANY BROTHERS OR SISTERS?

7 MS. SAUNDERS: YES I DO.

8 MR. WAPNER: HOW MANY?

9 MS. SAUNDERS: I HAVE TWO SISTERS.

10 MR. WAPNER: DO THEY LIVE IN THE LOS ANGELES, SANTA
11 MONICA AREA?

12 MS. SAUNDERS: YES.

13 MR. WAPNER: DO YOU SEE OR TALK TO THEM VERY OFTEN?

14 MS. SAUNDERS: YES, ALMOST EVERY DAY.

15 MR. WAPNER: AND ARE YOUR FOLKS LIVING IN THE LOS ANGELES
16 AREA?

17 MS. SAUNDERS: YES.

18 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO THEM?

19 MS. SAUNDERS: I SEE MY MOTHER ABOUT THREE TIMES A WEEK
20 AND I TALK TO HER MAYBE TWO OR THREE TIMES A DAY.

21 MR. WAPNER: OKAY. TWO OR THREE TIMES A DAY? I TAKE
22 IT THAT MEANS THAT YOU ARE FAIRLY CLOSE?

23 MS. SAUNDERS: YES, VERY.

24 MR. WAPNER: WHAT IS IT THAT MAKES YOU WANT TO GET INTO
25 SPORTS JOURNALISM?

26 MS. SAUNDERS: I HAVE ALWAYS BEEN VERY ATHLETIC. I
27 RAN TRACK, COMPETED UP UNTIL ABOUT SIX YEARS AGO. I PLAYED
28 BASKETBALL.

8A
1 I KNOW A LOT ABOUT SPORTS. AND I FIND IT VERY
2 INTERESTING. I LIKE IT. I ENJOY IT.

3 MR. WAPNER: ANYTHING ABOUT THAT PREVIOUS MURDER TRIAL,
4 THAT YOU THINK IS GOING TO AFFECT YOU IN DECIDING THIS CASE,
5 THE ONE YOU WATCHED?

6 MS. SAUNDERS: NO.

7 MR. WAPNER: HAVE YOU EVER HAD ANY BAD EXPERIENCES WITH
8 POLICE OFFICERS, THAT LEFT SUCH A BAD TASTE IN YOUR MOUTH
9 THAT YOU THINK YOU MIGHT BE BIASED AGAINST A POLICE OFFICER
10 WHO TESTIFIES IN THIS CASE?

11 MS. SAUNDERS: NO.

12 MR. WAPNER: ANY BAD EXPERIENCES WITH LAWYERS THAT WOULD
13 AFFECT YOU?

14 MS. SAUNDERS: NO.

15 MR. WAPNER: ANY BAD EXPERIENCES WITH JUDGE WAPNER?

16 MS. SAUNDERS: NO. SOME OF HIS DECISIONS, I DIDN'T
17 AGREE WITH. BUT OTHER THAN THAT, NO.

18 MR. WAPNER: YOU HAVE NOT READ ANY OF THE LETTERS THAT
19 PEOPLE WRITE INTO TV GUIDE. ONE PERSON SAID THAT RICHARD
20 DAWSON AND JUDGE WAPNER ARE THE TWO MEANEST PEOPLE ON
21 TELEVISION.

22 MS. SAUNDERS: I DIDN'T EVEN KNOW THAT THEY WROTE TO
23 TV GUIDE.

24 MR. WAPNER: NOTHING ABOUT THAT THAT IS GOING TO UPSET
25 YOU ONE WAY OR THE OTHER IN DECIDING THIS CASE?

26 MS. SAUNDERS: NO. ARE YOU REALLY RELATED TO JUDGE
27 WAPNER?

28 MR. WAPNER: UNFORTUNATELY, THE WAY THE PROCESS WORKS,

1 I GET TO ASK YOU THE QUESTIONS BUT I DON'T HAVE TO ANSWER
2 THEM.

3 THE COURT: I WILL ANSWER IT FOR YOU. HE IS HIS SON.

4 MS. SAUNDERS: OH.

5 THE COURT: THAT IS WHAT COUNSEL INDICATED TO YOU BEFORE.

6 MR. WAPNER: NOW, YOU DON'T HAVE TO SIT THROUGH A TWO-
7 OR THREE-MONTH TRIAL AND WAIT TO ASK ME AT THE END.

8 THE COURT: ALL RIGHT. DO YOU PASS FOR CAUSE?

9 MR. WAPNER: YES, YOUR HONOR.

10 THE COURT: A PEREMPTORY?

11 MR. BARENS: A MOMENT, YOUR HONOR.

12 (PAUSE.)

13 MR. BARENS: YOUR HONOR, THE DEFENSE WOULD REQUEST THAT
14 THE COURT THANK AND EXCUSE JUROR NUMBER 5, MS. FELTS.

15 THE COURT: THANK YOU, MS. FELTS.

16 THE CLERK: MRS. EMMA BECKING, B-E-C-K-I-NG.

17 THE COURT: MRS. BECKING, YOU HEARD ALL OF THE QUESTIONS
18 AND ANSWERS WHICH HAVE BEEN GIVEN TO THE GENERAL QUESTIONS.
19 IF THE SAME GENERAL QUESTIONS WERE ASKED OF YOU, WOULD YOUR
20 ANSWERS BE ANY DIFFERENT OR WOULD THEY BE SUBSTANTIALLY THE
21 SAME?

22 MS. BECKING: SUBSTANTIALLY THE SAME.

23 THE COURT: OKAY. MRS. BECKING, WHAT DO YOU DO, PLEASE?

24 MS. BECKING: I AM A HOMEMAKER. I AM A WIDOW.

25 THE COURT: A WIDOW? WHAT DID MR. BECKING DO DURING
26 HIS LIFETIME?

27 MS. BECKING: HE WAS IN PARTNERSHIP WITH HIS TWO BROTHERS.
28 THEY WERE GENERAL BUILDING CONTRACTORS. THEY SPECIALIZED

1 IN REMODELING.

2 THE COURT: HERE IN SANTA MONICA?

3 MS. BECKING: NO, IN THE WHOLE SOUTH BAY AREA. IT WAS
4 MAINLY MANHATTAN BEACH, HERMOSA BEACH AND PALOS VERDES.

5 THE COURT: WHERE DO YOU LIVE NOW?

6 MS. BECKING: MANHATTAN BEACH.

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

9 MS. BECKING: YES I HAVE.

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

11 MS. BECKING: IT WAS A 502.

12 THE COURT: A WHAT? A 502? THAT DATES YOU, YOU KNOW.
13 THAT WAS WAY BACK IN MY TIME.

14 MS. BECKING: DRIVING WHILE UNDER THE INFLUENCE.
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1 THE COURT: IT IS A DIFFERENT NUMBER ENTIRELY NOW.

2 DID THE JURY REACH A VERDICT IN THAT CASE?

3 MS. BECKING: WE DIDN'T REACH A VERDICT.

4 THE COURT: YOU HAD A HUNG JURY?

5 MS. BECKING: WE HAD A HUNG JURY.

6 THE COURT: ALL RIGHT. HAVE YOU EVER BEEN THE VICTIM
7 OF ANY KIND OF A CRIME OF ANY KIND?

8 MS. BECKING: NO.

9 THE COURT: THANK YOU VERY MUCH.

10 MR. BARENS: GOOD AFTERNOON, MS. BECKING.

11 MS. BECKING: GOOD AFTERNOON.

12 MR. BARENS: MS. BECKING, HOW DID YOU FEEL ABOUT THAT
13 HUNG JURY EXPERIENCE?

14 MS. BECKING: WELL, I THOUGHT THE LAW WORKED FINE. BUT
15 THE 12 OF US JUST DIDN'T GET TOGETHER.

16 MR. BARENS: DO YOU UNDERSTAND THAT A HUNG JURY IS A
17 PART OF THIS SYSTEM, A LEGITIMATE PART OF IT? THAT IS ONE
18 OF THE CHOICES WE GET, UNDER THE CONSTITUTION, THE WAY THIS
19 BUSINESS WORKS. DO YOU ACCEPT THAT?

20 MS. BECKING: YES.

21 MR. BARENS: WERE YOU ANGRY THAT IT WAS A HUNG JURY?

22 MS. BECKING: WHAT IS THAT?

23 MR. BARENS: WERE YOU ANGRY IT WAS A HUNG JURY?

24 MS. BECKING: WELL, I WOULD HAVE PREFERRED TO HAVE SEEN
25 IT SETTLED, NATURALLY. BUT IT WAS NOT.

26 MR. BARENS: YOU FELT FRUSTRATED?

27 MS. BECKING: NOT REALLY. IT WAS JUST ONE OF THOSE
28 THINGS.

1 MR. BARENS: WERE YOU WILLING TO ACCEPT THAT IT IS JUST
2 THE WAY THE CASE WORKED, BUT THAT NONETHELESS, IT WAS A
3 LEGITIMATE EXPERIENCE FOR A JUROR TO HAVE?

4 MS. BECKING: YES.

5 MR. BARENS: DO YOU UNDERSTAND THAT SOMETIMES YOU CAN
6 HAVE A HUNG JURY BECAUSE THERE IS JUST INSUFFICIENT DATA
7 PROVIDED THE JURY TO ENABLE EVERYBODY ON THAT JURY TO COME
8 TO ANY KIND OF A DECISION?

9 MS. BECKING: THAT COULD, YES.

10 MR. BARENS: YOU HAVE TO LISTEN TO ALL OF THE EVIDENCE
11 IN THE CASE BEFORE YOU CAN MAKE A DECISION, DON'T YOU?

12 MS. BECKING: YES.

13 MR. BARENS: DID THAT CASE INVOLVE A BREATHALYZER?
14 DO YOU KNOW WHAT I MEAN?

15 MS. BECKING: YES. I KNOW WHAT YOU MEAN BY THAT. YES,
16 IT DID.

17 MR. BARENS: AND YOU HAD SOME POLICE OFFICER COME IN
18 AND SAY WHAT THE BREATHALYZER WAS?

19 MS. BECKING: YES. THE POLICE OFFICER TESTIFIED.

20 MR. BARENS: BY CHANCE, DO YOU REMEMBER WHAT THE
21 READING WAS IN THAT CASE?

22 MS. BECKING: IT WAS LOW.

23 MR. WAPNER: WAS IT BELOW A .10?

24 MS. BECKING: I THINK IT WAS. IT WAS LOW. I KNOW THAT.

25 MR. BARENS: WERE YOU OVERWHELMED BY THE BREATHALYZER
26 IN MAKING YOUR DETERMINATION OF GUILT OR INNOCENCE, IF YOU
27 IN FACT, MADE ONE?

28 MS. BECKING: NO.

1 MR. BARENS: ALL RIGHT. UNDERSTAND, THAT I ASK YOU
2 ABOUT THAT EXPERIENCE AS A JUROR AND I DO NOT WANT YOU TO
3 TELL ME HOW YOU VOTED OR DIDN'T VOTE. DO YOU UNDERSTAND?

4 MS. BECKING: YES.

5 MR. BARENS: OKAY. YOU WERE NOT OVERWHELMED IN WHATEVER
6 DECISION YOU MADE, BY THE BREATHALYZER?

7 MS. BECKING: NO.

8 MR. BARENS: DID THE DEFENDANT TESTIFY IN THAT CASE?

9 MS. BECKING: YES HE DID.

10 MR. BARENS: HOW DID YOU FEEL ABOUT THE DEFENDANT WHEN
11 HE TESTIFIED?

12 MS. BECKING: I FELT THAT HE WAS HONEST AND TELLING
13 THE TRUTH.

14 MR. BARENS: ALL RIGHT. DID YOU HAVE --

15 THE COURT: YOU DON'T HAVE TO TELL US HOW YOU VOTED.

16 MS. BECKING: NO. I WON'T.

17 MR. BARENS: YOU KNOW, THE JUDGE --

18 MS. BECKING: MAYBE YOU SHOULDN'T HAVE ASKED THAT
19 QUESTION.

20 MR. BARENS: WELL, ONE TIME I HAD A CASE WHERE THEY
21 BELIEVED THE DEFENDANT WAS TELLING THE TRUTH BUT THEY THOUGHT
22 HE DIDN'T KNOW WHAT HE WAS TALKING ABOUT.

23 THE COURT: IT MUST HAVE BEEN A CIVIL CASE.

24 MR. BARENS: QUITE SO, YOUR HONOR. ALL RIGHT. OTHER
25 THAN THAT EXPERIENCE, HAVE YOU EVER BEEN ON A JURY PANEL
26 BEFORE?

27 MS. BECKING: I WAS ON A PANEL AT THE SAME TIME WHEN
28 I WAS ON THIS CASE. BUT I WAS YOU KNOW, NOT ACCEPTED.

1 MR. BARENS: WHAT SORT OF A CASE WERE YOU NOT ACCEPTED
2 ON? DO YOU RECALL THE TYPE OF CASE THEY WERE GOING TO PROCEED
3 WITH?

4 MS. BECKING: YES. I THINK IT WAS A SON BEATING UP
5 HIS MOTHER-IN-LAW.

6 MR. BARENS: ASSAULT AND BATTERY?

7 MS. BECKING: ASSAULT AND BATTERY.

8 MR. BARENS: PROBABLY INCLUDING JUSTIFICATION OR
9 SOMETHING? HAVE YOU EVER WATCHED ANY TRIAL?

10 MS. BECKING: YES I HAVE.

11 MR. BARENS: HOW MANY HAVE YOU WATCHED?

12 MS. BECKING: JUST ONE.

13 MR. BARENS: WHAT SORT OF A TRIAL DID YOU WATCH?

14 MS. BECKING: IT WAS AN ALLEGED PROSTITUTION.

15 MR. BARENS: ALLEGED, INDEED. OKAY. NOW, DID YOU WATCH
16 THE TOTALITY OF THAT TRIAL, MS. BECKING?

17 MS. BECKING: YES I DID.

18 MR. BARENS: WAS THAT AN INTERESTING ONE?

19 MS. BECKING: IT WAS VERY INTERESTING.

20 MR. BARENS: YES. DID THE DEFENDANT TESTIFY?

21 MS. BECKING: THE DEFENDANT TESTIFIED.

22 MR. BARENS: IT WAS A LADY, I HOPE?

23 MS. BECKING: YES.

24 MR. BARENS: OKAY.

25 MR. WAPNER: NOT NECESSARILY.

26 MR. BARENS: I KNOW. WE ARE IN SOUTHERN CALIFORNIA.
27 THERE ARE NO RULES AT ALL. BUT --

28 MR. WAPNER: THAT IS TWICE IN TWO DAYS.

1 MR. BARENS: NO. I TRUST THAT IT WAS A LADY. IT COULD
2 HAVE BEEN ON SANTA MONICA, WHERE YOU ARE SAFE, MR. WAPNER.

3 MS. BECKING: IT WAS ORANGE COUNTY.

4 MR. BARENS: IN ORANGE COUNTY? I KNOW FOR SURE IT WAS
5 A LADY. THEY WOULD HAVE SHOT A FELLOW DOWN THERE, IF HE HAD
6 BEEN ON TRIAL.

7 DID YOU WATCH THE WHOLE PROCEDURE ON IT?

8 MS. BECKING: YES I DID.

9 MR. BARENS: AND HOW DID YOU FEEL ABOUT THE LADY IN
10 QUESTION AS A WITNESS IN HER DEFENSE?

11 MS. BECKING: WELL, SHE WAS A GOOD WITNESS.

12 MR. BARENS: OKAY. ALL RIGHT. NOW, I AM SURE THAT
13 YOU HAVE HAD THE EXPERIENCE OF OBSERVING TWO DEFENDANTS
14 TESTIFY IN THEIR OWN BEHALF. I ASK YOU THIS. PRIOR TO THE
15 TIME THAT YOU ACTUALLY HEARD THEM SPEAK AS A WITNESS, DID
16 YOU HAVE SOME KIND OF AN OPINION ANTICIPATING WHAT THEY WERE
17 GOING TO SAY?

18 MS. BECKING: NO I DID NOT.

19 MR. BARENS: YOU DID NOT?

20 MS. BECKING: NO.

21 MR. BARENS: SO, THEIR TESTIMONY REALLY VALIDATED OR
22 INVALIDATED SOME PRIVATE OPINION THAT YOU HAD ABOUT WHAT THEY
23 WOULD OR WOULD NOT SAY?

24 MS. BECKING: YES.

25 MR. BARENS: WHAT SORT OF EDUCATION DO YOU HAVE,
26 MS. BECKING?

27 MS. BECKING: WELL, I AM A HIGH SCHOOL GRADUATE. AND
28 I GRADUATED FROM WOODBURY BUSINESS COLLEGE, HERE IN LOS ANGELES

1 MR. BARENS: WERE YOU EMPLOYED DURING YOUR LIFETIME?

2 MS. BECKING: YES.

3 MR. BARENS: DID YOU HAVE A PARTICULAR TYPE OF
4 EMPLOYMENT THAT YOU PURSUED?

5 MS. BECKING: I WAS A LEGAL SECRETARY.

6 MR. BARENS: I HOPE YOU DON'T HATE LAWYERS AS A RESULT
7 OF THAT. DO YOU, MS. BECKING?

8 MS. BECKING: WHAT?

9 MR. BARENS: I HOPE YOU DON'T HAVE ANYTHING AGAINST
10 LAWYERS.

11 MS. BECKING: NO. AS A MATTER OF FACT, THE CASE I WAS
12 ON, MY LAWYER ON THE PROSTITUTION CASE WAS ONE OF THE
13 ATTORNEYS.

14 MR. BARENS: REALLY?

15 MS. BECKING: YES.

16 MR. BARENS: WITH WHOM YOU HAD WORKED?

17 MS. BECKING: WITH WHOM I HAD WORKED.

18 MR. BARENS: YOUR HONOR, IS IT PERMISSIBLE FOR COUNSEL
19 TO INQUIRE AS TO THE NAME OF THE LAWYER THAT SHE WORKED FOR?

20 THE COURT: IT IS ALL RIGHT.

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1 MR. BARENS: THANK YOU, YOUR HONOR.

2 COULD YOU TELL ME WHAT LAW FIRM OR LAWYER YOU
3 WORKED FOR?

4 MS. BECKING: IT IS SUCH A LONG TIME AGO, YOU PROBABLY
5 WOULDN'T REMEMBER THE NAME.

6 MR. BARENS: I COULD BE REAL OLD.

7 MS. BECKING: HIS NAME IS BOYD ALAN TAYLOR.

8 MR. BARENS: BOYD ALAN TAYLOR?

9 JUST A MOMENT.

10 (UNREPORTED COLLOQUY BETWEEN MR. BARENS
11 AND MR. CHIER.)

12 MS. BECKING: PREVIOUS -- AFTER THAT, HE WAS WITH THE
13 CITY ATTORNEY'S OFFICE FOR QUITE A FEW YEARS BUT I WASN'T
14 WORKING FOR HIM THEN.

15 MR. BARENS: WERE YOU WORKING FOR ANOTHER LAWYER DURING
16 THAT TIME FRAME?

17 MS. BECKING: I WORKED FOR THREE DIFFERENT ATTORNEYS.

18 MR. BARENS: COULD YOU TELL ME WHO THEY WERE?

19 MS. BECKING: ONE WAS NAMED HENRY J. ELDER AND THE OTHER
20 WAS STEADMAN G. SMITH.

21 MR. BARENS: ALL RIGHT. WHAT SORT OF LEGAL WORK DID
22 THOSE FELLOWS DO?

23 MS. BECKING: WELL, I WOULD SAY 99 PERCENT OF IT WAS,
24 YOU KNOW, JUST PROBATE MOSTLY AND --

25 MR. BARENS: I LOOK TO MR. CHIER, HE BEING MY ELDER,
26 AND THOUGHT HE MIGHT KNOW THEM.

27 (LAUGHTER IN COURTROOM.)

28 MS. BECKING: MAYBE JUDGE WAPNER WOULD.

1 MR. WAPNER: OH.

2 MR. BARENS: ALL RIGHT. THEY DID MOSTLY PROBATE WORK?

3 MS. BECKING: WELL, MR. SMITH DID MOSTLY PROBATE.

4 MR. ELDER DID A LOT OF CIVIL.

5 MR. TAYLOR DID MAINLY CIVIL BUT A LITTLE BIT OF
6 CRIMINAL.

7 MR. BARENS: WELL, IS THERE ANYTHING FROM YOUR EXPERIENCE,
8 HAVING WORKED WITH THESE GENTLEMEN, THAT WOULD IN ANY WAY BIAS
9 YOU EITHER FOR THE PROSECUTION OR THE DEFENSE, WERE YOU TO
10 BE A JUROR IN THIS CASE?

11 MS. BECKING: NO, I WOULDN'T.

12 MR. BARENS: YOU ARE SURE?

13 MS. BECKING: I AM POSITIVE.

14 MR. BARENS: AND YOU DON'T HAVE ANY WAR STORY
15 EXPERIENCES ABOUT YOUR JOBS THAT WOULD IN ANY WAY BIAS YOU
16 AGAINST LAWYERS IN GENERAL?

17 MS. BECKING: NO.

18 MR. BARENS: IT WAS A PLEASANT THING FOR YOU?

19 MS. BECKING: I LOVED MY WORK.

20 MR. BARENS: TERRIFIC.

21 AFTER WORKING AS A LEGAL SECRETARY, DID YOU HAVE
22 ANY OTHER TYPE OF EMPLOYMENT?

23 MS. BECKING: I KEPT BOOKS FOR MY HUSBAND AND HIS
24 BROTHERS IN ACCOUNTING AND I ALSO DID A LITTLE PART TIME WORK
25 AT HOME FOR ANOTHER ATTORNEY.

26 MR. BARENS: WHO WAS THAT?

27 MS. BECKING: HIS NAME WAS THOMAS P. FOY.

28 AND HE LATER BECAME A MUNICIPAL COURT JUDGE IN

1 TORRANCE, NOW RETIRED.

2 MR. BARENS: ALL RIGHT. AND NOTHING FROM THAT EXPERIENCE
3 WOULD HAVE ANY IMPACT ON YOU AS A PROSPECTIVE JUROR?

4 MS. BECKING: NO.

5 MR. BARENS: DO YOU HAVE ANY HOBBIES AT PRESENT?

6 MS. BECKING: I LOVE GARDENING.

7 MR. BARENS: I AM NOT GOING TO DO THAT TO YOU. I AM
8 NOT GOING TO DO THE FROZEN FLOWER.

9 THE COURT: TELL US ABOUT THE METEORITE, YOU MEAN?

10 MR. BARENS: I AM NOT GOING TO DO THE METEORITE EITHER,
11 JUDGE. I KNOW SHE WOULD SAY IT WAS A METEORITE FROM THE
12 START.

13 WELL, ASIDE FROM THE GARDENING, DO YOU HAVE ANY
14 HOBBIES?

15 MS. BECKING: NOT REALLY, NO.

16 WHEN I WAS YOUNGER, I USED TO HAVE OTHER HOBBIES
17 BUT --

18 MR. BARENS: ANY PARTICULAR HOBBY FOLLOWED DURING YOUR
19 LIFETIME?

20 MS. BECKING: WELL, I USED TO LIKE TO BODY SURF OUT HERE
21 ON THE OCEAN.

22 I AM TOO OLD FOR THAT NOW.

23 MR. BARENS: ALL RIGHT, MRS. BECKING, DO YOU READ?

24 MS. BECKING: VERY LITTLE.

25 I LISTEN TO A LOT OF RADIO AND A LOT OF MUSIC.
26 I LOVE SYMPHONY MUSIC.

27 MR. BARENS: MRS. BECKING, I DO HAVE SOME RECOLLECTION
28 WHEN I QUESTIONED YOU LAST TIME THAT YOU HAD SOME CONCERN ABOUT

3-4
1 SMOKE AND FIRE; DO YOU REMEMBER THAT DIALOGUE?

2 MS. BECKING: SMOKE AND FIRE?

3 MR. BARENS: SMOKE AND FIRE.

4 MS. BECKING: I DON'T REMEMBER THAT.

5 THE COURT: WHERE THERE IS SMOKE THERE IS FIRE.

6 MS. BECKING: OH, WHERE THERE IS SMOKE THERE IS FIRE?

7 MR. BARENS: DO YOU REMEMBER THAT?

8 MS. BECKING: I DON'T REMEMBER IT TOO MUCH.

9 MR. BARENS: LET ME ASK YOU THIS: DO YOU HAVE A REASON
10 TO BELIEVE THAT BECAUSE JOE HUNT SITS THERE AS A DEFENDANT
11 ACCUSED OF A MURDER, DO YOU BELIEVE HE HAS DONE SOMETHING
12 WRONG?

13 MS. BECKING: NO, I DON'T.

14 MR. BARENS: YOU DON'T AT ALL?

15 MS. BECKING: NO.

16 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF
17 INNOCENCE THAT EVERY DEFENDANT, INCLUDING IF IT WERE YOU, IS
18 GIVEN IN THIS COUNTRY?

19 MS. BECKING: I THINK THEY SHOULD HAVE THE PRESUMPTION
20 OF INNOCENCE.

21 MR. BARENS: YOU THINK IT IS AN IMPORTANT RIGHT THAT
22 WE HAVE --

23 MS. BECKING: AN IMPORTANT RIGHT, YES.

24 MR. BARENS: -- AS CITIZENS HERE?

25 AFTER LOOKING AT THE COUPLE OF TRIALS YOU OBSERVED
26 AND THE ONE YOU PARTICIPATED IN AND WORKING FOR LAWYERS IN
27 SOME PERIOD OF TIME, HOW DO YOU FEEL ABOUT THE LEGAL SYSTEM
28 AS A GENERAL PROPOSITION?

1 MS. BECKING: OH, I THINK IT WORKS BEAUTIFULLY.

2 LIKE I SAY, IT MIGHT BE A LITTLE SLOW, BUT ASIDE
3 FROM THAT, I THINK IT IS FINE.

4 MR. BARENS: JUST ONE OF THOSE PATIENCE ACTIVITIES.
5 ALL RIGHT. ANYTHING ABOUT SOMEONE WHO MIGHT BELONG TO AN
6 ORGANIZATION CALLED THE BILLIONAIRE BOYS CLUB THAT WOULD GIVE
7 YOU ANY CONCERN?

8 MS. BECKING: NEVER HEARD OF THEM.

9 MR. BARENS: IT WOULDN'T MAKE YOU SUSPICIOUS BECAUSE
10 OF THAT?

11 MS. BECKING: NO.

12 MR. BARENS: ALL RIGHT. LET ME ASK YOU ABOUT THE PIE.
13 WHAT DO YOU THINK HAPPENED?

14 YOU HEARD THIS STORY THAT THIS PIE IS WHOLE, IT
15 IS NOT WHOLE AND JOHNNY --

16 THE COURT: THE PIE HAS ALREADY BEEN EATEN. LET'S STAY
17 AWAY FROM IT. THERE NO LONGER EXISTS ANY PIE. IT HAS BEEN
18 ALL EATEN UP.

19 (LAUGHTER IN COURTROOM.)

20 MR. BARENS: I ANTICIPATE IF I DON'T DO THIS, MY
21 COLLEAGUE WILL.

22 THE COURT: HE WON'T DO THAT, I PROMISE.

23 MR. BARENS: HE WON'T DO THAT?

24 THE COURT: NO.

25 MR. BARENS: COULD I ASK HER JUST ONE QUESTION?

26 THE COURT: YES.

27 MR. BARENS: IF JOHNNY WAS JUST STANDING THERE, HE KNOWS
28 HE IS THE ONLY GUY IN THE WORLD THAT COULD HAVE BEEN IN THAT

9-6

1 HOUSE AND HE HAS GOT PIE ALL OVER HIS SHIRT, DO YOU THINK AS
2 A REAL-WORLD PROPOSITION THERE IS ANY WAY IN THE WORLD THAT
3 HE COULD COME IN HERE AND SAY HE WAS REALLY NOT GUILTY, GIVEN
4 THE FACTS THAT MR. WAPNER PUT FORTH, DO YOU THINK THERE IS
5 ANYBODY IN THEIR RIGHT MIND WHO WOULD STAND UP AND SAY NOT
6 GUILTY TO THAT ONE?

7 MS. BECKING: GEE, I DON'T KNOW.

8 MR. BARENS: I WOULD JUST SUBMIT TO YOU THAT THAT WHOLE
9 THING FALLS APART BECAUSE THERE IS NO WAY JOHNNY --

10 MR. WAPNER: YOUR HONOR, THAT IS NOT A QUESTION.

11 THE COURT: LET'S NOT MAKE ANY SPEECHES. SAVE THAT FOR
12 THE CLOSING ARGUMENT.

13 MR. BARENS: I WANT TO GIVE THE PIE THE FINAL SHOT, YOUR
14 HONOR.

15 THE COURT: I THOUGHT YOU DID IT A LONG TIME AGO --

16 MS. BECKING: ARE YOU TRYING TO GET AT --

17 THE COURT: BUT LIKE A CAT --

18 MS. BECKING: DIRECT AND CIRCUMSTANTIAL EVIDENCE?

19 THE COURT: -- IT HAS NINE LIVES.

20 MR. BARENS: THE JUROR ASKED ME IF WE WERE TRYING TO
21 GET AT DIRECT AND CIRCUMSTANTIAL EVIDENCE AND I WOULD LIKE
22 TO CONFIRM TO HER THAT WAS THE INTENT OF THE EXAMPLE.

23 WHAT I WAS ASKING YOU ABOUT, MRS. BECKING, YOU
24 COULD SEE THE UTTER PREPOSTEROUSNESS OF IT AS AN EXAMPLE OF
25 EVEN CONTENDING HE ISN'T GUILTY; DO YOU UNDERSTAND WHAT I MEAN?

26 MS. BECKING: YES.

27 MR. BARENS: THANK YOU, YOUR HONOR. I PASS FOR CAUSE.

28 THE COURT: I THINK I OUGHT TO GIVE THEM A LITTLE BRIEF

9-7

1 RECESS AT THIS TIME.

2 LADIES AND GENTLEMEN, WE WILL TAKE A BRIEF
3 RECESS AT THIS TIME FOR 10 OR 15 MINUTES.

4 (RECESS.)

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1 THE COURT: IT WILL BE STIPULATED THE DEFENDANT IS
2 PRESENT. COUNSEL ARE PRESENT. THE PROSPECTIVE JURORS ARE
3 PRESENT. MR. WAPNER?

4 MR. WAPNER: I WAS ABOUT TO INQUIRE, YOUR HONOR.

5 THE COURT: YOU MAY GO AHEAD.

6 MR. WAPNER: GOOD AFTERNOON, MRS. BECKING.

7 MS. BECKING: GOOD AFTERNOON, MR. WAPNER.

8 MR. WAPNER: YOU WILL BE HAPPY TO KNOW THAT I FOUND OUT
9 DURING THE BREAK, WHAT HAPPENED TO THE PIE.

10 MS. BECKING: YOU DID?

11 MR. WAPNER: I TALKED TO THE BAILIFF AND HE SAID THAT
12 IT FELL OFF THE BOAT IN THE MIDDLE OF THE NIGHT AND DROWNED.

13 MR. BARENS: WE WILL STIPULATE TO THAT.

14 MR. WAPNER: MR. BARENS IS SUGGESTING HOW PREPOSTEROUS
15 HE THOUGHT IT WAS IN THIS CASE, LISTENING TO PEOPLE WHO WERE
16 SUGGESTING THAT HE WENT NEXT DOOR AND HOW OLD WAS THE BOY.
17 DID YOU HEAR ALL OF THAT STUFF?

18 MS. BECKING: YES.

19 MR. WAPNER: ALL RIGHT. DID ANY OF THAT STUFF SEEM A
20 LITTLE MUCH TO YOU?

21 MS. BECKING: A LITTLE MUCH.

22 MR. WAPNER: OKAY. DO YOU UNDERSTAND THE WHOLE PURPOSE
23 OF THAT EXAMPLE?

24 MS. BECKING: YES.

25 MR. WAPNER: HAD YOU HAD ANY EXPERIENCE OR UNDERSTANDING
26 OF CIRCUMSTANTIAL EVIDENCE BEFORE YOU CAME INTO THE COURTROOM?

27 MS. BECKING: NO.

28 MR. WAPNER: DO YOU THINK YOU UNDERSTAND IT A LITTLE

20-2

1 BIT BETTER NOW THAN YOU DID BEFORE?

2 MS. BECKING: BETTER, YES.

3 MS. WAPNER: OKAY. YOU HAVE SAT ON SEVERAL TRIALS AND
4 WATCHED SOME OTHERS. RIGHT?

5 MS. BECKING: I SAT ON JUST ONE.

6 MR. WAPNER: ALL RIGHT. THAT WAS DRIVING UNDER THE
7 INFLUENCE?

8 MS. BECKING: YES.

9 MR. WAPNER: IN THAT CASE, DID YOU FEEL THAT THE POLICE
10 OFFICERS WERE TRUTHFUL OR NOT?

11 MS. BECKING: YES. I BELIEVE THEY WERE TRUTHFUL.

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1 MR. WAPNER: AND YOU JUST DIDN'T FEEL THAT?

2 MS. BECKING: THEY FELT IN THEIR OWN MINDS THEY WERE
3 TRUTHFUL.

4 MR. WAPNER: DID YOU FEEL THEY WERE BEING TRUTHFUL BUT
5 THE EVIDENCE WASN'T SUFFICIENT OR SOMETHING ELSE?

6 MS. BECKING: WELL, SOMETHING ELSE.

7 MR. WAPNER: ALL RIGHT. DID YOU FEEL THAT THE JURY IN
8 THAT CASE, ALL 12 PEOPLE, MADE AN HONEST EFFORT TO REACH
9 A VERDICT?

10 MS. BECKING: I BELIEVE WE DID.

11 WE WERE SPLIT, YOU KNOW, LIKE SIX TO SIX AND THEN
12 WE WERE SPLIT EIGHT, YOU KNOW, FOUR AND THAT IS HOW IT ENDED
13 UP.

14 MR. WAPNER: SO IT WAS JUST A DIFFERENCE OF OPINION?

15 MS. BECKING: RIGHT.

16 MR. WAPNER: YOU DIDN'T HAVE ONE PERSON WHO CAME IN THERE
17 AND SAID, "WELL, I DON'T CARE ABOUT THE FACTS AND I DON'T CARE
18 ABOUT THE LAW, I AM JUST GOING TO DO WHAT I AM GOING TO DO?"

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20 MS. BECKING: NO, WE DIDN'T HAVE THAT.

21 MR. WAPNER: OKAY. HAVE YOU EVER BEEN THE VICTIM OF
22 ANY KIND OF A CON SCHEME?

23 MS. BECKING: NO.

24 MR. WAPNER: NOW THAT THE CAT IS OUT OF THE BAG, HOW
25 DO YOU FEEL ABOUT JUDGE WAPNER?

26 MS. BECKING: I THINK HE IS WONDERFUL. I LISTEN TO
27 PEOPLE'S COURT QUITE A BIT.

28 MR. WAPNER: OKAY, I THINK HE IS WONDERFUL, TOO.

1 MS. BECKING: YOU DO?

2 MR. WAPNER: THAT IS NOT GOING TO AFFECT YOU ONE WAY
3 OR THE OTHER IN DECIDING THIS CASE, IS IT?

4 MS. BECKING: NO.

5 MR. WAPNER: DO YOU THINK IF WE DON'T BRING HIM IN AS
6 A CO-PROSECUTOR OR SOMETHING, THAT IS NOT GOING TO --

7 MS. BECKING: I DON'T THINK HE WILL.

8 MR. BARENS: GOD, I HOPE NOT.

9 MS. BECKING: HE IS SUPPOSED TO BE RETIRED.

10 (LAUGHTER IN COURTROOM.)

11 MR. WAPNER: I'LL TELL YOU, I WAS NEVER MORE TICKLED
12 TO DEATH IN MY LIFE THAN ONE MORNING -- THEY DO THESE CASES
13 ON WEDNESDAYS.

14 MS. BECKING: THEY DO?

15 MR. WAPNER: HE TAPES THEM ALL ON ONE DAY AND HE CALLED
16 ME UP ONE WEDNESDAY MORNING, HE HAD A CASE, EVEN THOUGH IT
17 WAS A CIVIL CASE, THAT HAD TO DO BASICALLY WITH A BURGLARY, HAD
18 TO DO WITH SOMEBODY BREAKING IN AND HE USED TO SIT ON CIVIL
19 MOSTLY A LONG TIME AGO AND HE CALLED ME UP AND ASKED FOR
20 ADVICE.

21 MS. BECKING: THAT MADE YOU FEEL GOOD, DIDN'T IT?

22 MR. WAPNER: YES, IT SURE DID.

23 DO YOU HAVE ANY CHILDREN?

24 MS. BECKING: I HAVE ONE SON, 37.

25 MR. WAPNER: YOU MENTIONED THAT BEFORE.

26 CAN YOU TELL ME A LITTLE BIT ABOUT THE CIRCUMSTANCES
27 OF HIS PASSING?

28 MS. BECKING: OF WHAT?

1 MR. WAPNER: YOU HAVE A SON OR YOU HAD A SON?

2 MS. BECKING: I HAVE A SON.

3 MY HUSBAND IS DECEASED.

4 MR. WAPNER: SOMEONE, I THOUGHT IT WAS YOU, WHO HAD A
5 SON WHO HAD PASSED AWAY.

6 MS. BECKING: MY SON IS LIVING.

7 MR. WAPNER: DOES HE LIVE IN THE LOS ANGELES AREA?

8 MS. BECKING: HE LIVES IN REDONDO BEACH.

9 MR. WAPNER: AND THAT IS NOT TOO FAR FROM MANHATTAN?

10 MS. BECKING: IT ISN'T.

11 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO HIM?

12 MS. BECKING: I SEE HIM ABOUT TWICE A WEEK.

13 HE WORKS IN A BAIT AND TACKLE SHOP IN REDONDO
14 AND I GO DOWN THERE FREQUENTLY.

15 MR. WAPNER: YOU STILL GET DOWN TO THE WATER PRETTY
16 OFTEN EVEN IF YOU DON'T GO BODY SURFING?

17 MS. BECKING: NOT AS OFTEN AS I USED TO.

18 I SPEND MORE TIME IN MY GARDEN.

19 MR. WAPNER: WHEN IT IS NOT FREEZING.

20 MS. BECKING: IT IS NOT THAT COLD IN CALIFORNIA.

21 MR. WAPNER: WHEN YOU CAME INTO THIS COURTROOM AND
22 BEFORE YOU KNEW EVEN THAT THIS WAS A MURDER CASE, BUT ONLY
23 THAT IT WAS A CRIMINAL CASE, DID YOU FEEL ANY BIAS ONE WAY
24 OR THE OTHER TOWARDS EITHER THE PROSECUTION OR THE DEFENSE?

25 MS. BECKING: NO.

26 MR. WAPNER: DO YOU FOLLOW THE NEWS MUCH?

27 MS. BECKING: I LISTEN TO THE NEWS ON TELEVISION AND
28 RADIO.

1 MR. WAPNER: YOU MENTIONED THAT YOU LISTEN TO THE RADIO;
2 WHAT STATIONS DO YOU LISTEN TO?

3 MS. BECKING: I LIKE KABC. I LIKE KEN AND BOB.

4 MR. WAPNER: DO YOU LISTEN TO MUCH OF THE TALK STUFF
5 DURING THE DAY, THE CALL-IN PROGRAMS?

6 MS. BECKING: NO, BUT I DO DURING THE EVENING WHEN I
7 CAN'T SLEEP AT NIGHT, I LISTEN TO KABC, TALK ON RADIO.

8 MR. WAPNER: DO YOU EVER, WHEN YOU ARE READING OR
9 LISTENING TO THE RADIO, FOLLOW ANY OF THE STORIES ABOUT
10 CRIME OR --

11 MS. BECKING: NO.

12 MR. WAPNER: DID YOU FEEL ANY BIAS ONE WAY OR THE OTHER
13 TOWARDS THE PROSECUTION OR DEFENSE WHEN YOU WERE A LEGAL
14 SECRETARY AND THE PEOPLE YOU WERE WORKING FOR DID SOME LIMITED
15 CRIMINAL WORK?

16 MS. BECKING: NO.

17 THERE WAS VERY LITTLE CRIMINAL WORK ANYWAY, VERY
18 LITTLE.

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1 MR. WAPNER: HOW DID YOU FEEL WHEN IT WAS A FORMER
2 BOSS, I BELIEVE, WHO WENT TO THE CITY ATTORNEY'S OFFICE?

3 MS. BECKING: HOW DID I FEEL?

4 MR. WAPNER: WHEN HE WENT TO THE CITY ATTORNEY'S OFFICE?

5 MS. BECKING: WELL, I HAD ALREADY QUIT WORKING FOR
6 HIM. HE WANTED ME TO COME BACK AND GO IN THERE WITH HIM BUT
7 MY SON WAS JUST A BABY THEN. I COULDN'T DO IT.

8 MR. WAPNER: OKAY. IF IT TURNS OUT THAT YOU DON'T LIKE
9 THE VICTIM IN THIS CASE BUT YOU STILL THINK THAT THE EVIDENCE
10 PROVES BEYOND A REASONABLE DOUBT THAT HE WAS KILLED AND THAT
11 THE DEFENDANT DID IT, COULD YOU VOTE FOR A VERDICT OF GUILTY?

12 MS. BECKING: SAY IT AGAIN NOW.

13 MR. WAPNER: IF IT TURNS OUT THAT YOU HEAR ALL OF THE
14 EVIDENCE AND YOU DECIDE YOU DON'T LIKE THE VICTIM IN THIS
15 CASE, ALL RIGHT, YOU JUST DON'T LIKE HIM AS A PERSON. ARE
16 YOU WITH ME SO FAR?

17 MS. BECKING: LIKE THE VICTIM?

18 MR. WAPNER: RIGHT.

19 MS. BECKING: THE DEFENDANT, YOU ARE SPEAKING OF?

20 MR. WAPNER: NO. I AM TALKING ABOUT THE PERSON WHO WAS
21 KILLED.

22 MR. BECKING: OH, THE PERSON WHO WAS KILLED.

23 MR. WAPNER: IF YOU HEAR ALL THE EVIDENCE AND YOU HEAR
24 EVIDENCE ABOUT THAT PERSON AND ABOUT HIS LIFESTYLE AND IT TURNS
25 OUT THAT HE IS JUST NOT THE KIND OF PERSON THAT YOU WOULD
26 ASSOCIATE WITH OR YOU WOULD EVEN LIKE -- ARE YOU CLEAR ON
27 WHO I AM TALKING ABOUT?

28 MS. BECKING: YEAH, YOU ARE SPEAKING OF THE VICTIM.

1 MR. WAPNER: RIGHT, I AM SPEAKING OF THE VICTIM.

2 BUT YOU ALSO HAVE DECIDED IN YOUR OWN MIND THAT
3 HE WAS KILLED AND THAT THE EVIDENCE PROVED BEYOND A REASONABLE
4 DOUBT THAT THE DEFENDANT DID IT.

5 ARE YOU WITH ME SO FAR?

6 MS. BECKING: I AM WITH YOU.

7 MR. WAPNER: OKAY. IF THE EVIDENCE PROVES THE DEFENDANT
8 COMMITTED THE MURDER, COULD YOU VOTE FOR A VERDICT OF GUILTY
9 EVEN THOUGH YOU DIDN'T LIKE THE PERSON WHO WAS KILLED?

10 MS. BECKING: YES, I WOULD.

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

12 MS. BECKING: I DON'T HAVE ANY PROBLEM WITH THAT.

13 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE.

14 THE COURT: ALL RIGHT. DEFENSE PEREMPTORY.

15 MR. BARENS: YOUR HONOR, I AM PLEASED TO ADVISE YOU THAT
16 WE HAVE A JURY.

17 THE COURT: YOU PASS FOR CAUSE?

18 MR. BARENS: PASS FOR CAUSE.

19 THE COURT: ALL RIGHT, SWEAR THE JURY.

20 MR. WAPNER: YOUR HONOR --

21 THE COURT: PARDON ME?

22 MR. WAPNER: BEFORE WE -- I THINK WE DID DISCUSS ABOUT
23 THE SWEARING OF THE JURY.

24 THE COURT: OH, YES.

25 APPROACH THE BENCH.

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22A-1
1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 AT THE BENCH:)

3 MR. WAPNER: YOU CALLED US UP.

4 THE COURT: WHAT I WANTED TO SAY IS THAT WE DON'T WANT
5 TO DISCUSS THIS IN FRONT OF THE JURY. DO WE?

6 MR. WAPNER: RIGHT. I THOUGHT WE HAD AGREED THAT WE
7 WOULD NOT SWEAR THE PANEL UNTIL WE HAD HEARD ALL OF THESE
8 MOTIONS TO DISMISS.

9 THE COURT: DISMISS?

10 MR. WAPNER: WELL, THERE IS GOING TO BE A MOTION FILED
11 BY THE DEFENSE I BELIEVE, TOMORROW.

12 MR. CHIER: TOMORROW MORNING, WE THINK.

13 MR. WAPNER: TO DISMISS THE ENTIRE CASE, BASED ON WHAT
14 THEY ALLEGE HAPPENED DURING THE SERVICE OF THE SEARCH WARRANT
15 ON MR. ROBERTS' HOUSE LAST WEEK AND --

16 THE COURT: WELL, I HAVE NOTHING BEFORE ME AT THIS TIME.
17 I WISH I COULD ENTERTAIN SUCH A MOTION.

18 THESE ARE THE PAPERS THAT WERE SEIZED?

19 MR. WAPNER: I AM ASKING THE COURT ONLY, THAT IF
20 COUNSEL AGREE THAT THIS IS THE JURY, WE ONLY REFRAIN FROM
21 SWEARING THEM UNTIL WE HAVE HEARD THAT MOTION. THAT IS ALL.
22 SO THAT JEOPARDY --

23 THE COURT: WHAT DOES THE MOTION HAVE TO DO WITH IT?

24 MR. WAPNER: WELL, THERE IS GOING TO BE A REQUEST BY
25 THE DEFENSE TO DISMISS THE CASE. AND I DON'T KNOW EXACTLY
26 WHAT THE BASIS IS --

27 THE COURT: WELL, THEY MADE THE MOTION. YOU MADE A
28 MOTION TO CONTINUE THE CASE, DIDN'T YOU?

22A-2
1 MR. BARENS: THAT MOTION WILL BE HEARD TOMORROW. I
2 DO ADVISE YOUR HONOR THAT I WILL BE FILING A MOTION TOMORROW
3 THAT IS SET FOR TUESDAY, TO DISMISS. THAT WILL BE THE ONLY
4 APPROPRIATE SANCTION FOR WHAT OCCURRED, BASED ON THE LAW AND
5 THE CASES THAT WE WILL SUBMIT.

6 THE COURT: WELL, WHAT IS THE BASIS OF THE MOTION?

7 MR. BARENS: I AM NOT PREPARED BECAUSE I HAVE NOT
8 FINISHED THE MOTION. LIKE I SAID, THE MOTION WILL BE
9 COMPLETED TONIGHT AND SUBMITTED IN WRITTEN FORM TO YOUR HONOR
10 TOMORROW.

11 THE COURT: MEANTIME WE HAVE GOT ALL OF THE JURORS.
12 WHAT I WANT TO DO IS GET THESE JURORS SWORN AND START PICKING
13 THE ALTERNATE JURORS AND GET THE CASE UNDERWAY.

14 MR. WAPNER: YOUR HONOR, MAY I SUBMIT THAT WE CAN PICK
15 THE ALTERNATES, EVEN THOUGH WE HAVE NOT SWORN THESE PEOPLE?

16 THE COURT: YES.

17 MR. WAPNER: I THINK IT IS AGREEABLE. IS IT ALL RIGHT
18 TO PICK THE ALTERNATES?

19 MR. BARENS: WELL, I WOULD LIKE TO SAY FOR THE RECORD
20 THAT I HAVE NO OBJECTION TO SWEARING THE JURY.

21 MR. WAPNER: WELL, I DO.

22 THE COURT: HE WANTS TO PICK THE ALTERNATES FIRST
23 WITHOUT SWEARING ANYBODY.

24 MR. BARENS: AGAIN YOUR HONOR, JUST TO GET IT STRAIGHT
25 FOR THE RECORD, I DON'T UNDERSTAND WHAT THE PEOPLE ARE SAYING
26 RIGHT NOW.

27 THE COURT: I DON'T KNOW WHAT THEY ARE SAYING, EITHER.

28 MR. BARENS: BUT SINCE WE ARE AGREEING --

1 THE COURT: NO. HE WANTS TO NOT SWEAR THE JURY. THEN
2 HE SAYS THAT JEOPARDY ATTACHES. I DON'T KNOW WHAT IT MEANS.

3 MR. BARENS: I DON'T EITHER. BUT, SO WHAT?

4 THE COURT: HE MEANS IF BEFORE SWEARING THE JURY, YOU
5 MAKE A MOTION TO DISMISS AND I GRANT IT, THERE IS NO JEOPARDY.
6 IS THAT WHAT YOU MEAN?

7 MR. WAPNER: YES.

8 MR. BARENS: BUT, I LIKE THE ADVANTAGE OF THAT.

9 MR. WAPNER: WELL, THAT IS WHY I THINK IT IS
10 APPROPRIATE. COUNSEL PREVIOUSLY AGREED TO IT.

11 THE COURT: WELL, WOULD YOU AGREE WITHOUT PREJUDICE
12 TO YOUR MOTION ABOUT GETTING THE OTHER JURORS? WHAT WE WILL
13 DO IS SWEAR THE JURY AND THEN WE GET THE ALTERNATES AND --

14 MR. WAPNER: I UNDERSTAND THAT. ALL I AM ASKING IS
15 THAT BEFORE WE CAN PICK THE ALTERNATES, NOW, WITHOUT SWEARING
16 THE JURY -- THEN THE COURT CAN HEAR THIS MOTION.

17 THE COURT: DO YOU WANT THAT?

18 MR. BARENS: COULD I ASK MR. WAPNER A QUESTION FOR A
19 MOMENT?

20 (OFF THE RECORD COLLOQUY BETWEEN COUNSEL.)

21 MR. BARENS: YOUR HONOR, I STIPULATE TO PROCEED AS
22 MR. WAPNER HAS ASKED.

23 THE COURT: ALL RIGHT. WITHOUT SWEARING THE JURORS?

24 MR. BARENS: THAT'S CORRECT.

25 THE COURT: ALL RIGHT. THANK YOU.

26 WAIT A MINUTE. HOW MANY JURORS DO WE HAVE?

27 THE CLERK: 13 OUT THERE NOW.

28 THE COURT: THAT MEANS THAT THERE ARE FOUR --

22A-7
1 MR. BARENS: WE ONLY NEED 13, JUDGE BECAUSE WE HAVE
2 FOUR AND FOUR AND FOUR. THAT IS 12.

3 THE COURT: ALL RIGHT.

4 THE CLERK: ONE EXTRA.

5 MR. BARENS: LET'S DO IT BY THAT PROCESS. I DON'T WANT
6 TO HAVE TO DO THIS AGAIN.

7 THE COURT: EXACTLY. WHAT I PROPOSE TO DO IS AS
8 FOLLOWS. WHY DON'T WE HAVE THREE? THEN IF YOU PASS ON THOSE
9 THREE AND ACCEPT THOSE, WHATEVER NUMBER WILL BE LEFT -- I
10 WANT TO BE SURE THAT WE ARE GETTING AT LEAST TWO JURORS AT
11 THE END WHO HAVE NOT BEEN SELECTED, PLUS ALTERNATES THAT --

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2A-5
1 MR. WAPNER: YOUR HONOR, I THINK I ONLY NEED TO BE LEFT
2 WITH TWO WHEN YOU GO TO SELECT THE LAST ONE.

3 SO IN OTHER WORDS --

4 MR. BARENS: I THINK THAT IS WHAT HE SAID.

5 THE COURT: YES. I KNOW THAT AND --

6 MR. WAPNER: ONCE YOU PICK THE LAST NAME, THERE ONLY
7 NEEDS TO BE ONE IN THE BACK.

8 THE COURT: HERE'S WHAT WE DO. HERE IS WHAT I THINK
9 WE WILL DO. LET'S TAKE THREE. ALL RIGHT?

10 LET'S TAKE THREE. AND THEN IF WE CAN AGREE UPON
11 THREE -- IN OTHER WORDS, NO CHALLENGES AS TO ANY OF THE THREE
12 OR THERE HAVE BEEN AND THEN WE HAVE CHALLENGES ON THREE, IF
13 THERE ARE ANY LEFT, WE WILL PICK THAT ONE.

14 MR. BARENS: THERE IS ONLY ONE CRAZY, WILD MAN OUT THERE,
15 ANYWAY.

16 THE COURT: WHICH ONE IS THAT?

17 MR. BARENS: SPEARMAN. FRED I THINK, WON'T DISAGREE
18 ON THAT.

19 THE COURT: DO YOU WANT TO STIPULATE HIM AWAY?
20 HE HAD A SLIGHT COLD. HE DIDN'T WANT TO COME IN TODAY.
21 EVERYBODY SHOULD WAIT UNTIL HE GETS OFF HIS COLD.

22 MR. BARENS: MASHUGUNA.

23 MR. WAPNER: AS FAR AS THE PROCEDURE ON THE THREE --

24 THE COURT: YOU SEE, YOU PUT THREE IN THERE AND --

25 MR. WAPNER: I THOUGHT THAT THE WAY THE COURT IS
26 PROCEEDING, LET ME JUST TELL YOU MY ONLY RESERVATION. I LIKE
27 TO SEE ALL FOUR AT ONE TIME AND SEE WHAT I HAVE GOT, WHAT
28 I AM PICKING FROM.

1 MR. CHIER: WHAT THE MIXTURE IS.

2 THE COURT: ALL RIGHT. THEN LATER ON IF WE AGREE, YOU
3 ONLY HAVE TO HAVE THREE. WE DON'T NEED FOUR.

4 SUPPOSE ONE GETS EXCUSED. THEN WE DON'T HAVE
5 ANY LEFT OVER.

6 IF ALL OF THE CHALLENGES, PEREMPTORIES ARE
7 EXERCISED. IF YOU PUT FOUR AND THEN EACH ONE IS ENTITLED
8 TO FOUR -- IS THAT CORRECT?

9 MR. WAPNER: THAT'S CORRECT.

10 THE COURT: THAT IS 12. THERE WILL BE ONE LEFT OVER.

11 MR. WAPNER: THAT IS OKAY.

12 THE COURT: THAT IS OKAY?

13 MR. WAPNER: THERE ONLY NEEDS TO BE TWO LEFT TO PICK
14 FROM WHEN YOU DRAW THE LAST NAME. SO YOU ARE NOT JUST PICKING
15 FROM ONE, YOU ARE DRAWING ONE OUT OF TWO.

16 AND IF YOU HAVE -- YOU PUT FOUR IN AND WE EACH
17 CHALLENGE FOUR, ALL RIGHT.

18 BEFORE THE LAST CHALLENGE, ONE WILL HAVE FOUR
19 AND --

20 THE COURT: AND ONE WILL HAVE THREE, RIGHT?

21 MR. WAPNER: SO THERE WILL BE TWO SITTING BACK THERE.
22 THEN YOU PICK ONE NAME AND THAT IS THE LAST PERSON..

23 THE COURT: SUPPOSE SOMEBODY WANTS TO CHALLENGE THAT
24 ONE PERSON? YOU HAVE ONLY EXERCISED THREE, NOT FOUR.

25 MR. WAPNER: WELL, I MAY HAVE COUNTED WRONG.

26 THE COURT: I THINK YOU COUNTED WRONG. THEREFORE, IF
27 WE START WITH THREE, WE CAN ALWAYS INCREASE IT TO FOUR.

28 MR. WAPNER: ALL RIGHT.

1 THE COURT: WE WILL JUST PUT THREE IN THE BOX AND SEE
2 WHAT HAPPENS TO THOSE THREE. IF YOU PASS ALL THREE OF THEM,
3 THEN WE CAN TAKE ANOTHER ONE AND HAVE FOUR. WE WILL HAVE
4 TWO LEFT OVER, AT LEAST. ALL RIGHT?

5 (THE FOLLOWING PROCEEDINGS WERE HELD
6 IN OPEN COURT:)

7 THE CLERK: JUEL JANIS, J-A-N-I-S.

8 NANCY KORVIN, K-O-R-V-I-N.

9 CLIFTON D. RUTHERFORD, R-U-T-H-E-R-F-O-R-D.

10 THE COURT: MISS JANIS, MISS KORVIN AND
11 MR. RUTHERFORD, YOUR NAMES HAVE BEEN DRAWN AS POSSIBLE
12 ALTERNATE JURORS IN THIS CASE. THE ALTERNATE JURORS STAY
13 WITH THIS TRIAL AND LISTEN TO ALL OF THE TESTIMONY AS
14 INTELLIGENTLY AS THE OTHER JURORS WHO HAVE BEEN SELECTED ALL
15 THROUGHOUT THE TRIAL.

16 IT IS ONLY IN THE EVENT THAT FOR SOME GOOD REASON,
17 ONE OF THOSE 12 WILL BE EXCUSED, THAT ONE OF THE THREE OF
18 YOU WILL TAKE THE PLACE OF THAT ONE JUROR WHO HAD BEEN
19 EXCUSED AND THAT WILL BE DRAWN BY LOT.

20 IF THERE ARE TWO, THEN THE SECOND. AND IF THERE
21 ARE THREE, THEN THE THIRD.

22 YOUR RESPONSIBILITIES WILL BE JUST AS GREAT AS
23 JURORS PRESENTLY SEATED IN THE JURY BOX WHO HAVE BEEN
24 ACCEPTED BY BOTH SIDES.

25 ARE YOU WILLING, ALL THREE OF YOU, TO SERVE IN
26 THAT CAPACITY?

27 MS. JANIS: YES.

28 MS. KORVIN: YES.

1 MR. RUTHERFORD: YES.

2 THE COURT: ALL RIGHT. MISS JANIS, YOU TOO, HAVE HEARD
3 ALL OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?
4 IF THE SAME GENERAL QUESTIONS WERE ASKED OF YOU, WOULD YOUR
5 ANSWERS BE ABOUT THE SAME? WOULD THEY?

6 MS. JANIS: YES.

7 THE COURT: WHERE DO YOU LIVE?

8 MS. JANIS: BEL AIR.

9 THE COURT: DO YOU HAVE ANY OCCUPATION OR PURSUIT OF
10 ANY KIND?

11 MS. JANIS: THIS LAST YEAR I HAVE NOT WORKED. BUT PRIOR
12 TO THAT, I WAS THE ASSISTANT DEAN AT UCLA --

13 THE COURT: WHAT?

14 MS. JANIS: ASSISTANT DEAN AT THE UCLA SCHOOL OF PUBLIC
15 HEALTH.

16 THE COURT: UH-HUH. AND ANY OTHER JOBS THAT YOU HAVE
17 HELD OR OCCUPATIONS?

18 MS. JANIS: YES. BEFORE THAT, I WAS IN WASHINGTON,
19 D.C. I WAS ASSISTANT TO THE SURGEON GENERAL.

20 THE COURT: AN ASSISTANT ATTORNEY GENERAL?

21 MS. JANIS: NO, AN ASSISTANT TO THE SURGEON GENERAL.

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1 THE COURT: U.S. SURGEON GENERAL.

2 WHAT SCHOOLS DID YOU ATTEND?

3 MS. JANIS: I HAVE A PH.D. FROM THE UNIVERSITY OF
4 MARYLAND AND A MASTER'S DEGREE FROM THE UNIVERSITY OF MIAMI.

5 THE COURT: WELL, PROPERLY, WE SHOULD CALL YOU DR.
6 JANIS, SHOULDN'T WE?

7 (PROSPECTIVE ALTERNATE JUROR JANIS NODS
8 HER HEAD UP AND DOWN.)

9 THE COURT: ALL RIGHT, DR. JANIS, WHAT OTHER DEGREES
10 DO YOU HAVE?

11 MS. JANIS: I HAVE A MASTER'S DEGREE FROM THE UNIVERSITY
12 OF MIAMI AND A BACHELOR'S DEGREE FROM GEORGE WASHINGTON
13 UNIVERSITY.

14 THE COURT: AND THERE IS A MR. JANIS, IS THERE NOT?

15 MS. JANIS: YES.

16 THE COURT: I KNOW A LOT OF THESE FACTS ANYWAY, BUT I
17 HAVE GOT TO ASK YOU THAT FOR THE RECORD, ALL RIGHT?

18 AND WHAT DOES HE DO?

19 MS. JANIS: HE IS A CONSULTANT IN THE SAVINGS AND LOAN
20 BUSINESS.

21 THE COURT: HE IS A CONSULTANT?

22 MS. JANIS: A CONSULTANT IN THE SAVINGS AND LOAN
23 BUSINESS.

24 THE COURT: YES.

25 DID HE HOLD ANY POSITIONS IN THE GOVERNMENT
26 BEFORE THAT?

27 MS. JANIS: YES. HE WAS CHAIRMAN OF THE FEDERAL HOME
28 LOAN BANK BOARD AND THE UNDERSECRETARY OF THE DEPARTMENT OF

1 HOUSING AND URBAN DEVELOPMENT.

2 THE COURT: AND WHAT WAS HIS EDUCATIONAL BACKGROUND?

3 MS. JANIS: HE HAS A BACHELOR'S DEGREE FROM YALE
4 UNIVERSITY.

5 THE COURT REPORTER: YALE?

6 MS. JANIS: YES.

7 THE COURT: YALE, ALL RIGHT.

8 HAVE YOU EVER SERVED AS A JUROR ON A CRIMINAL
9 CASE BEFORE?

10 MS. JANIS: NO.

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

13 MS. JANIS: MY CAR WAS BROKEN INTO ONCE ABOUT TEN YEARS
14 AGO AND OUR HOUSE WAS ROBBED ABOUT --

15 THE COURT: BURGLARIZED.

16 MS. JANIS: BURGLARIZED ABOUT 15 YEARS AGO.

17 THE COURT: WOULD THOSE EXPERIENCES IN ANY WAY AFFECT
18 YOU IN BEING A FAIR AND IMPARTIAL JUROR IN DECIDING THE
19 MERITS OF THIS CASE?

20 MS. JANIS: NO.

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

22 YOU MAY INQUIRE.

23 OH, LET ME ASK THE OTHER TWO JURORS SO I GET
24 THROUGH.

25 MR. BARENS: YOUR HONOR WOULD PROPOSE THAT I WORK
26 CONJUNCTIVELY WITH THE THREE JURORS AT THIS POINT?

27 THE COURT: LET ME ASK THE OTHER JURORS -- YOU WANT TO
28 ASK THEM ONE AT A TIME?

1 MR. BARENS: I WOULD PREFER THAT PROCEDURE, YOUR HONOR.

2 THE COURT: ONE AT A TIME?

3 MR. BARENS: I THINK IT FACILITATES IT FOR EVERYONE IN
4 THE COURTROOM.

5 THE COURT: ONE AT A TIME?

6 MR. BARENS: YES, YOUR HONOR.

7 THE COURT: GO AHEAD.

8 MR. BARENS: THANK YOU, YOUR HONOR.

9 ONE MOMENT, YOUR HONOR.

10 (UNREPORTED COLLOQUY BETWEEN MR. BARENS,

11 MR. CHIER AND THE DEFENDANT.)

12 MR. BARENS: ONE MOMENT, YOUR HONOR.

13 (FURTHER UNREPORTED COLLOQUY.)

14 MR. BARENS: GOOD AFTERNOON, MRS. JANIS.

15 MRS. JANIS, YOU HAVE NEVER HAD ANY PRIOR JURY
16 EXPERIENCE?

17 (PROSPECTIVE ALTERNATE JUROR JANIS SHAKES

18 HER HEAD FROM SIDE TO SIDE.)

19 MR. BARENS: IF YOU COULD JUST ANSWER AUDIBLY.

20 MS. JANIS: NO.

21 MR. BARENS: HAVE YOU EVER OBSERVED A TRIAL BEFORE?

22 MS. JANIS: NEVER.

23 MR. BARENS: WHAT IS YOUR MASTER'S DEGREE IN?

24 MS. JANIS: PSYCHOLOGY.

25 MR. BARENS: AND YOUR PH.D. IS IN?

26 MS. JANIS: HUMAN DEVELOPMENT. IT WAS AN INTER-
27 DISCIPLINARY PROGRAM. IT WAS PSYCHOLOGY, PHYSIOLOGY AND
28 SOCIOLOGY.

1 MR. BARENS: DID YOU MAKE USE OF YOUR DOCTORATE IN A
2 PROFESSIONAL ENDEAVOR?

3 MS. JANIS: YES, BUT NOT IN THE TRADITIONAL SENSE OF
4 WHAT PSYCHOLOGY IS.

5 I HAVE REALLY BEEN INVOLVED IN HEALTH SCIENCE,
6 PUBLIC HEALTH ORIENTED KIND OF ACTIVITIES.

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1 MR. BARENS: COULD YOU BE A LITTLE BIT MORE SPECIFIC
2 IN FOCUSING FOR ME ON WHAT YOU MEAN BY THAT?

3 MS. JANIS: WELL, MY MOST RECENT POSITION AT UCLA
4 SCHOOL OF PUBLIC HEALTH AS AN ASSISTANT DEAN, I WAS INVOLVED
5 IN A RANGE OF ACTIVITIES THAT RELATE TO THE PREVENTION OF
6 ILLNESSES, WHICH IS REALLY WHAT PUBLIC HEALTH IS ABOUT, AND
7 I HAVE BEEN INVOLVED IN THINGS OF LATE, IN PARTICULAR, I
8 TAUGHT A COURSE CALLED "CHILD HEALTH POLICY" AND I HAVE WORKED
9 IN AREAS THAT REPRESENT A BROAD RANGE OF HEALTH RELATED
10 ISSUES FROM HEALTH MANPOWER, HEALTH FINANCING TO JUST ALMOST
11 ANYTHING YOU CAN THINK OF IN THE AREA THAT RELATES TO
12 EXERCISE, NUTRITION. THAT IS REALLY WHAT PUBLIC HEALTH IS
13 ABOUT.

14 MR. BARENS: HAVE ANY OF YOUR CAREER ACTIVITIES OR
15 CLASSES YOU HAVE TAKEN BROUGHT YOU INTO CONTACT WITH ANY
16 STUDIES OR WORK WITH DEFENDANTS IN CRIMINAL MATTERS?

17 MS. JANIS: NO.

18 MR. BARENS: NONE OF YOUR STUDIES INVOLVED ANY CLINICAL
19 ACTIVITY WITH DEFENDANTS IN THE CRIMINAL COURT SYSTEM?

20 MS. JANIS: ABSOLUTELY NOT.

21 MR. BARENS: ASIDE FROM YOUR ACTIVITY AT UCLA, WHAT WAS
22 THE EMPLOYMENT YOU IMMEDIATELY HAD PRECEDING THAT EMPLOYMENT?

23 MS. JANIS: I WAS WORKING IN WASHINGTON, D.C. AND I WAS
24 ASSISTANT TO THE SURGEON GENERAL, HE IS THE SURGEON GENERAL
25 AND THE ASSISTANT SECRETARY OF HEALTH, AND ALL OF THE MAJOR
26 ISSUES THAT RELATE TO HEALTH CARE IN THIS COUNTRY WERE THINGS
27 THAT CAME UNDER HIS AUSPICES, SO I WAS INVOLVED IN THOSE
28 ACTIVITIES.

1 MR. BARENS: AT PRESENT YOU ARE NOT CURRENTLY ACTIVELY
2 EMPLOYED?

3 MS. JANIS: NO.

4 MR. BARENS: ARE YOU EMPLOYED ON SOME VOLUNTARY BASIS
5 AT THIS POINT IN TIME?

6 MS. JANIS: NO.

7 MR. BARENS: AND DO YOU HAVE ANY SPECIFIC ACTIVITY YOU
8 ARE PURSUING DURING THIS HIATUS?

9 MS. JANIS: OH, NO.

10 WELL, THIS LAST YEAR I SPOKE AND I WROTE.

11 AND I HAD BEEN WORKING FOR ABOUT 17 YEARS AND I
12 WANTED TO TAKE A BREAK AND THAT IS WHY I STOPPED.

13 MR. BARENS: SURE.

14 THE WRITING YOU WERE DOING, PRESUMABLY WOULD BE
15 ABOUT APPLIED HEALTH SCIENCES?

16 MS. JANIS: WELL, IN PARTICULAR, IT HAD TO DO WITH
17 CHILD HEALTH AND I HAVE TALKED ON THINGS RELATING TO FAMILIES
18 AND HEALTH CARE ISSUES.

19 MR. BARENS: DO YOU HAVE ANY HOBBIES?

20 MS. JANIS: YES.

21 MR. BARENS: WHAT WOULD THAT BE?

22 MS. JANIS: EATING.

23 THE COURT: WHAT WAS THAT?

24 (RECORD READ BY THE REPORTER.)

25 MR. BARENS: WHY NOT?

26 MS. JANIS: MOVIES. TRAVEL. READING, CERTAINLY.

27 MR. BARENS: ONE OF THE THINGS YOU HAD READ, I THINK
28 YOU TOLD US, INVOLVED SOME PUBLICITY CONCERNING THE MATTER

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1 THAT WE ARE HERE ABOUT TODAY.

2 CAN YOU TELL ME TRUE, AS I HAVE ASKED OTHER
3 PROSPECTIVE JURORS THAT HAD PERHAPS READ SOMETHING ABOUT
4 THIS CASE, THAT NOTHING THAT YOU READ WOULD BIAS YOU WHATSOEVER
5 WERE YOU TO SERVE AS AN ALTERNATE IN THIS CASE IN MAKING A
6 DETERMINATION, IF YOU WERE CALLED UPON TO DO SO, ON THE GUILT
7 OR INNOCENCE OF MY CLIENT?

8 MS. JANIS: YES, THAT'S CORRECT.

23A 9 MR. BARENS: AND NOTHING IN THAT WOULD BIAS OR
10 INFLUENCE YOU?

11 MS. JANIS: THAT'S CORRECT.

12 MR. BARENS: AND YOU WOULD MAKE YOUR DECISION SOLELY
13 UPON WHAT EVIDENCE WAS DEMONSTRATED IN THE COURTROOM?

14 MS. JANIS: YES.

15 MR. BARENS: NOW, HOW DO YOU FEEL ABOUT THE PRESUMPTION
16 OF INNOCENCE WHICH THE DEFENDANT HAS IN THIS COURTROOM?

17 MS. JANIS: I FEEL LUCKY TO LIVE IN A COUNTRY WHERE THAT
18 IS THE PRESUMPTION.

19 MR. BARENS: AND YOU FEEL THAT IS A SUBSTANTIVE RIGHT
20 RATHER THAN SOME PROCEDURAL NONSENSE?

21 MS. JANIS: ABSOLUTELY.

22 MR. BARENS: HAVE YOU EVER HAD ANY CLASSES ON
23 CONSTITUTIONAL LAW?

24 MS. JANIS: NO.

25 MR. BARENS: OR ANY OTHER LEGAL TYPE CLASSES?

26 MS. JANIS: NO.

27 MR. BARENS: IS YOUR HUSBAND, BY CHANCE, A LAWYER AS
28 WELL?

1 MS. JANIS: NO.

2 MR. BARENS: DO YOU HAVE CHILDREN, DR. JANIS?

3 MS. JANIS: YES.

4 MR. BARENS: AND YOU HAVE?

5 MS. JANIS: I HAVE A 29-YEAR-OLD DAUGHTER AND 26-YEAR-OLD
6 SON.

7 MR. BARENS: AND WHAT DOES YOUR DAUGHTER DO?

8 MS. JANIS: SHE IS WORKING ON A MASTER'S DEGREE IN
9 SOCIAL WORK NOW.

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1 MR. BARENS: IS SHE MARRIED?

2 MS. JANIS: NO.

3 MR. BARENS: AND WHAT PURSUIT DOES YOUR SON HAVE?

4 MS. JANIS: HE IS IN RETAIL -- IN THE WHOLESALE COFFEE
5 BUSINESS.

6 MR. BARENS: IS HE MARRIED?

7 MS. JANIS: NO.

8 MR. BARENS: I SEE.

9 YOUR HUSBAND PRESENTLY IS AN INDEPENDENT CONSULTANT
10 TO SAVINGS AND LOANS?

11 MS. JANIS: YES -- WELL, FOR THE SEVERAL DIFFERENT
12 GROUPS. HE WORKS FOR THE U.S. AGENCY ONLY AND HE SERVES AS
13 A DIRECTOR OF THE FEDERAL HOME LOAN BANK BOARD -- NO, HE
14 DOESN'T -- JUST A MOMENT -- THAT EXPIRED IN DECEMBER. HE
15 DOESN'T DO THAT ANYMORE.

16 HE DID. IN SAN FRANCISCO.

17 MR. BARENS: HAS YOUR HUSBAND EVER SERVED AS A CONSULTANT
18 OR PANEL MEMBER ON ANY GOVERNMENTAL PANELS THAT HAD ANY
19 RELATION WHATSOEVER TO THE JUDICIAL SYSTEM FOR LAW OR LAW
20 ENFORCEMENT OR THE DETERMINATION OF LEGISLATIVE POLICY WITH
21 REFERENCE TO THE JUDICIAL SYSTEM?

22 MS. JANIS: NO.

23 MR. BARENS: HE HAS NEVER SERVED ON ANY PANEL ANALOGOUS
24 TO SOMETHING LIKE THAT?

25 MS. JANIS: NO.

26 MR. BARENS: YOU HAVE HEARD DISCUSSIONS ABOUT DIRECT
27 AND INDIRECT EVIDENCE IN THIS COURTROOM. WERE YOU AWARE OF
28 THE GENERAL PRINCIPLES THAT WERE OUTLINED TO YOU ABOUT DIRECT

1 AND CIRCUMSTANTIAL EVIDENCE BEFORE YOU CAME HERE?

2 MS. JANIS: YES.

3 MR. BARENS: AND DO YOU FIND BOTH ACCEPTABLE?

4 MS. JANIS: YES.

5 MR. BARENS: AND DO YOU HAVE ANY REASON TO BELIEVE,
6 BECAUSE JOE HUNT IS HERE AS A DEFENDANT IN THIS COURTROOM
7 CHARGED WITH MURDER, THAT HE HAS DONE SOMETHING WRONG?

8 MS. JANIS: NO.

9 MR. BARENS: YOU MAKE NO JUDGMENT WHATSOEVER PRIOR TO
10 HAVING HEARD ANY EVIDENCE?

11 MS. JANIS: NO, NO, I DON'T AT ALL.

12 MR. BARENS: YOU HAVE, GENERALLY SPEAKING, SOME
13 FAMILIARITY WITH HIS HONOR?

14 MS. JANIS: YES.

15 MR. BARENS: I ASK YOU TRUE, IN THE TOTALLY UNLIKELY
16 EVENT THAT HIS HONOR AND MYSELF SHOULD HAVE A DISAGREEMENT
17 DURING THIS TRIAL, AS FAR-FETCHED AS THAT MAY SEEM TO YOU,
18 WOULD YOU --

19 (LAUGHTER IN COURTROOM.)

20 MR. BARENS: -- WOULD YOU NOT BE BIASED TOWARDS HIS
21 HONOR'S POINT OF VIEW, OTHER THAN AS HE EXPRESSES AND MAKES
22 AN ULTIMATE DETERMINATION ON THE LAW AS ONLY HE CAN DO IN
23 THIS SETTING, WOULD YOUR FAMILIARITY WITH HIS HONOR IN ANY
24 WAY GIVE ME A DISADVANTAGE?

25 MS. JANIS: I DON'T BELIEVE SO.

26 I BELIEVE THE LAST TIME I SAW JUDGE RITTENBAND
27 WAS MAYBE SEVERAL YEARS AGO. I HAVE LIVED IN WASHINGTON --
28 WELL, ACTUALLY, I HAVE LIVED ON THE EAST COAST UNTIL FIVE,

1 SIX YEARS AGO.

2 MR. WAPNER: SO YOU DO NOT HAVE ANY HESITATION?

3 MS. JANIS: HE IS A FRIEND OF MY FATHER'S AND HAS BEEN
4 A FRIEND OF MY FATHER'S AND I KNOW HIM.

5 MR. BARENS: INDEED.

6 AND YOUR FATHER HAS A GOOD FRIEND THERE, BUT I
7 AM HOPING THAT THAT RELATIONSHIP WOULD IN NO WAY HAVE ANY
8 IMPACT ON ME AS A DEFENSE LAWYER IN THE UNLIKELY EVENT THAT
9 THE JUDGE AND I SHOULD DISAGREE.

10 MS. JANIS: RIGHT.

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1 MR. BARENS: TELL ME TRUE, THAT THAT WOULD NOT HAVE
2 ANY IMPACT ON YOU?

3 MS. JANIS: THAT'S CORRECT.

4 MR. BARENS: HOW WOULD YOU FEEL IF YOU WERE -- AND THIS
5 IS AS UNLIKELY AS MY LAST STATEMENT. IF YOU WERE A DEFENDANT
6 IN THIS COURTROOM AND WE HAD 12 JURORS WITH YOUR POINT OF
7 VIEW ABOUT THE WORLD AND YOUR LIFE EXPERIENCE THAT WOULD
8 BE SITTING THERE IN JUDGMENT OF THE FACTS, HOW DO YOU FEEL?
9 HOW WOULD YOU FEEL IF YOU WERE A DEFENDANT IN THAT CASE?

10 MS. JANIS: I WOULD FEEL COMFORTABLE.

11 MR. BARENS: YOU WOULD?

12 MS. JANIS: YES.

13 MR. BARENS: WHY DO YOU SAY THAT, DR. JANIS?

14 MS. JANIS: WELL, I GUESS LIKE THE OTHER JURORS THAT
15 HAVE ANSWERED THIS QUESTION, I THINK WE WOULD LIKE TO THINK
16 OF OURSELVES AS BEING WILLING TO BE OPEN-MINDED AND TO LISTEN
17 TO WHATEVER EVIDENCE IS PRESENTED AND MAKE A JUDGMENT
18 ACCORDINGLY.

19 MR. BARENS: BASED ON THE EVIDENCE?

20 MS. JANIS: BASED ON THE EVIDENCE.

21 MR. BARENS: DO YOU EQUATE REASONABLE WITH USUAL?
22 SOMETHING CAN BE REASONABLE THAT IS NORMALLY FOUND IN OUR
23 LIFE EXPERIENCE?

24 MS. JANIS: NO. I THINK THAT IF YOU HAVE LIVED LONG
25 ENOUGH, YOU HAVE HAD EXPERIENCES THAT THINGS DON'T ALWAYS
26 FALL INTO THE REASONABLE CATEGORY.

27 MR. BARENS: AND QUITE OFTEN, THINGS ARE NOT AS THEY
28 APPEAR TO BE?

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1 MS. JANIS: CORRECT.

2 MR. BARENS: THANK YOU FOR YOUR TIME, DOCTOR. WE PASS
3 FOR CAUSE, YOUR HONOR.

4 THE COURT: MR. WAPNER?

5 MR. WAPNER: DO YOU GO BY DR. JANIS?

6 MS. JANIS: YES, WHEN I WAS WORKING.

7 MR. WAPNER: OKAY. DO YOU RECOGNIZE THE NAME OF BOBBIE
8 ROBERTS?

9 MS. JANIS: NO.

10 MR. WAPNER: DO YOU LIVE ANYWHERE NEAR BELLAGIO ROAD
11 IN BEL AIR?

12 MS. JANIS: YOU HAVE TO GO INTO THAT ENTRANCE TO GET
13 TO MY HOUSE.

14 MR. WAPNER: WHEN YOU WERE AT UCLA, WHEN WAS THAT?

15 MS. JANIS: FROM 1981 TO EXACTLY A YEAR AGO, THIS MONTH.

16 MR. WAPNER: OKAY. DID YOU HAVE ANY CONTACT WITH
17 ANYBODY IN THE SCHOOL OF ARCHITECTURE AND URBAN PLANNING OVER
18 THERE?

19 MS. JANIS: I KNEW DEAN PERLOFF.

20 MR. WAPNER: YOU DIDN'T KNOW ANYBODY BY THE NAME OF
21 WAPNER WORKING IN THE SCHOOL OF ARCHITECTURE?

22 MS. JANIS: NO. I DIDN'T KNOW HER BUT I HAVE HEARD
23 OF HER.

24 MR. WAPNER: OKAY. NOW, WE HAVE GOTTEN THE WHOLE FAMILY
25 INVOLVED IN THIS?

26 MS. JANIS: YES.

27 MR. WAPNER: WOULD THAT AFFECT YOU IN ANY WAY IN DECIDING
28 THE CASE, WHATEVER EXPERIENCES YOU MIGHT HAVE HAD OR THINGS

24
1 YOU MIGHT HAVE HEARD?

2 MS. JANIS: NO.

3 MR. WAPNER: THAT IS MY MOTHER, IN CASE THERE IS ANY
4 QUESTION.

5 MS. JANIS: NO. I JUST HEARD THE NAME. YES.

6 MR. WAPNER: OKAY. FORGIVE ME, IF YOU ANSWERED THIS
7 QUESTION. I DIDN'T WRITE IT DOWN. HAVE YOU EVER SERVED ON
8 A JURY BEFORE?

9 MS. JANIS: NO.

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

12 MS. JANIS: NO.

13 MR. WAPNER: ANY KIND OF A THEFT?

14 MS. JANIS: YES. OUR HOUSE WAS BURGLARIZED ABOUT --
15 IT MUST HAVE BEEN 15 YEARS AGO.

16 MR. WAPNER: OKAY. YOU HAVE TO KEEP YOUR VOICE UP.

17 MS. JANIS: OUR HOUSE WAS BURGLARIZED ABOUT 15 YEARS
18 AGO.

19 MR. WAPNER: DID YOU MAKE A REPORT TO THE POLICE?

20 MS. JANIS: YES.

21 MR. WAPNER: WERE YOU SATISFIED WITH HOW IT WAS HANDLED?

22 MS. JANIS: YES.

23 MR. WAPNER: DO YOU HAVE SOME HESITATION?

24 MS. JANIS: WELL, I HESITATED BECAUSE ONE THING I
25 REMEMBER ABOUT THAT, IS THE POLICEMAN SHOWED ME A PICTURE
26 OF SUSPECTS AND SAYING AFTER THEY ASKED WHETHER I RECOGNIZED
27 ANYBODY -- WE HAD JUST SEEN THE INDIVIDUAL RUN THROUGH THE
28 HOUSE. WE HAD NOT BEEN ABLE TO MAKE AN IDENTIFICATION.

1 I REMEMBER THE POLICEMAN SAYING TO ME, "A MOTLEY CREW, AREN'T
2 THEY?"

3 I REMEMBER BEING REALLY, QUITE ANGRY AT THE FACT
4 THAT HE WOULD MAKE THAT KIND OF A PREJUDGMENT TO ME AS I AM
5 LOOKING AT THESE PICTURES.

6 MR. WAPNER: DID THEY TRY TO --

7 MS. JANIS: BUT THAT IS ALL I REMEMBER.

8 MR. WAPNER: WAS THAT THE LOS ANGELES POLICE DEPARTMENT?

9 MS. JANIS: NO. THIS WAS IN WASHINGTON, D.C.

10 MR. WAPNER: OTHER THAN MAKING A GENERAL COMMENT THAT
11 IT WAS A MOTLEY CREW, DID YOU FEEL THAT HE TRIED TO INFLUENCE
12 YOU IN TERMS OF WHICH ONE TO SELECT?

13 MS. JANIS: NO. I WAS NOT ABLE TO SELECT ANYONE. THEY
14 CERTAINLY DIDN'T TRY TO INFLUENCE ME.

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1 MR. WAPNER: OKAY. IN THAT CASE, WERE YOU UNABLE TO
2 MAKE AN IDENTIFICATION BECAUSE YOU DIDN'T HAVE SUFFICIENT
3 TIME TO SEE THE PERSON?

4 MS. JANIS: RIGHT.

5 MR. WAPNER: HAVE YOU EVER HAD OCCASION TO SEE SOMEONE
6 ON THE STREET YOU THOUGHT YOU KNEW AND MAYBE ATTEMPT TO
7 ACKNOWLEDGE THAT PERSON AND IT TURNED OUT THAT IT WAS NOT
8 THE SAME PERSON?

9 MS. JANIS: CERTAINLY.

10 MR. WAPNER: DID YOU STUDY ANYTHING ABOUT EYEWITNESS
11 IDENTIFICATION IN ANY OF THE COURSES THAT YOU MAY HAVE TAKEN?

12 MS. JANIS: NO.

13 MR. WAPNER: HAVE YOU READ ANYTHING ABOUT THE
14 PSYCHOLOGY OF EYEWITNESS IDENTIFICATION?

15 MS. JANIS: NOT REALLY.

16 MR. WAPNER: HAVE YOU HAD ANY OTHER OCCASIONS OTHER
17 THAN THE BURGLARY OF YOUR HOME, TO HAVE BEEN CALLED TO MAKE
18 AN IDENTIFICATION OF SOMEONE WHO MAY HAVE COMMITTED A CRIME?

19 MS. JANIS: NO.

20 MR. WAPNER: THANK YOU.

21 I WILL PASS FOR CAUSE.

22 THE COURT: ALL RIGHT. NOW, MISS KORVIN, YOU TOO, HAVE
23 HEARD ALL OF THE QUESTIONS AND ANSWERS WHICH WERE ASKED AND
24 GIVEN? YOU ARE MISS KORVIN, AREN'T YOU?

25 MS. KORVIN: YES.

26 THE COURT: YOU HEARD ALL OF THE QUESTIONS, DID YOU?

27 MS. KORVIN: YES.

28 THE COURT: AND IF THE SAME QUESTIONS WERE ASKED OF

1 YOU, YOUR ANSWERS WOULD BE ABOUT THE SAME, WOULDN'T THEY?

2 MS. KORVIN: THE SAME.

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

4 MS. KORVIN: I AM A TELECOMMUNICATIONS TECHNICIAN FOR
5 AMERICAN AIRLINES AT LAX AIRPORT.

6 THE COURT: AND IS THERE A MR. KORVIN?

7 MS. KORVIN: YES THERE IS.

8 THE COURT: WHAT DOES HE DO?

9 MS. KORVIN: HE IS THE DIRECTOR OF COMPUTER DEVELOPMENT
10 AND OPERATIONS FOR COMPUTER SCIENCES CORPORATION IN
11 EL SEGUNDO.

12 THE COURT: AND WHAT EDUCATIONAL BACKGROUND DO YOU HAVE?

13 MS. KORVIN: I HAVE A BACHELOR OF ARTS IN SPANISH FROM
14 MARQUETTE UNIVERSITY IN MILWAUKEE, WISCONSIN.

15 THE COURT: YOUR HUSBAND?

16 MS. KORVIN: HE HAS A BACHELOR OF SCIENCE IN JOURNALISM.

17 THE COURT: AND DO YOU HAVE ANY CHILDREN?

18 MS. KORVIN: NO WE DO NOT.

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

21 MS. KORVIN: NO I HAVE NOT.

22 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
23 OF A CRIME?

24 MS. KORVIN: NO I HAVE NOT.

25 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY
26 INQUIRE.

27 MR. BARENS: THANK YOU.

28 GOOD AFTERNOON, MS. KORVIN. MS. KORVIN --

1 MS. KORVIN: IT IS KORVIN.

2 MR. BARENS: KORVIN?

3 MS. KORVIN: KORVIN.

4 MR. BARENS: RIGHT. I GOT YOU. I HAVE --

5 MS. KORVIN: YOU DID THAT LAST TIME.

6 MR. BARENS: I HAVE A VERY DEAR FRIEND WHOSE NAME IS
7 BRUCE KORWIN. I BELIEVE YOUR HONOR KNOWS MR. KORWIN?

8 THE COURT: SURE.

9 MR. BARENS: MY NEIGHBOR. ALL RIGHT. WHO CARES?

10 ALL RIGHT. MS. KORVIN, IS THIS IN FACT, YOUR
11 FIRST CONTACT WITH OUR JUDICIAL SYSTEM?

12 MS. KORVIN: I SERVED ON A CIVIL JURY IN TEXAS ALMOST
13 TEN YEARS AGO.

14 MR. BARENS: OKAY. DID THE JURY COME TO A VERDICT IN
15 THAT CASE?

16 MS. KORVIN: YES.

17 MR. BARENS: AND HOW DID YOU FEEL ABOUT THAT EXPERIENCE
18 AS A JUROR?

19 MS. KORVIN: I THOUGHT IT WAS GREAT.

20 MR. BARENS: AND WAS THAT CASE -- WHAT WAS IT ABOUT,
21 AS BRIEFLY AS YOU CAN TELL ME?

22 MS. KORVIN: IT WAS A CHILD CUSTODY. THE FATHER WAS
23 SUING THE MOTHER FOR CUSTODY.

24 MR. BARENS: OKAY. IN CALIFORNIA, WE DON'T EVEN HAVE --
25 I DON'T -- I SHOULDN'T SAY THAT WE DON'T EVEN HAVE IT. WE
26 DON'T HAVE A JURY SYSTEM FOR DOMESTIC RELATIONS MATTERS WHICH
27 ENCOMPASS CHILD CUSTODY.

28 BUT RATHER, IT IS A MATTER DECIDED BY THE JUDGE.

1 IN ANY EVENT, IN THAT CASE, I PRESUME THAT -- I SHOULDN'T
2 PRESUME.

3 DID BOTH SIDES INTRODUCE PSYCHIATRIC OR
4 PSYCHOLOGICAL TESTIMONY ON THE PART OF WHOM THEY THOUGHT
5 SHOULD ULTIMATELY RECEIVE CUSTODY OF THE CHILD?

6 MS. KORVIN: NO. I DON'T REMEMBER ANY DOCTORS OR
7 EXPERTS OR ANYTHING LIKE THAT. IT WAS JUST FAMILY MEMBERS
8 AND FRIENDS.

9 MR. BARENS: ALL RIGHT. A LOT OF TIMES, I ASK THAT
10 BECAUSE A LOT OF TIMES THOSE BECOME THE PIVOTAL WITNESSES
11 IN THOSE CASES.

12 WAS THERE SOME ALLEGATION OF WRONGDOING ON THE
13 PART OF ONE OR BOTH OF THE PARENTS IN THAT SETTING THAT WAS
14 BEING LITIGATED?

15 MS. KORVIN: YES. I GUESS IN TEXAS, THEY HAVE TO PROVE
16 THE MOTHER UNFIT. SO THERE WAS A LOT OF THAT, MUDSLINGING.

17 MR. BARENS: MUDSLINGING, INDEED. AND I SUPPOSE ONE
18 SIDE PRESENTED WITNESSES THAT SAID THAT THEY WERE REAL GOOD
19 AND THE OTHER SIDE PRESENTED WITNESSES THAT SAID THE VERY
20 SAME PEOPLE WERE VERY BAD?

21 MS. KORVIN: EXACTLY.

22 MR. BARENS: YOU HAD TO COME TO SOME SORT OF A DECISION --
23 STRIKE THAT. WITHDRAW THAT STATEMENT.

24 IN THAT SETTING, YOU HAD REALLY A THIRD CONCERN,
25 DIDN'T YOU? IN THAT SETTING, THE CONCERN WAS THE BEST
26 INTEREST OF THE CHILD, RATHER THAN WHAT -- WHICH PARENT WAS
27 GOOD OR BAD?

28 MS. KORVIN: THAT'S CORRECT.

1 MR. BARENS: SO REALLY, THE ULTIMATE DECISION I SUPPOSE
2 THAT YOU WERE MAKING, HAD TO DO AT LEAST -- AS FAR AS BEING
3 OUTCOME DETERMINATIVE, AS TO WHICH PARENT YOU FELT WAS GOOD
4 OR BAD, AS MUCH AS HOW YOU VIEWED WHAT SERVED THE BEST
5 OVERALL INTEREST OF THE CHILD?

6 MS. KORVIN: THAT'S CORRECT.

7 MR. BARENS: NOW, DID BOTH OF THE PARENTS TESTIFY IN
8 THE HEARING?

9 MS. KORVIN: I BELIEVE THEY DID.

10 MR. BARENS: AND PART OF THE TIME THEY TESTIFIED, DID
11 YOU HAVE ANY KIND OF A FEELING FOR HOW THEY PROBABLY WOULD
12 HAVE TESTIFIED BEFORE THEY SPOKE?

13 MS. KORVIN: NO.

14 MR. BARENS: YOU DIDN'T HAVE SOME ANTICIPATION ABOUT
15 FOR INSTANCE, THAT YOU HAD HEARD CERTAIN ALLEGATIONS MADE
16 AGAINST THEM, RATHER SPECIFIC ALLEGATIONS OF MISCONDUCT ON
17 OCCASION OR A SERIES OF OCCASIONS?

18 MS. KORVIN: YES.

19 MR. BARENS: DID YOU HAVE AN ANTICIPATION AS TO WHAT
20 THEY WOULD SAY ABOUT THOSE ALLEGATIONS BEFORE THEY ACTUALLY
21 TESTIFIED?

22 MS. KORVIN: NO.

23 MR. BARENS: YOU DID NOT PREJUDGE OR ANTICIPATE THAT
24 TESTIMONY AT ALL?

25 MS. KORVIN: NO.

26 MR. BARENS: ALL RIGHT. DID YOUR OPINION ABOUT THOSE
27 PEOPLE CHANGE DURING THE TRIAL?

28 MS. KORVIN: NO.

1 MR. BARENS: WHAT YOU THOUGHT THEY WERE AND WHAT THEY
2 WERE ABOUT AND THE KIND OF PEOPLE THEY WERE WAS PRETTY MUCH
3 THE SAME THROUGHOUT THE MATTER?

4 MS. KORVIN: YES.

5 MR. BARENS: WAS THERE A LENGTHY DELIBERATION PROCESS
6 BY THE JURY?

7 MS. KORVIN: NO. IT WAS REAL SHORT. I THINK WE MADE
8 IT ON THE FIRST VOTE.

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1 MR. BARENS: I BELIEVE I HAVE THE PROVINCE TO ASK THE
2 VOTE ON THAT ONE, YOUR HONOR. IT IS A CIVIL MATTER.

3 THE COURT: GO AHEAD.

4 MR. BARENS: IF YOU WOULD.

5 DID THE JURY ULTIMATELY VOTE THAT THE MOTHER HAD
6 NOT BEEN FOUND UNFIT?

7 MS. KORVIN: THAT IS CORRECT, SHE WAS NOT UNFIT.

8 MR. BARENS: THAT IS WHAT I WOULD IMAGINE ON A FIRST
9 BALLOT, THAT KIND OF SUGGESTED THAT TO ME SOMEHOW.

10 MS. KORVIN: YES.

11 MR. BARENS: WAS THERE ANYTHING IN PARTICULAR DURING
12 THE TESTIMONY THAT HAD REALLY PERSUADED YOU THAT WAY, WAS THERE
13 A PARTICULAR WITNESS OR PARTICULAR FACT THAT WAS PROVEN OR
14 DISPROVEN OR NOT PROVEN AT ALL THAT SWAYED YOU AS A JUROR?

15 MS. KORVIN: NO, NOTHING BIG. JUST THE WHOLE THING.

16 MR. BARENS: DID YOU SOMEWHAT -- I DON'T KNOW IF YOU
17 WERE INSTRUCTED ON THIS AT ALL -- WAS THERE A PRESUMPTION THAT
18 THE MOTHER WAS FIT IN TEXAS UNTIL SHE WAS PROVEN UNFIT?

19 MS. KORVIN: I BELIEVE SO.

20 MR. BARENS: THERE WAS PROBABLY SOME KIND OF AN
21 INSTRUCTION ON THAT TO YOU?

22 MS. KORVIN: YES.

23 MR. BARENS: ALL RIGHT. HERE, THE DEFENDANT HAS A
24 PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY.

25 (PROSPECTIVE ALTERNATE JUROR KORVIN NODS
26 HER HEAD UP AND DOWN.)

27 MR. BARENS: ARE YOU COMFORTABLE WITH THAT?

28 MS. KORVIN: YES. VERY.

25-2

1 MR. BARENS: WERE YOU COMFORTABLE WITH THE PRESUMPTION
2 OF FITNESS FOR THE MOTHER IN THAT SETTING AS YOU PROCEEDED?

3 MS. KORVIN: YES.

4 MR. BARENS: AND IF YOU COULD TELL ME, BECAUSE I DON'T
5 KNOW, WAS THE BURDEN OF PROOF REQUIRED ON THE PART OF THE
6 FATHER A PREPONDERANCE OF THE EVIDENCE ON A LEVEL OF PROOF
7 TO OVERCOME THE PRESUMPTION OF FITNESS ON THE MOTHER'S PART,
8 WAS IT A PREPONDERANCE OF THE EVIDENCE TYPE OF STANDARD?

9 MS. KORVIN: I BELIEVE SO, YES.

10 MR. BARENS: ALL RIGHT. AND THEY FAILED TO SUPPORT IT
11 IN THAT INSTANCE?

12 MS. KORVIN: YES, THAT'S CORRECT.

13 MR. BARENS: NOT PROVEN?

14 MS. KORVIN: NOT PROVEN.

15 MR. BARENS: WHAT DO WE CALL NOT PROVEN IN THIS FORUM?

16 MS. KORVIN: NOT GUILTY.

17 MR. BARENS: RIGHT.

18 NOW DO YOU FURTHER UNDERSTAND THAT WHAT WE TALK
19 ABOUT HERE IS NOT A PREPONDERANCE OF THE EVIDENCE?

20 MS. KORVIN: I UNDERSTAND THAT.

21 MR. BARENS: ALL RIGHT. WHAT DO YOU THINK I MEAN WHEN
22 I SAY PREPONDERANCE OF THE EVIDENCE? WHAT DID IT MEAN TO
23 YOU, WHAT IS PREPONDERANCE OF THE EVIDENCE?

24 (PAUSE.)

25 MR. BARENS: PERHAPS I CAN BE OF ASSISTANCE.

26 MS. KORVIN: YES, PLEASE DO.

27 MR. BARENS: IN CIVIL LAW IN CALIFORNIA, PREPONDERANCE
28 OF THE EVIDENCE MEANS THAT TYPICALLY THE PLAINTIFF HAS A

1 BURDEN OF PROOF TO ESTABLISH A MORE LIKELY -- HE IS MORE
2 LIKELY WRONG THAN THE OTHER GUY.

3 YOU KNOW, PROBABLY THE EASIEST WAY TO LOOK AT IT
4 IS, YOU GET THE STAND-OFF SITUATION, THE RED LIGHT-GREEN LIGHT
5 ACCIDENT AND ONE OF THE OTHER SIDES, THE PLAINTIFF HAS A
6 BURDEN TO PROVE TO YOU BY A PREPONDRANCE OF THE EVIDENCE,
7 WHICH CAN EVEN BE 51-49, THAT CLOSE A CALL, THAT HE IS, YOU
8 KNOW, THAT THE OTHER GUY RAN THE RED LIGHT OR WHATEVER;
9 WOULD THAT BE THE WAY YOU RELATED TO THE STANDARD OF PROOF
10 DOWN THERE ON THAT CASE?

11 MS. KORVIN: ON THAT CASE, YES.

12 MR. BARENS: YOU UNDERSTAND THAT WHAT WE ARE TALKING
13 ABOUT HERE IS TOTALLY DIFFERENT?

14 MS. KORVIN: YES, I UNDERSTAND THAT.

15 MR. BARENS: ALL RIGHT. I CANNOT QUANTIFY FOR YOU
16 NUMERICALLY WHAT LEVEL WE NEED APPROACH FOR YOU TO FIND SOME-
17 THING BEYOND A REASONABLE DOUBT. BUT SUFFICE IT TO SAY THAT
18 IT IS SUBSTANTIALLY MORE THAN 51-49; ARE YOU COMFORTABLE WITH
19 THAT?

20 MS. KORVIN: YES.

21 MR. BARENS: NOW, IN THOSE CIVIL CASES, IN YOUR
22 EXPERIENCE, YOU NOTICED THE HUSBAND, THE FATHER AND THE MOTHER
23 BOTH HAD AN INCUMBENT BURDEN TO PUT ON EVIDENCE.

24 MS. KORVIN: YES, I UNDERSTAND THAT.

25 MR. BARENS: DO YOU KNOW THAT IN A CRIMINAL CASE THE
26 DEFENDANT COULD SIT THERE THE WHOLE TIME, AND IN FACT AS
27 INCREDIBLE AS IT MIGHT SEEM, I COULD SIT THERE THE WHOLE TIME
28 AS DEFENSE LAWYER AND NEVER OPEN MY MOUTH, EXCEPT TO SAY NOT

25-4

1 GUILTY AND EVENTUALLY THANK YOU TO THE JURY; DO YOU UNDERSTAND
2 THAT?

3 MS. KORVIN: YES, I DO.

4 MR. BARENS: NOW THAT IS NOT LIKELY HERE IN THIS
5 COURTROOM.

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1 MS. KORVIN: I THINK NOT.

2 MR. BARENS: BECAUSE THEY JUST WON'T LET ME GET AWAY
3 WITH THAT.

4 MR. WAPNER: BE MY GUEST.

5 MR. BARENS: YOU FORCED ME TO SPEAK, MR. WAPNER.

6 BUT NONETHELESS, IF YOU WERE TO HEAR THE DEFENDANT
7 TESTIFY IN THIS CASE, WOULD YOU HAVE SOME MISGIVING
8 PRELIMINARY TO HIS TESTIMONY THAT HE WAS LESS THAN LIKELY TO
9 BE CANDID WITH YOU?

10 MS. KORVIN: NO, I DON'T THINK SO.

11 MR. BARENS: YOU WOULDN'T THINK THAT BECAUSE HE
12 IS THE DEFENDANT HERE HE WOULDN'T BE ACCURATE?

13 MS. KORVIN: NO.

14 MR. BARENS: YOU WOULD WANT TO JUDGE THAT FOR YOURSELF,
15 WOULDN'T YOU?

16 MS. KORVIN: YES.

17 MR. BARENS: HOW DID YOU FEEL WHEN YOU FIRST HEARD
18 MR. WAPNER'S ADVICE THAT THE GOVERNMENT CAN BRING A MURDER
19 TRIAL INTO BEING AND A CHARGE AGAINST SOMEONE WHEN THERE IS
20 NO BODY, COULD YOU ACCEPT THAT?

21 MS. KORVIN: I -- I DIDN'T KNOW.

22 I ACCEPT IT. THAT IS THE LAW.

23 BUT I HADN'T KNOWN THAT BECAUSE I DIDN'T KNOW TOO
24 WELL.

25 MR. BARENS: ACCEPT IT?

26 MS. KORVIN: OKAY.

27 MR. BARENS: THERE IS ABSOLUTE PRECEDENCE IN CALIFORNIA
28 FOR THAT TYPE OF THING AND PROBABLY ELSEWHERE THAT WE CAN THINK

1 OF AND I CAN ASSURE YOU, IN TEXAS.

2 WOULD YOU WANT TO KNOW BEFORE WE STARTED WONDERING
3 ABOUT WHERE THE BODY IS, SOMETHING ABOUT THE LIKELIHOOD OF
4 WHETHER OR NOT THERE IS A BODY?

5 MS. KORVIN: YES.

6 MR. BARENS: YOU WOULDN'T JUST THINK BECAUSE MR. WAPNER
7 SAYS, "WE DON'T KNOW WHERE THE BODY IS," THAT THAT NECESSARILY
8 ESTABLISHES IN YOUR MIND THERE IS A BODY?

9 MS. KORVIN: NO, THAT IS NOT GOOD ENOUGH.

10 MR. BARENS: RIGHT.

11 THEY HAVE TO PROVE SOMETHING.

12 MS. KORVIN: YES.

13 MR. BARENS: THAT THERE IS A BODY.

14 MS. KORVIN: YES.

15 MR. BARENS: OTHER THAN A LIVE BODY, I SUPPOSE.

16 THE DEFENDANT MIGHT SAY TO YOU, "I DON'T KNOW.
17 I DON'T KNOW WHAT HAPPENED." DO YOU FEEL THAT THE DEFENDANT
18 IS FAILING TO DO SOMETHING YOU EXPECT IF HE CAN'T PROVE
19 SOMETHING TO YOU ABOUT WHERE THE BODY IS OR IS NOT OR IF THERE
20 IS A BODY OR NOT A BODY?

21 MS. KORVIN: NO.

22 MR. BARENS: WHAT SORT OF HOBBIES DO YOU HAVE?

23 MS. KORVIN: WELL, FROM MARCH TO OCTOBER ABOUT ALL I
24 DO IS RACE SAILBOATS AND THEN WINTER TIME, I SKI AND READ AND
25 THEN MY HUSBAND AND I GO TO A LOT OF SPORTS EVENTS.

26 MR. BARENS: YOU RACE SAILBOATS?

27 MS. KORVIN: YES.

28 MR. BARENS: WHAT SORT OF SAILBOATS DO YOU RACE?

1 MS. KORVIN: TWO IN PARTICULAR. A 32-FOOT ERIKSON AND
2 A 36 FOOT-CATALINA

3 MR. BARENS: DURING COMPETITIVE RACING, YOU DO THAT WITH
4 A CREW?

5 MS. KORVIN: YES.

6 I AM A CREW MEMBER. I AM NOT A CAPTAIN.

7 MR. BARENS: ON YOUR 42-FOOT BOAT, HOW MANY PEOPLE WOULD
8 CREW THAT?

9 MS. KORVIN: MY 32.

10 FIVE IS THE MOST.

11 MR. BARENS: AND WITH THOSE FIVE IN CREW, DO YOU MAKE
12 DECISIONS CONJUNCTIVELY DURING THE RACE OR DOES SOMEONE IN
13 PARTICULAR MAKE THE DECISIONS?

14 MS. KORVIN: WELL, YOU ALL GET A CHANCE TO GIVE YOUR
15 OPINION.

16 ULTIMATELY, THE CAPTAIN MAKES THE DECISION.

17 MR. BARENS: DURING THESE RACING ACTIVITIES, FROM TIME
18 TO TIME DO YOU HAVE FAIRLY CRITICAL MOMENTS IN A RACE?

19 MS. KORVIN: YES.

20 MR. BARENS: THAT ARE GOING TO DETERMINE THE OUTCOME;
21 IS THAT TRUE?

22 MS. KORVIN: YES.

23 MR. BARENS: AND IN FACT, A LOT OF TIMES IN THOSE
24 EVENTS IT COMES DOWN TO A MOMENT IN TIME THAT WE HAVE GOT TO
25 DECIDE WHETHER WE TACK OR NOT AND WHAT POSITION WE ARE GOING
26 TO TAKE ON THAT TACK; IS THAT CORRECT?

27 MS. KORVIN: THAT'S CORRECT.

28 MR. BARENS: WHAT SORT OF STANDARD DO YOU USE?

1 LET'S ASSUME YOU ARE THE CAPTAIN. THAT IS ONE
2 OF THOSE RATHER IMPORTANT DECISIONS IN YOUR LIFE, ISN'T IT?

3 MS. KORVIN: WHAT?

4 MR. BARENS: WELL, YOU HAVE GOT THE RACE ON THE LINE
5 AND LET'S SAY WE ARE IN THE FINALS OF THE TRIALS AND --

6 MS. KORVIN: UH-HUH.

7 MR. BARENS: -- NOT THIS SORT OF A TRIAL. A BOAT TRIAL.

8 OH, GOD, DID I SAY A BOAT TRIAL?

9 (LAUGHTER IN COURTROOM.)

10 MR. BARENS: EXCUSE ME. YES.

11 WELL, IN ANY EVENT, BE THAT AS IT MAY, YOU HAVE
12 TO MAKE A DECISION AND LET'S SAY YOU ARE THE CAPTAIN IN THAT
13 INSTANCE -- AND I DON'T KNOW. HAVE YOU EVER BEEN IN THAT
14 POSITION?

15 MS. KORVIN: YES.

16 MR. BARENS: WHAT SORT OF STANDARD DID YOU SET FOR
17 YOURSELF IN MAKING THAT DECISION ON WHETHER WE WIN. IT ALL
18 OR LOSE IT ALL, FOLKS, WHEN YOU HAVE GOT THOSE OTHER FOUR
19 PEOPLE, FIVE PEOPLE RELYING ON YOU?

20 MS. KORVIN: WELL, WE ALL SCREAM AT EACH OTHER REALLY
21 FAST AND FIND OUT WHAT WE THINK IS THE BEST ALTERNATIVE AND
22 THEN EVERYBODY AGREES ON IT AND THEN WE DO IT.

23 MR. BARENS: SOMETIMES YOU ARE RIGHT AND SOMETIMES YOU
24 ARE WRONG?

25 MS. KORVIN: THAT'S CORRECT.

26 MR. BARENS: BASED ON THE FACTS THAT ARE OUT THERE THAT
27 ARE KNOWABLE TO YOU.

28 WOULD YOU CONSIDER THAT ONE OF THOSE BEYOND A

1 REASONABLE DOUBT TYPE DECISIONS YOU MAKE?

2 THAT IS A TOUGHY FOR ME, TOO.

3 MS. KORVIN: IT IS TOUGH.

4 I DON'T KNOW.

5 MR. BARENS: YOU CAN'T KNOW ON THAT ONE, CAN YOU?

6 MS. KORVIN: NO.

7 MR. BARENS: I MIGHT SUBMIT FOR YOUR THINKING THAT THAT
8 IS A DIFFERENT TYPE OF DECISION THAN YOU MAKE HERE.

9 MS. KORVIN: A WHOLE LOT DIFFERENT.

10 MR. BARENS: A WHOLE LOT DIFFERENT.

11 DO YOU KNOW WHAT THE DIFFERENCE COMES DOWN TO?

12 MS. KORVIN: TELL ME.

13 MR. BARENS: STAKES, THE STAKES ARE DIFFERENT.

14 MS. KORVIN: THE STAKES ARE MUCH MORE DIFFERENT.

15 MR. BARENS: THAT IS THE DIFFERENCE.

16 THE IMPORTANCE OF THE DECISION TO YOU AS AN
17 INDIVIDUAL CAN BE EXTREME BUT, HERE, IT MAY HAVE SOMEWHAT
18 ANALOGOUSLY THE SAME IMPORTANCE BUT SIMPLY DIFFERENT STAKES.
19 DO YOU UNDERSTAND WHAT I MEAN?

20 MS. KORVIN: YES, I DO.

21 THE COURT: ALL RIGHT.

22 (LAUGHTER IN COURTROOM.)

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26A
1 MR. BARENS: WHAT SORT OF READING DO YOU DO?

2 MS. KORVIN: ALL KINDS.

3 MR. BARENS: OKAY. NOTHING IN PARTICULAR THAT HAS AN
4 EMPHASIS FOR YOU?

5 MS. KORVIN: NO. IN FACT, I LIKE TO INTERCHANGE
6 DIFFERENT TYPES AND NOT READ THE SAME KIND OF THING ALL OF
7 THE TIME.

8 MR. BARENS: AND YOUR EDUCATIONAL BACKGROUND CONSISTS
9 OF?

10 MS. KORVIN: A BACHELOR OF ARTS IN SPANISH.

11 MR. BARENS: FROM MARQUETTE?

12 MS. KORVIN: YES.

13 MR. BARENS: AND WERE YOU MARRIED DURING THAT PERIOD
14 OF TIME?

15 MS. KORVIN: NO.

16 MR. BARENS: DID YOU EVER MAKE USE OF THAT DEGREE?

17 MS. KORVIN: THAT IS HOW I STARTED WITH AMERICAN
18 AIRLINES WHEN I FIRST GOT OUT OF COLLEGE AND THEN GRADUALLY
19 WORKED MY WAY AWAY FROM IT.

20 MR. BARENS: ALL RIGHT. DID YOU HAVE A MINOR ALONG
21 WITH YOUR SPANISH MAJOR?

22 MS. KORVIN: NO.

23 MR. BARENS: YOUR MARRIAGE THAT YOU HAVE NOW IS YOUR
24 ONLY MARRIAGE?

25 MS. KORVIN: YES.

26 MR. BARENS: AND THE LAST BOOK YOU READ WOULD HAVE BEEN --

27 MS. KORVIN: THE SEVENTH SECRET BY IRVING WALLACE.

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

1 MS. KORVIN: "ONE HUNDRED AND ONE DALMATIANS."

2 MR. BARENS: ALL RIGHT. ARE WE THROUGH WITH THE PIE,
3 YOUR HONOR?

4 THE COURT: YES.

5 MR. BARENS: WE ARE NOT GOING TO DO THAT, EITHER SIDE?

6 THE COURT: NO.

7 MR. BARENS: THEN I CAN ABANDON THE PIE.

8 MR. WAPNER: IT SUNK.

9 THE COURT: IT HAS BEEN EATEN UP.

10 MR. BARENS: I JUST THOUGHT I WOULD ASK BEFORE I GOT
11 INTO ANYTHING ELSE.

12 IS THERE ANYTHING THAT YOU THINK THAT I OUGHT
13 TO KNOW ABOUT YOU AS A PROSPECTIVE JUROR IN THIS INSTANCE
14 THAT MIGHT BE OF SOME BENEFIT EITHER WAY?

15 MS. KORVIN: NO, JUST THAT I AM A FAIR PERSON. I WOULD
16 LIKE TO DO A GOOD JOB. I AM PARTICULAR ABOUT HOW I DO THINGS.

17 MR. BARENS: I RECALL YOU TELLING ME THAT I THINK YOU
18 HAD READ SOMETHING ABOUT THIS CASE PRIOR TO COMING HERE.

19 AND YOU KNOW, I HAVE ASKED THIS QUESTION OUT OF
20 A SENSE OF OBLIGATION AND CONCERN THAT YOU COULD IN FACT,
21 ASSURE ME AS SINCERELY AS YOU CAN, THAT NOTHING THAT YOU READ
22 ABOUT THIS CASE WOULD IN ANY WAY, INFLUENCE YOU IN REACHING
23 A DECISION CONCERNING MY CLIENT.

24 MS. KORVIN: THAT'S RIGHT.

25 MR. BARENS: YOU WOULD BASE YOUR DECISION SOLELY ON
26 THE EVIDENCE YOU SAW DEMONSTRATED IN THE COURTROOM?

27 MS. KORVIN: THAT'S CORRECT.

28 MR. BARENS: I THANK YOU. I PASS FOR CAUSE, YOUR HONOR.

6A-7
1 THE COURT: ALL RIGHT.

2 MR. WAPNER: THANK YOU, YOUR HONOR.

3 GOOD AFTERNOON, MS. KORVIN.

4 MS. KORVIN: HI.

5 MR. BARENS: I AM JUST KIND OF CURIOUS. YOU WENT TO
6 SCHOOL IN MILWAUKEE. AND YOU MARRIED SOMEONE WHO WENT TO
7 SCHOOL IN WEST VIRGINIA AND YOU WORKED IN TEXAS?

8 MS. KORVIN: YES. THAT'S CORRECT.

9 MR. WAPNER: AND HOW DID YOU AND YOUR HUSBAND END UP
10 IN LOS ANGELES AFTER ALL THOSE MACHINATIONS?

11 MS. KORVIN: WELL, WE CAME OUT HERE IN APRIL OF 1983
12 BECAUSE OF HIS JOB. WE WERE IN WASHINGTON, D.C.

13 MR. WAPNER: IT GETS CURIOUSER AND CURIOUSER. WHAT
14 WERE YOU DOING THERE?

15 MS. KORVIN: THAT IS MY HOME. I WAS THERE. I MOVED
16 THERE FROM TEXAS.

17 MR. WAPNER: WERE YOU WITH AMERICAN AIRLINES IN TEXAS?

18 MS. KORVIN: YES.

19 MR. WAPNER: THAT IS THEIR HOME BASE?

20 MS. KORVIN: YES.

21 MR. WAPNER: DALLAS?

22 MS. KORVIN: YES.

23 MR. WAPNER: AND AS A TELECOMMUNICATIONS TECHNICIAN,
24 WHAT DO YOU DO?

25 MS. KORVIN: I HANDLE ALL OF THE DATA INVOICE NETWORK
26 THAT WE HAVE AT TERMINAL 4, LAX.

27 MR. WAPNER: THAT IS CLEAR. DO YOU WANT TO EXPLAIN
28 IT TO ME IN PLAIN ENGLISH?

26A-4
1 MR. KORVIN: WELL, WE HAVE OUR OWN NETWORK WITH TERMINALS
2 ON IT. THAT IS WHERE ALL OF THE RESERVATIONS ARE PUT IN AND
3 EVERYTHING COMES UP. WE ARE ALL COMPUTERIZED NOW.

4 WE HAVE TERMINALS, LIKE THE ONE AT THE TICKET
5 COUNTER AND THE ONES AT THE GATES.

6 MR. WAPNER: RIGHT.

7 MS. KORVIN: I TAKE CARE OF ALL OF THOSE. I INSTALL
8 THEM. I MOVE THEM AROUND. I FIX THEM. I TROUBLE-SHOOT THEM
9 AND WHATEVER.

10 MR. WAPNER: ALL RIGHT. SO, IF THERE IS A PROBLEM WITH
11 ONE OF THE TERMINALS, THEY CALL YOU OR SOMEONE IN YOUR
12 DEPARTMENT?

13 MS. KORVIN: RIGHT.

14 MR. WAPNER: AND THEN YOU HAVE GO AND TRY TO MAKE A
15 DETERMINATION AS TO WHAT IS WRONG WITH IT?

16 MS. KORVIN: THAT'S RIGHT.

17 MR. WAPNER: AND YOU TRY TO GATHER AS MANY FACTS AS
18 YOU CAN?

19 MS. KORVIN: YES.

20 MR. WAPNER: AND AFTER YOU GET THOSE FACTS, YOU TAKE
21 THOSE AND BASED ON THOSE FACTS AND YOUR EXPERIENCE, TRY TO
22 FIGURE OUT WHAT THE MOST REASONABLE POSSIBILITY IS OR
23 PROBABILITY IS AS TO WHAT IS WRONG?

24 MS. KORVIN: THAT'S CORRECT.

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25 MR. WAPNER: AND IF IT IS NOT THAT, YOU GO TO NUMBER
26 TWO AND SO ON DOWN THE LINE?

27 MS. KORVIN: I START ALL OVER AGAIN AND I DO IT AGAIN.

28 MR. WAPNER: ALL RIGHT. AS LONG AS WE ARE TALKING

26A
1 DECISION-MAKING AND MR. BARENS' EXAMPLE WITH THE SAILBOAT
2 RACING, DID YOU HEAR REFERENCE MADE WITH OTHER JURORS ABOUT
3 NOT CONSIDERING PENALTY OR PUNISHMENT WHEN YOU DECIDE THE
4 QUESTION OF GUILT OR INNOCENCE?

5 MS. KORVIN: YES I DID.

6 MR. WAPNER: DO YOU THINK IT IS PROPER?

7 MS. KORVIN: YES.
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268-1
1 MR. WAPNER: SO THAT EVEN THOUGH THE ULTIMATE STAKES
2 IN THIS CASE, IF YOU WILL, MAY BE VERY HIGH, THAT YOU CAN'T
3 BE THINKING ABOUT WHAT THE STAKES ARE IN MAKING YOUR DECISION?

4 MS. KORVIN: THAT'S CORRECT.

5 MR. WAPNER: AND YOU WOULD BE ABLE TO DO THAT?

6 MS. KORVIN: YES.

7 MR. WAPNER: EXCUSE ME IF THIS IS A LITTLE BIT PERSONAL.
8 BUT CAN YOU TELL US, HAVE YOU AND YOUR HUSBAND MADE A
9 CONSCIOUS DECISION NOT TO HAVE CHILDREN?

10 MR. BARENS: THE DEFENSE OBJECTS.

11 THE COURT: I WILL SUSTAIN THE OBJECTION.

12 MR. WAPNER: LET ME COME AT IT A DIFFERENT WAY. DO
13 YOU HAVE ANY BROTHERS OR SISTERS?

14 MS. KORVIN: YES I DO.

15 MR. WAPNER: HOW MANY?

16 MS. KORVIN: I HAVE TWO OLDER BROTHERS AND SISTERS.

17 MR. WAPNER: DO THEY LIVE IN WASHINGTON, D.C.?

18 MS. KORVIN: MY OLDEST BROTHER LIVES IN PENNSYLVANIA
19 AND THEN THE OTHER TWO LIVE IN ALEXANDRIA, VIRGINIA.

20 MR. WAPNER: JUST OUTSIDE WASHINGTON?

21 MS. KORVIN: RIGHT.

22 MR. WAPNER: DO YOU SEE OR TALK TO THEM VERY OFTEN?

23 MS. KORVIN: HARDLY EVER.

24 MR. WAPNER: AND HOW ABOUT YOUR PARENTS? ARE THEY STILL
25 LIVING?

26 MS. KORVIN: YES. THEY LIVE IN NEBRASKA. MY MOTHER
27 IS STILL LIVING. SHE LIVES IN NEBRASKA WITH HER HUSBAND.
28 I CONSIDER THEM PARENTS.

26B-2

1 MR. WAPNER: ARE YOUR PARENTS DIVORCED?

2 MS. KORVIN: NO. MY FATHER DIED WHEN I WAS 12.

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

4 MS. KORVIN: ONCE A MONTH.

5 MR. WAPNER: WOULD YOU SAY YOU ARE CLOSE TO HER?

6 MS. KORVIN: YES WE ARE.

7 MR. WAPNER: AND DOES YOUR HUSBAND HAVE A FAMILY THAT
8 LIVES IN THE LOS ANGELES AREA?

9 MS. KORVIN: JUST A COUSIN LIVES IN PASADENA.

10 MR. WAPNER: YOU SAID THAT YOU ARE PARTICULAR ABOUT
11 HOW YOU DO THINGS. CAN YOU EXPLAIN THAT TO ME?

12 MS. KORVIN: WELL, IN MY LINE OF WORK, MACHINES HAVE
13 NO MERCY. SO I HAVE TO BE VERY PARTICULAR. I COULD BLOW
14 UP SOMETHING. WHICH I HAVE DONE BEFORE.

15 SO I HAVE LEARNED TO BE VERY CAREFUL. I HAVE
16 TO BE VERY METHODICAL ABOUT HOW I APPROACH SOMETHING, IF IT
17 IS NOT WORKING OR DOESN'T WORK RIGHT OR WHATEVER.

18 MR WAPNER: AND DO YOU TAKE A FAIRLY METHODICAL APPROACH
19 TO ATTEMPTING TO MAKE A DECISION IN THIS CASE?

20 MS. KORVIN: YES.

21 MR. WAPNER: LET ME ASK YOU A QUESTION THAT I DIDN'T
22 ASK, UNFORTUNATELY, MS. JANIS. HOW DO YOU FEEL ABOUT BEING
23 AN ALTERNATE IN THIS CASE?

24 MS. KORVIN: I THINK THAT IT IS JUST AS IMPORTANT AS
25 BEING A JUROR.

26 MR. WAPNER: DO YOU UNDERSTAND THAT YOU ARE KIND OF
27 IN THE ROLE OF A PINCH HITTER? YOU ARE SITTING ON THE BENCH,
28 NEVER QUITE KNOWING WHETHER YOU ARE GOING TO BE CALLED UPON

1 OR NOT?

2 MS. KORVIN: YES. I UNDERSTAND THAT.

3 MS. WAPNER: IS THAT ALL RIGHT WITH YOU?

4 MS. KORVIN: FINE.

5 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
6 OF A CON SCHEME?

7 MS. KORVIN: NO I HAVE NOT.

8 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND
9 OF CRIME WHATSOEVER?

10 MS. KORVIN: NO.

11 MR. WAPNER: HOW DO YOU FEEL ABOUT THE CONCEPT OF
12 CIRCUMSTANTIAL EVIDENCE GENERALLY?

13 MS. KORVIN: EVIDENCE IS EVIDENCE.

14 MR. WAPNER: AND IF THE JUDGE TELLS YOU THAT
15 CIRCUMSTANTIAL EVIDENCE IS JUST AS GOOD AS DIRECT EVIDENCE,
16 YOU COULD FOLLOW THAT INSTRUCTION?

17 MS. KORVIN: YES I CAN.

18 MR. WAPNER: DID YOU HAVE ANY NOTION IN YOUR HEAD, FROM
19 TV OR BOOKS OR ANYPLACE ELSE, BEFORE YOU CAME IN HERE, ABOUT
20 CORPUS DELICTI? HAD YOU EVER HEARD OF THAT?

21 MS. KORVIN: I HAVE HEARD THE TERM. BUT I HAVE NO IDEA
22 WHAT IT MEANS.

23 MR. WAPNER: HAVE YOU EVER HEARD ANYTHING ABOUT IT ON
24 TELEVISION, MEANING THAT THEY HAVE NO BODY OR SOMETHING LIKE
25 THAT?

26 MS. KORVIN: NO. CORPUS OBVIOUSLY MEANS BODY. BUT
27 I DON'T KNOW WHAT IT MEANS. I DON'T KNOW WHAT IT TRANSLATES
28 TO.

1 THE COURT: YOU CAN EXPLAIN IT TO HER.

2 MR. WAPNER: I WILL. WHAT IT TRANSLATES TO, IS BODY
3 OF THE CRIME WHICH REALLY MEANS THE ELEMENTS OF THE CRIME.

4 AND EVERY CRIME, WHETHER IT IS A MURDER OR DRIVING
5 UNDER THE INFLUENCE OR BURGLARY, HAS A CORPUS DELICTI.

6 IN A BURGLARY, THE BODY OF THE CRIME OR THE
7 ELEMENTS OF THE CRIME ARE THE ENTRY OF THE HOUSE OR BUSINESS
8 WITH THE INTENT TO COMMIT A FELONY OR A THEFT INSIDE. SO
9 THAT PHRASE, CORPUS DELICTI, DOESN'T HAVE ANYTHING TO DO WITH
10 THE NECESSITY OF A BODY OR NOT.

11 MS. KORVIN: I UNDERSTAND.

12 MR. BARENS: YOUR HONOR, FOR THE RECORD, I AM ADVISED
13 THAT I MISSPOKE MYSELF EARLIER ON THE LAW IN TEXAS WHEN I
14 SAID THAT WHEN THEY PROSECUTE A NO BODY CASE -- THAT THEY
15 WOULD PROSECUTE A NO BODY CASE IN TEXAS.

16 I AM NOW ADVISED AND I NOW RECALL, SINCE I HAVE
17 PRACTICED IN THE COURTS THERE AND DONE A LENGTHY CAPITAL CASE
18 THERE, THAT THEY WOULD NOT. THE CORPUS DELICTI RULE IN TEXAS,
19 IS SUCH THAT I DO NOT --

20 MR. WAPNER: WELL, WITHOUT DIGRESSION ON THE LAW IN
21 TEXAS, WHY ARE WE --

22 THE COURT: WE DON'T HAVE TO HAVE ANY OF THIS.

23 MR. BARENS: I MISSPOKE MYSELF EARLIER. I WOULD LIKE
24 TO CORRECT MYSELF ON THE RECORD.

25 THE COURT: THANK YOU VERY MUCH. YOU HAVE CORRECTED
26 YOURSELF.

27 MR. WAPNER: LEST YOU GET CONFUSED WHEN YOU WALK OUT
28 THE DOOR, WE ARE NOT IN DALLAS.

1 HOW DO YOU FEEL ABOUT THE IDEA THAT YOU MIGHT
2 BE SITTING ON A CASE IN JUDGMENT WHERE THERE WAS A MURDER AND
3 YOU BELIEVED THAT THERE WAS A MURDER AND THE DEFENDANT DID
4 IT BUT YOU JUST DIDN'T LIKE THE PERSON WHO WAS KILLED; WHAT
5 EFFECT WOULD THAT HAVE ON YOUR OPINION?

6 MS. KORVIN: NONE.

7 MR. BARENS: SO WHETHER OR NOT YOU LIKED HIM OR DIDN'T
8 LIKE HIM SHOULDN'T HAVE ANY AFFECT ON YOUR ULTIMATE DECISION.

9 MS. KORVIN: NO, IT WOULDN'T.

10 MR. WAPNER: HAVE YOU EVER BEEN IN A SITUATION, THAT
11 MRS. JANIS FOUND HERSELF IN AT ONE TIME, BEING CALLED UPON
12 TO ATTEMPT TO MAKE AN IDENTIFICATION OF SOMEONE?

13 MS. KORVIN: NEVER.

14 MR. WAPNER: HAVE YOU EVER SEEN SOMEONE ON THE STREET
15 THAT YOU THOUGHT YOU RECOGNIZED AND IT TURNED OUT IT WASN'T
16 THAT PERSON?

17 MS. KORVIN: YES.

18 MR. WAPNER: HAVE YOU DONE ANY STUDIES ON EYEWITNESS
19 IDENTIFICATION AT ALL?

20 MS. KORVIN: NO.

21 MR. WAPNER: HAVE YOU READ ANYTHING AT ALL ABOUT THAT?

22 MS. KORVIN: NO.

23 MR. WAPNER: HAVE YOU EVER BEEN IN A DISCUSSION WITH
24 CLOSE FRIENDS OR RELATIVES ABOUT A SERIOUS TOPIC, TAKEN ONE
25 POSITION AND THEN LATER CHARGED YOUR MIND?

26 MS. KORVIN: YES.

27 MR. WAPNER: IF YOU ARE IN THE JURY ROOM IN THIS CASE
28 AND YOU HAVE DELIBERATED ON THE CASE AND TAKE ONE POSITION

1 AND THEN YOU DECIDE THAT YOUR INITIAL POSITION WAS INCORRECT,
2 COULD YOU CHANGE YOUR MIND?

3 MS. KORVIN: YES, I COULD.

4 MR. WAPNER: IF YOU THOUGHT IT WAS CORRECT, COULD YOU
5 HOLD FAST TO IT?

6 MS. KORVIN: I WOULD.

7 MR. WAPNER: THANK YOU. I WILL PASS FOR CAUSE, YOUR
8 HONOR.

9 THE COURT: ALL RIGHT. WE CAN FINISH UP WITH MR.
10 RUTHERFORD VERY QUICKLY.

11 MR. RUTHERFORD, YOU TOO, HAVE HEARD ALL OF THE
12 QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

13 MR. RUTHERFORD: YES.

14 THE COURT: WERE I TO ASK YOU THE SAME GENERAL QUESTIONS,
15 YOUR ANSWERS WOULD BE THE SAME, WOULD THEY?

16 MR. RUTHERFORD: YES.

17 THE COURT: WHAT DO YOU DO, PLEASE?

18 MR. RUTHERFORD: I AM A TRUCK DRIVER.

19 THE COURT: BY WHOM ARE YOU EMPLOYED?

20 MR. RUTHERFORD: RALPH'S GROCERY COMPANY.

21 THE COURT: AND ARE YOU MARRIED?

22 MR. RUTHERFORD: YES, SIR.

23 THE COURT: AND DOES YOUR WIFE HAVE ANY EMPLOYMENT OUT-
24 SIDE THE HOME?

25 MR. RUTHERFORD: YES, SIR.

26 THE COURT: WHAT DOES SHE DO?

27 MR. RUTHERFORD: SHE IS A TRUCK DRIVER.

28 THE COURT: IS SHE REALLY?

7-3
1 MR. RUTHERFORD: YES, SIR.

2 THE COURT: WITH THE SAME COMPANY?

3 MR. RUTHERFORD: NO, SIR.

4 THE COURT: WHO DOES SHE WORK FOR?

5 MR. RUTHERFORD: JESSIE LORNE, INC. IN TORRANCE.

6 THE COURT: WHERE DO YOU LIVE?

7 MR. RUTHERFORD: IN LAWNDALE.

8 THE COURT: WHAT EDUCATIONAL BACKGROUND DO YOU HAVE?

9 MR. RUTHERFORD: I HAVE A HIGH SCHOOL GED AND THEN I
10 COMPLETED TWO YEARS OF JUNIOR COLLEGE.

11 THE COURT: AND YOUR WIFE?

12 MR. RUTHERFORD: SHE HAS A HIGH SCHOOL DEGREE AND I
13 BELIEVE SHE COMPLETED ONE YEAR OF JUNIOR COLLEGE.

14 THE COURT: H AVE YOU EVER SAT AS A JUROR ON A CRIMINAL
15 CASE BEFORE?

16 MR. RUTHERFORD: NO, SIR.

17 THE COURT: AND HAVE YOU EVER BEEN THE VICTIM OF ANY
18 KIND OF A SERIOUS CRIME?

19 MR. RUTHERFORD: SOMEBODY STOLE CEREAL OUT OF MY PICKUP
20 TRUCK.

21 THE COURT: ALL RIGHT.

22 MR. BARENS: TOMORROW, IF WE COULD, YOUR HONOR.

23 THE COURT: ALL RIGHT, I THINK WE WILL TAKE OUR
24 ADJOURNMENT AT THIS TIME UNTIL 10:30.

25 9:30 FOR THEM BUT 10:30 FOR YOU.

26 WE HAVE MOTIONS, HAVEN'T WE?

27 MR. BARENS: YES. JUST A MOMENT, YOUR HONOR.

28 THE COURT: AT ANY RATE, I WILL ASK THE JURORS/COME BACK
TO

1 TOMORROW MORNING AT 10:30. YOU COME DIRECTLY INTO THE
2 COURTROOM. YOU DON'T HAVE TO GO INTO THE JURY ASSEMBLY ROOM.
3 YOU TAKE THE SEATS THAT YOU NOW OCCUPY AND THE OTHER, THE REST
4 OF YOU CAN SIT WHEREVER YOU LIKE.

5 MR. WAPNER: 10:00?

6 MR. BARENS: JUST A MOMENT, YOUR HONOR.

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 OUT OF THE PRESENCE AND HEARING OF THE
9 JURY:)

10 MR. BARENS: RESPECTFULLY, YOUR HONOR, INSTEAD OF MIS-
11 SPEAKING MYSELF, FOR A CHANGE WE HAVE A MISTYPE. THIS IS ONLY
12 A TEN-MINUTE MOTION MAX AND WE WOULD LIKE IT AT 10:00 OR
13 10:15.

14 THE COURT: 10:00.

15 MR. BARENS: 10:10, YOUR HONOR, IF YOU WOULD. 10:10
16 WOULD BE AGREEABLE.

17 SECONDARILY, I WOULD LIKE TO FORMALLY NOTIFY THE
18 COURT THAT WE ARE WITHDRAWING THE KARNY DISCOVERY MOTION AT
19 THIS POINT IN TIME.

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27A

1 THE COURT: I THINK I HAVE ALREADY TAKEN STEPS TO HAVE
2 THE HEARING IN CAMERA BECAUSE I AM VERY MUCH INTERESTED IF
3 THERE IS ANY EVIDENCE THAT SHOULD BE ADDUCED IN THIS CASE AND
4 BY REASON OF THE FACT THAT YOU HAVE MADE THE MOTION, I THINK
5 I OUGHT TO HEAR WHAT IS GOING ON AND WHETHER THERE IS ANYTHING
6 AT ALL THAT, IF I KNOW ABOUT, WHETHER IT SHOULD BE HEARD IN
7 THIS CASE.

8 MR. BARENS: FOR THE RECORD, YOUR HONOR, THE DEFENSE
9 WOULD REQUEST THAT YOUR HONOR NOT READ ANY OF THAT.

10 THE COURT: WELL, YOU MADE THE MOTION AND I DENIED THE
11 MOTION AND I TOLD YOU I WAS GOING TO HAVE A HEARING IN CAMERA.

12 MR. BARENS: YES, WE DID, YOUR HONOR.

13 CERTAINLY, ALTHOUGH I HAVE MADE THE COMMENT FOR
14 THE RECORD, AS I AM OBLIGED TO DO, IF YOUR HONOR FINDS ANY-
15 THING IN THAT IN WHAT YOU READ THAT WOULD --

16 THE COURT: I WILL TELL YOU.

17 MR. BARENS: WOULD YOU TELL US?

18 THE COURT: ABSOLUTELY.

19 MR. BARENS: NOW, YOUR HONOR, THE CONVERSE OF THAT.

20 THE COURT: I WANT TO BE SURE THAT THERE IS NO EVIDENCE
21 THAT SHOULD BE BROUGHT TO LIGHT THAT ISN'T BROUGHT TO LIGHT.

22 IF THERE IS NOTHING IN WHAT I AM BEING TOLD, IF
23 IT HAS NO BEARING ON THIS CASE, THAT IS THE END OF IT.

24 IF IT HAS ANY, I WILL TELL YOU EXACTLY WHAT IT
25 IS.

26 MR. BARENS: ALL RIGHT. COULD I HAVE JUST ONE MOMENT,
27 YOUR HONOR?

28 (UNREPORTED COLLOQUY BETWEEN MR. BARENS,

1 MR. CHIER AND THE DEFENDANT.)

2 THE COURT: DO YOU AGREE?

3 MR. WAPNER: WELL, I WILL WAIT UNTIL THEY ARE FINISHED
4 CONFERRING, YOUR HONOR.

5 MR. BARENS: FOR THE RECORD, JUST SO I MAKE MY LANGUAGE
6 CLEAR IN RESPONSE TO YOUR HONOR'S DECISION TO READ THE
7 MATERIAL, MY COMMENT IS THAT THE DEFENSE WOULD OBJECT TO YOUR
8 HONOR READING THE MATERIAL.

9 THE COURT: WAIT. DO YOU THINK THERE IS SOMETHING TO
10 HIDE HERE?

11 MR. BARENS: NO, NOT AT ALL, YOUR HONOR.

12 THE COURT: WHY ALL OF A SUDDEN? YOU MAKE A MOTION
13 SERIOUSLY AND IN GOOD FAITH AND I HAVE CONSIDERED THAT
14 MOTION, THE OPPOSITION TO THAT MOTION, AND I HAVE MADE A RULING
15 ON THE CASE AND SUDDENLY YOU DECIDE TO WITHDRAW IT, WHY IS
16 THAT?

17 MR. BARENS: WELL, YOUR HONOR, I HAVE WITHDRAWN IT.

18 I CAN ASSURE YOUR HONOR THAT I WITHDRAW IT IN
19 EQUAL GOOD FAITH TO WHY IT WAS FILED TO BEGIN WITH.

20 I CAN ONLY ASSURE YOUR HONOR THAT TACTICALLY IT
21 IS A VERY APPROPRIATE DECISION, WE BELIEVE, FOR THE DEFENSE
22 TO HAVE MADE AT THIS POINT IN TIME.

23 MR. WAPNER: YOUR HONOR, I AM PERFECTLY HAPPY TO HAVE
24 THE MOTION WITHDRAWN.

25 AS THE COURT KNOWS, I WAS OPPOSED TO THE MOTION
26 IN THE FIRST INSTANCE.

27 BUT I THINK THAT THE COURT IS PUTTING EVERYBODY
28 IN AN AWKWARD POSITION IF YOU ARE SAYING THAT, NOTWITHSTANDING

1 THE FACT YOU DON'T HAVE A MOTION BEFORE YOU, YOU ARE GOING
2 TO REVIEW THESE MATERIALS.

3 THE COURT: THE MOTION IS BEFORE ME AND I MADE A RULING
4 ON IT.

5 MR. WAPNER: WELL --

6 THE COURT: IT IS A FAIT ACCOMPLI.

7 MR. WAPNER: IT MAY BE A FAIT ACCOMPLI BUT --

8 THE COURT: I HAVE ALREADY PLACED IN MOTION THE
9 PROCEDURE BY WHICH I WILL HEAR IT IN CAMERA.

10 MR. BARENS: ONE MOMENT, YOUR HONOR.

11 THE COURT: DON'T YOU WANT ME TO HEAR IT? DON'T YOU
12 WANT TO FIND OUT IF THERE IS ANYTHING ONE WAY OR THE OTHER,
13 IF THERE BE EVIDENCE IN THIS CASE, AREN'T YOU ANXIOUS FOR IT?

14 MS. WAPNER: YOUR HONOR, I DNO'T THINK THAT THAT CASE
15 HAS ANY BEARING ON THE ISSUES WE ARE GOING TO LITIGATE HERE
16 AND I THINK YOUR HONOR --

17 THE COURT: YOU MEAN THIS CASE, YOU MEAN A POSSIBILITY
18 OF IMPEACHMENT EVIDENCE AGAINST YOUR PRINCIPAL WITNESS IS NOT
19 RELEVANT IN THIS CASE?

20 MR. WAPNER: WELL, AS THE COURT IS WELL AWARE FROM THE
21 STATEMENT RECEIVED FROM THE POLICE DEPARTMENT, THE POLICE
22 DEPARTMENT HAS MADE A CATEGORICAL STATEMENT THAT MR. KARNY
23 IS NOT A SUSPECT IN THAT CASE.

24 THE COURT: WELL, IF I HAVE THE CONCESSION IN THIS
25 PARTICULAR CASE, THEN I DON'T THINK THERE WOULD BE ANYTHING
26 FURTHER FOR ME TO DO.

27 MR. WAPNER: WELL, I DON'T KNOW WHETHER THERE IS A
28 CONCESSION OR NOT BECAUSE I CAN'T SPEAK --

1 THE COURT: DO YOU KNOW WHAT EVIDENCE THERE IS?

2 MR. WAPNER: I DON'T KNOW WHAT EVIDENCE THERE IS, YOUR
3 HONOR, BUT I HAVE TALKED -- I HAVE HAD ONE DISCUSSION WITH
4 THE DETECTIVES IN THAT CASE SO I KNOW SOMEWHAT ABOUT THE
5 FACTS OF THE CASE. BUT THE POLICE DEPARTMENT HAS SUBMITTED
6 TO THE COURT THE DECLARATION, I BELIEVE, UNDER PENALTY OF
7 PERJURY BY DETECTIVE DIAZ THAT MR. KARNY IS NOT A SUSPECT.
8 AS FAR AS I AM CONCERNED, THAT SHOULD END THE INQUIRY.

9 IF THE COURT SAYS IT IS GOING TO REVIEW THESE
10 DOCUMENTS ANYWAY --

11 THE COURT: IF HE IS GOING TO WITHDRAW THE MOTION, HE
12 CAN MAKE IT ANOTHER TIME, TOO, CAN'T HE?

13 DON'T YOU WANT TO HAVE IT DEFINITELY DECIDED
14 ONCE AND FOR ALL WHETHER THERE IS ANY BASIS FOR ANY CLAIM THAT
15 HE HAD PERPETRATED OR HE IS A SUSPECT IN THE PERPETRATION OF
16 A MURDER?

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28-A
1 MR. WAPNER: I AM CONVINCED THAT HE IS NOT A SUSPECT
2 IN THE MURDER, YOUR HONOR. YOUR HONOR, BUT LET'S SAY THAT
3 THE COURT REVIEWS THE DOCUMENTS IN CAMERA. AND YOU DECIDE
4 THAT THERE IS SOMETHING THAT SHOULD BE DISCLOSED. HOW DO
5 I HAVE AN OPPORTUNITY TO THEN ARGUE TO THE COURT THAT YOU
6 SHOULDN'T DISCLOSE IT?

7 THE COURT: WELL, I WILL GIVE YOU AN OPPORTUNITY. YOU
8 HAVE TO KNOW WHAT IT IS FIRST, BEFORE YOU TELL ME NOT TO
9 DISCLOSE IT.

10 MR. WAPNER: WELL, THE POINT IS, THAT THERE IS NOTHING
11 BEFORE THE COURT. THERE IS NO VEHICLE BEFORE THE COURT.

12 THE COURT: WELL, DO I UNDERSTAND THAT YOU ARE NOT
13 INTERESTED IN FINDING OUT WHETHER OR NOT THERE IS OR ISN'T
14 A BASIS FOR ANY CLAIM THAT HE, KARNY, HAD PERPETRATED A
15 MURDER?

16 MR. WAPNER: WELL, YOUR HONOR --

17 THE COURT: THEY HAVE GOT EVIDENCE AND THEY ARE
18 SUPPOSED TO DISCLOSE IT TO ME. THAT IS WHAT THEY ARE SUPPOSED
19 TO DO. ALL I GOT IS A DENIAL. THAT IS NOT EVIDENCE.

20 THEY SAY THAT HE IS NOT A SUSPECT. THAT DOESN'T
21 MEAN ANYTHING.

22 MR. WAPNER: BUT, THERE IS NO VEHICLE PRESENTLY BEFORE
23 THE COURT, SINCE THE MOTION IS WITHDRAWN.

24 THE COURT: ARE YOU GOING TO ASSURE ME THAT NO SUCH
25 MOTION WILL BE MADE AGAIN?

26 MR. BARENS: DO I HAVE TO, YOUR HONOR?

27 THE COURT: YES YOU DO. BECAUSE IF THIS MOTION IS GOING
28 TO BE MADE AGAIN, THERE IS NO SENSE IN MY GOING THROUGH THE

28-2
1 WHOLE PROCEDURE AGAIN.

2 MR. BARENS: WELL YOUR HONOR, UNDER THE NEXUS IN WHICH
3 WE WOULD OPERATE NOW, THERE ARE SOME EXTREMELY SIGNIFICANT
4 MOTIONS THAT ARE GOING TO BE BEFORE YOUR HONOR NEXT WEEK
5 CONCERNING THE CONDUCT OF THE SAME POLICE OFFICERS THAT WERE
6 INVOLVED IN THE SEIZURE AND SEARCH AT THE ROBERTS' RESIDENCE
7 LAST THURSDAY, THE SAME DETECTIVE YOUR HONOR --

8 THE COURT: IT IS AN ALTOGETHER DIFFERENT MOTION BEFORE
9 ME THAN THAT WHICH I DECIDED. THAT MOTION WAS TO HAVE THE
10 POLICE DISCLOSE TO YOU THE INVESTIGATION THAT THEY HAD
11 CONDUCTED IN CONNECTION WITH AN ALLEGED MURDER WHICH HAD BEEN
12 COMMITTED BY ONE OF THE PRINCIPAL WITNESSES FOR THE PEOPLE.

13 THAT HAS NOTHING TO DO WITH THE SEIZURE OF
14 PROPERTY.

15 MR. BARENS: ONE MOMENT, YOUR HONOR.

16 (PAUSE.)

17 MR. BARENS: YOUR HONOR, I PERSONALLY HAVE FAITH IN
18 YOU, JUDGE. I HAVE FAITH IN HIS HONOR'S JUDGMENT.

19 YOUR HONOR, ALTHOUGH I MADE MY COMMENTS FOR THE
20 RECORD AND AT THE RISK OF BEING INCONSISTENT -- BUT AS YOU
21 KNOW, THERE IS NO REASON IN THE WORLD THAT I HAVE TO BE
22 CONSISTENT TO BEGIN WITH. ALTHOUGH I OBJECTED FOR THE RECORD,
23 I ACCEPT YOUR HONOR'S DECISION.

24 THE COURT: WELL, THANK YOU VERY MUCH. BUT THE POINT
25 OF THE MATTER IS, THAT YOU HAVE CALLED SOMETHING TO MY
26 ATTENTION ABOUT THIS PARTICULAR CASE ABOUT A WITNESS IN THIS
27 CASE, WHICH IS A VERY SERIOUS MATTER THAT HAS BEEN BROUGHT
28 TO ME.

28-7
1 MR. BARENS: THE PEOPLE CALLED IT TO YOUR HONOR'S
2 ATTENTION?

3 THE COURT: AM I THE REFEREE OR THE JUDGE? AM I SUPPOSED
4 TO JUDGE THE MERITS OF THE CASE?

5 MR. BARENS: WELL, OF COURSE YOU ARE NOT A REFEREE.
6 I DID NOT BRING THIS TO YOUR ATTENTION. MR. WAPNER DID, IN
7 THE FIRST INSTANCE, AS YOU WILL RECALL.

8 THE COURT: WELL, HE WAS UNDER AN OBLIGATION TO DO SO.

9 MR. BARENS: QUITE SO.

10 THE COURT: BECAUSE IT WAS HIS DUTY, ONCE A MATTER OF
11 THAT KIND HAS BEEN BROUGHT UP, TO DISCLOSE IT TO YOU.

12 AFTER HE DISCLOSED IT TO YOU, YOU THEN MADE A
13 MOTION AND YOU WANTED TO KNOW WHAT IS THE EVIDENCE THAT THEY
14 HAVE AND ET CETERA, ET CETERA. I GRANTED THAT MOTION TO THE
15 EXTENT THAT I WOULD HAVE AN IN CAMERA HEARING TO DETERMINE
16 WHETHER THERE WAS ANYTHING AT ALL WHICH WOULD HAVE ANY
17 RELEVANCY TO THIS CASE, FOR OR AGAINST THE DEFENDANT.

18 MR. BARENS: JUST SO THE RECORD IS CLEAR, SO IT CLEARLY
19 REFLECTS PROCEDURALLY WHAT THE DEFENSE IS EXPRESSING, THE
20 DEFENSE FORMALLY HAS WITHDRAWN THE MOTION AND OBJECTS TO YOUR
21 HONOR READING THE MATERIALS BUT ACCEPTS YOUR HONOR'S DECISION.

22 THE COURT: WELL, I UNDERSTAND THAT YOU ARE
23 ABANDONING THAT PARTICULAR PHASE OF THE CASE AND THAT YOU
24 DON'T WANT TO KNOW ANYTHING AT ALL ABOUT WHAT HAPPENED.

25 MR. BARENS: I DIDN'T SAY THAT, YOUR HONOR. I SAID
26 THAT I WAS WITHDRAWING THE MOTION IN THIS FORUM.

27 THE COURT: IS THERE SOME OTHER FORUM THAT YOU ARE GOING
28 TO GO TO?

28-4
1 MR. BARENS: THERE IS ANOTHER CASE, AS YOUR HONOR KNOWS,
2 WHERE THINGS ARE GOING ON.

3 THE COURT: WELL, THAT HAS NOTHING TO DO WITH THIS ONE,
4 DOWN HERE.

5 MR. BARENS: WELL, INEXTRICABLY, YOUR HONOR, THESE
6 THINGS TEND TO OVERLAP.

7 THE COURT: ALL RIGHT. IF YOU DON'T WANT ME TO HAVE
8 ANY KIND OF A HEARING AND THE DISTRICT ATTORNEY SAYS THAT
9 I SHOULDN'T CONDUCT THIS HEARING, THEN IT WILL ACCOMPLISH
10 NO PURPOSE. I AM PERFECTLY WILLING TO ABIDE BY THAT.

11 I AM AFRAID THAT THE DISTRICT ATTORNEY THINKS
12 THAT THERE MIGHT BE SOME ERROR IF I WERE TO HOLD IT AND HE
13 IS ERRING ON THE SIDE OF CAUTION.

14 MR. WAPNER: YES, YOUR HONOR. THANK YOU.

15 THE COURT: IS THAT RIGHT? I HAVE READ YOUR MIND,
16 HAVE I NOT?

17 MR. WAPNER: YES.

18 MR. BARENS: YOUR HONOR, THE DEFENSE COMMENT IS IN THE
19 SAME DIRECTION.

20 THE COURT: ALL RIGHT. VERY GOOD. THEN I WON'T HEAR
21 ANYTHING FURTHER ABOUT THAT THAT MATTER. I HAVE CHANGED MY
22 MIND.

23 MR. BARENS: THANK YOU.

24 MR. WAPNER: THANK YOU.

25 THE COURT: THAT IS NOT TO SAY THAT I AM NOT CURIOUS
26 TO FIND OUT IF THIS THING MERITS IT.

27 (AT 4:37 P.M. AN ADJOURNMENT WAS TAKEN
28 UNTIL THURSDAY, JANUARY 15, 1987, AT
10:10 A.M.)