

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

88DA0269

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  
ROOM 800  
LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 35 OF 101  
(PAGES 5287 TO 5476, 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

THURSDAY, JANUARY 15, 1987

VOLUME 35

PAGES 5287 TO 5476 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

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



1 SANTA MONICA, CALIFORNIA; THURSDAY, JANUARY 15, 1987; 10:20 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

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

7 ALL RIGHT, YOU HAVE A MOTION?

8 MR. BARENS: YES, WE DO. GOOD MORNING, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. BARENS: YOUR HONOR, I BELIEVE, HAS HAD AN  
11 OPPORTUNITY TO READ AND CONSIDER THE DEFENSE MOTION FOR AN  
12 ORDER CONTINUING THE TRIAL, ALONG WITH OUR DECLARATION AND  
13 POINTS AND AUTHORITIES IN SUPPORT THEREOF.

14 YOUR HONOR IS AT LEAST SOMEWHAT AWARE THAT LAST  
15 THURSDAY THERE WAS A SEARCH AND SEIZURE PURSUANT TO A SEARCH  
16 WARRANT ISSUED BY A JUDGE IN ANOTHER COURT WHEREUPON MANY  
17 DEFENSE EXHIBITS WERE REVIEWED AND SEIZED AND REMOVED BY POLICE  
18 OFFICERS FROM SAN MATEO, THE ATTORNEY GENERAL'S OFFICE, THE  
19 SPECIAL INVESTIGATOR, THE HOLLYWOOD POLICE DEPARTMENT AND THE  
20 BEVERLY HILLS POLICE DEPARTMENT.

21 THE PURPOSE AS SET OUT IN THIS MOTION, IN ORDER  
22 TO RECOVER THOSE DOCUMENTS, THE DEFENSE NEEDS TO PROCEED TO  
23 SAN MATEO WITH AN ORDER FOR RETURN, TO SEEK AN ORDER FOR  
24 RETURN OF THE DOCUMENTS AND SUCH OTHER APPROPRIATE REMEDIES  
25 AS MAY BE APPROPRIATE UP THERE.

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1                   ADDITIONALLY, WE NEED TO ASSESS -- THE DEFENSE  
2                   NEEDS TO ASSESS. WE NEED A PERIOD OF TIME NOW TO ASSESS THE  
3                   IMPACT THIS WILL HAVE ON THE DEFENSE FROM THE INTERCEPTION  
4                   AND REVIEW OF ALL OF THE DEFENSE MATERIALS THAT HAVE NOW BEEN  
5                   EXPOSED TO THE PROSECUTION'S REPRESENTATIVES.

6                   WE ALSO NEED AN OPPORTUNITY TO RECONSTRUCT MANY  
7                   OF THE EXHIBITS IN QUESTION. WE HAVE, AS YOUR HONOR IS AWARE,  
8                   ANOTHER MOTION WHICH WE HAVE FILED THIS MORNING, SEEKING  
9                   REDRESS AND SANCTIONS FOR THIS CONDUCT WHICH WILL BE HEARD  
10                  BY YOUR HONOR ON TUESDAY, PURSUANT TO THE NOTICE.

11                  YOUR HONOR, WE DID NOT BRING THIS CATASTROPHE  
12                  UPON THE DEFENDANT. WE ARE THE VICTIM OF THIS CATASTROPHE.  
13                  WE NEED AN OPPORTUNITY TO PROPERLY RESPOND TO THIS.

14                  THIS HAS REQUIRED A TREMENDOUS AMOUNT OF ADDITIONAL  
15                  WORK ON THE PART OF DEFENSE COUNSEL. IT IS DISTRACTING US  
16                  FROM THE IMMEDIATE JOB AT HAND OF PREPARING OPENING STATEMENTS  
17                  FOR THIS COURT AND COMPLETING OUR JURY VOIR DIRE, OF COURSE.

18                  THIS HAS BEEN AN UNBELIEVABLE SIDETRACK AND  
19                  DISTRACTION FOR THE DEFENSE.

20                  WE OBVIOUSLY, NOR DID MR. WAPNER, HAVE ANY IDEA  
21                  WE WOULD EVER HAVE TO DEAL WITH THIS TYPE OF AN ENCROACHMENT  
22                  ON THE PREPARATION OF THE DEFENSE.

23                  YOUR HONOR, WE SIMPLY HAVE NO ALTERNATIVE BUT TO  
24                  SEEK THE RELIEF REQUESTED OF YOUR HONOR THIS MORNING, IN ORDER  
25                  TO PRESERVE MR. HUNT'S RIGHT TO A FAIR TRIAL AND GIVE US AN  
26                  OPPORTUNITY TO PROPERLY PRESENT OUR EVIDENCE AT A TRIAL.

27                  MR. WAPNER: FIRST OF ALL, LET ME PREFACE WHAT I AM  
28                  GOING TO SAY BY THE STATEMENT THAT NOTHING THAT I SAY IS IN

1 ANY WAY, CONCEDING THE ISSUE THAT ITEMS THAT WERE TAKEN,  
2 ARE SOMEHOW PERTINENT TO THE DEFENSE OR WERE PRIVILEGED  
3 BECAUSE I DON'T KNOW THAT.

4 I DON'T INTEND TO INFER OR CONCEDE THAT BY WHAT  
5 I AM GOING TO SAY. I DO THINK HOWEVER, THAT THE SPECTRE  
6 OF SOME KIND OF A VIOLATION AT LEAST OF THE SIXTH AMENDMENT,  
7 HAS BEEN RAISED BY COUNSEL AND SHOULD BE RESOLVED BEFORE WE  
8 PROCEED.

9 I HAVE DISCUSSED IT WITH MY IMMEDIATE SUPERVISOR  
10 AND ALSO THE DIRECTOR OF BRANCH AND AREA OPERATIONS AND WE  
11 ARE IN AGREEMENT THAT IF THE DEFENSE SEEKS TIME TO LITIGATE  
12 THIS ISSUE, IT SHOULD BE RESOLVED BEFORE WE PROCEED WITH THE  
13 TRIAL.

14 I THINK I SUGGESTED IN MY REMARKS TO THE COURT,  
15 WHEN WE WERE KIND OF SPINNING OUR WHEELS LAST WEEK ABOUT THIS,  
16 THAT THIS ISSUE OF WHAT WAS TAKEN AND WHETHER IT WAS PROPERLY  
17 SEIZED SHOULD PROBABLY BE RESOLVED BY AN INDEPENDENT THIRD  
18 PARTY SUCH AS A SPECIAL MASTER OR SOMEONE AKIN TO A SPECIAL  
19 MASTER IN COURT IN SAN MATEO COUNTY WHERE THE MATERIALS ARE  
20 PRESENTLY.

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1 I HAVE TALKED TO THE ATTORNEY GENERAL THIS MORNING  
2 AND ASKED HIM HOW LONG HE THINKS IT WOULD TAKE TO RESOLVE  
3 THIS AND, OF COURSE, HE DOESN'T REALLY KNOW BECAUSE HE HASN'T  
4 BEEN SERVED WITH THE MOTION. BUT HE ASSURED ME THEY WOULD  
5 GIVE ME THEIR BEST COOPERATION IN TRYING TO RESOLVE THIS AS  
6 QUICKLY AS POSSIBLE.

7 THE COURT: WELL, WHY HASN'T THERE BEEN ANYTHING DONE  
8 UP TO THIS PARTICULAR TIME?

9 YOU KNEW ALL ABOUT THIS A LONG TIME AGO, AT LEAST  
10 A WEEK AND A HALF AGO, AND NOTHING HAS BEEN DONE.

11 MR. BARENS: YOUR HONOR ADDRESSES ME IN THIS INSTANCE  
12 AS IF THIS WAS MY PROBLEM AND THAT I SHOULD SOMEHOW BE HELD  
13 TO TASK.

14 THE COURT: YES, YOU ARE SEEKING THE RETURN OF PAPERS  
15 WHICH YOU SAY BELONG TO YOU SO YOU CAN PROPERLY PREPARE. IF  
16 YOU WERE PREPARED TO PROPERLY PROCEED WITH THIS CASE, YOU  
17 SHOULD HAVE DONE SOMETHING TO PROPERLY IMPLEMENT THAT.

18 MR. BARENS: LET ME RESPOND, YOUR HONOR. WE HAVE FILED  
19 A MOTION THIS MORNING FOR A CONTINUANCE TO GIVE US AN  
20 OPPORTUNITY TO DO THIS.

21 WE HAVE FILED A SECOND MOTION.

22 THE COURT: THIS HAS NOTHING TO DO WITH WHAT YOU COULD  
23 HAVE DONE UP THERE IN ORDER TO GET THOSE PAPERS BACK.

24 MR. BARENS: YOUR HONOR, I HAVE NOT WAIVED ANYTHING.  
25 I HAVE PROCEEDED EXPEDITIOUSLY HERE. I HAVE BEEN ENGAGED  
26 IN THIS COURTROOM EVERY DAY THIS WEEK.

27 THE COURT: YOU HAD YOUR ASSOCIATE THERE AND HE COULD  
28 HAVE PURSUED THAT. HE ISN'T NEEDED HERE WHILE WE SELECTED

3-2  
1 A JURY.

2 MR. BARENS: YOUR HONOR, I RESPECTFULLY DISAGREE WITH  
3 YOUR HONOR'S OPINION.

4 THE COURT: WELL, THEN I AM TELLING YOU WHAT MY OPINION  
5 IS AND AS I THINK THE COURSE THAT SHOULD HAVE BEEN FOLLOWED.  
6 NONETHELESS, I AM NOT GOING TO MAKE ANY ORDER IN A VACUUM.

7 I WANT TO KNOW WHAT SPECIFICALLY HAS BEEN TAKEN,  
8 HOW THAT WOULD IN ANY WAY RELATE TO YOUR PREPARATION.

9 WILL YOU TELL THAT MAN TO STOP INTERRUPTING ME  
10 WITH ANY GESTURES?

11 MR. CHIER: I AM CO-COUNSEL. I WILL TALK TO MY  
12 ASSOCIATE HERE.

13 THE COURT: YOU SIT DOWN WHEN I AM TALKING. YOU CAN  
14 TALK TO HIM AFTERWARDS.

15 MR. BARENS: I WILL CONFER AFTER YOUR HONOR FINISHES  
16 YOUR REMARKS, IF YOU WOULD, YOUR HONOR.

17 THE COURT: TAKE IT UP TO THE COURT OF APPEAL.

18 MR. CHIER: I WILL, YOUR HONOR.

19 MR. BARENS: IF YOU WOULD CONCLUDE YOUR REMARKS.

20 THE COURT: GO AHEAD.

21 I DON'T RECOGNIZE HIM AS BEING IN THE CASE. HE  
22 IS NOT CO-COUNSEL SO FAR AS I AM CONCERNED.

23 MR. BARENS: IF YOUR HONOR WOULD CONCLUDE HIS REMARKS.

24 THE COURT: YES. I WANT TO KNOW SPECIFICALLY WHAT IT  
25 IS THAT HAS BEEN TAKEN, THAT YOU SAY HAS BEEN TAKEN THAT YOU  
26 NEED IN ORDER TO PROCEED WITH THIS CASE AND I DON'T KNOW.  
27 I CAN'T KNOW THAT UNTIL I FIND OUT WHAT HAS BEEN SEIZED.

28 MR. BARENS: NOW YOUR HONOR IF I COULD HAVE JUST ONE



1       MOMENT, PLEASE.

2                    (CUNREPORTED COLLOQUY BETWEEN MR. BARENS  
3                    AND MR. CHIER.)

4       MR. BARENS:  YOU SEE, YOUR HONOR PLACES ME IN AN  
5       AWKWARD POSITION, WHICH IS FURTHER THE SUBJECT OF A MOTION  
6       FOR TUESDAY.

7                    YOUR HONOR ASKED ME TO DESCRIBE DOCUMENTS WHICH  
8       WOULD NECESSARILY CAUSE ME TO ADVISE YOUR HONOR AS TO THE  
9       SPECIFIC NATURE OF OUR DEFENSE.

10       THE COURT:  NO, I AM NOT ASKING YOU THAT AT ALL.

11                    I AM ASKING FIRST TO FIND OUT WHAT HAS BEEN  
12       SEIZED.

13       MR. BARENS:  I WILL TELL YOUR HONOR.

14       THE COURT:  THE DOCUMENTS THAT HAVE BEEN SEIZED --

15       MR. BARENS:  I WILL TELL YOUR HONOR --

16       THE COURT:  -- YOU DESCRIBED TO ME IN GENERAL TERMS  
17       SOMETHING THAT YOU HAVE, RECORDS AND WHATEVER IT MIGHT HAVE  
18       BEEN BUT THAT DOESN'T TELL ME WHAT THEY HAVE GOT UP THERE.

19       MR. BARENS:  YOUR HONOR, THE SEIZED MATERIALS INCLUDED  
20       80 DEFENSE EXHIBITS WHICH CONSISTED OF SPECIFIC DOCUMENTATION  
21       THAT WOULD GO TO IMPEACH PROSECUTION WITNESSES THAT WOULD  
22       GO TO ENABLING COUNSEL TO EFFECTIVELY CROSS-EXAMINE  
23       PROSECUTION WITNESSES.

24       THE COURT:  DO YOU KNOW THAT?

25       MR. WAPNER:  I DON'T KNOW WHAT WAS TAKEN, YOUR HONOR,  
26       AND I HAVE ATTEMPTED --

27       THE COURT:  THAT IS EXACTLY MY POINT.  I WANT TO FIND  
28       OUT WHAT HAS BEEN TAKEN.

1 MR. WAPNER: YOUR HONOR, I CONCUR, BUT I THINK THE  
2 ONLY WAY WE CAN DO THAT, WITHOUT VIOLATING ANYBODY'S RIGHTS  
3 OR POISONING THE CASE ANY FURTHER THAN IT MAY HAVE BEEN  
4 ALREADY, IS TO FOLLOW THIS PROCEDURE WHERE SOME INDEPENDENT  
5 PERSON, SUCH AS A SPECIAL MASTER CAN EXAMINE THE RECORDS,  
6 BECAUSE AS I TOLD THE COURT LAST WEEK, IT IS ENTIRELY  
7 POSSIBLE THAT ITEMS THAT WERE TAKEN WERE BOTH NECESSARY FOR  
8 THE PREPARATION OF THE DEFENSE IN THIS CASE AND PROPERLY  
9 SEIZABLE UNDER THAT WARRANT, WHICH DOESN'T MEAN THAT  
10 MR. BARENS ISN'T ENTITLED TO HAVE THEM BACK AND IT DOESN'T  
11 MEAN THAT THE PROSECUTION AGENCY IN SAN MATEO COUNTY ISN'T  
12 ENTITLED TO THEM EITHER. BUT THAT HAS TO BE DETERMINED.

13 THE COURT: IF WHAT YOU SAY IS CORRECT, THEN THEY WOULD  
14 HAVE TO BE RETURNED SO HE COULD PROCEED WITH THE TRIAL OF  
15 THIS CASE.

16 NOW, IF THEY HAVE THE RIGHT TO SEIZE THAT, THEN  
17 WE ARE AT AN IMPASSE, AREN'T WE? IF THEY HAVE A RIGHT TO  
18 RETAIN IT AND KEEP IT, THEN WE ARE AT AN IMPASSE, WE CAN'T  
19 PROCEED WITH THE TRIAL OF THIS CASE ACCORDING TO YOU.

20 MR. WAPNER: I DIDN'T MEAN TO INFER THAT AT ALL.

21 THE COURT: WELL, WHAT ARE YOU INFERRING?

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1 MR. WAPNER: IF THEY HAVE THE DOCUMENTS, THEN THEY MAY  
2 BE ENTITLED TO EITHER KEEP THE ORIGINALS AND PROVIDE COUNSEL  
3 WITH COPIES OR WE CAN -- I DON'T KNOW. WE ARE TALKING, LIKE  
4 THE COURT SAID, IN A VACUUM.

5 THE COURT: THAT IS EXACTLY WHAT I AM TALKING ABOUT.  
6 I WANT TO FIND OUT WHAT THE RECORDS ARE. CAN'T YOU GO UP  
7 THERE? CAN'T YOU AND HE GO UP THERE AND ARRANGE WITH THE  
8 ATTORNEY GENERAL, WHOEVER IT IS, TO OPEN THESE FILES, WITHOUT  
9 YOUR HAVING TO READ THEM, SO THAT NOTHING WILL BE DISCLOSED  
10 WHICH WOULD BE CONFIDENTIAL, TO FIND OUT WHETHER OR NOT THESE  
11 DOCUMENTS ARE THERE AND ARE NECESSARY FOR THIS CASE?

12 MR. BARENS: YOUR HONOR, THE DEFENSE IS SPECIFICALLY  
13 ASKING LEAVE THROUGH THIS CONTINUANCE, TO GO UP THERE AND FILE  
14 THE APPROPRIATE MOTION FOR THE RETURN OF THE DOCUMENTS.

15 I AM NOT GOING TO GO UP THERE AND SIMPLY SAY THAT  
16 I WANT TO LOOK AT WHAT THEY HAVE GOT. I WANT THEM BACK.

17 I CAN'T PRESENT THEM IN THIS COURTROOM IF I DON'T  
18 HAVE THEM.

19 THE COURT: WELL, NO COURT COULD DECIDE WHETHER OR NOT  
20 THESE ARE DOCUMENTS WHICH ARE NECESSARY IN COURT UNLESS YOU  
21 HAVE A SPECIAL MASTER. WON'T YOU DO THAT?

22 MR. BARENS: I AM TELLING YOUR HONOR THAT THE 80 DEFENSE  
23 EXHIBITS THAT THEY HAVE, I HAVE SPENT OVER TWO YEARS PREPARING  
24 FOR THIS TRIAL. YOUR HONOR, THEY HAVE DEFENSE EXHIBITS UP  
25 THERE. I WANT MY EXHIBITS BACK. I CAN'T GET THEM BACK FROM  
26 YOUR HONOR. I MUST GET THEM BACK FROM THE JUDGE THAT ISSUED  
27 THE WARRANT.

28 THE COURT: WHAT ARE YOU GOING TO DO ABOUT IT?

1 MR. WAPNER: WELL FIRST OF ALL, I DIDN'T ISSUE THE  
2 SEARCH WARRANT. SO THE LITIGATION IS INVOLVED WITH THE ATTORNEY  
3 GENERAL'S OFFICE AND I AM COMMUNICATING WITH THEM. I HAVE  
4 TOLD THEM NOT TO EXAMINE OR COPY OR DISTRIBUTE THE MATERIALS.  
5 THEY HAVE THEM IN A BOX THAT IS SEALED.

6 SO THAT IS THE FIRST THING I HAVE DONE, IS TO  
7 PREVENT THESE MATERIALS FROM BEING DISSEMINATED OR DISCLOSED.

8 I HAVE NOT LOOKED AT ANY OF THEM. I DON'T INTEND  
9 TO UNLESS AND UNTIL IT TURNS OUT THAT THEY WERE NOT PRIVILEGED  
10 OR --

11 THE COURT: THE ATTORNEY GENERAL KNOWS WHAT THE CONTENTS  
12 OF THOSE RECORDS ARE, DOES HE NOT?

13 MR. WAPNER: CERTAINLY THE SPECIAL AGENT WHO WAS INVOLVED  
14 IN THE SEIZURE OF MATERIALS KNOWS.

15 THE COURT: CAN'T THEY THEN WITH COUNSEL, GO UP AND  
16 EXAMINE ALL OF THE RECORDS AND RETURN THOSE RECORDS TO MR.  
17 BARENS WHICH HE REQUIRES IN ORDER TO PROCEED WITH THIS CASE?

18 MR. WAPNER: YOUR HONOR, I --

19 THE COURT: IT WOULD BE A MISCARRIAGE OF JUSTICE IF THAT  
20 ISN'T DONE, IF THESE RECORDS ARE PERTINENT TO THIS CASE AND  
21 IT IS NECESSARY FOR HIM TO HAVE THEM.

22 MR. WAPNER: WHAT I AM SUGGESTING IS NOT THAT HE IS NOT  
23 OR MAY NOT BE ENTITLED TO HAVE THEM BACK, SINCE I DON'T KNOW  
24 WHAT THEY ARE. BUT IT COULD BE THE SITUATION WHERE THEY  
25 ARE BOTH PROPERLY SEIZABLE UNDER THE WARRANT AND THAT MR.  
26 BARENS IS ENTITLED TO HAVE NOT NECESSARILY THE ORIGINALS --  
27 HE MAY NOT BE NECESSARILY ENTITLED TO HAVE THE ORIGINALS BACK.

28 THE COURT: WELL, WHEN IS THAT GOING TO BE DETERMINED?

1 MR. WAPNER: HOPEFULLY, AS SOON AS POSSIBLE. I CONCUR  
2 WITH YOUR HONOR THAT A MOTION PERHAPS COULD HAVE BEEN FILED  
3 ALREADY IN NORTHERN CALIFORNIA. BUT I AM NOT SUGGESTING THERE  
4 WAS ANY DILATORY TACTICS.

5 THE COURT: CAN'T YOU GO UP THERE OVER THE WEEKEND,  
6 FRIDAY AND SATURDAY AND SUNDAY WITH MR. BARENS AND SEE WHAT  
7 IS IN THERE?

8 YOU ARE NOT GOING TO EXAMINE THE RECORDS BUT LET  
9 THE ATTORNEY GENERAL, WHOEVER COUNSEL IS THAT IS PROSECUTING  
10 THE CASE, GO THROUGH THEM WITH MR. BARENS AND DETERMINE WHICH  
11 SHOULD BE RETURNED TO HIM AND WHICH SHOULD NOT OR IF NOTHING  
12 IS GOING TO BE RETURNED, AT LEAST GIVE HIM COPIES.

13 MR. BARENS: BEGGING YOUR HONOR'S PARDON, MR. WAPNER  
14 IS NOT SUPPOSED TO SEE THE MATERIALS.

15 THE COURT: HE IS NOT GOING TO SEE THEM. I SAID THE  
16 ATTORNEY GENERAL THERE AND YOU WILL GO THROUGH THE RECORDS.

17 MR. BARENS: BUT THE ATTORNEY GENERAL AND I ARE GOING  
18 TO DISAGREE ON WHAT IS APPROPRIATE FOR THE DEFENSE IN THIS  
19 CASE.

20 THE COURT: WELL, WHY DON'T YOU PREPARE AN ORDER SO WE  
21 CAN HAVE A THIRD PARTY, THE SO-CALLED SPECIAL MASTER THAT YOU  
22 REFERRED TO?

23 MR. BARENS: THE DIRECT APPROACH IS FOR ME TO FILE A  
24 MOTION WITH THE JUDGE THAT ISSUED THE WARRANT, FOR THE RETURN  
25 OF THE DOCUMENTS PER SE.

26 THE COURT: WHY HAS THAT NOT BEEN DONE?

27 MR. BARENS: WELL, I HAVE BEEN ENGAGED IN THIS COURTROOM.

28 THE COURT: YOU HAVE HAD HIM HERE.

1 MR. BARENS: MR. CHIER HAS BEEN ENGAGED WITH ME IN THE  
2 PREPARATION OF THIS MATTER.

3 THE COURT: I WOULD SUGGEST IT BE DONE IMMEDIATELY.  
4 WHAT WE WILL DO IS PICK THE JURY. I WILL CONTINUE THE  
5 CASE AND GIVE YOU AN OPPORTUNITY TO DO THAT.

6 MR. BARENS: ALL RIGHT. THEN AS I UNDERSTAND IT, WHAT  
7 WE ARE GOING TO DO HERE YOUR HONOR, BECAUSE I WANT TO BE  
8 SPECIFIC BECAUSE I WILL CONCEDE YOUR HONOR, THIS IS ALL A  
9 MATTER OF FIRST IMPRESSION TO ME.

10 I HAVE NEVER HAD THIS OCCUR IN 18 YEARS OF BEING  
11 IN PRACTICE. IT IS A BIT AWKWARD, YOUR HONOR.

12 YOUR HONOR IS SAYING THAT WE'LL FINISH WITH THE  
13 SELECTION OF THE ALTERNATES AT THIS POINT. AT THIS PARTICULAR  
14 POINT YOUR HONOR IS SAYING YOU WILL THEN RULE ON THE DEFENSE  
15 MOTION BROUGHT THIS MORNING?

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1 THE COURT: NO. WHAT I WILL SAY THEN, IF THE DISTRICT  
2 ATTORNEY AGREES, WE'LL CONTINUE THIS CASE FOR A WEEK OR TEN  
3 DAYS OR WHATEVER IT MIGHT BE, KEEPING THE JURY.

4 THEN, MEANTIME, YOU RESOLVE THIS MATTER AS TO WHAT  
5 DOCUMENTS ARE UP THERE AND WHETHER THEY SHOULD OR SHOULD NOT  
6 BE RETURNED.

7 MR. BARENS: ONE OTHER COMMENT I WOULD LIKE TO MAKE  
8 BECAUSE I DO NOT WANT TO DO ANYTHING THIS MORNING THAT WOULD  
9 CAUSE YOUR HONOR IN ANY WAY TO PREJUDGE A MOTION YOUR HONOR  
10 WILL BE READING FOR TUESDAY.

11 THE COURT: I WON'T PREJUDGE ANYTHING. ALL I WANT TO  
12 DO IS FINISH AND JUST GET RID OF THE PEOPLE OUT THERE AND GET  
13 THE JURY SELECTED. THEN WE CAN CONTINUE THE MATTER. WE CAN  
14 PURSUE THIS MATTER OF YOUR GETTING YOUR PAPERS BACK.

15 MR. BARENS: I HAVE TRIED TO BE AS EXPEDITIOUS AS --

16 THE COURT: IT HAS BEEN TEN DAYS AND NOTHING HAS BEEN  
17 DONE.

18 MR. BARENS: YOUR HONOR, TODAY IS EIGHT DAYS ACTUALLY,  
19 YOUR HONOR. YOUR HONOR, I HAVE BEEN HERE FOR MOST OF THOSE  
20 DAYS.

21 THE COURT: I UNDERSTAND. BUT YOUR ASSOCIATE COULD  
22 HAVE PROCEEDED WITH THE MATTER.

23 MR. BARENS: YOUR HONOR, HE WAS --

24 THE COURT: HE KNOWS AS MUCH ABOUT IT AS YOU DO.

25 MR. BARENS: YOUR HONOR, IF I CAN MAKE ANOTHER COMMENT  
26 ABOUT WHAT I MEANT, YOUR HONOR IS WELL AWARE AND I AM  
27 RECONFIRMING THAT THE DEFENSE HAS BROUGHT A MOTION FILED WITH  
28 THE COURT THIS MORNING FOR DISMISSAL OF THE CASE AGAINST

1 MR. HUNT IN THIS COURTROOM, BASED ON THE MISCARRIAGE OF  
2 JUSTICE PERPETRATED BY THE PROSECUTION'S AGENTS IN THIS  
3 MATTER.

4 ALTHOUGH YOUR HONOR HAS SAID THAT YOUR HONOR  
5 WOULD BE DISPOSED TO CONTINUING THE TRIAL AFTER THE SELECTION  
6 OF THE JURORS IN ORDER TO LET US REDRESS THIS MATTER UP  
7 NORTH, THAT MIGHT BE INTERPRETED AS SUGGESTING THAT YOUR  
8 HONOR WOULD HAVE SOME IMPRESSION NOT TO DISMISS THIS CASE,  
9 WHICH WOULD SOUND LIKE A PREJUDGMENT OF TUESDAY'S MOTION.

10 AND I AM SIMPLY TRYING TO ACT IN A PROPHYLACTIC  
11 MANNER TO --

12 THE COURT: WHAT HAS THE DISTRICT ATTORNEY DONE TO WARRANT  
13 A DISMISSAL OF THE CASE? HE WAS NOT RESPONSIBLE FOR WHAT  
14 HAPPENED UP THERE IN ANOTHER MATTER OVER WHICH WE HAVE NO  
15 JURISDICTION.

16 MR. BARENS: YOUR HONOR, THE DISMISSAL WE ARE SEEKING  
17 IS NOT BASED ON SOME RESPONSIBILITY PARTICULARLY OF MR.  
18 WAPNER. IT IS BASED ON YOUR HONOR'S READING THE MOTION.

19 THE COURT: IT IS NOT IRREMIABLE. YOU CAN FIND OUT  
20 AND YOU GET THE PAPERS BACK AND WE CAN PROCEED.

21 MR. BARENS: NO. IT GOES WAY BEYOND ITS IMPACT OF THE  
22 PAPERS. IT GOES TO THE FACT THAT THE PROSECUTION HAS READ  
23 THE ENTIRE DEFENSE FILE.

24 THE COURT: HAVE YOU -- DO YOU KNOW WHAT THESE PAPERS  
25 ARE? I THOUGHT YOU TOLD ME THAT YOU DIDN'T KNOW ANYTHING  
26 ABOUT IT?

27 MR. WAPNER: FIRST OF ALL, I HAVE NOT READ IT. SECOND  
28 OF ALL, IT IS MY UNDERSTANDING THAT THE DETECTIVE DID NOT READ



1 ANYTHING.

2 THIRD OF ALL, IT IS MY UNDERSTANDING THAT WE WILL  
3 LITIGATE IT, THAT MR. CHIER WAS THERE DURING A LOT OF THE  
4 SEARCH AND --

5 THE COURT: HE CAN ARGUE. I WILL TAKE IT UNDER  
6 SUBMISSION AND --

7 MR. BARENS: WE HAVE ASKED FOR AN EVIDENTIARY HEARING  
8 IN THIS REGARD BECAUSE CERTAINLY, THERE IS NO INSTANCE I  
9 SAY IN THIS COURT RECORD, WHERE MR. WAPNER IN ANY WAY, ACTED  
10 IMPROPERLY.

11 HOWEVER, THE CASE AGENT, THE DETECTIVE WORKING  
12 FOR HIM FROM BEVERLY HILLS, ALONG WITH THREE OTHER BEVERLY  
13 HILLS POLICE DEPARTMENT DETECTIVES WHO ARE INVOLVED IN THE  
14 PROSECUTION'S PREPARATION OF THIS CASE, HAVE BECOME  
15 IRREVOCABLY TAINTED WITH DEFENSE MATERIALS AND THERE IS NO  
16 QUESTION THAT THEY ARE IN EXTENSIVE CONTACT WITH PROSECUTION  
17 WITNESSES WHO WILL TESTIFY.

18 THE COURT: ONE THING AT A TIME. I THINK THE FIRST  
19 THING IS FOR YOU TO GET YOUR RECORDS BACK. THE MOTION SHOULD  
20 BE MADE AS PROMPTLY AS POSSIBLE.

21 IF IT REQUIRES THE APPOINTMENT OF A SPECIAL  
22 MASTER, THEN THAT WILL BE DONE. BUT, I WANT TO EXPEDITE THIS  
23 AS MUCH AS POSSIBLE. I WANT TO HAVE ALL OF THE FACTS  
24 DISCLOSED ABOUT THE PAPERS TAKEN. WE WILL HAVE TO SEE IF  
25 THEY ARE IRREVOCABLY OR IRRETRIEVABLY PREJUDICIAL TO YOU.  
26 THEN OF COURSE, I WILL CONSIDER ALL THOSE MATTERS AT THE TIME  
27 YOUR MOTION IS HEARD WHEN WE HAVE AN EVIDENTIARY HEARING.

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1 MR. BARENS: I AM ONLY ASSERTING THAT YOUR HONOR SHOULD  
2 COMPREHENSIVELY READ THE MOTION THAT WE WERE UP UNTIL  
3 1 O'CLOCK THIS MORNING PREPARING.

4 THE COURT: I JUST GOT IT THIS MINUTE.

5 I WILL READ IT.

6 MR. BARENS: AND WHAT I AM JUST SUBMITTING, YOUR HONOR,  
7 IS THAT THE IMPACT AND SIGNIFICANCE TO THE DEFENSE OF THIS  
8 ACTIVITY GOES WAY BEYOND WHETHER OR NOT WE GET THE PHYSICAL  
9 POSSESSION OF OUR DOCUMENTS BACK.

10 IF IT WAS SIMPLY A MATTER OF MY RETRIEVING  
11 DOCUMENTS, I WOULDN'T BOTHER YOUR HONOR WITH THIS, TO BEGIN  
12 WITH.

13 THE COURT: WHEREVER POSSIBLE IN THOSE DOCUMENTS,  
14 ANYTHING THAT IS CONTAINED IN THOSE DOCUMENTS THAT SHOULD  
15 NOT BE USED WON'T BE USED IN THIS CASE AND, AS I SAID, WE  
16 WILL CROSS THAT BRIDGE WHEN WE COME TO IT.

17 MR. BARENS: YES, AND I ONLY SUBMIT, AS YOUR HONOR WILL  
18 SEE IN OUR MOTION, IT MAY BE IMPOSSIBLE FOR YOUR HONOR TO  
19 EFFECTIVELY ASSURE THE DEFENSE THAT THAT WOULD BE THE CASE.

20 THE COURT: LET'S SEE. WHY DON'T YOU GET ALL OF THE  
21 FACTS FIRST AND THEN I WILL BE IN A POSITION WHERE I CAN MAKE  
22 A DECISION ON IT.

23 MR. BARENS: YES, YOUR HONOR.

24 MR. WAPNER: YOUR HONOR, I AGREE WITH THE COURT  
25 WHOLEHEARTEDLY.

26 I THINK IF WE ARE GOING TO FOLLOW THE PROCEDURE  
27 OF GETTING THIS JURY AND THEN HAVE SOME SORT OF A POSTPONEMENT,  
28 BECAUSE OF THE NECESSITY OF LITIGATING THE ISSUE IN

5-2  
1 SAN MATEO COUNTY, THAT THAT MOTION NOW CALENDARED FOR  
2 TUESDAY SHOULD BE HEARD AFTER THE LITIGATION IN NORTHERN  
3 CALIFORNIA AND I WOULD REQUEST THAT.

4 THE COURT: LET'S WAIT FOR THIS MOTION UNTIL EVERYTHING  
5 HAS BEEN DONE AND THEN YOU CAN AUGMENT THIS MOTION WITH ANY  
6 FACTS WHICH ARE DISCLOSED WHICH ARE EITHER HELPFUL, I ASSUME,  
7 OR THE PROSECUTION CAN SAY WHICH WILL MILITATE AGAINST YOUR  
8 MOTION.

9 MR. BARENS: I BELIEVE YOUR HONOR HAS A POINT THERE.

10 ALL RIGHT, WHAT WE WILL DO THEN -- LET ME GET  
11 A PROCEDURE AGREED UPON WITH MR. WAPNER. ONE MOMENT, YOUR  
12 HONOR.

13 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

14 MR. BARENS: JUST A MOMENT IF WE COULD, YOUR HONOR.

15 YOUR HONOR, WE ARE UNABLE AT THIS SPECIFIC MOMENT  
16 TO DETERMINE THE PROCEDURE WHICH WE WILL ARTICULATE TO YOUR  
17 HONOR WITHIN ONE DAY OF COMPLETING THE SELECTION OF THE  
18 ALTERNATE JURORS.

19 THE COURT: PARDON ME?

20 MR. BARENS: WITHIN ONE DAY OF COMPLETING -- WELL, WHEN  
21 WE COMPLETE THE ALTERNATES, WE WILL TAKE A RECESS TO WORK  
22 OUT THE MECHANICS.

23 THE COURT: ALL RIGHT.

24 MR. BARENS: AGAIN, YOUR HONOR, I SUBMIT RESPECTFULLY  
25 WE ARE IN A BIT OF AN UNKNOWN AREA FOR THE MOMENT. I AM  
26 TRYING TO FEEL MY WAY THROUGH WHAT IS APPROPRIATE HERE.

27 THE COURT: VERY GOOD.

28 MR. BARENS: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT, LET'S GET THE JURORS, IF YOU  
2 WILL, PLEASE.

3 (THE FOLLOWING PROCEEDINGS WERE HELD  
4 IN OPEN COURT IN THE PRESENCE OF THE  
5 JURORS AND PROSPECTIVE ALTERNATE JURORS:)

6 THE BAILIFF: YOUR HONOR, WE HAVE SOME EXHIBITS FROM  
7 THE JURY, A CHERRY PIE WITH A PIECE MISSING AND SOME  
8 METEORITES.

9 (LAUGHTER IN COURTROOM.)

10 MR. BARENS: HOW, PRAY TELL, CAN I TELL THESE ARE  
11 METEORITES?

12 MS. KING: WE WOULD HAVE BROUGHT THE BOAT BUT IT  
13 SANK.

14 MR. WAPNER: AND I WANTED A JURY WITH A SENSE OF HUMOR.

15 MS. KING: YOU GOT IT.

16 THE COURT: ALL RIGHT, SHOW THE NOTE TO COUNSEL.

17 (FURTHER UNREPORTED COLLOQUY BETWEEN  
18 COUNSEL.)

19 MR. BARENS: WE HAD BEST APPROACH THE BENCH, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 (THE FOLLOWING PROCEEDINGS WERE HELD  
22 AT THE BENCH:)

23 MR. BARENS: THE DEFENSE IS EXTREMELY CONCERNED ABOUT  
24 THIS LETTER, WHICH SEEMS TO SPECIFICALLY CONTRADICT  
25 INFORMATION WHICH WAS GIVEN YESTERDAY.

26 THE COURT: BY HER?

27 MR. BARENS: YES, YOUR HONOR.

28 THE JUROR TOLD US YESTERDAY THAT SHE HAD IN

5-4  
1 FACT NOT SIGNED A LETTER OF RESIGNATION FROM HER PRESENT  
2 EMPLOYMENT.

3 THE COURT: WELL, IF SHE PERJURED HERSELF, DO YOU WANT  
4 HER AS A JUROR?

5 MR. BARENS: YOUR HONOR, I AM NOT ACCUSING ANYBODY OF  
6 THAT AS A JUROR.

7 THE COURT: WELL, ASSUMING SHE DID.

8 MR. BARENS: NO. I AM ASSUMING THAT THERE IS A MISTAKE  
9 IN THIS LETTER.

10 I AM REQUESTING A HARDSHIP HEARING IN CHAMBERS  
11 SO WE CAN RESOLVE THIS MATTER, WITHOUT THE HEARING OF  
12 EVERYBODY ELSE IN THE COURTROOM.

13 I THINK WE CAN REMEDY THIS WITH A VERY BRIEF  
14 HEARING IN CHAMBERS, AS WE DID WITH OUR OTHER HARDSHIP HEARINGS.

15 THE COURT: THEY SAY THEY ARE NOT GOING TO PAY HER.  
16 ALL WE HAVE TO ASK HER IS WHETHER OR NOT SHE, NONETHELESS,  
17 WANTS TO SERVE AS A JUROR.

18 MR. BARENS: I AM NOT CONVINCED SHE HAS RESIGNED FROM  
19 HER JOB WHERE SHE IS GOING TO LOSE ANY PAY AT ALL FROM HER  
20 EMPLOYMENT.

21 THE COURT: WELL, THAT IS WHAT THEY SAY IN THE LETTER.

22 MR. BARENS: THIS IS NOT HER PRESENT EMPLOYMENT.  
23 THIS IS THE EMPLOYER WHERE SHE IS PROPOSING TO GO.

24 HER PRESENT EMPLOYER, SHE STILL HAS A JOB WITH --  
25 WOULD YOUR HONOR GIVE US A BRIEF IN CHAMBERS  
26 HEARING?

27 THE COURT: WHAT IS HER NAME?

28 MR. BARENS: TRACEY SAUNDERS.

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

3 THE COURT: MISS SAUNDERS, WE HAVE GOT YOUR LETTER AND  
4 I THINK WE WANT TO ASK YOU SOME QUESTIONS ABOUT THAT, SO  
5 WOULD YOU PLEASE COME INTO CHAMBERS SO WE CAN HAVE A HEARING  
6 ON IT?

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(THE FOLLOWING PROCEEDINGS WERE HELD  
IN CHAMBERS WITH COUNSEL, THE DEFENDANT  
AND PROSPECTIVE JUROR SAUNDERS PRESENT:)

MR. BARENS: THE DEFENSE THANKS HIS HONOR FOR THE  
OPPORTUNITY TO HAVE THIS HEARING. YOUR HONOR, COULD I ASK --

THE COURT: LET HER FINISH READING THAT LETTER.

MR. BARENS: COULD I HAVE THE LETTER?

THE COURT: LET ME ASK THE QUESTIONS FIRST.

MR. BARENS: YES, OF COURSE, YOUR HONOR. SORRY,  
YOUR HONOR.

THE COURT: THIS LETTER INDICATES THAT YOU HAVE ALREADY  
ACCEPTED EMPLOYMENT WITH THE SANTA MONICA/MALIBU UNIFIED  
SCHOOL DISTRICT. YOU ARE TO BEGIN WORK JANUARY 26, 1987.

MS. SAUNDERS: EXACTLY.

THE COURT: AND THAT YOU HAD RESIGNED YOUR CURRENT  
POSITION EFFECTIVE JANUARY 23, 1987?

MS. SAUNDERS: UH-HUH. I HAVE GIVEN NOTICE BUT I HAVE  
NOT SIGNED THE RESIGNATION PAPERS.

THE COURT: IT SAYS THAT YOU HAVE RESIGNED YOUR CURRENT  
POSITION AND YOU HAVE BEEN ACCEPTED BY THE NEW EMPLOYER.

MS. SAUNDERS: I TOLD MY SUPERVISOR, OKAY? BUT WHEN  
I WENT IN LAST WEEK, THE PAPERS HAD NOT BEEN TYPED, OKAY?

AND I WILL BE SIGNING THE PAPERS TOMORROW,  
ACTUALLY SIGNING THEM TOMORROW. BUT I HAVE GIVEN HER NOTICE.

THE COURT: SHE SAYS HERE ALSO, "MISS SAUNDERS INFORMED  
ME THAT SHE WAS ON JURY DUTY FOR TEN DAYS BUT WOULD BE ABLE  
TO ACCEPT THE POSITION. HOWEVER, THIS AFTERNOON SHE INFORMED  
ME THAT SHE HAS BEEN SELECTED AS A JUROR IN YOUR COURT AND

A-2  
1 THAT THE TRIAL IS TO LAST TWO MONTHS."

2 IF YOU ARE NOT ABLE TO WORK BEGINNING JANUARY 26,  
3 1987, THEY WITHDRAW THEIR OFFER OF EMPLOYMENT. DO YOU WANT  
4 THAT TO HAPPEN? DO YOU WANT THAT JOB?

5 MS. SAUNDERS: NO. I WANT THE JOB.

6 THE COURT: YOU WANT THAT EMPLOYMENT?

7 MS. SAUNDERS: YES I DO.

8 THE COURT: THEREFORE, YOU DON'T WANT TO BE ON THE JURY?

9 MS. SAUNDERS: WELL, I CAN'T. I MEAN, IT IS ONE OF  
10 TWO THINGS.

11 THE COURT: ALL RIGHT.

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

13 MS. SAUNDERS, I HAD A MISUNDERSTANDING PERHAPS  
14 YESTERDAY, THAT YOU HAD NOT RESIGNED YOUR EMPLOYMENT WITH  
15 YOUR PRESENT EMPLOYER. I DID NOT UNDERSTAND THAT IT IS YOUR  
16 INTENT IN FACT, TO OFFICIALLY SIGN A DOCUMENT TOMORROW  
17 RESIGNING YOUR PRESENT EMPLOYMENT.

18 MS. SAUNDERS: YES IT IS.

19 MR. BARENS: I FURTHER HAD I THOUGHT, AN UNDERSTANDING  
20 YESTERDAY, THAT YOU HAD INDICATED THAT YOUR NEW EMPLOYER WOULD  
21 HOLD YOUR JOB OPEN FOR YOU, TO GIVE YOU AN OPPORTUNITY TO  
22 CONCLUDE THIS TRIAL AS A JUROR. DID SOMETHING CHANGE SINCE  
23 YESTERDAY ABOUT THEIR WILLINGNESS TO HOLD YOUR JOB  
24 AVAILABLE?

25 MS. SAUNDERS: OKAY. THEY TOLD ME YESTERDAY WHEN I  
26 WENT IN AFTER I LEFT HERE -- I WENT ACROSS THE STREET AND  
27 I SPOKE WITH PERSONNEL. THEY SAID THEY COULD NOT HOLD IT  
28 BECAUSE THEY HAVE OTHER CANDIDATES.



1 MR. BARENS: I SEE. IN THAT EVENT YOUR HONOR, I DO  
2 NOT WISH TO CAUSE THIS JUROR ANY LOSS OF EMPLOYMENT OR  
3 INCOME AND I WOULD BE WILLING TO JOIN IN A STIPULATION WITH  
4 MR. WAPNER THAT THE JUROR BE EXCUSED.

5 THE COURT: DO YOU SO STIPULATE?

6 MR. WAPNER: YES.

7 THE COURT: ALL RIGHT. THANK YOU VERY, VERY MUCH.  
8 I AM GLAD THAT YOU BROUGHT THIS MATTER TO US AND CLEARED UP  
9 THIS MISUNDERSTANDING THAT WE HAD.

10 WE DON'T WANT TO SEE YOU ON A JURY WHERE YOU ARE  
11 NOT GOING TO BE PAID BY ANYBODY AND YOU LOSE YOUR OTHER JOB  
12 THAT YOU VERY MUCH WANT.

13 SO, FOR YOUR SAKE, WE ARE GOING TO EXCUSE YOU.

14 MS. SAUNDERS: THANK YOU.

15 THE COURT: THANK YOU.

16 (PROSPECTIVE JUROR SAUNDERS EXITED  
17 CHAMBERS.)

18 THE COURT: NOW, HOW DO WE GO ABOUT REPLACING HER?

19 MR. BARENS: I AM QUERYING THAT IN MY MIND RIGHT NOW,  
20 YOUR HONOR. AT THE TIME THAT SHE WAS SEATED, I HAD TWO  
21 PEREMPTORIES LEFT. I HAD ONE LEFT. NO. SHE CAME AFTER --

22 THE COURT: NO. YOU HAD 25.

23 MR. BARENS: AS OF THIS MINUTE, I HAVE 25, CORRECT.  
24 SORRY.

25 SHE CAME PRIOR TO MISS BECKING, I BELIEVE.

26 MR. CHIER: YES.

27 MR. BARENS: OKAY. I WOULD LIKE TO RECAST THE DRAW.  
28 IN OTHER WORDS, I BELIEVE THAT WE HAVE PROCEEDED IMPROPERLY

1 IN LIGHT OF THIS -- INNOCENTLY BUT IMPROPERLY WITH THE  
2 EXAMINATION OF THE THREE ALTERNATES.

3 I WOULD LIKE TO GO BACK TO THE STATUS QUO  
4 EXISTENT WHEN WE CONCLUDED WITH MISS BECKING, AS THOUGH I  
5 HAD NEVER SPOKEN AT ALL TO MISS SAUNDERS BUT RATHER, HAD 11 --  
6 WE'LL HAVE 12 PEOPLE IN THE BOX. BUT I HAVE CONCLUDED 11  
7 PEOPLE. I HAVE MY REMAINING PEREMPTORY AND I AM NOW I THINK --  
8 DO I HAVE ONE OR TWO AT THIS MOMENT?

9 THE COURT: I HAVE GOT A RECORD. I THINK YOU HAD 25.

10 (THE CLERK ENTERS CHAMBERS.)

11 THE COURT: HOW MANY PEREMPTORIES DID THE DEFENSE HAVE?

12 THE CLERK: THE DEFENSE HAD 25. THEY WERE SHORT ONE.

13 MR. BARENS: THE PROBLEM IS -- NOW I RECALL. AFTER  
14 MISS SHEPARD WAS SEATED --

15 THE COURT: MISS SHEPARD?

16 MR. BARENS: MISS SAUNDERS. AFTER MISS SAUNDERS I  
17 EXERCISED ANOTHER PEREMPTORY, LEAVING ME WITH ONE. I WOULD  
18 LIKE TO GO BACK TO THE POSITION THAT I WAS IN BEFORE I  
19 EXERCISED MY PEREMPTORY, AFTER THE COMPOSITION OF THE JURY  
20 WAS ESTABLISHED WITH THIS JUROR.

21 THE COURT: I WON'T PERMIT THAT TO BE DONE. YOU HAVE  
22 EXERCISED 25 PEREMPTORIES. YOU CAN'T GO BACK TO 24 OR 23  
23 OR 22 BECAUSE OF THIS OCCURRENCE. ALL THIS HAS PRESENTED  
24 US WITH IS THE FOLLOWING PROBLEM: SHE HAS BEEN EXCUSED NOW  
25 BY STIPULATION, SO WE HAVE GOT THREE ALTERNATES SO FAR.

26 WE HAVE NOT FINISHED WITH THEM. WHEN WE FINISH  
27 WITH THE THIRD, IF YOU PASS FOR CAUSE, WE'LL DRAW BY LOT,  
28 ONE OF THOSE THREE.

1 WE WILL PUT HER OR PUT HIM IN MISS SAUNDERS'  
2 PLACE. ALL RIGHT?

3 THEN YOU CAN EXERCISE YOUR PEREMPTORY, YOUR LAST  
4 PEREMPTORY, IF YOU WANT TO.

5 MR. BARENS: A MOMENT, YOUR HONOR.

6 (BRIEF PAUSE.)

7 THE COURT: THAT IS THE PROPER WAY OF DOING IT  
8 LOGICALLY, ISN'T IT AND FAIRLY?

9 MR. BARENS: JUST A MOMENT, YOUR HONOR.

10 (PAUSE.)

11 MR. BARENS: MAY I HAVE A MOMENT?

12 THE COURT: SURELY. GO OUTSIDE CHAMBERS, IF YOU WANT  
13 TO.

14 (MR. BARENS AND MR. CHIER EXIT  
15 CHAMBERS.)

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1 (PAUSE.)

2 MR. BARENS: UNUSUAL SITUATIONS, YOUR HONOR, MAKE FOR  
3 UNUSUAL RESPONSES.

4 YOUR HONOR, HERE IS WHAT THE DEFENSE WOULD  
5 SUGGEST AS IT REQUESTS, EITHER -- MY FIRST PREFERENCE IS THAT  
6 THE THREE ALTERNATES PRESENTLY BEING EXAMINED BE PUT BACK  
7 IN THE GENERAL POOL; THAT I GO BACK TO HAVING THE COURT NOW  
8 CALL A JUROR AS THOUGH THE LAST, THE JUROR THAT WAS EXCUSED  
9 HAD JUST IN THE REGULAR ORDER OF THINGS BEEN, YOU KNOW, A  
10 STIPULATED EXCUSAL FOR THAT JUROR AND THAT SIMPLY THAT WE CALL  
11 THE NEXT PROSPECTIVE JUROR OUT, EXAMINE THAT JUROR AND I  
12 EITHER DO OR DO NOT EXERCISE A PEREMPTORY AT THAT POINT IN  
13 TIME.

14 THEREAFTER, WE WOULD THEN BY RANDOM SELECTION  
15 IMPANEL THREE ALTERNATES AND PROCEED. IF ONE OF THE THREE  
16 ALTERNATES BE DRAWN, THAT IS, ONE OF THE THREE THAT HAVE  
17 ALREADY BEEN UP THERE, WE SIMPLY WOULD NOT HAVE TO EXAMINE  
18 THAT ALTERNATE.

19 THE COURT: WHAT IS YOUR NEXT SUGGESTION?

20 MR. BARENS: MY NEXT SUGGESTION, JUDGE -- FRANKLY, THAT  
21 IS MY SUGGESTION, JUDGE.

22 THE COURT: I AM NOT GOING TO FOLLOW THAT SUGGESTION.

23 MR. BARENS: ALL RIGHT. MY SECOND SUGGESTION, YOUR  
24 HONOR, WOULD BE THAT WE NOW SEAT A FOURTH ALTERNATE BEFORE  
25 I BE REQUIRED TO EXERCISE MY PEREMPTORY OR NOT, SO THAT I CAN  
26 SEE A BETTER VIEW OF THE COMPOSITION OF THE ALTERNATES THAT  
27 I AM DEALING WITH AT THAT POINT IN TIME, SINCE I HAVE ALREADY  
28 GOT THREE I AM REFERENCING.

1 THE COURT: I DON'T THINK WE OUGHT TO CHANGE THE  
2 PROCEDURE WHICH WE HAD AGREED UPON BEFORE, PRIOR TO MS.  
3 SAUNDERS GETTING HERSELF INVOLVED IN THIS PARTICULAR THING.

4 WHAT WE WILL DO IS FINISH OUR VOIR DIRE OF THE  
5 THIRD ALTERNATE, THE PROPOSED ALTERNATE, THEN, AS I TOLD YOU,  
6 IF YOU PASS FOR CAUSE WE WILL THEN DRAW ONE OF THE THREE TO  
7 SIT IN THE PLACE OF MISS SAUNDERS AND THEN YOU CAN EXERCISE  
8 YOUR PEREMPTORY AT THAT PARTICULAR TIME IF YOU WANT TO.

9 MR. BARENS: THE PROBLEM I AM GETTING, YOUR HONOR, IS  
10 THAT I NOW HAVE --

11 THE COURT: NOBODY IS DEPRIVING YOU OF ANYTHING. YOU  
12 CAN EXERCISE PEREMPTORIES WITH RESPECT TO THE ALTERNATES, TOO,  
13 IF YOU WANT TO.

14 THEN IF YOU PASS THESE TWO, THEN THERE WILL BE  
15 TWO MORE AND WE WILL HAVE TWO MORE COME IN AND YOU CAN  
16 EXERCISE PEREMPTORIES AS TO THEM, TOO .

17 MR. BARENS: ONE MOMENT.

18 THE COURT: I WANT TO BE SURE WE HAVE ENOUGH OUT THERE  
19 SO WE CAN FILL FOUR ALTERNATES THERE. I DON'T WANT ANYBODY  
20 IN A POSITION WHERE WE HAVE TO START THE WHOLE PROCESS OVER  
21 AGAIN BECAUSE WE DON'T HAVE ENOUGH.

22 MR. BARENS: NO, YOUR HONOR, I ABSOLUTELY DON'T WANT  
23 THAT TO HAPPEN.

24 ONE MOMENT, YOUR HONOR.

25 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
26 AND MR. CHIER.)

27 THE COURT: DO YOU HAVE ANY OBJECTION WITH THAT, WITH  
28 MY PROCEDURE?

1 MR. WAPNER: WELL, I HAVE --

2 THE COURT: DON'T WORRY ABOUT ANY ERROR, WILL YOU?

3 MR. WAPNER: WHAT?

4 THE COURT: THAT IS WHAT YOU ARE ALWAYS WORRYING ABOUT.

5 MR. WAPNER: I AM JUST TRYING TO FIGURE OUT WHAT THE  
6 APPROPRIATE PROCEDURE IS. I MEAN TECHNICALLY WE HAVE NOT  
7 SWORN THE JURY BUT THAT IS ONLY BECAUSE COUNSEL AGREED WE  
8 WOULDN'T DO THAT UNTIL THE MOTIONS.

9 THE COURT: RIGHT.

10 MR. WAPNER: SO I THINK WE SHOULD PROCEED AS IF THE JURY  
11 HAD BEEN SWORN. BUT IN THAT CASE -- IF THAT IS THE CASE,  
12 THEN LET'S ASSUME THE JURY HAD BEEN SWORN, ALL RIGHT? THEN  
13 IT WOULDN'T BE APPROPRIATE TO PUT IN AN ALTERNATE AND THEN,  
14 HAVING HAD THE JURY SWORN AND HAVE AN EXERCISE OF A PEREMPTORY  
15 CHALLENGE.

16 THE COURT: WE HAVEN'T GOTTEN THEM SWORN. WE HAVE TO  
17 FILL OUT THE JURY NOW. WE WILL FILL UP THE JURY BOX TO BE  
18 SURE WE HAVE 12 AND THE ONLY WAY OF DOING THAT IS TAKE ONE  
19 OF THE OTHERS. WE HAVE 11 IN THERE AND WE HAVE TO FILL THAT  
20 TWELFTH SEAT UP THERE. THOSE PROSPECTIVE ALTERNATES HAVE BEEN  
21 ASKED AND ANSWERED QUESTIONS AND I WANT TO FINISH QUESTIONING  
22 THE THIRD JUROR AND THEN WE WILL SELECT ONE OF THOSE THREE  
23 TO SIT IN THE PLACE OF THE ONE THAT HAS BEEN VACATED. ISN'T  
24 THAT LOGICAL?

25 MR. BARENS: LET ME TELL YOUR HONOR ANOTHER PROBLEM I  
26 HAVE GOT IN BEING CANDID WITH YOUR HONOR. I WAS A BIT MORE  
27 CASUAL IN MY EXAMINATION, TO BE HONEST WITH YOU, OF THESE  
28 PROSPECTIVE ALTERNATE JURORS.

1 THE COURT: I WILL LET YOU REOPEN AND DON'T BE SO CASUAL  
2 ABOUT IT. DO IT IN DEPTH, IF YOU WANT TO.

3 MR. BARENS: THAT IS WHY --

4 THE COURT: I THOUGHT YOU DID EXACTLY THE SAME THING  
5 WITH THESE ALTERNATES THAT YOU DID WITH THE PRIOR JURORS.

6 MR. BARENS: I THINK THE RECORD WILL REFLECT I WAS MUCH  
7 BRIEFER.

8 THE COURT: GO AHEAD AND OPEN IT UP AGAIN.

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1           MR. BARENS: YOUR HONOR, LET ME OPEN UP ANOTHER  
2 POSSIBILITY. YOUR HONOR, WHAT WOULD THE PROBLEM BE IF WE  
3 LEFT THE THREE ALTERNATES IN PLACE AS THEY ARE NOW, JUST  
4 LEAVE THEM AS THEY ARE, AND THEN THE CLERK CALL ANOTHER  
5 RANDOM JUROR TO SIT IN SEAT NUMBER 12? THE COURT WOULD  
6 EXAMINE, COUNSEL WOULD EXAMINE THAT JUROR AND I EITHER  
7 EXERCISE A PEREMPTORY ON THAT JUROR OR I DON'T AND YOU STILL  
8 HAVE YOUR THREE ALTERNATES SITTING AS THEY DO, EXCEPT I HAVE  
9 A CLEAN START ON THAT LAST JUROR.

10           MR. WAPNER: NO, I DON'T AGREE WITH THAT.

11           THE COURT: THESE THREE HAVE BEEN CHOSEN FIRST BY  
12 RANDOM, ONE OF THOSE THREE SHOULD TAKE THE PLACE OF THAT  
13 JUROR AND NOT SOMEBODY FROM OUTSIDE THE JURY BOX.

14           MR. BARENS: I DON'T KNOW WHY THAT DOESN'T SEEM LOGICAL  
15 AND CONSISTENT TO ME, JUDGE.

16           MR. WAPNER: IT SEEMS TO ME THAT THE NEXT NAME DRAWN  
17 AFTER MISS SAUNDERS WAS DR. JANIS.

18           THE COURT: ALL RIGHT.

19           MR. WAPNER: SO THAT MIGHT BE THE LOGICAL THING TO DO  
20 IS TO SAY THAT WAS THE NEXT RANDOM SELECTION, THAT THAT PERSON  
21 SHOULD GO INTO THAT SPOT.

22           THE PROCEDURE THE COURT IS SUGGESTING IS TO  
23 SAY, WELL, WE WILL MAKE IT EVEN MORE RANDOM THAN THAT. WE  
24 HAVE PICKED THREE NAMES AND OUT OF THOSE THREE WE WILL PICK  
25 ONE TO GO INTO THAT SPOT.

26           THE COURT: ARE YOU SUGGESTING THE FIRST ONE PICKED  
27 SHOULD BE THE ONE?

28           MR. WAPNER: ALL I AM SUGGESTING --



1 THE COURT: THEY WEREN'T PICKED AS JURORS.

2 MS. SAUNDERS WAS PICKED AS A JUROR, SHE WASN'T  
3 PICKED AS AN ALTERNATE. THE THREE OF THEM WERE PICKED FOR  
4 THAT PURPOSE.

5 MR. WAPNER: THAT IS TRUE.

6 I MISSPOKE MYSELF. BECAUSE AFTER MS. SAUNDERS,  
7 THERE WAS A PEREMPTORY CHALLENGE EXERCISED AND THEN THERE WAS  
8 SOMEONE ELSE SEATED. MRS. BECKING WAS SEATED.

9 BUT ASSUMING THAT AFTER -- THAT IS NOT RIGHT  
10 EITHER -- I AM SORRY.

11 MR. BARENS: HERE IS WHAT I NEED TO DO, YOUR HONOR, WHAT  
12 I RESPECTFULLY REQUEST, YOUR HONOR -- YOUR HONOR, I AM NOT  
13 FAMILIAR WITH THE DEFENDANT'S RIGHTS IN THIS SETTING. I  
14 REQUEST A BRIEF RECESS TO ENABLE ME TO GO TO THE LIBRARY AND  
15 LOOK AT THE CODE.

16 THE COURT: I WILL TAKE THE RESPONSIBILITY, WHATEVER  
17 YOUR RESEARCH SHOWS, I AM GOING TO DO IT THIS WAY. I DON'T  
18 WANT ANY MORE DELAYS. WHAT IS GOING TO HAPPEN, AND THE LOGICAL  
19 WAY OF DOING IT IS, WE HAVE GOT THREE ALTERNATES BEFORE ANY  
20 TRIAL STARTED, ONE JUROR, WHO IS ONE OF THE 12, HAS BEEN  
21 EXCUSED. YOU TAKE ONE OF THE THREE, PUT THAT ONE AS THE  
22 TWELFTH JUROR.

23 I AM NOT GOING TO ADOPT YOUR SUGGESTION.

24 THE THREE OF THEM WERE DRAWN TOGETHER, SO TO SPEAK.  
25 I AM GOING TO DRAW ONE OF THOSE THREE TO TAKE NUMBER 12 --  
26 IS IT -- HER PLACE AND THEN YOU CAN EXERCISE THE PEREMPTORY  
27 AT THAT TIME IF YOU WANT TO.

28 MR. BARENS: ALL RIGHT. WOULD YOUR HONOR MAKE A BRIEF

1 STATEMENT TO THE JURY AS TO THE STATUS OF AFFAIRS NOW SO THEY  
2 DON'T FEEL ANYTHING IS AMISS?

3 THE COURT: YOU MEAN TELL THEM ABOUT WHAT HAS HAPPENED  
4 AND SO FORTH?

5 MR. BARENS: YES.

6 THE COURT: SURE, I WILL TELL THEM.

7 MR. BARENS: AND THAT YOU HAVE ELECTED A PROCEDURE TO  
8 DRAW ONE OF THOSE THREE BY LOT TO FILL HER PLACE?

9 THE COURT: THAT'S CORRECT.

10 MR. BARENS: AND IT SHOWS NO PREFERENCE BY ANY COUNSEL.

11 THE COURT: PRECISELY.

12 MR. BARENS: WOULD YOU PLEASE REMIND THEM THAT THE  
13 DEFENSE REALLY HAD REMAINING ONE PEREMPTORY?

14 THE COURT: I WILL TELL THEM.

15 MR. BARENS: AND THAT THERE IS NOTHING PREJUDICIAL  
16 IN ANY WAY TOWARDS US IF WE EXERCISE OR DON'T EXERCISE AT THAT  
17 POINT?

18 THE COURT: SURE.

19 MR. BARENS: I JUST WANT TO REMIND THEM THAT I HAD ONE,  
20 THEY MAY NOT BE AWARE, YOUR HONOR, THAT I STILL HAD ONE LEFT.

21 THE COURT: YES.

22 MR. BARENS: THEY PROBABLY AREN'T AWARE OF THAT.

23 THE COURT: NO, I WILL TELL THEM THAT YOU ARE ENTITLED  
24 TO ONE MORE PEREMPTORY CHALLENGE.

25 MR. BARENS: I WOULD APPRECIATE THAT, YOUR HONOR.

26 THE COURT: IF YOU WANT TO EXERCISE IT.

27 MR. WAPNER: I UNDERSTAND THE COURT HAS ALREADY DECIDED  
28 WHAT IT WANTS TO DO.

1                   MAY I JUST THROW THIS INTO THE POT FOR WHATEVER  
2 IT IS WORTH?

3                   THE COURT: GO AHEAD.

4                   MR. WAPNER: IT SEEMS TO ME, SINCE WE WERE PROCEEDING  
5 YESTERDAY WITH NOT SWEARING THE JURY ONLY BECAUSE OF THIS  
6 MOTION THAT WAS PENDING AND, THEREFORE, WE ARE PROCEEDING TO-  
7 DAY AS IF THE JURY HAD BEEN SWORN, THAT HAD THE JURY BEEN  
8 SWORN AND JEOPARDY ATTACHED,       THE ALTERNATES  
9 SELECTED, THAT THE PROPER PROCEDURE, IF WE HAD A SWORN  
10 JURY, ON AN EXCUSE FOR HARDSHIP, LET'S SAY THIS HAPPENED TWO  
11 OR THREE WEEKS FROM NOW WHEN WE ARE IN TRIAL, WHAT WE WOULD  
12 DO AT THAT POINT IS PICK ONE OF THE ALTERNATES BY LOT.  
13 SO LET ME SUGGEST THIS, WHICH IS THAT WE FINISH WITH THE  
14 SELECTION OF THE ALTERNATES AS IF WE WERE GOING TO DO --  
15 WHICH WAS WHAT WE WERE GOING TO DO, TAKE THREE ALTERNATES AND  
16 USE THE PEREMPTORY ON THE THREE AND IF WE HAD ENOUGH LEFT  
17 OVER, WE WOULD SELECT A FOURTH ALTERNATE. AND IF WE GET  
18 THREE ALTERNATES OR FOUR, DEPENDING UPON HOW MANY WE GET, THAT  
19 ONCE WE HAVE GOT THE FOUR AND ALL OF THE PEREMPTORIES ARE  
20 EXERCISED, WE THEN PICK BY LOT ONE OF THOSE THREE OR FOUR  
21 PEOPLE TO SIT IN THAT SEAT.

22                   MR. BARENS: NO.

23                   I WANT TO GO WITH YOUR HONOR'S SUGGESTION AT THIS  
24 POINT.

25                   THE COURT: YES, WE WILL GO ACCORDING TO MY SUGGESTION.

26                   MR. BARENS: ALL RIGHT, YOUR HONOR.

27                   THE COURT: ALL RIGHT. SHALL WE GO OUT?

28                   MR. BARENS: THANK YOU, YOUR HONOR.

1 THE COURT: WHAT WE WILL DO IS WE WILL FINISH THE  
2 QUESTIONING.

3 MR. BARENS: OF MR. RUTHERFORD, WE HAD ACTUALLY NOT  
4 STARTED, YOUR HONOR.

5 THE COURT: NO. I AM FINISHED BUT YOU HADN'T.

6 MR. BARENS: YES, I HAD NOT FINISHED.

7 THE COURT: ALL RIGHT.  
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8-1  
1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT IN THE PRESENCE OF THE  
3 JURORS:)

4 THE COURT: NOW I WILL TELL YOU WHAT IT IS ALL ABOUT.  
5 MISS SAUNDERS, BECAUSE OF HARDSHIP IN A LETTER FURNISHED TO  
6 THE COURT AND COUNSEL FROM HER EMPLOYER, ASKED THAT SHE BE  
7 EXCUSED BECAUSE OF HARDSHIP TO HER. SHE WOULD NOT RECEIVE  
8 ANY COMPENSATION WHILE SHE WAS SERVING ON THE JURY. SO FOR  
9 HER SAKE, WE EXCUSED HER.

10 NOW, SINCE THERE IS A VACANCY IN SEAT NUMBER 12,  
11 WE HAVE BEEN DISCUSSING WHAT THE PROPER PROCEDURE SHOULD BE  
12 IN FILLING THAT CHAIR THAT WAS FORMALLY OCCUPIED BY  
13 MISS SAUNDERS.

14 WE HAVE AGREED AS FOLLOWS: THAT WE'LL PROCEED  
15 TO FINISH THE VOIR DIRE EXAMINATION OF MR. RUTHERFORD AND  
16 THEN WE'LL HAVE THREE POSSIBLE ALTERNATES WHO HAVE BEEN  
17 ALREADY INTERROGATED.

18 AND THEN WHAT WE'LL DO AFTER THAT, IS TO DRAW  
19 BY LOT, HAVE ONE OF THE THREE OF YOU WHO ARE SEATED NOW IN  
20 THE JURY BOX, TAKE THE PLACE OF MISS SAUNDERS. AND WE'LL  
21 PROCEED FROM THERE, SINCE THE DEFENDANT OF COURSE, IS ENTITLED  
22 TO EXERCISE ANOTHER PEREMPTORY IF THEY DESIRE TO DO SO.

23 MR. BARENS: RIGHT. I HAD A PEREMPTORY REMAINING WHEN  
24 I ACCEPTED THE JURY.

25 THE COURT: YES. THAT'S CORRECT.

26 ALL RIGHT. YOU MAY QUESTION MR. RUTHERFORD.

27 MR. BARENS: THANK YOU, YOUR HONOR.

28 GOOD MORNING, MR. RUTHERFORD.

8-2  
1 MR. RUTHERFORD: GOOD MORNING.

2 MR. BARENS: THE MORNING HAS ALREADY BEEN UNUSUAL,  
3 MR. RUTHERFORD. WELL, HOW DID YOU FEEL MR. RUTHERFORD, ABOUT  
4 THE PRESUMPTION OF INNOCENCE THAT THE DEFENDANT HAS WHEN HE  
5 COMES INTO THE COURTROOM FOR TRIAL?

6 MR. RUTHERFORD: ALL RIGHT. THAT IS THE WAY IT HAS  
7 TO BE.

8 MR. BARENS: DO YOU FEEL THAT THE FACT THAT HE IS HERE  
9 FACING A TRIAL CIRCUMSTANCE TO BEGIN WITH IN ANY WAY INDICATES  
10 TO YOU THAT HE HAS DONE SOMETHING WRONG?

11 MR. RUTHERFORD: NO, SIR.

12 MR. BARENS: DO YOU UNDERSTAND THAT THAT PRESUMPTION  
13 OF INNOCENCE THAT HE HAS, IS PRECISELY THE SAME PRESUMPTION  
14 OF INNOCENCE THAT YOU WOULD HAVE IF YOU WERE A DEFENDANT IN  
15 THIS COURTROOM?

16 MR. RUTHERFORD: YES, SIR.

17 MR. BARENS: NOW, YOU INDICATED YESTERDAY THAT YOU HAVE  
18 NO PRIOR JURY EXPERIENCE.

19 MR. RUTHERFORD: NO, SIR.

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

21 MR. RUTHERFORD: NO, SIR, JUST PERRY MASON.

22 MR. BARENS: WELL, WE WON'T HAVE THAT HERE, I DON'T  
23 THINK.

24 HAVE YOU EVER BEEN A WITNESS IN A TRIAL?

25 MR. RUTHERFORD: NO, SIR.

26 MR. BARENS: HAVE YOU EVER HAD YOUR DEPOSITION TAKEN?

27 MR. RUTHERFORD: NO, SIR.

28 MR. BARENS: SO THIS IS IN FACT, YOUR FIRST CONTACT

8-7  
1 WITH THE INSTITUTION?

2 MR. RUTHERFORD: YES, SIR, OTHER THAN MY PARKING TICKET.

3 MR. BARENS: YOU DIDN'T TRY ANY OF THE TICKETS THAT  
4 YOU GOT OR ANYTHING LIKE THAT?

5 MR. RUTHERFORD: I TOOK IT TO COURT.

6 MR. BARENS: YOU DID?

7 MR. RUTHERFORD: YES, SIR.

8 MR. BARENS: DID YOU ACTUALLY REPRESENT YOURSELF?

9 MR. RUTHERFORD: YES, SIR.

10 MR. BARENS: HOW DID YOU DO?

11 MR. RUTHERFORD: I WON.

12 MR. BARENS: ALL RIGHT. COME ON OVER HERE.

13 OKAY, WHAT DID YOU THINK OF THIS SYSTEM AFTER  
14 BEING IN FRONT OF A JUDGE AND TRYING IT? I PRESUME -- WAS  
15 THERE A LAWYER OR JUST A POLICE OFFICER?

16 MR. RUTHERFORD: JUST THE POLICE OFFICER.

17 MR. BARENS: WELL, WERE YOU SATISFIED WITH THE OUTCOME?

18 MR. RUTHERFORD: YES, DEFINITELY. YES, SIR.

19 MR. BARENS: YOU BET. OKAY, WHAT DO YOU THINK ABOUT  
20 WHETHER OR NOT A DEFENDANT SHOULD HAVE TO TESTIFY AT A TRIAL?

21 MR. RUTHERFORD: THAT IS UP TO HIM.

22 MR. BARENS: AND WOULD YOU FEEL THAT IF A DEFENDANT  
23 DIDN'T TESTIFY, THAT THAT SAID SOMETHING BAD ABOUT HIM?

24 MR. RUTHERFORD: NO, SIR.

25 MR. BARENS: IT WAS JUST ONE OF HIS RIGHTS?

26 MR. RUTHERFORD: YES, SIR.

27 MR. BARENS: NOW, WHAT ABOUT THE OPPOSITE OF THAT IF  
28 A DEFENDANT DOES TESTIFY? WOULD YOU THINK AS YOU SIT THERE

8-4  
1 NOW, WELL, IF MR. HUNT TAKES THE STAND, FOR SURE HE IS GOING  
2 TO SAY SO AND SO? WOULD YOU BE THINKING THAT?

3 MR. RUTHERFORD: NO, SIR.

4 MR. BARENS: DO YOU THINK THAT A DEFENDANT WOULD  
5 NECESSARILY BE UNTRUTHFUL BECAUSE HE HAD SOME DIRE  
6 CONSEQUENCES FACING HIM?

7 MR. RUTHERFORD: NO, SIR.

8 MR. BARENS: YOU WOULDN'T?

9 MR. RUTHERFORD: NO, SIR.

10 MR. BARENS: YOU ARE EMPLOYED AS A TRUCK DRIVER, SIR?

11 MR. RUTHERFORD: YES, SIR.

12 MR. BARENS: DO YOU DRIVE INTERSTATE TRUCKS OR JUST  
13 LOCALLY?

14 MR. RUTHERFORD: I DID UNTIL THE LAST PART OF OCTOBER.  
15 THEN I GOT A JOB WITH RALPH'S GROCERY. I DRIVE TO SAN DIEGO  
16 AND LOS ANGELES AND ORANGE COUNTY.

17 MR. BARENS: HOW LONG HAVE YOU BEEN IN THAT SORT OF  
18 EMPLOYMENT?

19 MR. RUTHERFORD: IF YOU ADDED IT UP, PROBABLY 15 YEARS.

20 MR. BARENS: DURING THAT 15-YEAR PERIOD OF TIME, HAVE  
21 YOU HAD OTHER TYPES OF EMPLOYMENT?

22 MR. RUTHERFORD: YES, SIR.

23 MR. BARENS: CONSISTING OF?

24 MR. RUTHERFORD: MECHANIC. THAT IS ABOUT IT, DRIVING  
25 A TRUCK AND MECHANIC.

26 MR. BARENS: WERE YOU IN THE SERVICE?

27 MR. RUTHERFORD: YES, SIR.

28 MR. BARENS: WHAT SORT OF MILITARY DUTY DID YOU HAVE?



8-5  
1 MR. RUTHERFORD: I WAS IN THE NAVY FOR THREE YEARS IN  
2 A HELICOPTER SQUADRON.

3 MR. BARENS: WERE YOU A PILOT?

4 MR. RUTHERFORD: NO, SIR, AIR CREWMAN.

5 MR. BARENS: YOUR EDUCATION AFTER HIGH SCHOOL CONSISTS  
6 OF APPROXIMATELY TWO YEARS OF JUNIOR COLLEGE?

7 MR. RUTHERFORD: YES, SIR.

8 MR. BARENS: WHAT JUNIOR COLLEGE DID YOU ATTEND?

9 MR. RUTHERFORD: TERRIN COUNTY IN FORT WORTH, TEXAS.

10 MR. BARENS: THAT IS WHERE YOU ORIGINATE FROM?

11 MR. RUTHERFORD: YES, SIR.  
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B-1  
1 MR. BARENS: THE FORT WORTH AREA? THAT IS NOT A GREAT  
2 SURPRISE.

3 ALL RIGHT. WHAT SORT OF CLASSES DID YOU TAKE  
4 IN JUNIOR COLLEGE, MR. RUTHERFORD?

5 MR. RUTHERFORD: NEW MATH, PHYSICAL ED, HISTORY, ENGLISH,  
6 INTRODUCTION TO PSYCHOLOGY, A PHILOSOPHY COURSE --

7 MR. BARENS: ALL RIGHT. THE PHILOSOPHY BACKGROUND HAS  
8 SOME PARTICULAR INTEREST TO US IN THIS CASE BECAUSE IF YOU  
9 ARE ON THIS JURY, YOU WILL PROBABLY HEAR SOME DISCUSSION ABOUT  
10 A PHILOSOPHY OR PHILOSOPHICAL POINT OF VIEW THAT MIGHT BE  
11 CORRECTLY OR INCORRECTLY REFERRED TO AS THE PARADOX PHILOSOPHY.  
12 HAVE YOU EVER HEARD THE EXPRESSION BEFORE?

13 MR. RUTHERFORD: I HAVE HEARD THE EXPRESSION.

14 MR. BARENS: COULD YOU TELL US IN WHAT CONTEXT OR PLACE  
15 YOU MIGHT HAVE HEARD THAT?

16 MR. RUTHERFORD: RIGHT HERE IN THIS COURTROOM.

17 MR. BARENS: IT DOESN'T COUNT. OKAY. OTHER THAN HEARING  
18 ABOUT THAT IN THIS COURTROOM, HAVE YOU EVER HEARD THAT  
19 REFERENCED BEFORE?

20 MR. RUTHERFORD: I MIGHT HAVE. I DON'T REMEMBER.

21 MR. BARENS: ALL RIGHT, SIR. DID YOU IN YOUR PHILOSOPHY  
22 CLASS AT ALL, DEAL WITH EXISTENTIAL PHILOSOPHY?

23 MR. RUTHERFORD: NO, SIR. I DIDN'T LIKE THE CLASS.  
24 I DROPPED IT HALFWAY THROUGH.

25 MR. BARENS: ALL RIGHT. IT WAS NOT A REQUIREMENT, THEN?

26 MR. RUTHERFORD: NO.

27 MR. BARENS: YOU DIDN'T HAVE TO STAY?

28 MR. RUTHERFORD: NO.

3B-?  
1 MR. BARENS: DID YOU GET INTO ANYTHING ABOUT THE  
2 PHILOSOPHY OF PRAGMATISM?

3 MR. RUTHERFORD: NO, SIR.

4 MR. BARENS: SO YOU DON'T FEEL THAT -- WELL, LET ME  
5 ASK YOU THIS. YOU DON'T FEEL THAT ANYTHING YOU RECEIVED BY  
6 WAY OF INSTRUCTION IN ANY OF YOUR PHILOSOPHY CLASSES WOULD  
7 IMPACT YOU AS A JUROR IN THIS CASE?

8 MR. RUTHERFORD: NO, SIR.

9 MR. BARENS: ALL RIGHT. WHAT DO YOU FEEL ABOUT SOMEONE  
10 WHO MIGHT HAVE BEEN A MEMBER OF AN ORGANIZATION REFERRED TO  
11 AS THE BILLIONAIRE BOYS CLUB?

12 MR. RUTHERFORD: NOTHING.

13 MR. BARENS: IT WOULDN'T MAKE YOU SUSPICIOUS OF THEM?

14 MR. RUTHERFORD: NO, SIR.

15 MR. BARENS: ALL RIGHT. ONE OF THE QUESTIONS I HAVE  
16 ASKED THE JURORS WHICH I WISH TO PUT TO YOU IS, THE FACT THAT  
17 JOE HUNT IS HERE ACCUSED OF A MURDER, WOULD THAT NECESSARILY  
18 MAKE YOU BELIEVE THAT A MURDER TOOK PLACE AND WE ARE GOING  
19 TO BE -- AND YOUR PURPOSE IN BEING HERE IS TO DECIDE WHETHER  
20 HE DID THE MURDER?

21 MR. RUTHERFORD: NO, SIR.

22 MR. BARENS: YOU WOULD WANT TO HEAR THE EVIDENCE,  
23 WOULDN'T YOU? I MEAN, YOU HAVE PROBABLY HEARD THAT EVIDENTLY  
24 THE GOVERNMENT IS UNPREPARED TO PRODUCE A BODY IN THIS CASE.

25 THEREFORE, I SUPPOSE PRELIMINARILY, YOU WOULD  
26 HAVE TO DETERMINE WHETHER OR NOT THERE IS A BODY OTHER THAN  
27 A LIVE BODY?

28 MR. RUTHERFORD: YES, SIR.

8B-3  
1 MR. BARENS: SO YOU WOULD WANT TO MAKE THAT INQUIRY  
2 BEFORE YOU START TO DETERMINE WELL, DID SOMEBODY MURDER  
3 SOMEONE?

4 MR. RUTHERFORD: YES, SIR.

5 MR. BARENS: NOW, YOU HAVE HEARD THE DISTRICT ATTORNEY  
6 TALK ABOUT WELL, IF YOU DIDN'T LIKE THE ALLEGED VICTIM, YOU  
7 WOULD NONETHELESS FAIRLY JUDGE THE DEFENDANT ON WHETHER OR  
8 NOT HE KILLED SOMEONE. YOU HEARD THAT, DIDN'T YOU?

9 MR. RUTHERFORD: YES.

10 MR. BARENS: YOU PROBABLY AGREE WITH THAT, DON'T YOU?

11 MR. RUTHERFORD: YES, SIR.

12 MR. BARENS: QUITE SO. HOWEVER, WOULD YOU WANT TO KNOW  
13 A LITTLE SOMETHING ABOUT THAT ALLEGED VICTIM IN ORDER TO  
14 DETERMINE WHETHER OR NOT HE WAS DEAD OR JUST MAKING IT LOOK  
15 LIKE HE WAS DEAD?

16 MR. RUTHERFORD: YES, SIR.

17 MR. BARENS: SO, YOUR INQUIRY WOULDN'T JUST GO TO  
18 WHETHER OR NOT YOU LIKE THE DEFENDANT BUT WHETHER HE IS  
19 BELIEVABLE OR NOT?

20 MR. RUTHERFORD: WELL, YES, SIR.

21 MR. BARENS: YOU SEE, COULD YOU UNDERSTAND THAT FOR  
22 ME TO MAKE A STATEMENT TO YOU, THERE ARE A FEW WAYS I CAN  
23 DO IT? I CAN EITHER SAY SOMETHING TO YOU, I CAN DEMONSTRATE  
24 IT BY MY CONDUCT OR I CAN DEMONSTRATE IT THROUGH A LACK OF  
25 CONDUCT, TO CREATE AN IMPRESSION OF SOMETHING.

26 MR. RUTHERFORD: YES, SIR.

27 MR. BARENS: YOU UNDERSTAND THAT?

28 MR. RUTHERFORD: YES, SIR.

8B-4  
1 MR. BARENS: THEREFORE, IF YOU WERE TOLD FOR AN INSTANCE  
2 THAT THE DEFENDANT WAS SOME CON MAN OR ILLUSIONIST OF SOME  
3 KIND WHO HAD REASONS TO VOLUNTARILY ABSENT HIMSELF FROM THE  
4 JURISDICTION, WOULD YOU WANT TO KNOW SOMETHING ABOUT HIS  
5 CHARACTER AND HIS SETTING IN LIFE BEFORE WE COULD DETERMINE  
6 WHETHER HE IS DEAD OR NOT?

7 MR. RUTHERFORD: YES, SIR, TRUE.

8 MR. BARENS: ALL RIGHT. YOUR WIFE, I UNDERSTAND IS  
9 A TRUCK DRIVER AS WELL?

10 MR. RUTHERFORD: YES, SIR.

11 MR. BARENS: AND HOW LONG HAS SHE BEEN A TRUCK DRIVER?

12 MR. RUTHERFORD: SIX YEARS.

13 MR. BARENS: AND DID SHE HAVE EMPLOYMENT PRIOR TO THAT?

14 MR. RUTHERFORD: YES, SIR. SHE USED TO WORK FOR B OF A,  
15 BANK OF AMERICA.

16 MR. BARENS: IS SHE A TRUCK DRIVER SUCH AS YOURSELF  
17 IN A LOCAL CAPACITY?

18 MR. RUTHERFORD: SHE IS LONG-HAUL.

19 MR. BARENS: ALL RIGHT. DO YOU HAVE CHILDREN?

20 MR. RUTHERFORD: NO, SIR.

21 MR. BARENS: AND HOW LONG HAVE YOU BEEN MARRIED?

22 MR. RUTHERFORD: A LITTLE OVER A YEAR.

23 MR. BARENS: I SEE. WERE YOU PREVIOUSLY MARRIED?

24 MR. RUTHERFORD: YES, SIR.

25 MR. BARENS: AND WHAT --

26 MR. RUTHERFORD: I SAID I WAS A TRUCK DRIVER.

27 MR. BARENS: NOTHING WRONG WITH THAT. I TRUST OF COURSE,  
28 MR. RUTHERFORD, THERE ARE NO OTHER MRS. RUTHERFORDS IN OTHER

B-5  
1 PORTS AROUND? THAT IS A JOKE, OF COURSE, SIR.

2 WHAT DID THE FIRST MRS. RUTHERFORD DO?

3 MR. RUTHERFORD: SHE CUT HAIR.

4 MR. BARENS: ALL RIGHT. DID YOU HAVE ANY CHILDREN FROM  
5 THAT MARRIAGE?

6 MR. RUTHERFORD: YES, SIR.

7 MR. BARENS: AND THEY DO NOT CURRENTLY RESIDE WITH YOU?

8 MR. RUTHERFORD: NO, SIR.

9 MR. BARENS: AND HOW OLD ARE YOUR CHILDREN?

10 MR. RUTHERFORD: MY OLDEST GIRL IS 19. MY YOUNGEST  
11 DAUGHTER DIED WHEN SHE WAS A YEAR AND A HALF OLD.

12 MR. BARENS: SORRY, MR. RUTHERFORD. HOW IS YOUR  
13 19-YEAR-OLD EMPLOYED, SIR?

14 MR. RUTHERFORD: SHE CUTS HAIR.

15 MR. BARENS: ALL RIGHT. MR. RUTHERFORD, HOW DO YOU  
16 FEEL ABOUT PROSPECTIVELY BEING A JUROR ON THIS CASE?

17 MR. RUTHERFORD: I LOOK FORWARD TO IT. I HAVE NEVER  
18 SEEN THE SYSTEM WORK, OTHER THAN LIKE I SAY, MY PARKING  
19 TICKET, YOU KNOW. I LOOK FORWARD TO IT. IT IS A PART OF  
20 MY DUTY AS AN AMERICAN CITIZEN.

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1 MR. BARENS: DO YOU UNDERSTAND THE STANDARD OF PROOF  
2 IS BEYOND A REASONABLE DOUBT?

3 MR. RUTHERFORD: YES, SIR.

4 MR. BARENS: ARE YOU SATISFIED THAT THE ONLY ONE THAT  
5 HAS TO PROVE ANYTHING TO YOU IN THIS CASE IS THE GOVERNMENT?

6 MR. RUTHERFORD: YES, SIR.

7 MR. BARENS: THEY HAVE GOT TO DO THAT BEYOND A REASONABLE  
8 DOUBT?

9 MR. RUTHERFORD: YES, SIR.

10 MR. BARENS: DO YOU UNDERSTAND THAT IS A LOT HEAVIER  
11 THAN A MORE LIKELY THAN NOT STANDARD?

12 MR. RUTHERFORD: YES, SIR.

13 MR. BARENS: IN OTHER WORDS, YOU WOULD HAVE TO REALLY  
14 BE CONVINCED BEYOND A REASONABLE DOUBT THAT THE CASE AGAINST  
15 MY CLIENT HAS BEEN ESTABLISHED THROUGHOUT IN ORDER TO REACH  
16 A VERDICT?

17 MR. RUTHERFORD: YES, SIR, I KNOW.

18 MR. BARENS: WOULD YOU BELIEVE THAT IN ORDER FOR SOMETHING  
19 TO BE REASONABLE THAT IT WOULD BE USUAL, THAT THE USUAL  
20 ANSWER, THAT IS WHAT IS REASONABLE AND ANYTHING THAT ISN'T  
21 USUAL ISN'T REASONABLE?

22 MR. RUTHERFORD: YES, SIR, THAT MAKES SENSE.

23 MR. BARENS: IT DOES?

24 MR. RUTHERFORD: WELL, I DON'T QUITE KNOW WHAT YOU MEAN  
25 HERE.

26 MR. BARENS: OKAY. YOU SEE, IT IS POSSIBLE IN THIS CASE  
27 THAT WE MAY GET INTO SOME FAIRLY UNUSUAL GROUND, TO EXPLAIN  
28 WHAT DID OR DIDN'T HAPPEN IN THIS AREA.

1 MR. RUTHERFORD: YES.

2 MR. BARENS: AND MY CONCERN IS THAT IF YOU ARE LOOKING  
3 FOR JUST THE USUAL THING, "OH, WELL, YOU KNOW, IF A GUY IS  
4 MISSING HE MUST BE DEAD," THAT, YOU KNOW, MIGHT BE USUAL.

5 WHAT I AM SAYING IS, COULD YOU LISTEN TO ALL OF  
6 THE TESTIMONY AND CONSIDER THAT A REASONABLE EXPLANATION FOR  
7 CONDUCT WITH THESE PEOPLE INVOLVED IN THIS PROSECUTION, IN  
8 THIS CASE, MIGHT NOT NECESSARILY BE USUAL AT ALL?

9 MR. RUTHERFORD: OH, SURE.

10 MR. BARENS: YOU COULD UNDERSTAND THAT?

11 MR. RUTHERFORD: YES, SIR.

12 MR. BARENS: YOU REMEMBER I DID MY EXAMPLE THE OTHER  
13 DAY ABOUT FINDING A ROCK ON THE LAND THAT COULD TURN OUT TO  
14 BE A METEORITE; EVEN THOUGH THAT WOULD BE HIGHLY UNUSUAL, IT  
15 COULD NONETHELESS BE TRUE.

16 MR. RUTHERFORD: YES, SIR.

17 MR. BARENS: EVEN THOUGH IT MIGHT BORDER ON THE TACK  
18 OF BEING SOMEWHAT IMPROBABLE BUT, NONETHELESS, TRUE.

19 MR. RUTHERFORD: YES, SIR.

20 MR. BARENS: YOU SEE, THE ONLY THING, I SUBMIT TO YOU,  
21 MR. RUTHERFORD, THAT WOULD BE REASONABLE IN THIS CASE IS WHAT  
22 YOU BELIEVE ABOUT THIS CASE.

23 MR. RUTHERFORD: YES, SIR.

24 MR. BARENS: WHAT IS REASONABLE IS RELATIVE TO THE FACTS  
25 THAT THE PLAYERS IN THIS DRAMA WERE ASSOCIATED WITH.

26 MR. RUTHERFORD: YES, SIR.

27 MR. BARENS: DO YOU UNDERSTAND THAT?

28 MR. RUTHERFORD: YES, SIR.



1 MR. BARENS: HOW WOULD YOU FEEL IF YOU WERE THE  
2 DEFENDANT HERE AND THE 12 JURORS HAD YOUR OUTLOOK ON LIFE AND  
3 YOUR BELIEF SYSTEM, HOW WOULD YOU FEEL ABOUT BEING A  
4 DEFENDANT BEING TRIED BY 12 PEOPLE WITH YOUR PERSUASIONS  
5 AND OUTLOOK, MR. RUTHERFORD?

6 MR. RUTHERFORD: I WOULD FEEL LIKE I WAS GETTING THE  
7 BEST.

8 MR. BARENS: I LIKE THAT.

9 YOU FEEL, I PRESUME, IN YOUR ANSWER YOU ARE  
10 REFERENCING THAT YOU ARE TRULY OPEN-MINDED?

11 MR. RUTHERFORD: OH, YES, SIR.

12 MR. BARENS: AND COULD GIVE A FAIR TRIAL?

13 MR. RUTHERFORD: YES, SIR.

14 MR. BARENS: DO YOU BELIEVE YOU WOULD BE WILLING TO  
15 LISTEN TO ALL OF THE EVIDENCE BEFORE YOU STARTED MAKING ANY  
16 DECISIONS ABOUT WHO IS GUILTY AND WHO IS INNOCENT?

17 MR. RUTHERFORD: OH, YES, SIR.

18 MR. BARENS: AND YOU KNOW WHAT CONCERNS ME, OF COURSE,  
19 THAT THE PEOPLE, THE GOVERNMENT PUTS ITS CASE ON FIRST AND  
20 YOU KNOW, JUST TRY TO BURY THE DEFENDANT AND EVERYTHING ELSE  
21 BECAUSE THAT IS THEIR JOB, AND WHAT I WANT TO MAKE SURE OF  
22 IS YOU UNDERSTAND THAT JUST AFTER THAT HAPPENS, YOU DON'T MAKE  
23 SOME KIND OF A DECISION BECAUSE, I ASSURE YOU, THERE WILL BE  
24 A DEFENSE CASE.

25 MR. RUTHERFORD: YES, THERE ARE TWO SIDES TO EVERYTHING.

26 MR. BARENS: YOU ARE NOT GOING TO MAKE ANY DECISIONS  
27 UNTIL YOU HAVE HEARD BOTH SIDES?

28 MR. RUTHERFORD: RIGHT.

9-4

1           MR. BARENS: HAVE YOU EVER BEEN IN A SITUATION WHERE  
2 YOU WERE HEARING A POINT OF VIEW, PERHAPS DURING ONE OF THE  
3 PRESIDENTIAL DEBATES OR JUST EVEN IN A SOCIAL SETTING, WHERE  
4 SOMEONE CAME TO YOU IN A DISPUTE AND YOU HEARD ONE SIDE OF  
5 THE STORY AND THEN LATER -- YOU BELIEVED ONE SIDE OF THE  
6 STORY -- AND THEN LATER ON, YOU GOT SOME ADDITIONAL INFORMATION  
7 FROM SOMEONE THAT CHANGED YOUR MIND?

8           MR. RUTHERFORD: YES, SIR.

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1 MR. BARENS: NOW WHAT HAPPENS IF YOU GET TO A SITUATION  
2 WHERE YOU HAVE HEARD BOTH SIDES OF THE STORY AND YOU SAY  
3 "IT IS JUST A CLOSE CALL," I MEAN IT IS A CLOSE CALL, IT IS  
4 ALMOST NECK AND NECK, IT MIGHT LOOK A LITTLE LIKE HE IS MAYBE  
5 GUILTY, WHAT DO YOU DO IF YOU ARE SITTING THERE AND SAYING  
6 "MAYBE HE IS GUILTY" WHAT DO YOU DO?

7 MR. RUTHERFORD: MAYBE HE IS GUILTY?

8 MR. BARENS: YES, THAT IS WHAT YOU ARE LEFT WITH.

9 MR. RUTHERFORD: IF IT IS A MAYBE SITUATION, THEN I WOULD  
10 FIND FOR THE DEFENDANT.

11 MR. BARENS: IN A CLOSE CALL, THE LAW SAYS WE RESOLVE  
12 ALL DOUBTS IN FAVOR OF THE DEFENDANT; CAN YOU ACCEPT THAT?

13 MR. RUTHERFORD: YES, SIR.

14 MR. BARENS: NOW, YOU HAVE HEARD DIALOGUE BY COUNSEL  
15 ABOUT ALL OF THESE EXAMPLES OF DIRECT AND INDIRECT EVIDENCE.  
16 DO YOU UNDERSTAND WHY THAT IS BEING DONE IS BECAUSE IF THEY  
17 CAN'T PRODUCE A BODY, WHICH I DON'T BELIEVE THEY CAN, THEN  
18 THE GOVERNMENT HAS TO CONVINCING YOU FOLKS, AND IF YOU ARE A  
19 JUROR, THAT SOMEBODY IS DEAD BY WHAT THEY CALL CIRCUMSTANTIAL  
20 EVIDENCE.

21 MR. RUTHERFORD: YES.

22 MR. BARENS: YOU UNDERSTAND THAT THAT IS WHAT THAT HAS  
23 ALL BEEN ABOUT.

24 WE HAD THAT PIE BUSINESS AS AN ALLEGED EXAMPLE  
25 OF CIRCUMSTANTIAL EVIDENCE.

26 MR. RUTHERFORD: YES, SIR.

27 MR. BARENS: HOW DID YOU FEEL ABOUT THE ANSWERS YOU  
28 HEARD ABOUT THE PIE, OR DID YOU FEEL YOU COULD MAKE ANY

1 DECISION BASED ON THE EVIDENCE YOU HAD BEEN GIVEN?

2 MR. RUTHERFORD: WELL, BASED ON WHAT WE HAD TO GO WITH,  
3 THE BOY MUST HAVE EATEN THE PIE. THAT IS THE ONLY CONCLUSION  
4 WE COULD DRAW FROM WHAT WE KNEW ABOUT IT.

5 MR. BARENS: YOU MIGHT CALL THAT TYPE OF A SITUATION  
6 A SET-UP.

7 MR. RUTHERFORD: YES, SIR.

8 MR. BARENS: THAT IS THE OLD "ARE YOU STILL BEATING  
9 YOUR WIFE" QUESTION? NOT THAT I AM PUTTING THAT TO YOU, SIR.

10 HOWEVER, YOU SEE THERE ARE CERTAIN QUESTIONS THAT,  
11 NOT JUST LAWYERS BUT ANYBODY CAN ASK YOU, WHERE YOU REALLY  
12 DON'T HAVE AN ANSWER.

13 YOU KNOW, I MEAN THE ANSWER IS DICTATED BY THE  
14 QUESTION, IT IS NOT YOUR ANSWER. THE GUY ASKING YOU THE  
15 QUESTION HAS PROGRAMMED THE ANSWER. THAT IS WHY I ASK, DO  
16 YOU REMEMBER YESTERDAY WHEN I SAID THAT WHAT IS INCREDIBLE  
17 ABOUT THAT CASE IS THAT JOHNNY COVERED IN CHERRY PIE WOULDN'T  
18 EVER PLEAD NOT GUILTY TO BEGIN WITH.

19 THE REAL QUESTION FOR YOU, I SUBMIT, MR. RUTHERFORD,  
20 IS: DO YOU REALLY THINK HE WOULD COME IN HERE AND PLEAD  
21 NOT GUILTY?

22 MR. RUTHERFORD: I DON'T BELIEVE HE WOULD.

23 MR. BARENS: NOBODY WOULD. NOBODY WOULD.

24 LET ALONE COME IN HERE WITH THE MOST DESPERATE  
25 OF LAWYERS THAT WOULD ENDORSE THAT TYPE OF POSITION.

26 MR. RUTHERFORD, DO YOU UNDERSTAND JOE HUNT IS NOT  
27 COVERED IN CHERRY PIE?

28 MR. RUTHERFORD: YES, SIR.

1 MR. BARENS: JOE HUNT CAME IN HERE AND PLED NOT GUILTY.

2 MR. RUTHERFORD: YES, SIR.

3 MR. BARENS: THAT HIS CASE -- WE ARE NOT DEALING WITH  
4 A CIRCUMSTANTIAL EVIDENCE CASE THAT IS EVEN REMOTELY ANALOGOUS  
5 TO THAT EXAMPLE; DO YOU UNDERSTAND THAT?

6 MR. RUTHERFORD: YES, SIR.

7 MR. BARENS: NOW, DO YOU THINK THERE IS ANYTHING I OUGHT  
8 TO KNOW ABOUT YOU OR YOUR BACKGROUND OR YOUR BELIEF SYSTEM  
9 THAT IN ANY WAY I SHOULD BE AWARE OF BEFORE MAKING A  
10 DETERMINATION, AT LEAST FROM MY PERSPECTIVE, AS SUBJECTIVE  
11 AS THAT IS IN THIS WHOLE PROCESS, BEFORE EVALUATING YOU AS  
12 A PROSPECTIVE JUROR?

13 MR. RUTHERFORD: NO, SIR.

14 MR. BARENS: I THINK I HAVE GOT WHAT I NEED TO KNOW.  
15 I THANK YOU FOR YOUR TIME, MR. RUTHERFORD.

16 WE PASS FOR CAUSE.

17 THE COURT: ALL RIGHT.

18 MR. WAPNER: GOOD MORNING, MR. RUTHERFORD.

19 LET'S SEE, HAVE YOU GOT PIE STAINS ON THERE?

20 MR. RUTHERFORD: I QUIT EATING CHERRY PIE.

21 MR. WAPNER: WELL, STICK AROUND AT LUNCH, WE HAVE GOT  
22 SEVEN-EIGHTHS OF A PIE HERE.

23 YOUR CHANCES JUST WENT UP, DIDN'T THEY?

24 MR. RUTHERFORD: YES, SIR.

25 MR. WAPNER: TAKE A LOOK AROUND YOU FOR A SECOND, HOW  
26 DO YOU FEEL ABOUT THE NEXT TEN (SIC) MONTHS WITH TEN WOMEN.

27 A JUROR: TEN MONTHS?

28 MR. BARENS: OBJECTION TO THE QUESTION -- WAIT A MINUTE.

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I WILL WITHDRAW THAT OBJECTION.

THE COURT: YES.

MR. WAPNER: YOU ARE IN ENOUGH TROUBLE WITH THE WOMEN  
ON THE JURY ALREADY, YOU HAD JUST BETTER QUIT, MR. BARENS.

MR. BARENS: I DON'T BELIEVE THAT, MR. WAPNER.

1 MR. WAPNER: MR. BARENS GENERALLY ASKS PEOPLE ABOUT  
2 THEIR HOBBIES. CAN YOU TELL ME WHAT YOURS ARE?

3 MR. RUTHERFORD: MODEL RAILROAD.

4 MR. WAPNER: DO YOU BUILD AND EXHIBIT THEM?

5 MR. RUTHERFORD: JUST BUILD THEM AND JUST RUN THEM FOR  
6 MYSELF, YOU KNOW.

7 MR. WAPNER: OKAY. ANYTHING ELSE?

8 MR. RUTHERFORD: I JUST STARTED TAKING FLYING LESSONS.

9 MR. WAPNER: YOU WON'T THROW A COKE BOTTLE OUT OF A  
10 PLANE?

11 MR. RUTHERFORD: NO, SIR.

12 MR. WAPNER: DOES YOUR DAUGHTER LIVE IN THE LOS  
13 ANGELES AREA?

14 MR. RUTHERFORD: NO, SIR.

15 SHE IS IN TEXAS.

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

17 MR. RUTHERFORD: IT HAS BEEN PROBABLY THREE YEARS AGO  
18 SINCE I TALKED TO HER.

19 MR. WAPNER: DOES SHE LIVE WITH YOUR EX-WIFE?

20 MR. RUTHERFORD: YES.

21 MR. WAPNER: IT IS INTERESTING THAT YOU SHOULD MENTION  
22 PERRY MASON. I USED TO USE THAT EXAMPLE ALL THE TIME UNTIL  
23 I REALIZED THAT PEOPLE WEREN'T WATCHING THAT ANYMORE. IT  
24 HAS BEEN OFF THE AIR FOR SO LONG, PEOPLE HADN'T EVEN HEARD  
25 OF IT.

26 DO YOU REMEMBER AT THE END OF THOSE SHOWS THAT  
27 THEY ALWAYS SOLVED THE CASE, DIDN'T THEY?

28 MR. RUTHERFORD: OH, YES, SIR.

1 MR. WAPNER: EITHER SOMEBODY BROKE DOWN ON THE WITNESS  
2 STAND OR SOMEBODY IN THE BACK OF THE COURTROOM STARTED  
3 SCREAMING, "I DID IT, I DID IT," DO YOU REMEMBER THAT?

4 MR. RUTHERFORD: YES, SIR.

5 MR. WAPNER: AND THEN THEY WOULD HAVE A COMMERCIAL  
6 AND THEN PAUL AND DELLA AND PERRY WOULD GET TOGETHER AND THEY  
7 WOULD NOT ONLY EXPLAIN WHO DID IT, BUT WHY THEY DID IT AND  
8 THE MOTIVES OF EVERYONE INVOLVED, DO YOU REMEMBER THAT?

9 MR. RUTHERFORD: YES, SIR.

10 MR. WAPNER: DO YOU THINK THAT WILL HAPPEN IN THIS  
11 CASE?

12 MR. RUTHERFORD: NO, SIR.

13 MR. WAPNER: IF IT DOESN'T, DO YOU THINK I CAN STILL  
14 PROVE THE CASE BEYOND A REASONABLE DOUBT?

15 MR. RUTHERFORD: I SUPPOSE SO.  
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1 MR. WAPNER: THE PROSECUTOR IN PERRY MASON LOST EVERY  
2 CASE. YOU ARE NOT LOOKING AT ME AND THINKING THAT I AM --

3 MR. RUTHERFORD: I FORGOT ABOUT THAT, BUT HE DID.

4 MR. WAPNER: YOU ARE NOT GOING TO LOOK AT ME AND SAY,  
5 THAT IS HAMILTON BERGER AND HE IS GOING TO LOSE?

6 MR. RUTHERFORD: NO, SIR.

7 MR. WAPNER: DO YOU HAVE ANY FEELINGS FROM THAT SHOW  
8 OR ANY OTHER SHOW, THAT CIRCUMSTANTIAL EVIDENCE WAS NOT AS  
9 GOOD AS ANY OTHER KIND OF EVIDENCE?

10 MR. RUTHERFORD: NO, SIR. I HAVE NEVER HEARD BEFORE  
11 OF CIRCUMSTANTIAL EVIDENCE. I HAD NEVER THOUGHT ABOUT IT,  
12 YOU KNOW, BEING AS GOOD AS THE OTHER UNTIL I CAME IN HERE.

13 MR. WAPNER: DO YOU APPRECIATE NOW THAT IT IS JUST AS  
14 GOOD AS ANY OTHER KIND OF EVIDENCE?

15 MR. RUTHERFORD: YES, SIR.

16 MR. WAPNER: DO YOU UNDERSTAND THAT THE WHOLE CHERRY  
17 PIE EXAMPLE WAS TO DEMONSTRATE CIRCUMSTANTIAL EVIDENCE AND  
18 WHAT IT IS ALL ABOUT?

19 MR. RUTHERFORD: YES, SIR.

20 MR. WAPNER: HAVE YOU EVER BEEN THE VICTIM OF A THEFT?

21 MR. RUTHERFORD: MY PICKUP TRUCK WAS BROKEN INTO AND  
22 THEY STOLE MY STEREO AND BUSTED THE WINDOW OUT OF IT.

23 MR. WAPNER: DID YOU MAKE A REPORT TO THE POLICE?

24 MR. RUTHERFORD: NO, SIR.

25 MR. WAPNER: WHY NOT?

26 MR. RUTHERFORD: I FIGURED THAT THEY HAVE GOT OTHER  
27 THINGS TO DO BESIDES MESSING WITH A LITTLE OLD STEREO.

28 MR. WAPNER: YOU FIXED THE BROKEN WINDOW AND REPLACED

10A-2  
1 THE STEREO AND THAT WAS IT?

2 MR. RUTHERFORD: THAT'S IT.

3 MR. WAPNER: DO YOU HOLD ANY ANIMOSITY TOWARD THE  
4 POLICE DEPARTMENT AS A RESULT OF THE TICKET THAT YOU GOT?

5 MR. RUTHERFORD: NO, SIR.

6 MR. WAPNER: WAS IT A TICKET FOR DRIVING OR PARKING?

7 MR. RUTHERFORD: A PARKING TICKET.

8 MR. WAPNER: DO YOU HAVE ANY STEPCHILDREN?

9 MR. RUTHERFORD: NO, SIR.

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

12 THE COURT: ALL RIGHT. WHAT WE ARE GOING TO DO NOW,  
13 WE'LL TAKE THE THREE NAMES OF THE ALTERNATES IN THE BOX AND  
14 SHAKE THEM AROUND AND PICK ONE OUT. THAT PERSON WILL TAKE  
15 THE PLACE OF JUROR NUMBER 12.

16 THE BAILIFF: THE WINNER IS MR. RUTHERFORD.

17 THE COURT: ALL RIGHT.

18 MR. BARENS: I THINK THAT I HAD ANOTHER PEREMPTORY.

19 THE COURT: YES, YOU CAN STILL EXERCISE A PEREMPTORY.

20 MR. BARENS: YOUR HONOR, JUST A MOMENT, PLEASE.

21 (PAUSE.)

22 MR. BARENS: THE DEFENSE ACCEPTS THE JURY, YOUR HONOR.  
23 THANK YOU.

24 THE COURT: YOU WILL TAKE THE PLACE OF MR. RUTHERFORD  
25 AS AN ALTERNATE.

26 THE CLERK: BRENDA GALL, G-A-L-L.

27 THE COURT: IF SELECTED AS AN ALTERNATE JUROR, WOULD  
28 YOU BE WILLING TO SERVE IN THAT CAPACITY?

1 MS. GALL: YES I WOULD.

2 THE COURT: ALL RIGHT. I THINK MY MEMORY IS GETTING  
3 VERY DIM BECAUSE OF THE PASSAGE OF TIME. I REMEMBER A LONG  
4 TIME AGO THAT YOU INDICATED THAT YOU OR SOME MEMBER OF YOUR  
5 FAMILY HAD BEEN ENGAGED IN SOME LAW ENFORCEMENT WORK OF SOME  
6 KIND?

7 MS. GALL: YES. MY FATHER WAS AN IMMIGRATION  
8 INVESTIGATOR.

9 THE COURT: AND DO YOU REMEMBER WHAT HIS DUTIES  
10 ENTAILED?

11 MS. GALL: HE WORKED WITH GETTING PEOPLE NATURALIZED  
12 INTO THE COUNTRY AND SOMETIMES HE HAD TO MAKE ARRESTS.

13 THE COURT: AND THOSE ARRESTS WERE FOR SOME ILLEGALS  
14 COMING INTO THE COUNTRY, IS THAT IT?

15 MS. GALL: I DON'T KNOW WHY HE DID THAT.

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

20 MS. GALL: THE SAME.

21 THE COURT: AND WHAT DO YOU DO, PLEASE?

22 MS. GALL: I AM A GROCERY CHECKER AT RALPH'S AND AN  
23 ART STUDENT AT EL CAMINO COLLEGE.

24 THE COURT: ARE YOU MARRIED?

25 MS. GALL: YES.

26 THE COURT: AND FIRST, TELL US WHAT YOUR EDUCATIONAL  
27 BACKGROUND WAS.

28 MS. GALL: I GRADUATED FROM HIGH SCHOOL. THEN I HAVE

10P-2

1 JUST TAKEN SOME ART CLASSES IN JUNIOR COLLEGE.

2 THE COURT: DO YOU HAVE ANY CHILDREN?

3 MS. GALL: TWO DAUGHTERS, 21 AND 24.

4 THE COURT: YOU REALLY DON'T LOOK LIKE IT. I DON'T  
5 INTEND TO FLATTER YOU.

6 MS. GALL: THANK YOU.

7 THE COURT: WHAT DOES YOUR HUSBAND DO?

8 MS. GALL: HE IS A CERAMIC ARTIST. HE WORKS FOR  
9 HIMSELF.

10 THE COURT: FOR WHAT?

11 MS. GALL: FOR HIMSELF.  
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1 THE COURT: WHERE DO YOU LIVE, AGAIN?

2 MS. GALL: MANHATTAN BEACH.

3 THE COURT: AND WHAT WAS HIS BACKGROUND AND EDUCATION?

4 MS. GALL: HE HAS A BACHELOR'S IN ART FROM LONG BEACH  
5 STATE.

6 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN A  
7 CRIMINAL CASE BEFORE?

8 MS. GALL: NO I HAVE NOT.

9 THE COURT: ALL RIGHT. YOU MAY INQUIRE.

10 MR. BARENS: THANK YOU, YOUR HONOR.

11 GOOD MORNING, MS. GALL.

12 MS. GALL: GOOD MORNING.

13 MR. BARENS: MS. GALL, IS THERE A PARTICULAR TYPE OF  
14 ART THAT YOU ARE INTERESTED IN THAT YOU ARE A STUDENT OF?

15 MS. GALL: I DO LOTS OF PORTRAITS.

16 MR. BARENS: OF PEOPLE?

17 MS. GALL: YES. I HAVE BEEN MAKING PART OF MY LIVING  
18 DOING THAT.

19 THE COURT: WHAT ELSE?

20 MR. BARENS: WELL, THERE ARE SOME OUTSTANDING ANIMAL  
21 PORTRAIT ARTISTS OF DIFFERENT TYPES?

22 THE COURT: ALL RIGHT.

23 MS. GALL: PEOPLE DO ASK ME TO DO THAT SOMETIMES.

24 MR. BARENS: I SHOULD THINK. I HAVE SEEN SIMILARITIES.  
25 BUT IN ANY EVENT, YOU ARE PRIMARILY DOING PEOPLE PORTRAITS?

26 MS. GALL: YES.

27 MR. BARENS: HAVE YOU EVER SEEN THAT CONTEST THAT THEY  
28 HAVE WHERE PEOPLE LOOK LIKE THEIR DOGS?

10B-4  
1 MS. GALL: YES. AND THEY DO.

2 MR. BARENS: IT WAS ON THE NEWS ABOUT TWO WEEKS AGO.  
3 IT IS REMARKABLE THAT YOU GET VOLUNTEERS.

4 IN ANY EVENT, HOW LONG HAVE YOU BEEN DOING THAT?

5 MS. GALL: ABOUT A YEAR AND A HALF.

6 MR. BARENS: DO YOU DO IT PROFESSIONALLY?

7 MS. GALL: I HAVE BEEN MAKING A LITTLE BIT OF MONEY  
8 DOING THAT, BUT NOT MUCH.

9 MR. BARENS: BEFORE YOU STARTED YOUR EMPLOYMENT WITH  
10 RALPHS, DID YOU HAVE ANY EMPLOYMENT PRIOR TO THAT?

11 MS. GALL: I WORKED AT BUZZA-CARDOZA GREETING CARDS.

12 THE COURT REPORTER: PLEASE SPELL THAT.

13 MS. GALL: B-U-Z-Z-A HYPHEN C-A-R-D-O-Z-A GREETING CARDS.

14 MR. BARENS: SO WOULD IT BE A FAIR STATEMENT THAT ALL  
15 OF YOUR EMPLOYMENT HAS BEEN GENERALLY IN THE ART-RELATED  
16 AREA?

17 MS. GALL: NO, JUST A SMALL AMOUNT. MOSTLY, IT HAS  
18 BEEN RALPH'S.

19 MR. BARENS: AND SIMILAR TO THAT?

20 MS. GALL: YES.

21 MR. BARENS: OKAY. YOUR TWO GIRLS, 21 AND 24, WHAT  
22 DOES YOUR 24-YEAR-OLD DO?

23 MS. GALL: SHE IS A SECRETARY. IN ORANGE COUNTY.

24 MR. BARENS: WHAT TYPE OF OFFICE?

25 MS. GALL: IT IS A DEVELOPMENT OFFICE.

26 MR. BARENS: IS SHE MARRIED?

27 MS. GALL: NO.

28 MR. BARENS: AND YOUR YOUNGER DAUGHTER?

10B-5

1 MS. GALL: SHE IS A SALESGIRL AT A DEPARTMENT STORE  
2 IN HAWAII AND SHE IS MARRIED.

3 MR. BARENS: AND HER HUSBAND, HOW IS HE EMPLOYED?

4 MS. GALL: HE DESIGNS KITCHEN AND BATHROOM CABINETS.

5 MR. BARENS: I SEE. AND YOUR HUSBAND IS A CERAMIC  
6 ARTIST. IS THERE A PARTICULAR DEPICTION HE IS INVOLVED IN  
7 WITH CERAMICS?

8 MS. GALL: HE MAKES A LOT OF FUNCTIONAL POTTERY. HE  
9 ALSO DOES CUSTOM MURALS.

10 MR. BARENS: HAVE YOU EVER HAD ANY EMPLOYMENT WHEREBY  
11 YOU DID ANY SKETCHES OR PORTRAITS FOR ANY LAW ENFORCEMENT  
12 PEOPLE?

13 MS. GALL: NO.

14 MR. BARENS: IT COULD COME UP IN THIS CASE THAT THERE  
15 IS SOME EYEWITNESS ISSUE THAT IS POSED. AND I ASK YOU IF,  
16 JUST HAVING SEEN ME SAY ON ONE OCCASION AND SAY WE HAD  
17 SPENT 15 MINUTES TOGETHER, NOT EVEN NECESSARILY CHATTING,  
18 LET'S SAY THAT YOU CERTAINLY HAD AN OPPORTUNITY TO WATCH ME  
19 FOR 15 MINUTES WHILE I WAS UP HERE -- WELL, MY BACK WAS  
20 DISCOURTEOUSLY TO YOU. BUT DO YOU THINK THAT YOU COULD  
21 ACCURATELY DRAW ME FROM MEMORY, SAY, WEEKS LATER?

22 MS. GALL: I DON'T THINK SO. I HAVE NEVER TRIED DOING  
23 THAT. I HAVE WONDERED IF I COULD OR NOT. BUT I DON'T REALLY  
24 KNOW.

25 MR. BARENS: ALTHOUGH YOU COULD NOT DRAW ME WEEKS LATER,  
26 DO YOU THINK YOU COULD RECOGNIZE ME?

27 MS. GALL: YES.

28 MR. BARENS: QUITE SO?

10B-6

1 MS. GALL: YES.

2 MR. BARENS: SUPPOSING YOU HAD SEEN A PORTRAIT OF ME  
3 THAT WAS NOT DONE IN A SURREALISTIC FASHION BUT IT WAS DONE  
4 MORE CONVENTIONALLY LIKE THEY DO PORTRAITS OF PRESIDENTS IN  
5 THE WHITEHOUSE OR WHATEVER. LATER ON, I CAME WALKING ON THE  
6 STREET. DO YOU THINK THAT YOU WOULD KNOW IT WAS ME?

7 MS. GALL: POSSIBLY.

8 MR. BARENS: POSSIBLY?

9 MS. GALL: YES.

10 MR. BARENS: DO YOU THINK YOU -- AND AGAIN, WHEN I SAY  
11 "PORTRAIT" IN THIS INSTANCE, OBVIOUSLY, I AM NOT FAMILIAR  
12 WITH THE TYPE OF ARTWORK THAT YOU CREATE.

13 BUT A LOT OF TIMES, PEOPLE IN A VERY CONVENTIONAL  
14 SENSE, THEY ASK FOR A PORTRAIT OF THEMSELVES AND THEY WANT  
15 A PICTURE THAT REALLY LOOKS LIKE THEM AND SOMETIMES WHAT YOU  
16 END UP WITH IS A PAINTING THAT IS ALMOST A PHOTOGRAPH.

17 MS. GALL: UH-HUH.

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1 MR. BARENS: IF YOU SAW SOMEONE IN A PAINTING OF THAT  
2 TYPE OR A DRAWING OF THAT TYPE, DO YOU THINK THAT THEREAFTER  
3 YOU COULD RECOGNIZE THAT PERSON IF YOU ENCOUNTERED THAT  
4 PERSON?

5 MS. GALL: I MIGHT BE ABLE TO.

6 IT WOULD BE EASIER IF I SAW THEM IN PERSON.

7 MR. BARENS: OH, QUITE UNQUESTIONABLY.

8 WHAT I AM TALKING ABOUT, BASED ON A DRAWING THAT  
9 TRULY AND ACCURATELY AND NOT -- I AM QUALIFYING THIS -- NOT  
10 AN IMPRESSIONISTIC DRAWING. I SEE YOU, I DRAW A DRAWING --  
11 ASSUMING I WILL ALSO BE ABLE TO DO THAT -- DO YOU THINK YOU  
12 MIGHT JUST BE ABLE TO RECOGNIZE THAT PERSON?

13 MS. GALL: YES, I THINK I MIGHT.

14 MR. BARENS: DO YOU THINK YOU WOULD HAVE SOME CONFIDENCE  
15 IN THAT RECOGNITION?

16 MS. GALL: YES.

17 MR. BARENS: MRS. GALL, YOU HAVE NEVER BEEN A JUROR  
18 BEFORE; THAT IS CORRECT, ISN'T IT?

19 MS. GALL: THAT'S RIGHT.

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

21 MS. GALL: NO, I HAVEN'T.

22 MR. BARENS: IS THIS YOUR VERY FIRST EXPERIENCE IN  
23 THIS TYPE OF SETTING?

24 MS. GALL: YES.

25 MR. BARENS: YOU HAVE NEVER BEEN A WITNESS?

26 MS. GALL: NO.

27 MR. BARENS: THIS IS YOUR FIRST CONTACT OF ANY  
28 SIGNIFICANCE WITH LAWYERS?

1 MS. GALL: YES.

2 MR. BARENS: HAS THIS PROCEEDING BEEN SURPRISING YOU  
3 SO FAR OR ABOUT WHAT YOU EXPECTED?

4 MS. GALL: IT IS ALL NEW TO ME. I REALLY HADN'T  
5 EXPECTED ANYTHING.

6 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF  
7 INNOCENCE AFFORDED DEFENDANTS IN CRIMINAL TRIALS IN THE  
8 UNITED STATES?

9 MS. GALL: I AM HAPPY ABOUT THAT.

10 MR. BARENS: DO YOU THINK THAT IS A WORTHWHILE RIGHT?

11 MS. GALL: YES, IT IS.

12 MR. BARENS: DO YOU THINK IN ANY WAY THAT THAT IS JUST  
13 SOME PROCEDURAL NICETY WE THROW OUT THERE ON OUR WAY TO  
14 CONVICTING DEFENDANTS OR DO YOU THINK IT REALLY MEANS SOME-  
15 THING?

16 MS. GALL: NO. I THINK IT MEANS SOMETHING.

17 MR. BARENS: IT IS SUBSTANTIVE IN NATURE?

18 MS. GALL: YES.

19 MR. BARENS: AND IF THE DEFENDANT WERE TO TESTIFY, AND  
20 I ASK YOU TRUE, WOULD YOU HAVE SOME FEELING IN YOUR OWN HEART  
21 THAT THE DEFENDANT WOULD PROBABLY LIE --

22 MS. GALL: NO.

23 MR. BARENS: -- BECAUSE HE WAS TESTIFYING?

24 MS. GALL: NO, I THINK HE WOULD PROBABLY BE --

25 MR. BARENS: DO YOU THINK YOU WOULD FAIRLY AND TRULY  
26 LISTEN TO HIM?

27 MS. GALL: YES.

28 MR. BARENS: WHAT KIND OF HOBBIES DO YOU HAVE?

1 MS. GALL: I LIKE TO WINDSURF AND SKI. I BELONG TO A  
2 HEALTH CLUB.

3 MR. BARENS: DO YOU BELONG TO ANY CHARITABLE OR SOCIAL  
4 ORGANIZATIONS?

5 MS. GALL: NO, I DON'T.

6 MR. BARENS: DOES YOUR HUSBAND?

7 MS. GALL: NO.

8 MR. BARENS: YOU HEARD THE EXPLANATION ABOUT CIRCUMSTAN-  
9 TIAL EVIDENCE AND DIRECT EVIDENCE; DO YOU FEEL COMFORTABLE  
10 WITH ALL OF THAT?

11 MS. GALL: YES.

12 MR. BARENS: YOU UNDERSTAND CIRCUMSTANTIAL EVIDENCE,  
13 OF COURSE, HAS ONE OTHER ELEMENT TO IT AND THAT IS, YOU HAVE  
14 TO MAKE SOME SORT OF ASSUMPTION ABOUT WHAT THE TRUTH IS OR  
15 WHAT IS CORRECT BASED ON THE EVIDENCE THAT IS GIVEN YOU.  
16 YOU HAVE TO, THEREFORE, TAKE ANOTHER STEP TO SAY, "OKAY, IF  
17 THIS HAPPENED AND THIS HAPPENED AND THIS HAPPENED OR DIDN'T,"  
18 CONVERSELY, THAT THE FOLLOWING FACT IS EITHER ESTABLISHED OR  
19 NOT ESTABLISHED; DO YOU UNDERSTAND THAT?

20 MS. GALL: YES.

21 MR. BARENS: OKAY, IN MAKING THAT CONCLUSION, YOU ARE  
22 EXPECTED TO ACT IN SOME REASONABLE MANNER; DO YOU UNDERSTAND  
23 THAT?

24 MS. GALL: YES.

25 MR. BARENS: DO YOU UNDERSTAND THAT THE ONLY PERSON THAT  
26 DETERMINES WHAT IS REASONABLE IN THIS SETTING IS YOU; DO  
27 YOU UNDERSTAND THAT?

28 MS. GALL: YES.

1 MR. BARENS: THE FACT THAT THE GOVERNMENT'S  
2 REPRESENTATIVE, THE DISTRICT ATTORNEY, OR THAT YOU MIGHT HAVE  
3 THE IMPRESSION THAT THE JUDGE THINKS SOMETHING IS REASONABLE  
4 OR ISN'T REASONABLE, DO YOU REALIZE IN THAT INSTANCE THAT  
5 MEANS NOTHING? THE ONLY ONE WHOSE REASONABLENESS COUNTS IS  
6 EACH INDIVIDUAL JUROR AND THAT JUROR'S PERCEPTION OF  
7 REALITY; DO YOU UNDERSTAND THAT?

8 MS. GALL: YES, I DO.  
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1 MR. BARENS: NOW, LIKEWISE, A NECESSARY ELEMENT OF  
2 THAT, OF COURSE, IS PROOF BEYOND A REASONABLE DOUBT.

3 NOW, YOU KNOW IT IS IMPOSSIBLE FOR ANY OF US TO  
4 ASSIGN A NUMERICAL COEFFICIENT TO WHAT IS BEYOND A REASONABLE  
5 DOUBT.

6 DO YOU CLEARLY UNDERSTAND IT IS NOT ONE OF THOSE  
7 51-49 DEALS?

8 MS. GALL: YES.

9 MR. BARENS: AND IT IS SUBSTANTIALLY GREATER THAN THAT.

10 WERE YOU OVERWHELMED BY THE CHERRY PIE EXAMPLE?

11 MS. GALL: I GOT A KICK OUT OF SOME OF THE ANSWERS.

12 MR. BARENS: DO YOU FEEL SOME OF THE ANSWERS WERE  
13 UNREALISTIC?

14 MS. GALL: YES, I DID.

15 MR. BARENS: WOULD YOU CONSIDER THAT WHAT APPEARED TO  
16 BE UNREALISTIC ANSWERS BY SOME OF THE PROSPECTIVE JURORS  
17 REALLY, INSTEAD OF BEING ANSWERS, WERE THE QUESTIONS THAT YOU  
18 HEARD?

19 MS. GALL: DID I FEEL THAT SOME OF THE ANSWERS WERE  
20 REALLY QUESTIONS?

21 MR. BARENS: UH-HUH.

22 MS. GALL: YES, THEY DID. THEY STOPPED AND ASKED ANOTHER  
23 QUESTION.

24 MR. BARENS: YOU SEE, AS IT TURNS OUT, DOESN'T IT, THAT  
25 SOME OF THE PEOPLE THAT WERE SAYING THINGS THAT THE PROSECUTOR  
26 WOULD SAY WERE UNREASONABLE, LIKE THE WOMAN WHO SAID,  
27 "WELL, MAYBE HE WENT NEXT DOOR OR MAYBE SOMEBODY FROM NEXT  
28 DOOR CAME OVER," YOU SEE, THE MAYBE QUESTION IS A RELEVANT

1 QUESTION HERE, NOT YOU ARE SOLD SOME BILL OF GOODS BY A  
2 LAWYER TELLING YOU SOMETHING BY AN ACCUSATION.

3 THE JOB OF THE JURORS IS TO ASK THAT MAYBE  
4 QUESTION BEFORE YOU CAN DETERMINE WHAT IS REASONABLE OR NOT.

5 THE COURT: IS THAT A QUESTION?

6 MR. BARENS: YES.

7 DO YOU UNDERSTAND THAT?

8 MS. GALL: YES, I DO.

9 MR. BARENS: ALL RIGHT. AND WHAT I AM TRYING TO  
10 COMMUNICATE, WHAT WE ARE SAYING, WHAT I AM TRYING TO  
11 COMMUNICATE IS, YOU JUST DON'T LISTEN TO TESTIMONY. YOU JUST  
12 DON'T LISTEN TO WHAT THE LAWYERS SAY.

13 YOU HAVE GOT TO ASK YOURSELF SOME QUESTIONS IN  
14 DECIDING WHETHER THERE IS A REASONABLE DOUBT OR NOT ABOUT  
15 WHETHER YOU CAN BELIEVE THE WITNESS; DO YOU UNDERSTAND THAT?

16 MS. GALL: YES.

17 MR. BARENS: ABOUT WHETHER THAT WITNESS HAS MOTIVES OR  
18 BIASES; DO YOU UNDERSTAND THAT?

19 MS. GALL: YES.

20 MR. BARENS: AND THAT WITNESS' POSITION IN THE WHOLE  
21 FRAMEWORK OF THE DRAMA UNFOLDING IN THE COURTROOM; DO YOU  
22 UNDERSTAND?

23 MS. GALL: UH-HUH.

24 MR. BARENS: AND WHETHER OR NOT THE WITNESS HAS ENOUGH  
25 DATA HIMSELF TO REALLY KNOW WHAT HE IS TALKING ABOUT; DO  
26 YOU UNDERSTAND THAT?

27 MS. GALL: YES.

28 MR. BARENS: NOW, HAVE YOU EVER BEEN IN A SITUATION WHERE

1 YOU WERE RECEIVING INFORMATION ON A TOPIC FROM SOME DIFFERENT  
2 SOURCES AND YOU FELT THERE WASN'T ENOUGH INPUT TO MAKE A GOOD  
3 DECISION; HAS THAT EVER HAPPENED TO YOU?

4 MS. GALL: YES, IT HAS.

5 MR. BARENS: IF THAT WERE TO HAPPEN IN THIS SETTING,  
6 ARE YOU AWARE OF WHAT THE RESULT OF THAT TYPE OF A THING IS?

7 MS. GALL: YES.

8 YOU CAN'T REALLY MAKE A DECISION.

9 MR. BARENS: AND WHAT DO YOU DO IF YOU CAN'T REALLY  
10 DECIDE?

11 MS. GALL: OH, WITH THIS CASE, THE DEFENDANT WOULD HAVE  
12 TO BE NOT GUILTY.

13 MR. BARENS: NOT JUST WITH THIS CASE, WITH EVERY CRIMINAL  
14 CASE.

15 IN EVERY CRIMINAL CASE, THE LAW SAYS EITHER THAT  
16 IS PROVEN BEYOND A REASONABLE DOUBT TO THE SATISFACTION OF  
17 12 JURORS OR IT IS SIMPLY NOT PROVEN. NOT GUILTY. DO YOU  
18 UNDERSTAND THAT?

19 MS. GALL: I DO.

20 MR. BARENS: OKAY. HOW WOULD YOU FEEL IN YOUR HEART  
21 OF HEARTS WERE YOU ABOUT TO GO TO TRIAL FOR MURDER AND THE  
22 12 PEOPLE ON THIS JURY HAD YOUR OUTLOOK, YOUR PERSONALITY,  
23 YOUR POINT OF VIEW ON THE WORLD, HOW WOULD YOU FEEL AS A  
24 DEFENDANT IN THAT SETTING?

25 MS. GALL: I WOULD FEEL PRETTY LUCKY.

26 MR. BARENS: YOU WOULD?

27 MS. GALL: YES.

28 MR. BARENS: YOU WOULD FEEL YOU COULD BE OPENMINDED AND

1 LISTEN TO ALL OF THE EVIDENCE BEFORE REACHING A DECISION?

2 MS. GALL: OH, YES.

3 MR. BARENS: AND LASTLY, DO YOU THINK THERE IS ANYTHING  
4 I OUGHT TO KNOW ABOUT YOU OR YOUR BACKGROUND, YOUR POINT OF  
5 VIEW OR YOUR EXPERIENCES THAT WOULD ASSIST ME IN MAKING A  
6 DECISION ON YOUR QUALIFICATIONS AS A JUROR?

7 MS. GALL: I THINK I WOULD MAKE A GOOD JUROR.

8 MR. BARENS: AND IT IS SOMETHING YOU WOULD BE INTERESTED  
9 IN DOING?

10 MS. GALL: YES.

11 MR. BARENS: ALL RIGHT, THANK YOU VERY MUCH, MRS. GALL.

12 PASS FOR CAUSE, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. WAPNER: THANK YOU.

15 GOOD MORNING, MRS. GALL.

16 MS. GALL: GOOD MORNING.

17 MR. WAPNER: WHY DO YOU THINK YOU WOULD BE A GOOD JUROR?

18 MS. GALL: BECAUSE I AM FAIR AND HONEST.

19 MR. WAPNER: DO YOU THINK THAT EVERY PERSON WHO TAKES  
20 THE WITNESS STAND AND SWEARS TO TELL THE TRUTH ACTUALLY DOES  
21 TELL THE TRUTH?

22 MS. GALL: NO, I DON'T THINK THAT.

23 MR. WAPNER: DO YOU UNDERSTAND AS A JUROR IT WOULD BE  
24 YOUR JOB TO DETERMINE WHO WAS TELLING THE TRUTH AND WHO WASN'T?

25 MS. GALL: YES. I AM SURE I WOULD DO A GOOD JOB, TOO.

26 MR. WAPNER: COULD YOU APPLY THE SAME STANDARD TO ALL  
27 OF THE WITNESSES WHO TESTIFY IN TRYING TO FIGURE OUT WHETHER  
28 THEY WERE TELLING THE TRUTH OR NOT?



1 MS. GALL: YES.

2 MR. WAPNER: IN OTHER WORDS, IF IT IS PROPER TO TAKE  
3 INTO CONSIDERATION WHETHER A WITNESS FOR THE PROSECUTION HAS  
4 A MOTIVE TO TELL THE TRUTH OR NOT TO TELL THE TRUTH, IS IT  
5 ALSO PROPER TO TAKE INTO CONSIDERATION WHETHER A WITNESS FOR  
6 THE DEFENSE HAS A MOTIVE TO TELL THE TRUTH OR NOT TO TELL THE  
7 TRUTH?

8 MS. GALL: YES.

9 MR. WAPNER: IF A WITNESS FOR THE DEFENSE HAPPENS TO  
10 BE THE DEFENDANT, SHOULD HE CHOOSE TO TESTIFY, IS IT PROPER  
11 TO TAKE INTO CONSIDERATION WHAT MOTIVE, IF ANY, HE MIGHT  
12 HAVE NOT TO TELL THE TRUTH?

13 MS. GALL: YES.

14 MR. WAPNER: COULD YOU DO THAT?

15 MS. GALL: YES.

16 MR. WAPNER: WHY DON'T YOU ATTEMPT TO DO PORTRAITS FROM  
17 MEMORY?

18 MS. GALL: I SHOULD.

19 I DON'T KNOW.

20 I GUESS I AM MORE INTERESTED IN ACCURACY AND I  
21 GUESS I JUST FIGURE THAT I WOULDN'T BE VERY ACCURATE THAT  
22 WAY.

23 MR. WAPNER: AND THE REASON FOR THAT IS BECAUSE YOU ARE  
24 DEPENDING ON YOUR MEMORY AS OPPOSED TO HAVING A PERSON  
25 SITTING IN FRONT OF YOU?

26 MS. GALL: RIGHT.

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12A-1

1 MR. WAPNER: WOULD YOU SAY THAT THE MORE TIME THAT  
2 PASSED BETWEEN THE TIME YOU SAW A SUBJECT AND THE TIME YOU  
3 ATTEMPTED TO DRAW THAT PERSON, THE MORE LIKELY IT IS THAT  
4 YOUR MEMORY WOULD BE FALSE?

5 MS. GALL: YES.

6 MR. WAPNER: IN THE EXAMPLE MR. BARENS GAVE YOU ABOUT  
7 SEEING A PICTURE OF SOMEONE AND THEN TRYING TO RECONSTRUCT  
8 IT, WOULD YOUR MEMORY TEND TO BE MORE FAULTY, THE MORE TIME  
9 THAT PASSED BETWEEN THE TIME YOU HAD SEEN THE EXHIBIT AND  
10 THE TIME YOU TRIED TO RECONSTRUCT?

11 MS. GALL: YES.

12 MR. BARENS: OBJECTION. I NEVER ASKED THAT QUESTION.  
13 I NEVER ASKED HER THAT.

14 MR. WAPNER: I JUST DID.

15 THE COURT: HE IS ASKING HIS OWN QUESTION.

16 MR. BARENS: IF HE MAKES IT HIS OWN, OKAY. BECAUSE  
17 THAT CLEARLY IS NOT WHAT I WAS ASKING.

18 THE COURT: THAT'S ALL RIGHT. GO AHEAD. ASK YOUR OWN  
19 QUESTION.

20 MR. WAPNER: THANK YOU.

21 WOULD YOUR ABILITY TO ACCURATELY DEPICT THE  
22 PERSON YOU WERE DRAWING, ALSO DEPEND UPON THE QUALITY OF THE  
23 PHOTOGRAPH YOU WERE GIVEN?

24 MS. GALL: YES, VERY MUCH.

25 MR. WAPNER: SO IF IT WAS AS MR. BARENS SAID, ONE OF  
26 THOSE PICTURES THAT LOOKS LIKE A PORTRAIT OR PORTRAITS THAT  
27 LOOKS LIKE A PICTURE, YOU MIGHT BE ABLE TO MORE ACCURATELY  
28 REPRODUCE IT, AS OPPOSED TO PERHAPS, A COPY OF A COPY OF A

12A-2  
1 COPY?

2 MS. GALL: RIGHT.

3 MR. WAPNER: HAVE YOU EVER HAD ANY EXPERIENCES ON THE  
4 STREET WHERE YOU SAW SOMEONE YOU THOUGHT YOU KNEW AND PERHAPS  
5 TRIED TO ACKNOWLEDGE THAT PERSON AND THEN REALIZED THAT IT  
6 WAS NOT THE SAME PERSON?

7 MS. GALL: YES I HAVE.

8 MR. WAPNER: HAVE YOU EVER HAD PEOPLE COMING INTO YOUR  
9 LINE AT THE STORE THINKING THAT YOU WERE A CHECKER THAT THEY  
10 HAD BEEN WITH THE WEEK BEFORE AND IT TURNS OUT YOU WEREN'T?

11 MS. GALL: YES.

12 MR. WAPNER: THAT HAPPENS FAIRLY FREQUENTLY?

13 MS. GALL: YES IT DOES.

14 MR. WAPNER: AND IN THAT CIRCUMSTANCE ALSO, IT MIGHT  
15 MAKE A DIFFERENCE IF THEY HAD BEEN IN YOUR LINE THE WEEK  
16 BEFORE OR IT HAD BEEN THREE OR FOUR WEEKS SINCE THEY HAD SEEN  
17 YOU, SOMETHING LIKE THAT?

18 MS. GALL: POSSIBLY. I DON'T KNOW WHAT THEY ARE THINKING  
19 WHEN THEY ASK THAT. BUT PEOPLE DO SAY THAT. THEY THINK THEY  
20 HAVE SEEN ME BEFORE SOMEWHERE ELSE.

21 MR. WAPNER: WHEN YOU CAME INTO THE COURTROOM AND YOU  
22 FOUND OUT THAT THIS WAS A MURDER CASE, DID YOU HAVE SOME  
23 PICTURE IN YOUR MIND OF WHAT THE PERSON CHARGED WITH THE  
24 MURDER WAS SUPPOSED TO LOOK LIKE?

25 MS. GALL: I PROBABLY DID, YES.

26 MR. WAPNER: AND THE DEFENDANT DOESN'T FIT IN THAT  
27 PICTURE, DOES HE?

28 MS. GALL: NO.

12A 7  
1 MR. WAPNER: HOW IS THAT GOING TO AFFECT YOUR ABILITY  
2 TO FAIRLY JUDGE THIS CASE?

3 MS. GALL: I WAS REAL CONCERNED ABOUT THAT AT FIRST.  
4 AND I THINK I HAVE COME TO GRIPS WITH MYSELF, THAT I DON'T  
5 THINK IT WOULD MAKE A DIFFERENCE NOW. IT WAS KIND OF A  
6 SHOCK AT FIRST.

7 MR. WAPNER: WELL, WHAT WAS THE PICTURE THAT YOU HAD  
8 IN YOUR MIND OF WHAT THE PERSON WAS SUPPOSED TO LOOK LIKE?

9 MS. GALL: SOME TERRIBLE LOOKING GUY.

10 MR. WAPNER: HE IS NOT TERRIBLE LOOKING, IS HE?

11 MS. GALL: NO.

12 MR. WAPNER: DOES THAT MEAN THAT HE MUST NOT HAVE DONE  
13 THIS?

14 MS. GALL: NO IT DOESN'T. NO.

15 MR. WAPNER: DOES THAT MEAN THE PROSECUTION ISN'T GETTING  
16 A FAIR TRIAL FROM YOU?

17 MS. GALL: NO.

18 MR. WAPNER: DO YOU THINK TO YOURSELF, HOW CAN WE PICK  
19 ON SUCH A NICE LOOKING YOUNG MAN?

20 MR. BARENS: WAIT A MINUTE, NOW. COUNSEL IS ASKING  
21 HER TO MAKE SOME SORT OF A JUDGMENT ON MY CLIENT.

22 THE COURT: I WILL SUSTAIN THAT.

23 MR. BARENS: THANK YOU. IF HE COULD JUST LIMIT IT TO  
24 LOOKS, THOUGH, HE WINS.

25 MR. WAPNER: WHAT I AM TRYING TO FIND OUT IS IF YOU  
26 HAVE SOME -- IF BECAUSE OF THE WAY YOU WERE THINKING WHEN  
27 YOU FIRST CAME IN HERE, THAT WHEN IT REALLY GETS DOWN TO IT,  
28 IF YOU ARE A JUROR ON THIS CASE AND YOU ARE IN THE JURY ROOM,

12A-4

1 THAT IS GOING TO HAVE TO HAVE ANY PLACE ON THE -- CARRY ANY  
2 WEIGHT ON THE SCALES IN TRYING TO DECIDE THIS CASE?

3 MR. BARENS: YOUR HONOR, YOU KNOW THAT YOU INSTRUCTED  
4 THE JURY THAT --

5 THE COURT: JUST MAKE YOUR OBJECTION.

6 MR. BARENS: THE OBJECTION IS THAT IT IS ABSOLUTELY  
7 PROPER FOR JURORS TO CONSIDER THE DEMEANOR AND APPEARANCE  
8 OF A WITNESS AND --

9 THE COURT: OF ALL WITNESSES. YES?

10 MR. BARENS: IN MAKING THEIR CONCLUSIONS. SO APPEARANCES  
11 ARE ABSOLUTELY RELEVANT TO THEIR CONCERNS.

12 THE COURT: THAT IS NOT THE QUESTION.

13 MR. BARENS: IT SOUNDED THAT WAY.

14 THE COURT: REPHRASE YOUR QUESTION.

15 MR. BARENS: THANK YOU.

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12B-1  
1 MR. WAPNER: WHAT I AM ASKING YOU IS, YOU HAD IN YOUR  
2 MIND, A PRECONCEIVED NOTION OF WHAT A PERSON WHO IS CHARGED  
3 WITH A MURDER SHOULD LOOK LIKE. YES?

4 MS. GALL: YES.

5 MR. WAPNER: WE BOTH AGREE THE DEFENDANT DOES NOT FIT  
6 THAT NOTION, RIGHT?

7 MS. GALL: THAT'S RIGHT.

8 MR. WAPNER: FORGET ABOUT WHETHER HE TESTIFIES OR  
9 WHETHER HE DOES NOT. WHAT I WANT TO KNOW IS, LET'S SAY THAT  
10 YOU ARE A JUROR ON THIS CASE AND YOU GET INTO THE JURY ROOM  
11 AND YOU ARE TRYING TO DECIDE THIS CASE, BASED ON THE FACTS  
12 IN THIS CASE AND THE EVIDENCE THAT IS PRESENTED TO YOU AND  
13 THE LAW THAT THE JUDGE GIVES YOU.

14 AND THE JUDGE TELLS YOU THAT YOU HAVE TO DECIDE  
15 THE CASE BASED ON WHAT THE WITNESSES HAVE SAID AND ANY  
16 EVIDENCE THAT HAS BEEN INTRODUCED IN THE CASE AND THE LAW.

17 ARE YOU GOING TO SAY THAT NOTWITHSTANDING THAT,  
18 THAT I HAD THIS NOTION OF WHAT THE PERSON SHOULD LOOK LIKE  
19 AND HE DOESN'T LOOK LIKE THAT AND THEREFORE, I AM GOING TO  
20 PUT THAT AS A WEIGHT ON THE SCALE?

21 MS. GALL: NO.

22 MR. WAPNER: CAN YOU PROMISE ME THAT YOU WON'T DO THAT?

23 MS. GALL: I CAN PROMISE YOU THAT.

24 MR. WAPNER: DO YOU UNDERSTAND THE FACT THAT A PERSON  
25 IS PRESUMED INNOCENT, DOESN'T MEAN THAT THEY ARE INNOCENT?

26 MS. GALL: THAT'S RIGHT.

27 MR. WAPNER: THAT PEOPLE ARE CONVICTED IN COURTS OF  
28 THIS COUNTRY EVERY DAY, EVEN THOUGH THEY WERE PRESUMED TO

12B-2  
1 BE INNOCENT WHEN THEY STARTED OUT THE CASE?

2 MS. GALL: YES.

3 MR. WAPNER: IF THE PRESUMPTION OF INNOCENCE MEANT THAT  
4 EVERYONE THAT WAS PRESUMED INNOCENT WAS INNOCENT, WE WOULDN'T  
5 NEED TRIALS, WOULD WE?

6 MS. GALL: NO.

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

9 MS. GALL: NO I HAVE NOT.

10 MR. WAPNER: HOW MUCH DO YOU TALK TO YOUR DAUGHTERS?

11 MS. GALL: I TALK TO THEM EACH AT LEAST ONCE A WEEK.

12 MR. WAPNER: DO THEY LIVE HERE LOCALLY?

13 MS. GALL: ONE IS IN HAWAII.

14 MR. WAPNER: YOU SAID THAT YOU GOT A KICK OUT OF SOME  
15 OF THE ANSWERS THAT PEOPLE GAVE TO THAT CHERRY PIE EXAMPLE?

16 MS. GALL: YES.

17 MR. WAPNER: DID YOU THINK WHEN YOU WERE HEARING THE  
18 EXAMPLE, IT WAS A SETUP?

19 MS. GALL: NO. I DIDN'T THINK THAT.

20 MR. WAPNER: DID YOU THINK THE PERSON -- EXCUSE ME,  
21 THE PEOPLE WHO WERE GIVING THOSE ANSWERS THAT YOU SAY YOU  
22 GOT A KICK OUT OF, DO YOU THINK THEY THOUGHT IT WAS A SETUP?

23 THE COURT: WHAT DO YOU MEAN BY A "SETUP"?

24 MR. WAPNER: WELL, I AM TRYING TO ADOPT MR. BARENS'  
25 WORD. I WILL EXPLAIN IT.

26 DO YOU THINK I WAS TRYING TO PUT WORDS IN THEIR  
27 MOUTHS, TRYING TO GET THEM TO SAY CERTAIN THINGS?

28 MS. GALL: NO. I DIDN'T THINK THAT.

12B-3  
1 MR. WAPNER: DID YOU HAVE ANY OPINION WHEN YOU FIRST  
2 HEARD AN EXAMPLE, AS TO WHO ATE THE PIE?

3 MS. GALL: YES.

4 MR. WAPNER: WHAT WAS YOUR OPINION?

5 MS. GALL: I THOUGHT THE BOY PROBABLY ATE THE PIE.

6 MR. WAPNER: ALL RIGHT. HOW DID YOU FEEL ABOUT THE  
7 WOMAN WHO SAID THAT IF SHE WAS STANDING THERE AND LOOKING  
8 AT THE BOY WITH THE PIE ALL OVER HIM AND A PIECE MISSING AND  
9 SHE LOOKED HIM IN THE EYE AND HE SAID THAT HE DIDN'T DO IT  
10 AND THEN SHE SAID SHE WOULD HAVE TO BELIEVE HIM. HOW DID  
11 YOU FEEL ABOUT THAT?

12 MS. GALL: I RAISED TWO DAUGHTERS THAT WERE ALWAYS DOING  
13 THAT TO ME. I DIDN'T ALWAYS BELIEVE THEM. AND LOTS OF TIMES,  
14 I DIDN'T EVER FIND OUT WHO DID IT.

15 BUT I KNOW I DIDN'T DO IT AND THERE WERE ONLY  
16 THREE OF US.

17 MR. WAPNER: SO, THEY DON'T NECESSARILY ALWAYS TELL  
18 THE TRUTH?

19 MS. GALL: THAT'S RIGHT.

20 MR. WAPNER: IF YOU HEAR THIS WHOLE CASE AND IT TURNS  
21 OUT THAT YOU BELIEVE THAT THE EVIDENCE PROVES BEYOND A  
22 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE MURDER THAT  
23 HE IS CHARGED WITH AND IT ALSO TURNS OUT THAT AFTER LISTENING  
24 TO ALL OF THE EVIDENCE, YOU DON'T LIKE THE VICTIM IN THIS  
25 CASE, IS THAT GOING TO HAVE ANY EFFECT ON YOUR ABILITY TO  
26 RENDER A GUILTY VERDICT IF THE EVIDENCE PROVES BEYOND A  
27 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY?

28 MS. GALL: NO.



12B-4

1 MR. WAPNER: DO YOU THINK THAT WHETHER OR NOT YOU LIKE  
2 THE VICTIM IN THE CASE OR LIKE HIS LIFESTYLE OR WOULD HAVE  
3 CHOSEN TO HAVE HIM AS A FRIEND, SHOULD HAVE ANY AFFECT ON  
4 YOUR DECISION IN THE CASE?

5 MS. GALL: NO.

6 MR. WAPNER: IN ANY SITUATION WHERE YOU ARE TRYING TO  
7 DECIDE WHAT HAPPENED BETWEEN COMPETING VIEWS OF THINGS, DO  
8 YOU THINK THAT YOU COULD ALWAYS SAY WELL, THIS IS POSSIBLE  
9 AND THIS IS ALSO POSSIBLE OR SOMETHING IS ALWAYS POSSIBLE?

10 MS. GALL: YES.

11 MR. WAPNER: WHEN MR. BARENS WAS ASKING YOU ABOUT  
12 PEOPLE ASKING THE QUESTION OF MAYBE THIS OR MAYBE THAT, DO  
13 YOU THINK THAT YOU COULD DO THAT IN ALMOST EVERY SITUATION?

14 MS. GALL: YES.

15 MR. WAPNER: AND IF YOU WERE IN A JURY ROOM AND YOU  
16 LISTENED TO THE ENTIRE CASE AND YOU DECIDED THAT THE EVIDENCE  
17 PROVES THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, DO  
18 YOU THINK IT IS STILL POSSIBLE TO SAY WELL, MAYBE THIS OR  
19 MAYBE THAT?

20 MS. GALL: ONLY IF THERE WAS EVIDENCE TO SUPPORT THE  
21 MAYBES.

22 MR. WAPNER: OKAY. BUT ARE YOU THE KIND OF A PERSON  
23 WHO IS GOING TO ASK THE MAYBE QUESTIONS, FACED WITH THE LITTLE  
24 BOY STANDING IN FRONT OF YOU WITH THE PIE ON HIS FACE?

25 MS. GALL: NO. I WON'T MAKE UP MY OWN MAYBES.

26 MR. WAPNER: THAT IS BASICALLY THE QUESTION THAT I AM  
27 GETTING AT. DO YOU HAVE ANY FEELINGS ABOUT WITNESSES WHO  
28 TESTIFY UNDER GRANTS OF IMMUNITY?

12B-5  
1 MS. GALL: NO. I DON'T HAVE ANY FEELING ABOUT IT.

2 MR. WAPNER: HAVE YOU HEARD OR READ ANYTHING ABOUT  
3 THIS IN THE PAPERS RECENTLY?

4 MS. GALL: NO.

5 MR. WAPNER: THANK YOU. I PASS FOR CAUSE.

6 THE COURT: ALL RIGHT. WE HAVE JUST ABOUT REACHED THE  
7 NOONHOUR. I WILL ASK YOU ALL TO RETURN TO THIS COURTROOM  
8 AT 1:45 THIS AFTERNOON.

9 THOSE JURORS SEATED THERE CAN SIT THERE. YOU  
10 CAN KEEP YOUR SEATS IF YOU WANT TO.

11 ALL RIGHT. WE WILL SEE YOU HERE AT 1:45 THIS  
12 AFTERNOON.

13 (THE JURY EXITS THE COURTROOM.)  
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13-1

1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 AT THE BENCH OUT OF THE PRESENCE OF  
3 THE JURY:)

4 THE COURT: THIS MOTION THAT WAS MADE, THE PRESS WANT  
5 A COPY OF IT. THEY WANT TO COPY IT.

6 MR. WAPNER: THEY WANT TO COPY THE MOTION?

7 THE COURT: YES. IT HAS BEEN FILED AND THEY WANT TO  
8 COPY THE MOTION. THEY WANT TO HAVE COPIES MADE OF IT.

9 MR. BARENS: IT IS AGREEABLE TO THE DEFENSE.

10 MR. WAPNER: WELL, IF IT IS IN THE COURT FILE, I ASSUME  
11 IT IS A PUBLIC RECORD.

12 THE COURT: ALL RIGHT.

13 MR. BARENS: COULD I ASK THE COURT --

14 THE COURT: ALL RIGHT, THEY CAN HAVE IT.

15 MR. BARENS: COULD I ASK YOUR HONOR A QUESTION?

16 THE COURT: YES.

17 MR. BARENS: YOUR HONOR, WELL NOW THAT THERE ARE IN  
18 EXISTENCE THREE ALTERNATES THAT HAVE BEEN QUESTIONED --

19 THE COURT: RIGHT.

20 MR. BARENS: -- THE DEFENSE WOULD LIKE THE FOURTH  
21 ALTERNATE PUT IN BEFORE IT IS INCUMBENT TO EXERCISE A  
22 PEREMPTORY.

23 THE COURT: NO, I CAN'T DO THAT BECAUSE I WANT TO FIND  
24 OUT. WE MAY NOT HAVE ENOUGH ALTERNATES IF WE HAVE FOUR.  
25 I MEAN WE WILL NOT HAVE ENOUGH JURORS TO GO AROUND IF THERE  
26 ARE FOUR AND FOUR AND FOUR AND THERE WON'T BE TWO LEFT OVER.

27 MR. BARENS: SO THEREFORE, YOUR HONOR --

28 THE COURT: HOW MANY HAVE WE GOT LEFT?

1 THE CLERK: NINE.

2 THE COURT: WE ONLY HAVE NINE LEFT. YOU SEE, THERE  
3 WILL BE FOUR, EIGHT AND TWELVE.

4 MR. BARENS: HOW IN THE WORLD, THOUGH, AS A LEGAL  
5 MATTER, CAN I ACCEPT THE PRESENT COMPOSITION OF THE ALTERNATES  
6 WITHOUT HAVING FOUR IF I DON'T CHOOSE?

7 THE COURT: I DON'T KNOW THAT WE ARE GOING TO HAVE  
8 FOUR.

9 IT MAY BE THREE. IT ALL DEPENDS ON WHETHER WE  
10 RUN OUT OF JURORS OR NOT.

11 MR. BARENS: OH, I UNDERSTOOD -- HERE IS WHERE I AM  
12 MAYBE MISTAKEN --

13 THE COURT: IF, FOR EXAMPLE, YOU ACCEPT THE THREE AND  
14 YOU ACCEPT THE THREE, THEN WE WILL GET A FOURTH BECAUSE WE  
15 WOULD HAVE SUFFICIENT JURORS TO GO AROUND.

16 MR. BARENS: BUT YOUR HONOR UNDERSTANDS, IF I ACCEPT  
17 THE THREE FOR NOW, I HAVEN'T WAIVED MY FOUR PEREMPTORIES.

18 MR. WAPNER: WHAT?

19 THE COURT: OH, NO. YOU HAVE WAIVED. NO, NO.

20 MR. WAPNER: WE ONLY GET ONE PEREMPTORY PER ALTERNATE.

21 THE COURT: THAT IS THE IDEA, IF YOU ACCEPT THE OTHER  
22 THREE, YOU CAN'T CHALLENGE THEM ANY MORE.

23 MR. BARENS: I THOUGHT THAT THIS PROCESS RESEMBLED  
24 REGULAR JURY SELECTION, THAT I HAD A CUMULATIVE NUMBER.

25 THE COURT: SURE, IF YOU ACCEPT THE THREE ALTERNATES,  
26 THAT IS THE END OF IT. THE WAY IT IS NOW, IF YOU WANT TO  
27 CHALLENGE ONE OF THE THREE ALTERNATES, YOU HAVE THE RIGHT  
28 TO DO THAT.

1 MR. BARENS: RIGHT.

2 THE COURT: YOU CAN CHALLENGE ALL THREE IF YOU WANT  
3 TO DO THAT.

4 MR. BARENS: I WON'T DO THAT, YOUR HONOR.

5 THE COURT: ALL RIGHT. THEN IF WE HAVE ENOUGH JURORS  
6 LEFT OVER, THEN WE CAN SELECT THE FOURTH.

7 MR. WAPNER: AND WHEN WE GET TO SELECTING THE FOURTH  
8 ALTERNATE, WE WILL EACH ONLY HAVE ONE CHALLENGE.

9 THE COURT: THAT IS CORRECT.

10 MR. BARENS: WELL, IT HAS GOTTEN TO BE, THE WAY IT IS --

11 THE COURT: NOBODY IS TAKING AWAY YOUR FOURTH. YOU  
12 CAN EXERCISE THREE NOW AND ONE LATER ON IF WE HAVE ENOUGH.

13 MR. BARENS: I UNDERSTAND.

14 COULD WE JUST SUMMARILY THROW MR. SPEARMAN OUT?

15 THE COURT: SURELY, IF YOU WANT TO STIPULATE.

16 MR. BARENS: DO YOU WANT TO STIPULATE, FRED?

17 I WILL TELL YOU MY PROBLEM, IT IS JAUNDICING  
18 THIS, BECAUSE OF THE PROBABILITY FACTOR IF HE IS DRAWN, IT  
19 IS INCREASING EVERY TIME WE GO AROUND HERE AND HE IS LIKE  
20 SOME WHITE SHARK THAT IS OUT THERE IN THE WATER WAITING FOR  
21 ME AND I THINK FOR YOU, TOO. I AM JUST -- I JUST --

22 DO YOU WANT TO GET RID OF HIM?

23 MR. WAPNER: LET ME TAKE A LOOK AT MY NOTES AND I WILL  
24 LET YOU KNOW AT 1:30.

25 THE COURT: ALL RIGHT, I HAVE NO OBJECTION TO IT --

26 MR. BARENS: THANK YOU, YOUR HONOR.

27 THE COURT: -- IF YOU WANT TO STIPULATE TO IT.

28 MR. BARENS: THIS GUY HATED EVERYBODY.

1 THE COURT: I DON'T THINK HE WOULD MAKE THE BEST KIND  
2 OF A JUROR. IF YOU GENTLEMEN STIPULATE TO KICK HIM OFF, I  
3 AM PERFECTLY AGREEABLE TO THAT.

4 (AT 12:10 P.M. A RECESS WAS TAKEN  
5 UNTIL 1:45 P.M. OF THE SAME DAY.)  
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1 SANTA MONICA, CALIFORNIA; THURSDAY, JANUARY 15, 1987; 1:50 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE

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

5  
6 (THE FOLLOWING PROCEEDINGS WERE HELD  
7 IN OPEN COURT OUTSIDE THE PRESENCE AND  
8 HEARING OF THE PROSPECTIVE JURORS.)

9 THE COURT: YES?

10 MR. BARENS: MR. WAPNER WAS KIND ENOUGH TO STIPULATE,  
11 VIS A VIS MR. SPEARMAN, IF YOUR HONOR WOULD PERMIT.

12 THE COURT: WELL, WHAT I WOULD SUGGEST IS, IF HIS NAME  
13 IS PICKED OUT, YOU JUST COME TO THE BENCH AS A MATTER OF  
14 FORM AND I WILL TELL HIM THAT HE HAS BEEN EXCUSED.

15 MR. BARENS: THANK YOU. I F YOU WOULD, YOUR HONOR.

16 THE COURT: OKAY. WE ARE READY.

17 (THE PROSPECTIVE JURORS ENTER THE  
18 COURTROOM.)

19 THE COURT: ALL RIGHT.

20 MR. BARENS: YES, YOUR HONOR. THE DEFENSE REQUESTS THAT  
21 YOUR HONOR THANK AND EXCUSE MS. GALL, THE THIRD ALTERNATE.

22 THE COURT: THANK YOU, MA'AM.

23 THE CLERK: CAROL A. AUSUBEL. IS THAT MRS.?

24 MS. AUSUBEL: YES.

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1 THE COURT: MRS. AUSUBEL, YOU HAVE HEARD ALL OF THE  
2 QUESTIONS AND ANSWERS WHICH WERE ASKED AND GIVEN?

3 MS. AUSUBEL: YES.

4 THE COURT: IF THE SAME GENERAL QUESTIONS WERE ASKED  
5 OF YOU, YOUR ANSWERS WOULD BE THE SAME, WOULD THEY?

6 MS. AUSUBEL: AH, YES.

7 THE COURT: ALL RIGHT. DID ANYTHING OCCUR TO YOU DURING  
8 THE COURSE OF THE QUESTIONING, ANY MENTAL RESERVATION WHICH  
9 YOU WANT TO TELL US ABOUT?

10 MS. AUSUBEL: I DON'T HAVE ANY MENTAL RESERVATION BUT  
11 I DID SERVE IN YOUR COURT AS A JUROR BEFORE.

12 THE COURT: I WAS GOING TO ASK YOU THAT QUESTION NEXT.

13 YOU DID HAVE PREVIOUS JURY EXPERIENCE IN THIS  
14 COURT, DID YOU?

15 MS. AUSUBEL: YES.

16 THE COURT: WHAT WAS THE NATURE OF THE CASE THAT WE  
17 TRIED HERE?

18 MS. AUSUBEL: IT WAS MURDER.

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

20 MS. AUSUBEL: YES, WE DID.

21 THE COURT: WHATEVER YOU MIGHT HAVE HEARD IN THAT CASE,  
22 WHATEVER IMPRESSIONS OR REACTIONS YOU GOT, YOU KNOW THIS IS  
23 AN ALTOGETHER DIFFERENT CASE, ALTOGETHER DIFFERENT CASE,  
24 ALTOGETHER DIFFERENT CAST OF CHARACTERS AND YOU WILL JUST BE  
25 GUIDED BY WHAT YOU HEAR IN THIS CASE, WOULD YOU NOT?

26 MS. AUSUBEL: YES.

27 THE COURT: OTHER THAN THAT, YOUR ANSWERS WILL BE  
28 SUBSTANTIALLY THE SAME AS TO THE GENERAL QUESTIONS WHICH WERE



1 ASKED OF THE OTHER JURORS; IS THAT RIGHT?

2 MS. AUSUBEL: YES.

3 THE COURT: THANK YOU.

4 HAVE YOU EVER BEEN THE VICTIM OF ANY KIND OF A  
5 CRIME?

6 MS. AUSUBEL: NO.

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

8 DON'T BE MODEST.

9 MS. AUSUBEL: WELL, I AM ENGAGED IN A NUMBER OF LITTLE  
10 THINGS.

11 DO YOU MEAN --

12 THE COURT: I MEAN YOUR PRINCIPAL OCCUPATION.

13 MS. AUSUBEL: MY PRINCIPAL OCCUPATION IS HOMEMAKER AT  
14 THIS TIME.

15 THE COURT: YOU HAVE HAD SOME OTHER ACTIVITIES OUTSIDE  
16 OF THE HOME?

17 MS. AUSUBEL: WELL, I STARTED A SMALL LITTLE BUSINESS  
18 AND I AM WRITING A BOOK AND WORKING ON A VIDEO.

19 THE COURT: IS THERE A MR. AUSUBEL?

20 MS. AUSUBEL: DR. AUSUBEL, YES.

21 THE COURT: HOW DO YOU PRONOUNCE THAT?

22 MS. AUSUBEL: AUSUBEL.

23 THE COURT: AUSUBEL.

24 IS HE A DOCTOR OF MEDICINE?

25 MS. AUSUBEL: NO, HE IS NOT.

26 HE IS A ORTHODONTIST.

27 THE COURT: ORTHODONTIST? WHERE DOES HE DO HIS  
28 PRACTICE?

1 MS. AUSUBEL: CANOGA PARK AND AGOURA.

2 THE COURT: DID YOU HAVE ANY PREVIOUS EMPLOYMENT BEFORE  
3 YOU BECAME A HOMEMAKER?

4 MS. AUSUBEL: YES.

5 THE COURT: WHAT DID YOU DO?

6 MS. AUSUBEL: I -- WELL, I DID A NUMBER OF THINGS. MY  
7 PRINCIPAL EMPLOYMENT WAS SPEECH PATHOLOGIST.

8 THE COURT: A WHAT?

9 MS. AUSUBEL: SPEECH PATHOLOGIST.

10 THE COURT: YOU THINK THAT I MIGHT HAVE BEEN ONE OF  
11 YOUR PATIENTS AT SOME TIME?

12 MS. AUSUBEL: NO.

13 (LAUGHTER IN COURTROOM.)

14 THE COURT: WERE YOU WITH SOME HOSPITAL?

15 MS. AUSUBEL: I WAS IN PRIVATE PRACTICE AS WELL AS WITH  
16 THE LOS ANGELES CITY SCHOOL SYSTEM.

17 THE COURT: I SEE.

18 THEN IN THE SCHOOL SYSTEM, DID YOU HAVE A REGULAR  
19 TENURE?

20 MS. AUSUBEL: I AM SORRY. DID I HAVE --

21 THE COURT: DID YOU HAVE TENURE?

22 MS. AUSUBEL: OH, YES.

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16-1  
1 THE COURT: WHAT PART OF THE SCHOOL SYSTEM WERE YOU  
2 ASSOCIATED WITH?

3 MS. AUSUBEL: SPECIAL EDUCATION DIVISION.

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

5 MS. AUSUBEL: CALABASAS.

6 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

7 MS. AUSUBEL: I HAVE A B.S. AND TWO MASTER'S DEGREES.

8 THE COURT: AND THE MASTERS ARE IN WHAT?

9 MS. AUSUBEL: SPEECH PATHOLOGY AND --

10 THE COURT: NOT THERAPY, ANYWAY?

11 MS. AUSUBEL: NO.

12 THE COURT: ALL RIGHT.

13 MS. AUSUBEL: AND EDUCATIONAL ADMINISTRATION.

14 THE COURT: AND YOUR HUSBAND HAS A DDS, HAS HE?

15 MS. AUSUBEL: YES.

16 THE COURT: WHERE DID HE HAVE HIS BACCALAUREATE?

17 MS. AUSUBEL: AT UCLA.

18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ANY  
19 QUESTIONS?

20 MR. BARENS: THANK YOU, YOUR HONOR.

21 GOOD AFTERNOON, MS. AUSUBEL.

22 MS. AUSUBEL: GOOD AFTERNOON.

23 THE COURT: INCIDENTALLY, DO YOU REMEMBER THE NAME OF  
24 THAT CASE THAT YOU WERE THE JUROR ON?

25 MS. AUSUBEL: I DO NOT.

26 THE COURT: ALL RIGHT.

27 MR. BARENS: THAT WAS MY VERY FIRST QUESTION, YOUR HONOR.  
28 I AM SURE IT WOULD NEVER OCCUR TO YOU THAT I AM GOING TO ASK

1 YOU ABOUT THAT EXPERIENCE AS A JUROR ON A MURDER CASE. HOW  
2 LONG AGO WAS IT?

3 MS. AUSUBEL: I BELIEVE IT WAS SIX OR EIGHT YEARS AGO.

4 MR. BARENS: YOU COULD GENERALLY DESCRIBE WHAT THAT  
5 CASE INVOLVED?

6 MS. AUSUBEL: YES. YES, THAT WAS -- THE MAN ON WHOSE  
7 TRIAL I SAT WAS ACCUSED OF ENTERING A HOME AND TAKING THE  
8 LIFE OF THE MAN OF THE HOUSE AND SHOOTING THE WIFE AND  
9 BROTHER.

10 MR. BARENS: WERE THEY DEAD, AS WELL?

11 MS. AUSUBEL: NO.

12 MR. BARENS: WAS IT A MURDER DURING THE COMMISSION OF  
13 A BURGLARY OR A ROBBERY AT THAT POINT?

14 MS. AUSUBEL: AS I BEST RECALL, HE TOOK A NECKLACE OFF  
15 THE DAUGHTER, THE LITTLE GIRL THAT WAS SLEEPING'S NECK.

16 MR. BARENS: THERE WAS APPARENTLY -- THE MOTIVE OF THE  
17 DEFENDENT WAS TO BREAK AND ENTER AND COMMIT A THEFT? OR WAS  
18 THERE ANOTHER MOTIVE THAT HE HAD, SOME PERSONAL RELATIONSHIP  
19 WITH ONE OF THE VICTIMS?

20 MS. AUSUBEL: THERE WAS NO PERSONAL RELATIONSHIP.  
21 I FRANKLY, CANNOT REMEMBER. THE HOUSE WAS UNDER CONSTRUCTION  
22 OR REMODELING.

23 THERE SEEMED TO HAVE BEEN SOME QUESTION AS TO  
24 WHETHER HE KNEW IT WAS OCCUPIED OR -- WHETHER HE KNEW IT WAS  
25 OCCUPIED.

26 MR. BARENS: WAS THE VICTIM SHOT TO DEATH?

27 MS. AUSUBEL: THE VICTIM WAS SHOT TO DEATH.

28 MR. BARENS: AND WERE YOU A JUROR THROUGHOUT THE CASE,

1 A REGULAR JUROR OR ALTERNATE?

2 MS. AUSUBEL: NO. I WAS A REGULAR JUROR THROUGHOUT  
3 THE CASE.

4 THE COURT: AFTER WE GET THROUGH, WE WILL HAVE  
5 ROSEMARIE COME IN. SHE HAS AN EXTREMELY GOOD MEMORY ON THE  
6 FACTS. SHE'LL BE ABLE TO TELL YOU THE NAME OF THE CASE.

7 MR. BARENS: I WOULD CONCUR THAT ROSEMARIE COULD DO  
8 THAT, YOUR HONOR.

9 MA'AM, YOU WERE COMMENTING YOU WERE A REGULAR  
10 JUROR THROUGHOUT THE PROCESS?

11 MS. AUSUBEL: THAT'S CORRECT.

12 MR. BARENS: WAS THAT YOUR FIRST ACTIVITY EVER AS A  
13 JUROR?

14 MS. AUSUBEL: I BELIEVE THAT SOMETIME A LONG TIME AGO,  
15 THAT I SAT ON A MUNI COURT JURY IN TRAFFIC. FOR SOME REASON,  
16 THAT COMES TO MY MIND.

17 MR. BARENS: HOW LONG DID THAT TRIAL TAKE?

18 MS. AUSUBEL: THE TRAFFIC CASE?

19 MR. BARENS: SORRY, MA'AM, THE MURDER TRIAL?

20 MS. AUSUBEL: I THINK THAT WE WERE IN DELIBERATION  
21 MAYBE TWO WEEKS. SO IT COULD HAVE BEEN A MONTH.

22 MR. BARENS: WAS THE GOVERNMENT SEEKING THE DEATH PENALTY  
23 IN THAT CASE?

24 MS. AUSUBEL: DO YOU KNOW, I REALLY DON'T RECALL.  
25 I HAVE TRIED TO REMEMBER THAT, AS I HAVE BEEN SETTING HERE  
26 IN THE COURTROOM. I JUST DON'T RECALL.

27 MR. BARENS: ALL RIGHT. DID THE DEFENDANT TESTIFY IN  
28 THAT CASE?

1 MS. AUSUBEL: NO HE DID NOT.

2 MR. BARENS: HE DID NOT? HOW DID YOU HONESTLY FEEL  
3 ABOUT THAT WHEN YOU WENT BACK TO RETIRE, TO VOTE, BEFORE YOU  
4 HAD REALLY DISCUSSED IT WITH ANYONE? WHAT WAS YOUR STATE  
5 OF MIND CONSIDERING THE DEFENDANT IN TERMS OF THAT ISSUE?

6 MS. AUSUBEL: WHAT WAS MY FEELING? IS THAT THE  
7 QUESTION?

8 MY FEELING WAS THAT I HAD NO FEELING ONE WAY OR  
9 THE OTHER WITH RESPECT TO THAT QUESTION.

10 MR. BARENS: DID YOU FEEL THAT THE FACT THAT THE  
11 DEFENDANT DID NOT TESTIFY HAD SOME IMPACT ON YOUR ULTIMATE  
12 VERDICT THAT WAS REACHED?

13 MS. AUSUBEL: NO I DID NOT.

14 MR. BARENS: YOU DO NOT? YOU FELT THE CASE WAS JUDGED  
15 BASED ON THE REST OF THE EVIDENCE THAT WAS PRODUCED?

16 MS. AUSUBEL: YES I DID.

17 MR. BARENS: EXCLUSIVELY?

18 DO YOU THINK IT WOULD HAVE MADE A DIFFERENCE,  
19 HAD THE DEFENDANT TESTIFIED?

20 MS. AUSUBEL: NO I DO NOT.

21 MR. BARENS: WAS THE GENERAL DEFENSE AS FAR AS YOU COULD  
22 DETERMINE IT TO BE, ONE OF A PLAIN "I DIDN'T DO IT" DEFENSE  
23 OR WAS THERE -- WAS THERE SOME JUSTIFICATION ASSERTED BY THE  
24 DEFENSE IN TERMS OF SELF-DEFENSE OR MISTAKE OR INSANITY OR  
25 DIMINISHED CAPACITY?

26 MS. AUSUBEL: THE DEFENDANT PUT FORTH A DEFENSE THAT  
27 IT WAS A MISTAKE IN IDENTITY.

28 MR. BARENS: AND -- ALL RIGHT. I WILL ACCEPT THAT.

1 YOU MEAN A MISTAKE IN IDENTITY CASE IN TERMS THAT THE  
2 DEFENDANT WAS WRONGLY IDENTIFIED AS THE CULPRIT?

3 MS. AUSUBEL: ABSOLUTELY, YES.

4 MR. BARENS: I CALL THAT THE "I DIDN'T DO IT" DEFENSE  
5 IN GENERAL. IT WAS THAT I DIDN'T DO IT AND SOMEBODY ELSE  
6 DID IT. THEY HAVE MISTAKENLY IDENTIFIED ME.

7 MS. AUSUBEL: OKAY.

8 MR. BARENS: NOW INCIDENTALLY, DID THEY IDENTIFY THE  
9 DEFENDANT -- WAS IT THE VICTIMS THAT SURVIVED THAT IDENTIFIED  
10 THE DEFENDANT? INCIDENTALLY, MISS AUSUBEL, THERE IS NO REAL  
11 GOOD REASON THAT YOU HAVE TO REMEMBER ANYTHING.

12 MS. AUSUBEL: I JUST DON'T. I WANT TO BE AS ACCURATE  
13 AS I POSSIBLY CAN BE. I JUST DO NOT RECALL.

14 MR. BARENS: INCIDENTALLY, AS I MENTIONED EARLIER ON  
15 IN THAT FIRST QUESTIONING, THERE ARE NO RIGHT OR WRONG  
16 ANSWERS. AN "I DON'T REMEMBER" OR "I NEVER KNEW" ANSWER IS  
17 AS GOOD AS ANY OTHER KIND OF ANSWER IN EVERY RESPECT.

18 MS. AUSUBEL: I JUST DON'T RECALL.

19 MR. BARENS: I AM TOTALLY COMFORTABLE WITH THAT. WHAT  
20 DID YOU FEEL ABOUT THE LAWYERS IN THAT CASE? DID YOU THINK  
21 BOTH LAWYERS HAD PROPERLY REPRESENTED THE INTERESTS OF THEIR  
22 RESPECTIVE CLIENTS?

23 MS. AUSUBEL: ABSOLUTELY. I THOUGHT THEY WERE  
24 OUTSTANDING.

25 MR. BARENS: AND WERE THERE ANY OTHER WITNESSES,  
26 IDENTITY WITNESSES THAT YOU CAN RECALL?

27 MS. AUSUBEL: NO.

28 MR. BARENS: WAS THERE ANY OF WHAT WE CALL FORENSIC

1 EVIDENCE WITNESSES? IN OTHER WORDS, SOMEONE PERHAPS FROM  
2 THE POLICE DEPARTMENT THAT IDENTIFIED A WEAPON OR A BULLET  
3 OR A PHOTOGRAPH OR A FRAGMENT OF SOME KIND OR A FOOTPRINT,  
4 ANYTHING THAT YOU COULD BE DESCRIBING AS FORENSIC EVIDENCE?

5 MS. AUSUBEL: YES THERE WAS.

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17-1

1 MR. BARENS: COULD YOU TELL ME A LITTLE BIT ABOUT THAT?

2 MS. AUSUBEL: THERE WAS A, I BELIEVE HE SAID HE WAS  
3 A FORENSIC OFFICER MAYBE AND, AS I RECALL, HIS TESTIMONY WAS  
4 DISALLOWED.

5 MR. BARENS: DO YOU RECALL WHY?

6 MS. AUSUBEL: BECAUSE OF SOME INVOLVEMENT, SOME PRIOR  
7 INVOLVEMENT, SOMETHING.

8 I JUST RECALL THAT WE HAD TO DISREGARD WHAT HE  
9 HAD TOLD US.

10 MR. BARENS: ALL RIGHT, I WON'T EVEN CHOOSE TO  
11 SPECULATE BECAUSE THAT IS IN SUCH A REALM OF COMPLEXITY THERE  
12 IS NO WAY I WOULD EVEN CHOOSE TO SPECULATE ON THAT ONE.

13 MS. AUSUBEL: RIGHT.

14 MR. BARENS: IN THAT CASE, HOW DID YOU FEEL AFTER THAT  
15 PROCESS? YOU HAD OBVIOUSLY AN ONEROUS DUTY IN THAT CASE.  
16 IT SOUNDS TO ME LIKE IT WAS A PRETTY DIFFICULT THING IN  
17 REACHING A DECISION.

18 HOW DID YOU FEEL ABOUT THAT PROCESS AFTER YOU HAD  
19 SERVED ON THE JURY?

20 MS. AUSUBEL: YOU MEAN ABOUT THE JUDICIAL SYSTEM?

21 MR. BARENS: YES.

22 MS. AUSUBEL: OH, I -- I THINK THE JUDICIAL SYSTEM IS  
23 WONDERFUL. I THINK IT WORKS, ALBEIT SLOWLY, BUT I THINK IT  
24 WORKS.

25 MR. BARENS: WE ARE ALL GOING TO AGREE WITH THE SLOWNESS  
26 OF THE PROCESS BUT, YOU KNOW, WITH EXCELLENT RESULTS FROM  
27 LENGTHY PROCESSES.

28 MS. AUSUBEL: ABSOLUTELY.

1 MR. BARENS: WAS THERE ANYTHING ABOUT THAT TRIAL THAT  
2 WAS CONTRARY TO WHAT YOU EXPECTED BEFORE YOU WENT IN TO  
3 SERVE AS A JUROR? WAS THERE ANYTHING THAT KIND OF STOOD  
4 OUT IN YOUR MIND THAT SURPRISED YOU ABOUT THE WAY THINGS WERE  
5 PROCEEDING OR CONDUCTED?

6 MS. AUSUBEL: NOT THAT I RECALL.

7 MR. BARENS: HOW DID YOU FEEL -- I AM GOING TO ASK YOU  
8 AN OBVIOUS SECOND QUESTION IN A MOMENT -- BUT AT THAT POINT  
9 DURING THAT TRIAL HOW DID YOU FEEL ABOUT THE PRESUMPTION OF  
10 INNOCENCE THAT THE DEFENDANT HAD?

11 MS. AUSUBEL: I FEEL GOOD ABOUT THE PRESUMPTION OF  
12 INNOCENCE. I THINK THAT IT IS NECESSARY AND REQUIRED AND THAT  
13 WE SHOULD HAVE IT AND I WOULDN'T WANT IT ANY OTHER WAY.

14 MR. BARENS: DO YOU THINK IT IS A WORTHWHILE RIGHT WE  
15 ALL HAVE AS PEOPLE IN THIS COUNTRY?

16 MS. AUSUBEL: YES.

17 MR. BARENS: WERE YOU ABLE TO MAINTAIN THAT PRESUMPTION  
18 OF INNOCENCE CONCERNING THAT DEFENDANT THROUGHOUT THE PRESENT-  
19 ATION OF THE PROSECUTION'S CASE?

20 MS. AUSUBEL: YES.

21 MR. BARENS: YOU STILL FELT THAT PRESUMPTION AND  
22 BENEFIT OF THE DOUBT BEFORE THE DEFENSE PUT ON ITS CASE?

23 MS. AUSUBEL: ABSOLUTELY.

24 MR. BARENS: YOU FELT STILL OPEN-MINDED AND RECEPTIVE  
25 TO EVIDENCE AT THAT POINT IN TIME?

26 MS. AUSUBEL: OH, ABSOLUTELY.

27 MR. BARENS: AS YOU COME HERE TODAY, DO YOU FEEL THE  
28 SAME WAY ABOUT THE PRESUMPTION OF INNOCENCE?

1 MS. AUSUBEL: OH, CERTAINLY, YES.

2 MR. BARENS: AND IF IN THIS CASE, CONTRARY TO YOUR  
3 EXPERIENCE IN THAT CASE, THE DEFENDANT CAME FORTH AND  
4 TESTIFIED, WOULD YOU BE OPEN-MINED IN LISTENING TO HIM?

5 MS. AUSUBEL: YES.

6 MR. BARENS: AND YOU WOULD FEEL THAT HE WOULDN'T  
7 NECESSARILY BE ANYTHING LESS THAN CANDID BECAUSE HE WAS A  
8 DEFENDANT?

9 MS. AUSUBEL: I AM SORRY?

10 MR. BARENS: WOULD YOU FEEL --

11 MS. AUSUBEL: MY MIND WENT SOME PLACE ELSE. I AM SORRY.

12 MR. BARENS: I WAS A BIT AWKWARD IN MY PHRASEOLOGY AS  
13 WELL.

14 WOULD YOU HAVE ANY SECRET BELIEF IN YOUR MIND THAT  
15 MR. HUNT MAY BE LESS THAN CANDID WITH YOU TESTIFYING AS A  
16 DEFENDANT BECAUSE HE IS IN DIFFICULT STRAITS HERE?

17 MS. AUSUBEL: NO.

18 MR. BARENS: DO YOU HAVE ANY REASON TO BELIEVE HE HAS  
19 DONE ANYTHING WRONG AT THIS POINT IN TIME JUST BECAUSE HE IS  
20 HERE?

21 MS. AUSUBEL: NO.

22 MR. BARENS: YOU DON'T FEEL THAT WAY AT ALL?

23 MS. AUSUBEL: NO.

24 MR. BARENS: SPEECH PATHOLOGY, COULD YOU TELL ME MORE  
25 SPECIFICALLY WHAT YOU LOOK TO WORK WITH IN THAT AREA? BECAUSE  
26 MORE SPECIFICALLY, I AM THINKING MORE ABOUT SPEECH THERAPY.

27 MS. AUSUBEL: SAME THING.

28 MR. BARENS: IS THE EMPHASIS ON SPEECH PROBLEMS MORE

1 THAN SPEECH IMPEDIMENTS?

2 MS. AUSUBEL: STROKE.

3 HOWEVER, MY EMPHASIS WAS NOT CONGENITAL BUT IT  
4 COULD BE.

5 MR. BARENS: BUT YOURS WAS MORE AN EMPHASIS INVOLVING  
6 PEOPLE THAT HAVE HAD A PHYSICAL PROBLEM?

7 MS. AUSUBEL: SOME PHYSICAL. BOTH, I WOULD SAY BOTH.

8 MR. BARENS: RATHER THAN EMOTIONAL?

9 AND WHEN DID YOU LAST ACTIVELY PURSUE THAT AS A  
10 PROFESSION?

11 MS. AUSUBEL: ABOUT TEN YEARS AGO.

12 MR. BARENS: AND DURING THE LAST TEN YEARS YOUR PRIMARY  
13 PROFESSION HAS BEEN THAT OF A HOMEMAKER?

14 MS. AUSUBEL: NO -- WELL, I GUESS PRIMARILY, YES.

15 I HAVE HAD A COUPLE OF BUSINESS VENTURES, PERSONAL  
16 CARE SALON AND I SOLD THAT. I HAVE HAD KIND OF AN ONGOING  
17 CATERING BUSINESS. I HAVE A LETTER-WRITING BUSINESS.

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1 MR. BARENS: I AM SORRY?

2 MS. AUSUBEL: LETTER-WRITING BUSINESS.

3 MR. BARENS: LETTER-WRITING FOR -- YOU WOULD WRITE  
4 LETTERS FOR OTHER PEOPLE?

5 MS. AUSUBEL: YES.

6 MR. BARENS: AND YOUR CATERING BUSINESS, ARE YOU STILL  
7 ACTIVE IN THAT?

8 MS. AUSUBEL: WELL, SORT OF. I MEAN NOT CERTAINLY NOT  
9 LIKE I WAS.

10 MR. BARENS: IN FOOD CATERING, ARE YOU AT ALL FAMILIAR  
11 WITH ANYONE NAMED ROSE DOSTI?

12 MS. AUSUBEL: NO, I AM NOT.

13 MR. BARENS: DO YOU HAVE ANY HOBBIES?

14 MS. AUSUBEL: I REALLY DON'T. I GUESS I DON'T.

15 MR. BARENS: YOU GUESS YOU DON'T?

16 MS. AUSUBEL: I AM THINKING THAT EVERYTHING I DO SEEMS  
17 NOT TO BE PAYING ME SO IT MUST BE A HOBBY.

18 I DO WORK WITH THE HOMELESS AND HUNGRY. I CALL  
19 THAT -- I GUESS THAT IS A HOBBY, TOO.

20 MR. BARENS: WELL, THAT IS A WORTHWHILE ACTIVITY.

21 HOW MANY CHILDREN DO YOU HAVE?

22 MS. AUSUBEL: I HAVE TWO CHILDREN, TWO GIRLS: 30 AND  
23 31.

24 MR. BARENS: AND HOW ARE THEY INVOLVED? WHAT DO THEY  
25 DO?

26 MS. AUSUBEL: THE 31-YEAR-OLD IS MARRIED AND OWNS AND  
27 OPERATES A BALLOON, AS IN PARTY BALLOON, BUSINESS AND HAS  
28 TWO CHILDREN. SHE LIVES IN PASADENA.

7-6

1 THE YOUNGER DAUGHTER LIVES IN LOS ANGELES, IS  
2 UNMARRIED AND IS -- I BELIEVE SHE IS AN ACCOUNTANT NOW IN  
3 COMPUTERS. SHE IS AN ACCOUNTANT BUT I THINK NOW IT IS WITH  
4 COMPUTERS.

5 MR. BARENS: GOING BACK FOR A MOMENT TO THE MURDER TRIAL  
6 THAT YOU PARTICIPATED IN --

7 THE COURT: INCIDENTALLY, I THINK THE NAME OF THAT  
8 DEFENDANT WAS GREGORY WILLIAMS.

9 MS. AUSUBEL: YOU ARE ABSOLUTELY RIGHT, YOUR HONOR.

10 THE COURT: THAT WAS OUR REPORTER. ROSEMARIE IS THE  
11 ONE THAT CAME UP WITH THE NAME.

12 MR. BARENS: REMARKABLE INDEED.

13 WELL, IN THE WILLIAMS CASE, DID YOUR OPINION ABOUT  
14 THE DEFENDANT CHANGE DURING THE TRIAL?

15 MS. AUSUBEL: NO.

16 THAT WAS REALLY MY FIRST JURY EXPERIENCE WHERE  
17 I THOUGHT ANYTHING OF SIGNIFICANCE WAS AT STAKE AND AS I  
18 RECALL, WE WERE PERMITTED TO TAKE NOTES.

19 MR. BARENS: YES.

20 MS. AUSUBEL: AND I JUST KIND OF WAITED IT OUT UNTIL  
21 IT WAS ALL OVER AND THEN FORMED AN OPINION.

22 MR. BARENS: AND DURING THE DELIBERATION PROCESS, FROM  
23 THE TIME YOU INITIALLY RETIRED UNTIL THE TIME YOU REACHED A  
24 VERDICT, DID YOUR OPINION OF THE DEFENDANT CHANGE?

25 MS. AUSUBEL: FROM THE BEGINNING OF THE DELIBERATION  
26 TO THE END, DID IT CHANGE?

27 MR. BARENS: RIGHT.

28 MS. AUSUBEL: NO.

17A

1 MR. BARENS: INCIDENTALLY, WHEN YOU WERE TRYING TO  
2 REACH A VERDICT THERE, WAS THERE AN ISSUE THAT COMPLICATED  
3 THE DELIBERATION WHERE YOU WERE TRYING TO DETERMINE, SAY,  
4 BETWEEN A FIRST DEGREE MURDER AND A SECOND DEGREE MURDER AND  
5 PERHAPS A MANSLAUGHTER?

6 MS. AUSUBEL: I DON'T RECALL.

7 MR. BARENS: YOU DON'T RECALL THAT?

8 MS. AUSUBEL: NO.

9 MR. BARENS: DID YOU MENTION TO ME EARLIER THAT IT TOOK  
10 THE JURORS TWO WEEKS TO REACH A VERDICT?

11 MS. AUSUBEL: IT SEEMED TO ME THAT IT WAS. IT MIGHT  
12 NOT HAVE BEEN BUT --

13 MR. BARENS: COULD YOU TELL ME AGAIN, WITHOUT INDICATING  
14 WHICH SIDE YOU WERE ON, WHAT APPEARED TO YOU TO BE THE CAUSATION  
15 OF WHY THE JURORS COULDN'T AGREE, IF YOU CAN IN FACT FOCUS  
16 ON THAT CAUSATION?

17 MS. AUSUBEL: I RECALL THAT THERE WERE REQUESTS MADE  
18 FOR TESTIMONY TO BE REREAD.

19 MR. BARENS: YES.

20 MS. AUSUBEL: AND THEN IT HAD TO BE DISCUSSED.

21 MR. BARENS: WERE THE JURORS IN SOME REGARDS THEN  
22 UNCERTAIN WITH EXACTLY WHAT THEY HAD HEARD?

23 MS. AUSUBEL: I DO NOT KNOW WHAT WAS IN THEIR MINDS.

24 MR. BARENS: AND THERE WAS A LOT OF REREADING OF  
25 THE TRANSCRIPT? WAS IT A TRANSCRIPT IN THAT SENSE INVOLVING  
26 WITNESS TESTIMONY OR INSTRUCTIONS BY THE COURT?

27 MS. AUSUBEL: WITNESS TESTIMONY.  
28

18A-1  
1 MR. BARENS: YOU WERE UNCERTAIN ON THE SAME SUBJECTS THEY  
2 NEEDED REREAD OR DID YOU FEEL YOU WERE PRETTY -- YOU RECALLED  
3 PRETTY WELL WHAT THE PEOPLE HAD SAID?

4 MS. AUSUBEL: I FELT THAT I RECALLED WHAT HAD BEEN SAID.

5 MR. BARENS: DID YOU THINK ALL OF THE JURORS ACTED  
6 REASONABLY IN THE DELIBERATION PROCESS?

7 MS. AUSUBEL: I BELIEVE THAT EVERYONE FULFILLED THEIR  
8 DUTY, TO THE BEST OF THEIR ABILITY, ON THAT JURY.

9 MR. BARENS: AND WAS THE JURY PRETTY WELL SPLIT AMONG  
10 ITSELF FOR A COUPLE OF WEEKS OR WAS IT A SITUATION WHERE THERE  
11 WAS MAYBE, A SINGLE HOLDOUT? WHAT SORT OF SETTING ARE WE  
12 IN?

13 MS. AUSUBEL: IT WASN'T EVENLY DIVIDED. AND THERE WAS  
14 NOT A SINGLE HOLDOUT.

15 MR. BARENS: DID YOU FEEL YOU WERE WITH THE MAJORITY  
16 DECISION FROM THE START?

17 MS. AUSUBEL: YES.

18 MR. BARENS: DO YOU UNDERSTAND OR DO YOU RECALL FROM  
19 THAT EXPERIENCE IN THAT AREA WHERE THE JURORS WEREN'T SURE  
20 ABOUT WHAT WAS SAID, THAT YOU COULD ONLY GO BACK TO THE  
21 TESTIMONY AND THE EVIDENCE THAT HAD BEEN BROUGHT INTO THE  
22 COURTROOM, YOU COULDN'T GET ANY MORE DATA OR INPUT?

23 MS. AUSUBEL: ABSOLUTELY, YES.

24 MR. BARENS: DO YOU UNDERSTAND THAT I HAVE DISCUSSED  
25 BEFORE HERE, THAT AFTER LISTENING TO ALL OF THE EVIDENCE,  
26 IF YOU HAVE NOT GOT ENOUGH EVIDENCE AND YOU REREAD ALL OF  
27 THE TESTIMONY, WHAT DO YOU DO?

28 MS. AUSUBEL: NOT GUILTY.



18A-2

1 MR. BARENS: NOT PROVEN?

2 MS. AUSUBEL: YES.

3 MR. BARENS: ALL RIGHT. DO YOU UNDERSTAND THAT IN A  
4 CLOSE CALL, THE DOUBT IS RESOLVED IN FAVOR OF THE DEFENDANT?

5 MS. AUSUBEL: YES.

6 MR. BARENS: I WOULD IMAGINE THAT A LOT OF WHAT YOU  
7 HEAR HIS HONOR SAY IN THIS SETTING, WOULD SOUND SIMILAR TO  
8 WHAT YOU HEARD THEN.

9 WE WOULD ASK YOU HOWEVER, BECAUSE IT IS DIFFERENT  
10 CASES, TO TRY TO FORGET THE EDUCATIONAL VALUE OF THAT PRIOR  
11 TRIAL, IF YOU ARE SELECTED IN THIS CASE.

12 MS. AUSUBEL: I UNDERSTAND.

13 MR. BARENS: I AM SURE, HAVING PRACTICED FOR A LONG  
14 TIME AND OCCASIONALLY IN THIS COURT YEARS AGO -- WELL, IN  
15 LAW AND MOTION ACTUALLY, YOUR HONOR -- THAT YOU WERE QUITE  
16 IMPRESSED WITH HIS HONOR.

17 AND I ASK YOU TRUE IF THE IMPRESSION THAT YOU  
18 HAD OF HIS HONOR, WOULD IN ANY WAY DISADVANTAGE ME IN THE  
19 EVENT -- THOUGH IT MAY BE REMOTE -- THAT HIS HONOR AND I  
20 DISAGREE ON A SUBJECT DURING THIS TRIAL?

21 MS. AUSUBEL: NO IT WOULD NOT.

22 MR. BARENS: YOU WOULD LOOK AT HIS HONOR JUST LIKE ANY  
23 OTHER JUDGE?

24 MS. AUSUBEL: YES.

25 MR. BARENS: ALL RIGHT. NOTHING FROM YOUR PRIOR  
26 EXPERIENCE IN THIS COURTROOM WOULD UNDULY IMPACT YOU, WHERE  
27 I COULD BE DISADVANTAGED?

28 MS. AUSUBEL: NO.

18A-3

1 MR. BARENS: AND YOU WOULD BE ABLE TO JUDGE THIS CASE  
2 JUST ON THE EVIDENCE PRODUCED IN THIS CASE AND HAVE NO  
3 RELATIONSHIP TO THAT PRIOR MATTER?

4 MS. AUSUBEL: YES.

5 MR. BARENS: HOW DO YOU FEEL ABOUT THE FACT THAT THE  
6 GOVERNMENT COULD COME FORTH AND SUE A MURDER CASE WITH NO  
7 BODY?

8 MS. AUSUBEL: I UNDERSTAND THAT.

9 MR. BARENS: AND THAT SEEMS APPROPRIATE TO YOU?

10 MS. AUSUBEL: THAT'S THE LAW.

11 MR. BARENS: ALL RIGHT. YOU WOULD FIRST WANT TO I  
12 ASSUME DETERMINE THAT A MURDER OCCURRED?

13 MS. AUSUBEL: YES.

14 MR. BARENS: AND YOU WOULD WANT TO KNOW SOMETHING ABOUT  
15 YOU KNOW, IF YOU HAVE A MISSING FELLOW HERE AND ALL WE KNOW --  
16 ALL YOU KNOW BEFORE A TRIAL IF THERE IS NO BODY, OBVIOUSLY,  
17 ALL ONE CAN SAY WITH CERTAINTY IS THAT SOMEBODY IS MISSING.

18 YOU WOULD WANT TO KNOW SOMETHING ABOUT THE NATURE  
19 AND CHARACTER AND BACKGROUND AND OVERALL SITUATION OF THAT  
20 MISSING PERSON?

21 MS. AUSUBEL: I DO NOT KNOW.

22 MR. BARENS: WELL, IF I SUGGEST TO YOU THAT THE MISSING  
23 PERSON MAYBE HAD SOME MAJOR ISSUES IN HIS LIFE THAT HE HAD  
24 TO DEAL WITH THAT MIGHT HAVE ENCOURAGED HIM TO WANT TO LEAVE,  
25 WOULD YOU WANT TO KNOW ABOUT FACTORS LIKE THAT IN  
26 DETERMINING WHETHER OR NOT HE HAD BEEN MURDERED, AS OPPOSED  
27 TO VOLUNTARILY ABSENTING HIMSELF FROM THE JURISDICTION?  
28 OR, WOULD YOU NOT WANT TO THINK ABOUT THAT?

18A-4  
1 MS. AUSUBEL: MY HONEST OPINION IS THAT THE QUESTION  
2 IS, WAS HE MURDERED.

3 MR. BARENS: WELL, THE POINT WE HAVE GOT TO GET TO IN  
4 DECIDING WHETHER HE IS MURDERED, IF THERE IS NO BODY, WE HAVE  
5 TO FIRST MAKE A DECISION I WOULD SUPPOSE ON WHETHER HE IS  
6 ALIVE OR NOT.

7 YOU SEE, A MURDER, IF A PERSON IS DEAD, YOU CAN  
8 BE DEAD IN A LOT OF WAYS THAT ARE NOT NECESSARILY A MURDER.  
9 AND YOU KNOW WHAT I MEAN.

10 BUT BEFORE WE GET TO THE DETERMINATION AS TO HOW  
11 ONE GETS DEAD, IT MIGHT BEHOVE US TO DETERMINE WHETHER THEY  
12 ARE DEAD OR NOT, IS WHAT I SUGGEST TO YOU.

13 MS. AUSUBEL: I UNDERSTAND.

14 MR. BARENS: AND IF IN MAKING THE DECISION AS TO WHETHER  
15 SOMEONE IS DEAD OR ALIVE -- DO YOU THINK IT WOULD BE VALUABLE  
16 TO DETERMINE SOMETHING ABOUT THEIR CHARACTER AND BACKGROUND?

17 MS. AUSUBEL: I WOULD THINK THAT I WOULD NEED AS MUCH  
18 INFORMATION AS I COULD GET WITH RESPECT TO ALL ELEMENTS OF  
19 THE CASE.

20 MR. BARENS: SURE. DO YOU REMEMBER THAT I WAS TELLING  
21 MR. RUTHERFORD A BIT AGO, THAT MY MERE ABSENCE IN A SITUATION,  
22 CAN BE A FORM OF A STATEMENT TO YOU? I CAN BE CREATING AN  
23 EFFECT IN YOUR MIND BY MY ABSENCE, AS MUCH AS MY PRESENCE?

24 MS. AUSUBEL: YES.

25 MR. BARENS: IN FACT, SOMETIMES MY ABSENCE UNDER  
26 CERTAIN SITUATIONS CAN BE MORE PROVOCATIVE AND SUGGESTIVE  
27 THAN ANYTHING I MIGHT BE ABLE TO SAY, WERE I PRESENT. DO  
28 YOU SEE WHAT I MEAN?

1 MS. AUSUBEL: YES. I DO SEE WHAT YOU MEAN.

2 MS. BARENS: IN OTHER WORDS, IF WE WERE ALL DUE FOR  
3 DINNER AND I SHOWED UP AND JUST SAT THERE ALL NIGHT AND NEVER  
4 SAID A WORD, THAT MIGHT NOT OCCASION MUCH COMMENT. IT MIGHT  
5 OCCASION SOME HAPPINESS.

6 BUT IF I DIDN'T SHOW UP AT ALL, IT WOULD CREATE  
7 ALL SORTS OF SPECULATION, WOULDN'T IT, ABOUT WHETHER OR NOT  
8 SOMETHING HAPPENED TO ME?

9 MS. AUSUBEL: ABSOLUTELY.

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8B-1  
1 MR. BARENS: IF SOMETHING HAPPENED TO ME AND HAD I DONE  
2 SOMETHING TO MYSELF OR HAD SOMEONE DONE SOMETHING TO ME AND  
3 ALL THOSE OTHER SORTS OF THINGS WE CAN GET INTO --

4 MS. AUSUBEL: RIGHT. RIGHT, I AGREE WITH YOU.

5 (MR. CHIER ENTERS THE COURTROOM.)

6 MR. BARENS: NOW, WITH ALL THAT TYPE OF SPECULATION  
7 THAT IT MAY OCCUR TO YOU THAT THE GOVERNMENT COMES IN HERE  
8 WITH A SOLUTION FOR YOU ON THAT TYPE OF SPECULATION, DO YOU  
9 UNDERSTAND THAT THE DECISION YOU HAVE TO COME TO, THE  
10 SOLUTION OFFERED TO YOU IS WHETHER OR NOT IT IS BEYOND A  
11 REASONABLE DOUBT?

12 MS. AUSUBEL: YES.

13 MR. BARENS: THE OTHER CASE YOU SAT ON AS A JUROR IN  
14 MY OPINION, OBVIOUSLY DIFFERS FROM THIS CASE BECAUSE THERE,  
15 YOU HAD A BODY. YOU HAD A PERSON YOU HAD TO BELIEVE THAT  
16 WAS EITHER PRESENT OR NOT PRESENT.

17 BUT THERE WAS LITTLE DOUBT THAT YOU HAD A DEATH  
18 AND DEATH BY CRIMINAL MEANS. THEREFORE, THE ONLY ISSUE WAS  
19 A "WHO DONE IT" TYPE OF TRIAL?

20 MS. AUSUBEL: YES.

21 MR. BARENS: DO YOU UNDERSTAND THAT YOU DON'T HAVE THAT  
22 HERE?

23 MS. AUSUBEL: YES.

24 MR. BARENS: YOU WILL REMEMBER THAT?

25 MS. AUSUBEL: YES.

26 MR. BARENS: OKAY. THANK YOU FOR YOUR TIME. I PASS  
27 FOR CAUSE, YOUR HONOR.

28 MR. WAPNER: GOOD AFTERNOON, MISS AUSUBEL.

1 MS. AUSUBEL: GOOD AFTERNOON.

2 MR. WAPNER: THERE IS A LOT OF GROUND FOR QUESTIONS.

3 MS. AUSUBEL: YES.

4 MR. WAPNER: DID YOU HEAR ANY EXPERT TESTIMONY IN THE  
5 PRIOR MURDER CASE ABOUT EYEWITNESS IDENTIFICATION?

6 MS. AUSUBEL: I DON'T RECALL IF THERE WAS ANY.

7 MR. WAPNER: DID YOU GET A LOT OF EXAMPLES DURING THE  
8 JURY SELECTION PROCESS, SIMILAR TO THE ONES THAT I WAS USING  
9 ABOUT SEEING PEOPLE ON THE STREETS AND THINKING THAT THEY  
10 WERE SOMEONE YOU KNEW AND THEN REALIZING THAT IT WAS NOT?

11 MS. AUSUBEL: I DON'T RECALL THAT.

12 MR. WAPNER: HAVE YOU EVER HAD THAT EXPERIENCE HAPPEN  
13 TO YOU?

14 MS. AUSUBEL: FREQUENTLY.

15 MR. WAPNER: IN THE CASE THAT YOU SAT ON, WAS THERE  
16 EVIDENCE OFFERED, CIRCUMSTANTIAL EVIDENCE OFFERED TO YOU TO  
17 SUPPORT ANY EYEWITNESS IDENTIFICATION THAT MAY HAVE BEEN MADE  
18 OF THE ALLEGED PERPETRATOR OF THE CRIME?

19 MS. AUSUBEL: I DON'T RECALL. I JUST DON'T RECALL.

20 MR. WAPNER: MY PIE IS OVER THERE ON THE TABLE. THE  
21 CLERK ASSURES ME THAT AFTER LUNCH, THERE WAS STILL ONLY ONE  
22 PIECE MISSING. DID YOU HEAR THE ANSWERS THAT MOST OF THE  
23 VARIOUS PEOPLE GAVE TO THAT EXAMPLE?

24 MS. AUSUBEL: YES.

25 MR. WAPNER: AND WHAT DID YOU THINK ABOUT THE VARIOUS  
26 ANSWERS THAT WERE GIVEN?

27 MS. AUSUBEL: THAT IT HAD BECOME TIRESOME.

28 MR. WAPNER: YOU SHOULD HAVE BEEN HERE WHEN WE WERE

1 TALKING ABOUT THE BOAT. DID YOU THINK THAT ANY OF THESE  
2 ANSWERS WERE FARFETCHED TO YOU?

3 MS. AUSUBEL: YES.

4 MR. WAPNER: DID YOU FORM ANY OPINION IN YOUR MIND ABOUT  
5 WHAT HAPPENED?

6 MS. AUSUBEL: THE OPINION THAT I FORMED WAS THAT I DID  
7 NOT HAVE ENOUGH INFORMATION TO FORM AN OPINION.

8 MR. WAPNER: WHAT INFORMATION WOULD YOU HAVE WANTED?

9 MS. AUSUBEL: I WOULD WANT TO KNOW WHERE THE HOUSE WAS  
10 SITUATED.

11 MR. WAPNER: WHY?

12 MS. AUSUBEL: I WOULD WANT TO KNOW IF THERE WAS AN ANIMAL  
13 IN THE HOUSE. I HAD A MYRIAD OF QUESTIONS.

14 MR. WAPNER: OKAY. WHAT DIFFERENCE WOULD IT MAKE TO  
15 YOU WHERE THE HOUSE WAS SITUATED?

16 MS. AUSUBEL: WERE THERE KIDS IN CLOSE PROXIMITY? DID  
17 OTHER CHILDREN HAVE ACCESS? WAS THE BAD SEED LIVING NEXT  
18 DOOR, EATING THE PIE AND COMING INTO THE HOUSE AND SMEARING  
19 THE KID WITH THE PIE? THERE WERE HUNDREDS OF QUESTIONS.

20 MR. WAPNER: DID YOU ANSWER QUESTIONS SIMILAR TO THAT  
21 WHEN YOU WERE ON JURY DUTY THE LAST TIME WHEN YOU WERE  
22 DELIBERATING ON THE CASE?

23 MS. AUSUBEL: THEY NEVER POSED THE CHERRY PIE QUESTION.

24 THE COURT: THAT IS THE BRAIN CHILD OF MR. WAPNER.

25 MR. WAPNER: I WISH I COULD TAKE CREDIT FOR IT, ALTHOUGH  
26 I GUESS, BASED ON THE FACT THAT I HAVE RUN IT INTO THE GROUND,  
27 MAYBE I SHOULDN'T WANT TO TAKE CREDIT FOR IT.

28 MS. AUSUBEL: I UNDERSTAND THAT IT WAS ALL ABOUT

1 CIRCUMSTANTIAL EVIDENCE. I MEAN, I WAS ABLE TO GET THROUGH  
2 TO THAT.

3 MR. WAPNER: OKAY.

4 MS. AUSUBEL: I UNDERSTOOD THAT WAS PART OF THE PURPOSE.  
5 I ABSOLUTELY UNDERSTOOD THAT.

6 MR. WAPNER: OKAY. DID YOU HAVE ANY EXPLANATION GIVEN  
7 TO YOU OF CIRCUMSTANTIAL EVIDENCE IN THE LAST TRIAL YOU WERE  
8 IN?

9 MS. AUSUBEL: I DON'T RECALL. I KNOW THAT I KNEW WHAT  
10 CIRCUMSTANTIAL EVIDENCE WAS. I DON'T KNOW HOW I KNEW.

11 MR. WAPNER: TELL ME ABOUT THESE VARIOUS BUSINESSES  
12 THAT YOU ARE INVOLVED IN. WHAT IS THE ONE THAT YOU HAVE NOW?

13 MS. AUSUBEL: THE LETTER WRITING BUSINESS?

14 MR. WAPNER: TELL ME ABOUT THAT.

15 MS. AUSUBEL: I WRITE LETTERS THAT PEOPLE PAY ME FOR.

16 MR. WAPNER: WHAT KINDS OF LETTERS?

17 MS. AUSUBEL: ANY KIND OF LETTER, A BUSINESS LETTER,  
18 PERSONAL LETTERS, LETTERS OF INQUIRY, LETTERS SEEKING  
19 INFORMATION, LETTERS GIVING INFORMATION, LOVE LETTERS, THANK  
20 YOU NOTES --

21 MR. WAPNER: YOU WRITE LOVE LETTERS FOR PEOPLE?

22 MS. AUSUBEL: YES.

23 MR. WAPNER: WHAT DID THEY DO, GIVE YOU THE WHOLE  
24 BACKGROUND AND BASIC INFORMATION?

25 MS. AUSUBEL: THEY TELL ME WHO THEY WANT ME TO TELL  
26 THEY LOVE, I GUESS. I DON'T KNOW.

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1 MR. WAPNER: DO YOU WRITE THESE OUT BY HAND OR DO YOU  
2 TYPE THEM?

3 MS. AUSUBEL: IT IS ENTIRELY YOUR CHOICE.

4 MR. WAPNER: BOY, YOU STICK AROUND LONG ENOUGH AND YOU  
5 HEAR EVERYTHING.

6 OKAY. AND YOU HAVE A BOOK THAT YOU ARE WORKING  
7 ON?

8 MS. AUSUBEL: YES.

9 MR. WAPNER: WHAT KIND OF A BOOK IS IT?

10 MS. AUSUBEL: COOKBOOK.

11 MR. WAPNER: AND VIDEO, WHAT KIND OF VIDEO?

12 MS. AUSUBEL: COOKING VIDEO. THE PUBLISHERS SAID I  
13 SHOULD DO A VIDEO ALSO.

14 MR. WAPNER: WHAT KIND OF A VIDEO IS IT GOING TO BE?

15 MS. AUSUBEL: A HOW-TO-COOK.

16 MR. WAPNER: JUST GENERALLY?

17 MS. AUSUBEL: RIGHT, HOW TO COOK SOME OF THE THINGS.

18 MR. WAPNER: AND YOU HAVE HAD VARIOUS OTHER BUSINESSES  
19 OVER THE LAST FEW YEARS; IS THAT CORRECT?

20 MS. AUSUBEL: YES, I HAD.

21 I DID THE PERSONAL CARE SALON AND THEN I DID --  
22 OH, I DID AN EFFICIENCY SERVICE, GOING IN AND SETTING UP  
23 PHYSICIAN'S, DENTIST'S AND ATTORNEY'S OFFICES.

24 MR. WAPNER: HOW LONG DID EACH OF THOSE BUSINESSES LAST,  
25 DO YOU KNOW?

26 MS. AUSUBEL: UNTIL I GOT TIRED OF THEM.

27 MR. WAPNER: HOW LONG WOULD THAT BE? A WEEK, A MONTH,  
28 TWO YEARS?

1 MS. AUSUBEL: PROBABLY YEARS. OVER YEARS, I DID MOST  
2 OF IT.

3 MR. WAPNER: HOW LONG HAVE YOU BEEN INVOLVED IN THE  
4 LETTER-WRITING BUSINESS AS YOU HAVE CURRENTLY?

5 MS. AUSUBEL: WELL, I HAVE ALWAYS WRITTEN LETTERS.

6 I WAS GOING TO WRITE A BOOK ABOUT HOW TO WRITE  
7 LETTERS.

8 MR. WAPNER: YOU DON'T WANT TO GIVE AWAY YOUR SECRETS?

9 MS. AUSUBEL: AND I DECIDED MAYBE THEY COULD JUST PAY  
10 ME TO WRITE THE LETTERS AND I WOULDN'T TELL THEM HOW TO DO  
11 IT.

12 SO I HAVE BEEN WRITING LETTERS FOR 20 YEARS AND  
13 NOT BEING PAID FOR IT.

14 I AM BEING PAID FOR IT ABOUT A YEAR.

15 MR. WAPNER: THANK YOU.

16 MS. AUSUBEL: YOU ARE WELCOME.

17 MR. WAPNER: PASS FOR CAUSE, YOUR HONOR.

18 THE COURT: THE PEOPLE'S PEREMPTORY?

19 MR. WAPNER: YES, YOUR HONOR, WE WOULD ASK THE COURT  
20 TO EXCUSE MRS. AUSUBEL. THANK YOU.

21 THE COURT: THANK YOU.

22 MS. AUSUBEL: YOU ARE WELCOME.

23 THE CLERK: ROBERT J. SCHWARTZ, S-C-H-W-A-R-T-Z.

24 THE COURT: MR. SCHWARTZ, I WON'T ASK YOU IF YOU HEARD  
25 ALL THE QUESTIONS AND ANSWERS BECAUSE IT DOESN'T MAKE ANY  
26 DIFFERENCE. THEY WILL ASK YOU THAT AGAIN ANYWAY.

27 ALL RIGHT, WHAT DO YOU DO, PLEASE?

28 MR. SCHWARTZ: I AM RETIRED FROM THE COUNTY OF LOS ANGELES.

1 THE COURT: WHAT DID YOU DO FOR THE COUNTY?

2 MR. SCHWARTZ: I WAS CHIEF DEPUTY COUNTY CLERK.

3 THE COURT: WERE YOU DOWNTOWN, WERE YOU?

4 MR. SCHWARTZ: YES, SIR.

5 THE COURT: I REMEMBER THE NAME WHEN I USED TO BE  
6 DOWNTOWN.

7 WHAT IS YOUR EDUCATIONAL BACKGROUND?

8 MR. SCHWARTZ: I HAVE A BACHELOR'S DEGREE IN ENGLISH  
9 FROM UCLA AND I HAVE A SERIES OF NIGHT COURSES I TOOK OVER  
10 MANY YEARS AND I WAS IN A MASTER'S PROGRAM AT USC IN PUBLIC  
11 ADMINISTRATION, I DID NOT GET THE DEGREE.

12 THE COURT: IS THERE A MRS. SCHWARTZ?

13 MR. SCHWARTZ: YES.

14 THE COURT: DOES SHE OR HAS SHE EVER PURSUED ANY  
15 EMPLOYMENT OUTSIDE THE HOME?

16 MR. SCHWARTZ: IN THE FIRST YEARS OF OUR MARRIAGE, SHE  
17 WAS AN OFFICER MANAGER AND BOOKKEEPER.

18 THE COURT: AND WHERE DO YOU LIVE?

19 MR. SCHWARTZ: MAR VISTA.

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

22 MR. SCHWARTZ: NO, SIR.

23 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND  
24 OF CRIME?

25 MR. SCHWARTZ: ABOUT A YEAR AGO, WE HAD AN ATTEMPTED  
26 BURGLARY WITH AN INTRUDER IN THE HOUSE.

27 THE COURT: YOU SCARED HIM OUT, DID YOU?

28 MR. SCHWARTZ: MY DOG DID.

1 THE COURT: AS A RESULT OF ANY EXPERIENCES YOU HAVE  
2 EVER HAD, FOR ANY REASON, WOULD THAT PREJUDICE YOU EITHER  
3 AGAINST THE PROSECUTION OR THE DEFENSE IN THIS CASE?

4 MR. SCHWARTZ: I WOULD HAVE TO GIVE YOU MY WORK HISTORY.

5 THE COURT: YES.

6 MR. SCHWARTZ: I STARTED IN 1952 AS AN AIR POLLUTION  
7 INSPECTOR. AT THAT TIME, I WAS A PEACE OFFICER WHO CARRIED  
8 A DEPUTY SHERIFF'S BADGE, WITHOUT COMPENSATION. MY TITLES  
9 WERE PUBLIC INFORMATION ASSISTANT, ASSISTANT BUSINESS MANAGER  
10 IN THE AIR POLLUTION CONTROL DISTRICT. I WAS BUSINESS MANAGER  
11 AT THE DEPARTMENT OF ADOPTIONS. I WAS DIVISION CHIEF IN THE  
12 DEPARTMENT OF HEALTH. I WAS DIRECTOR OF ADMINISTRATIVE  
13 SERVICES AND WORKED MY WAY UP TO CHIEF DEPUTY IN THE COUNTY  
14 CLERK'S OFFICE.

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1 ALL OF THESE DEPARTMENTS ARE REGULATORY AGENCIES.

2 THE COURT: AS A RESULT OF THAT EXPERIENCE, DO YOU HAVE  
3 ANY PREDILECTIONS OR ANY PREJUDICES AGAINST ONE SIDE OR THE  
4 OTHER IN THIS CASE?

5 MR. SCHWARTZ: WELL, I HAVE BEEN THINKING THAT OVER  
6 SITTING HERE ALL THIS TIME.

7 THE COURT: YES?

8 MR. SCHWARTZ: ON A CONSCIENCE LEVEL, I SAY NO. BUT  
9 ON THE SUBCONSCIENCE LEVEL, SUBLIMINAL, I CAN'T TELL YOU.

10 THE COURT: ALL RIGHT. AT ANY RATE, CONSCIOUSLY, YOU  
11 WILL TRY NOT TO FAVOR ONE SIDE AS AGAINST THE OTHER, WOULD  
12 YOU?

13 MR. SCHWARTZ: YES, SIR.

14 THE COURT: I THINK THAT IS ABOUT ALL I HAVE.

15 MR. BARENS: THANK YOU, YOUR HONOR.

16 GOOD AFTERNOON, MR. SCHWARTZ.

17 MR. SCHWARTZ: GOOD AFTERNOON.

18 MR. BARENS: MR. SCHWARTZ, IF I AM NOT MISTAKEN, I  
19 RECALL THAT YOU HAD READ SOMETHING ABOUT THIS MATTER, I THINK  
20 YOU SAID IN THE L.A. TIMES?

21 MR. SCHWARTZ: YES.

22 MR. BARENS: EARLIER, YOU ADVISED HIS HONOR THAT NOTHING  
23 IN YOUR PRIOR EXPERIENCE WOULD CONSCIOUSLY BIAS YOU ONE WAY  
24 OR ANOTHER TOWARD THE DEFENSE IN THIS MATTER; WOULD THAT  
25 INCLUDE ANYTHING YOU HAD READ IN THAT ARTICLE?

26 MR. SCHWARTZ: NO, I ONLY RECALL THE ARTICLE WITH THE  
27 CATCH PHRASE, "THE BILLIONAIRE BOYS CLUB".

28 I DON'T REMEMBER ANY OF THE DETAILS.

1 MR. BARENS: YOU DON'T RECALL WHETHER YOU HAD FORMED  
2 AN IMPRESSION ABOUT WHETHER OR NOT A MURDER HAD OCCURRED IN  
3 THE FIRST INSTANCE FROM READING THAT ARTICLE?

4 MR. SCHWARTZ: I DON'T EVEN RECALL READING ABOUT THE  
5 MURDER.

6 MR. BARENS: ALL RIGHT, SIR, YOU HAD SOME ADJUNCTIVE  
7 ACTIVITY WITH LAW ENFORCEMENT OVER THE YEARS. IN FACT, I  
8 THINK YOU SAID INITIALLY THAT YOU WERE A VOLUNTARY PEACE  
9 OFFICER?

10 MR. SCHWARTZ: I WILL EXPLAIN IT TO YOU.

11 MR. BARENS: IF YOU WOULD, SIR.

12 MR. SCHWARTZ: AN AIR POLLUTION INSPECTOR TOOK HIS  
13 DUTIES AS A PEACE OFFICER FROM THE AIR POLLUTION CONTROL  
14 OFFICER. WE CARRIED DEPUTY SHERIFF'S BADGES AND WE WERE  
15 KNOWN AS DEPUTY SHERIFFS WITHOUT COMPENSATION, FOR THAT REASON.

16 MR. BARENS: WHAT DID YOU DO IN THAT FUNCTION AND  
17 CAPACITY?

18 MR. SCHWARTZ: I PATROLLED AN AREA, INSPECTED PLANTS,  
19 CITED PEOPLE INTO COURT, APPEARED IN COURT.

20 MR. BARENS: YOU HAD THE PRESUMPTION OF GUILT ABOUT THE  
21 PEOPLE YOU CITED?

22 MR. SCHWARTZ: I CITED THEM BECAUSE THEY WERE GUILTY.

23 MR. BARENS: IF YOU CITED THEM, THEY WERE GUILTY?

24 MR. SCHWARTZ: I NEVER LOST A CASE.

25 MR. BARENS: WELL, LET ME ASK YOU SOMETHING, MR. SCHWARTZ.  
26 JUST THAT YOU NEVER LOST A CASE, DOES THAT MEAN PEOPLE WERE  
27 GUILTY WHEN YOU CITED THEM? DID YOU MAKE SOMEBODY GUILTY?

28 MR. SCHWARTZ: DID I MAKE THEM GUILTY?

1 MR. BARENS: SURE.

2 MR. SCHWARTZ: NO.

3 THE EVIDENCE MAKES THEM GUILTY.

4 MR. BARENS: CAN YOU MAKE THEM GUILTY BECAUSE YOU THINK  
5 THEY ARE GUILTY?

6 MR. SCHWARTZ: NO.

7 MR. BARENS: WHO MAKES PEOPLE GUILTY, SIR?

8 MR. SCHWARTZ: THEMSELVES, THE EVIDENCE, THE JURY.

9 MR. BARENS: OH, A JURY. A JURY. A JURY.

10 YOU SEE, TO MY KNOWLEDGE, THE ONLY ONE I HAVE EVER  
11 SEEN IN THIS WORLD THAT COULD DEFINE SOMEONE AS GUILTY AND  
12 CUT ANY ICE WAS A JUROR, NOT A POLICEMAN. I NEVER SAW A  
13 POLICEMAN MAKE SOMEBODY GUILTY, MR. SCHWARTZ.

14 MR. SCHWARTZ: YES, I THINK WE ARE PLAYING WITH THE  
15 WORD "MAKE."

16 MR. BARENS: I DON'T THINK I AM AT ALL, MR. SCHWARTZ,  
17 AND I WANT TO MAKE SURE WE UNDERSTAND EACH OTHER.

18 MR. SCHWARTZ: OKAY.

19 MR. BARENS: THE FUNCTION OF THE JURY IS TO DEFINE  
20 GUILT OR INNOCENCE.

21 THE ONLY OTHER PERSON IN THE UNITED STATES THAT  
22 CAN DO THAT IS A JUDGE IN A CASE WHERE A JURY IS NOT ASKED  
23 FOR BY A DEFENDANT. THE REST OF US ONLY HAVE OPINIONS ON  
24 GUILT AND INNOCENCE.

25 MR. SCHWARTZ: I UNDERSTAND WHAT YOU ARE SAYING.

26 MR. BARENS: AND THAT IS ALL I SAY.

27 MR. SCHWARTZ: YES, SIR.

28 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF

1 INNOCENCE THAT EACH OF US HAVE, WERE WE TO BE A DEFENDANT IN  
2 A CRIMINAL TRIAL?

3 MR. SCHWARTZ: I THINK IT IS MOST IMPORTANT. IT IS  
4 THE BASIS OF OUR JUSTICE SYSTEM.

5 MR. BARENS: DO YOU HAVE SOME LINGERING BELIEF THAT  
6 IF THE DISTRICT ATTORNEY, WHO IS A COUNTY EMPLOYEE, AND  
7 POLICEMEN WHO WORK FOR THE CITIES, COME IN AND SAY, "WELL,  
8 THE GUY IS GUILTY," AND THE POLICEMAN SAYS "I NEVER LOST A  
9 CASE," WHAT DO YOU THINK ABOUT THE DEFENDANT'S PRESUMPTION  
10 OF INNOCENCE IN THAT SITUATION?

11 MR. SCHWARTZ: HE IS STILL INNOCENT UNTIL WE PROVE  
12 HIM GUILTY HERE.

13 MR. BARENS: DO YOU ASSUME BY THAT WE ARE JUST GOING  
14 TO PRESUME HIM INNOCENT FOR A WHILE AND THEN JUST PROCEED  
15 HERE TO PROVE HIM GUILTY; YOU DON'T BELIEVE THAT?

16 MR. SCHWARTZ: WE PROCEED -- THE GUILTY PART WILL COME  
17 AT THE END.

18 MR. BARENS: DO YOU THINK THE GUILTY PART WILL COME  
19 AT THE END?

20 MR. SCHWARTZ: I AM SORRY.

21 THE DECISION WILL COME AT THE END.

22 MR. BARENS: THE DECISION COMES AT THE END?

23 MR. SCHWARTZ: YES.

24 MR. BARENS: NOT THE GUILTY PART COMES AT THE END?

25 MR. SCHWARTZ: I MISSPOKE.

26 MR. BARENS: THEY HAD BETTER HAVE THE GUILTY PART SOME-  
27 WHERE AT THE BEGINNING OR THE MIDDLE OR THEY WILL NEVER GET  
28 IT AT THE END, OKAY?



1 MR. SCHWARTZ: ALL RIGHT.

2 MR. BARENS: SO WHAT I AM DRIVING AT, AND I AM TRYING  
3 TO SEE IF WE CAN WORK TOGETHER, OBVIOUSLY I AM NOT GOING TO  
4 KID YOU THAT I DON'T HAVE AN IMPRESSION YOU ARE PROSECUTION  
5 ORIENTED BECAUSE OF YOUR BACKGROUND AND YOUR EXPERIENCE AND  
6 THERE IS NOTHING WRONG WITH THAT. WHAT I AM TRYING TO  
7 DETERMINE IS WHETHER WE CAN WORK TOGETHER AS A JUROR AND GIVE  
8 THE DEFENSE AND THE PROSECUTION A FAIR TRIAL.

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1 MR. BARENS: DID YOU REALLY BELIEVE IN YOUR HEART WHEN  
2 YOU SEE JOE HUNT SITTING THERE AT THE END OF COUNSEL TABLE  
3 ACCUSED BY THE DISTRICT ATTORNEY'S OFFICE, A PART OF THE  
4 COUNTY, OF COMMITTING A FIRST DEGREE MURDER AND YOU HAVE  
5 POLICEMEN AND YOU KNOW THAT THERE ARE GOING TO BE SOME KINDS  
6 OF POLICEMEN -- SOME KIND OR ANOTHER THAT IS GOING TO COME  
7 IN HERE TO HELP HIM OUT, DO YOU REALLY BELIEVE THAT YOU COULD  
8 MAINTAIN A PRESUMPTION OF INNOCENCE ON THAT DEFENDANT  
9 THROUGHOUT THE TRIAL?

10 MR. SCHWARTZ: YES.

11 MR. BARENS: YOU REALLY COULD?

12 MR. SCHWARTZ: YES.

13 MR. BARENS: NOTHING IN YOUR BACKGROUND WOULD CAUSE  
14 YOU CONCERN TO BELIEVE THAT YOU WOULDN'T BE AS OPEN-MINDED  
15 ABOUT THAT AS ANY OTHER JUROR MIGHT BE?

16 MR. SCHWARTZ: WITHIN THE PROVISIONS THAT I MENTIONED  
17 EARLIER.

18 MR. BARENS: THAT PERHAPS SUBLIMINALLY --

19 MR. SCHWARTZ: YES.

20 MR. BARENS: YOU MIGHT HAVE A BIAS?

21 MR. SCHWARTZ: YES.

22 MR. BARENS: LET ME ASK YOU TRUE, SIR. NOW, THE WHOLE  
23 WORLD IS DIFFERENT. YOU ARE SITTING NEXT TO ME AT THE COUNSEL  
24 TABLE, ACCUSED OF MURDER AND THE ONLY 12 PEOPLE WE COULD  
25 FIND THAT DAY ALL HAD YOUR IDENTICAL BACKGROUND AND OUTLOOK.

26 AND YOU TURN TO ME AND YOU SAY AS MY CLIENT,  
27 "WHAT DO YOU THINK?" AND I SAY, "I DON'T KNOW ABOUT THE JURY."  
28 WHAT DO YOU THINK? WHAT DO YOU THINK,

20A-2  
1 MR. SCHWARTZ? WHAT DO YOU THINK AT THAT MOMENT IN TIME? HOW  
2 WOULD YOU FEEL IF YOU WERE THE DEFENDANT AND I HAVE 12 PEOPLE  
3 WITH YOUR BACKGROUND, EXPERIENCE AND ORIENTATION FOR YOU?

4 MR. SCHWARTZ: PRETTY DISTURBED.

5 MR. BARENS: YOU ARE UPSET, AREN'T YOU?

6 MR. SCHWARTZ: YES.

7 MR. BARENS: YOU ARE SCARED TO DEATH?

8 MR. SCHWARTZ: YES.

20B  
9 MR. BARENS: YOU BET YOU ARE. I AM TOO, MR. SCHWARTZ.  
10 I AM NOT SCARED FOR ME. I HAVE GOT HIS LIFE ON THE LINE.  
11 I AM LOOKING FOR AS FAIR AND OPEN-MINDED A JUROR AS I CAN  
12 GET. AND I THINK YOU ARE AN HONEST GUY. AND THAT IS WHY  
13 I AM ASKING ALL THESE QUESTIONS.

14 AND I AM NOT SAYING -- I AM NOT SAYING THAT I  
15 AGREE WITH YOU OR DISAGREE WITH YOU IN YOUR ORIENTATION. I  
16 JUST DON'T THINK YOU COULD TELL ME TRUE AND HONESTLY THAT  
17 YOU REALLY BELIEVE IN YOUR HEART OF HEARTS, THAT YOU WOULD  
18 MAKE A FAIR AND OPEN-MINDED JUROR ON A FIRST DEGREE MURDER  
19 CASE.

20 THE COURT: IS THAT A QUESTION YOU ARE ASKING HIM OR  
21 ARE YOU TELLING HIM HOW YOU FEEL? IS THAT A QUESTION?

22 MR. BARENS: NOW, MY QUESTION IS, DO YOU DISAGREE WITH  
23 ME?

24 MR. SCHWARTZ: DO I DISAGREE WITH YOUR FEELING?

25 MR. BARENS: YES, SIR.

26 MR. SCHWARTZ: NO I DON'T.

27 MR. BARENS: MAY WE APPROACH?

28 THE COURT: NO, NOT YET. HE DIDN'T DISAGREE WITH YOUR

20A-3  
1 FEELINGS.

2 ASK HIM ABOUT HIS OWN.

3 MR. BARENS: DO YOU SHARE MY FEELING AS FAR AS WHETHER  
4 OR NOT YOU COULD BE FAIR AND AN OPEN-MINDED JUROR ON A FIRST  
5 DEGREE MURDER CASE, IN LIGHT OF THE CONCERNS I ARTICULATED?

6 MR. SCHWARTZ: IT IS PRETTY HARD FOR ME TO WAIVER THERE.  
7 I THINK I CAN BE FAIR. BUT I GAVE YOU SOME PROVISIONS THAT  
8 DISTURB ME, FRANKLY.

9 MR. BARENS: I THINK WHAT YOU ARE SAYING IS, THAT WERE  
10 YOU THE DEFENDANT IN THIS CASE, YOU WOULDN'T WANT TO HAVE  
11 YOU AS A JUROR?

12 MR. SCHWARTZ: UNDER THOSE CONDITIONS, YES. I WOULD  
13 NOT.

14 MR. BARENS: ALL RIGHT. I WILL RESERVE AT THIS POINT,  
15 YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. BARENS: I WOULD LIKE TO SPEAK TO THE DISTRICT  
18 ATTORNEY FOR JUST A MOMENT, IF WE COULD.

19 THE COURT: ALL RIGHT.

20 (OFF THE RECORD COLLOQUY BETWEEN  
21 COUNSEL.)

22 MR. BARENS: THANK YOU.

23 THE COURT: ALL RIGHT. MR. WAPNER?

24 MR. WAPNER: MR. SCHWARTZ, DO YOU HAVE ANY -- WELL,  
25 THE QUESTION I WAS GOING TO ASK, MAYBE ISN'T A GOOD QUESTION.  
26 BUT LET ME ASK IT.

27 IF IT IS NOT RIGHT, WE'LL START ALL OVER AGAIN.  
28 DO YOU HAVE ANY RESERVATIONS ABOUT YOUR ABILITY

20A-4  
1 TO GIVE THE DEFENDANT A FAIR TRIAL?

2 MR. SCHWARTZ: NO.

3 MR. WAPNER: DO YOU THINK AS YOU SIT THERE, BASED ON  
4 YOUR BACKGROUND, THAT YOU ARE A RUBBER STAMP FOR THE  
5 PROSECUTION, JUST WAITING UNTIL THE TRIAL IS OVER SO YOU CAN  
6 GO IN AND FIND SOMEONE GUILTY?

7 MR. SCHWARTZ: NO, SIR.

8 MR. WAPNER: NOW, YOU SERVED WITH THE COUNTY STARTING  
9 IN 1952?

10 MR. SCHWARTZ: YES.

11 MR. WAPNER: WHEN DID YOU START WITH THE CLERK'S OFFICE?

12 MR. SCHWARTZ: 1970.

13 MR. WAPNER: AND WHEN DID YOU RETIRE?

14 MR. SCHWARTZ: MARCH OF 1983.  
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1 MR. WAPNER: DID YOU WORK IN THE CRIMINAL DIVISION OF  
2 THE CLERK'S OFFICE?

3 MR. SCHWARTZ: NO. I WAS ALWAYS IN ADMINISTRATION.

4 MR. WAPNER: YOU NEVER WORKED IN THE COURTROOM?

5 MR. SCHWARTZ: NO.

6 MR. WAPNER: WHAT KIND OF ADMINISTRATION DID YOU DO  
7 FOR THE CLERK'S OFFICE?

8 MR. SCHWARTZ: WHEN I FIRST STARTED OUT, I WAS DIRECTOR  
9 OF ADMINISTRATIVE SERVICES FOR ALL THE SUPPORT SERVICES FOR  
10 THE LINE DIVISIONS. DO YOU WANT ME TO ELABORATE?

11 MR. WAPNER: GO AHEAD, IF YOU CAN.

12 MR. SCHWARTZ: PERSONNEL, BUDGET, DATA PROCESSING AND  
13 THOSE KINDS OF THINGS.

14 MR. WAPNER: AND WHAT DID YOU DO AFTER THAT OR WAS THAT  
15 MOSTLY IT FOR THE ENTIRE TIME?

16 MR. SCHWARTZ: ABOUT HALF THE TIME. I BECAME CHIEF  
17 DEPUTY IN 1977.

18 MR. WAPNER: AND AS CHIEF DEPUTY, YOU WERE OVERSEEING  
19 PEOPLE DOING PRETTY MUCH THE SAME THING?

20 MR. SCHWARTZ: THAT WAS THE WHOLE DEPARTMENT.

21 MR. WAPNER: WHAT IS SUPPORT SERVICES?

22 MR. SCHWARTZ: SUPPORT SERVICES IS -- THE STRUCTURE  
23 AT THAT TIME WAS THAT THE COUNTY CLERK WAS A DEPARTMENT HEAD.  
24 THE CHIEF DEPUTY IS THE ASSISTANT.

25 THEN YOU HAD FOUR MAJOR UNITS, ADMINISTRATIVE  
26 SERVICES THAT WE TALKED ABOUT, CRIMINAL JUSTICE/JUVENILE/  
27 MENTAL HEALTH, CIVIL AND DISTRICT OFFICES.

28 MR. WAPNER: AND SO, AS THE CHIEF DEPUTY, YOU WERE

20-6  
1 OVERSEEING THE CRIMINAL AS WELL AS ALL OF THE OTHER  
2 DIVISIONS?

3 MR. SCHWARTZ: YES.

4 MR. WAPNER: DID YOU HAVE OCCASION TO GO AROUND THE  
5 COUNTY TO VARIOUS CLERK'S OFFICES?

6 MR. SCHWARTZ: I VISITED VARIOUS COURTS TO OBSERVE THE  
7 COURT CLERK IN ACTION, TO OBSERVE THE PROCEDURES BECAUSE IN  
8 HAVING THAT SPECIFIC BACKGROUND, I WANTED TO FAMILIARIZE  
9 MYSELF WITH THEIR WORK.

10 MR. WAPNER: AND DURING THE 13 YEARS OR SO THAT YOU  
11 WERE WITH THE COUNTY CLERK, DID YOU HAVE THE OPPORTUNITY TO  
12 BE AWARE OF MANY GUILTY AS WELL AS MANY NOT GUILTY VERDICTS  
13 THAT WOULD COME DOWN EVERY DAY OR EVERY WEEK DURING YOUR  
14 TENURE?

15 MR. SCHWARTZ: NO. WHEN I VISITED THE COURTROOMS, IT  
16 WOULD BE VARYING PERIODS OF TIME, FROM HALF AN HOUR TO AN  
17 HOUR TO A FEW MINUTES, MOSTLY WITH THE COURT CLERK TO SEE  
18 WHAT HE OR SHE WAS DOING.

19 MR. WAPNER: BUT IN THE PROVINCE OF THE CLERK'S OFFICE,  
20 ALL OF THE FILES COMING THROUGH THE COURTROOM EVENTUALLY END  
21 UP IN THE CLERK'S OFFICE?

22 MR. SCHWARTZ: THEY START AT THE CLERK'S OFFICE.

23 MR. WAPNER: AND FINISH?

24 MR. SCHWARTZ: RIGHT.

25 MR. WAPNER: AND WHEN A CRIMINAL FILE STARTS OUT IN  
26 THE SUPERIOR COURT, IT IS PRETTY MUCH OF A BLANK RECORD?

27 MR. SCHWARTZ: YES.

28 MR. WAPNER: AND BY THE TIME THE FILE ULTIMATELY COMES

20-7  
1 TO REST SOMEWHERE IN THE COUNTY CLERK'S OFFICE, THERE HAS  
2 BEEN SOME TYPE OF AN ADJUDICATION OR A PLEA AND IT ENDS UP  
3 THAT THE PERSON IS CONVICTED OR ACQUITTED IN SOME FASHION?

4 MR. SCHWARTZ: CORRECT.

5 MR. WAPNER: AND THEN THEY COME DOWN ON BOTH SIDES OF  
6 THE FENCE, RIGHT?

7 MR. SCHWARTZ: YES.

8 MR. WAPNER: WHAT IS IT ABOUT YOUR EXPERIENCE WITH THE  
9 CLERK'S OFFICE OR THE COUNTY, THAT CAUSES YOU TO THINK THAT  
10 YOU ARE MORE LIKELY TO FAVOR THE PROSECUTION THAN THE DEFENSE  
11 IN THIS CASE?

12 MR. SCHWARTZ: I AM NOT SURE I WANTED TO GIVE THAT  
13 IMPRESSION. FOR MANY YEARS, COUNTY EMPLOYEES WERE NOT EVEN  
14 CHOSEN AS JURORS, SIMPLY BECAUSE THEY MOSTLY WERE WITH  
15 REGULATORY AGENCIES. THAT WAS THE IMPRESSION I WAS TRYING  
16 TO LEAVE YOU WITH.

17 THEREBY IN MY CAPACITY AS CHIEF DEPUTY COUNTY  
18 CLERK, I FOR EXAMPLE, REPRESENTED THE DEPARTMENT MANY TIMES  
19 ON A COUNTY-WIDE CRIMINAL JUSTICE COORDINATING SYSTEM OR HAD  
20 OCCASION TO DEAL WITH THE SHERIFF'S OFFICE OR PEOPLE FROM  
21 THE NARCOTICS LAB OR OTHER POLICE AGENCIES HAVING TO DO WITH  
22 THE STORAGE OF NARCOTICS.

23 WELL, THAT WAS MY EXPOSURE TO THE CRIMINAL JUSTICE  
24 SYSTEM BUT NOT IN THE NATURE OF GOING INTO COURT AND WATCHING  
25 THE WHOLE PROCEDURE TO THE CONCLUSION.

26 MR. WAPNER: OKAY. I UNDERSTAND WHAT YOU ARE TRYING  
27 TO SAY IN TERMS OF THE BACKGROUND AND THE PEOPLE THAT YOU  
28 HAVE WORKED WITH.



1                   DOES THAT MAKE YOU THINK THAT YOUR STATE OF MIND  
2 IS SUCH THAT AS YOU SIT THERE NOW, YOU ARE MORE LIKELY TO  
3 BELIEVE THE WITNESSES THAT ARE PUT ON BECAUSE I WORK FOR THE  
4 COUNTY?

5                   MR. SCHWARTZ: NO, NO.

6                   MR. WAPNER: DOES IT MAKE YOU MORE LIKELY TO BELIEVE  
7 A POLICE OFFICER BECAUSE HE IS A CITY EMPLOYEE OR HE IS BEING  
8 PUT ON THE STAND BY THE DISTRICT ATTORNEY'S OFFICE?

9                   MR. SCHWARTZ: NO.

10                  MR. WAPNER: IF YOU WERE SITTING IN THE DEFENDANT'S  
11 CHAIR, YOU SAID THAT YOU WOULD BE SOMEWHAT NERVOUS ABOUT HAVING  
12 A PERSON WITH YOUR STATE OF MIND? WHY IS THAT?

13                  MR. SCHWARTZ: WELL, THE QUESTION SEEMED TO BE MORE  
14 THAT HE FELT THAT I WAS INCLINED TO FAVOR THE PROSECUTION.  
15 AND WITH THOSE CONDITIONS, SURE. I WOULD BE NERVOUS.

16                  MR. WAPNER: BUT, WHAT I WANT TO KNOW, IS THAT NOBODY  
17 CAN KNOW YOUR STATE OF MIND EXCEPT YOU.

18                  MR. SCHWARTZ: YES?

19                  MR. WAPNER: I UNDERSTAND THAT YOU ARE TELLING ME THAT  
20 YOU HAVE WORKED FOR THE GOVERNMENT FOR A WHILE.

21                               DO YOU MEAN TO IMPLY BY THAT, THAT BECAUSE OF  
22 THAT, YOU ARE MORE LIKELY TO FAVOR THE PROSECUTION?

23                  MR. SCHWARTZ: I AM NOT IMPLYING THAT. I AM LETTING  
24 YOU TAKE THE INFERENCE THAT THAT MIGHT BE BECAUSE I HAVE BEEN  
25 A GOVERNMENT EMPLOYEE AND CONNECTED WITH LAW ENFORCEMENT IN  
26 AN INDIRECT WAY, THAT I MIGHT --

27                  MR. WAPNER: WHEN YOU SAY "INDIRECT" WAY, INDIRECTLY  
28 CONNECTED WITH LAW ENFORCEMENT, ARE YOU REFERRING TO WHEN

1 YOU WERE WITH THE CLERK'S OFFICE AS WELL AS WHEN YOU WERE  
2 WITH THE AIR POLLUTION CONTROL DISTRICT?

3 MR. SCHWARTZ: YES.

4 MR. WAPNER: OKAY. I GUESS THERE ARE TWO THINGS GOING  
5 ON HERE. ONE, YOU ARE GIVING US INFORMATION AND SAYING OKAY,  
6 YOU MAKE UP YOUR OWN MINDS WHAT TO DO WITH IT.

7 WHAT I AM SAYING IS, YOU TAKE THE INFORMATION.  
8 YOU HAVE GOT IT.

9 MR. SCHWARTZ: UH-HUH.

10 MR. WAPNER: YOU KNOW YOUR BACKGROUND AND YOUR STATE  
11 OF MIND. WHAT IS YOUR STATE OF MIND?

12 MR. SCHWARTZ: I AM NEUTRAL.

13 MR. WAPNER: DO YOU HAVE ANY RESERVATIONS ABOUT THAT?

14 MR. SCHWARTZ: I DON'T HAVE ANY RESERVATIONS.

15 MR. WAPNER: HAVE YOU EVER BEEN ON JURY DUTY BEFORE?

16 MR. SCHWARTZ: NO.

17 MR. WAPNER: IF YOU LISTEN TO THIS WHOLE CASE AND YOU  
18 DELIBERATE WITH THE OTHER JURORS AND YOU DECIDE THAT THE  
19 EVIDENCE DOES NOT PROVE THE DEFENDANT GUILTY BEYOND A  
20 REASONABLE DOUBT, WOULD YOU HAVE ANY HESITATION IN COMING  
21 INTO THIS COURTROOM, SITTING IN THE JURY BOX, LOOKING ME IN  
22 THE EYE AND SAYING, "I VOTE NOT GUILTY"?

23 MR. SCHWARTZ: NO.

24 MR. WAPNER: EVEN THOUGH YOU WORKED FOR THE COUNTY FOR  
25 ALL THOSE YEARS?

26 MR. SCHWARTZ: NO.

27 MR. WAPNER: YOUR EMPLOYMENT WITH THE COUNTY DOESN'T  
28 REALLY HAVE ANYTHING TO DO WITH YOUR DECISION IN THIS CASE,

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DOES IT?

MR. SCHWARTZ: NO.

MR. WAPNER: IF THE EVIDENCE IS THERE AND IT PROVES  
BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, THEN  
THAT SHOULD BE YOUR VERDICT, RIGHT?

MR. SCHWARTZ: CORRECT.

21 F

1 MR. WAPNER: IF IT IS NOT THERE AND IT DOESN'T PROVE  
2 BEYOND A REASONABLE DOUBT THAT HE IS GUILTY, HE IS ENTITLED  
3 TO AN ACQUITTAL, CORRECT?

4 MR. SCHWARTZ: CORRECT.

5 MR. WAPNER: SHOULD YOUR EMPLOYMENT WITH THE COUNTY ENTER  
6 INTO YOUR -- SHOULD YOU USE THAT AS A WEIGHT ON THE SCALES  
7 OF JUSTICE IN DECIDING WHETHER OR NOT THE CASE HAS BEEN  
8 PROVED BEYOND A REASONABLE DOUBT?

9 MR. SCHWARTZ: NO.

10 MR. WAPNER: IF YOU ARE TRYING TO DECIDE IS IT BEYOND  
11 A REASONABLE DOUBT OR IS IT NOT, ARE YOU GOING TO SAY  
12 "WELL, GEE, I WORKED FOR THE COUNTY ALL OF THOSE YEARS SO I  
13 WILL JUST THROW A LITTLE EXTRA WEIGHT ON THE SIDE OF THE  
14 PROSECUTION"?

15 MR. SCHWARTZ: NO.

16 MR. WAPNER: OKAY. LET'S GET DOWN TO SOMETHING A LITTLE  
17 MORE MUNDANE AND RUN IT INTO THE GROUND. WHAT HAPPENED TO  
18 THE PIE THAT WAS EATEN?

19 MR. SCHWARTZ: UNDER THE CONDITIONS THAT YOU PRESCRIBED,  
20 WITHOUT ANYTHING ELSE IN THE EQUATION, THERE IS NO DECISION  
21 OTHER THAN THE KID ATE THE PIE. YOU LED US INTO THAT.

22 MR. WAPNER: OR SO IT SEEMED.

23 MR. SCHWARTZ: OR SO IT SEEMED.

24 MR. WAPNER: UNTIL YOU HAVE HEARD QUESTIONS ABOUT WHERE  
25 WAS THE HOUSE, WHO LIVED NEXT DOOR AND ALL OF THAT KIND --  
26 DID YOU HAVE THOSE QUESTIONS IN YOUR MIND?

27 MR. SCHWARTZ: NO.

28 YOU GAVE CERTAIN CONDITIONS AND I ACCEPTED THEM.

1 MR. WAPNER: OKAY. HAVE YOU EVER BEEN THE VICTIM OF  
2 A THEFT OR ANY KIND OF A CON SCHEME?

3 MR. SCHWARTZ: NO.

4 MR. WAPNER: IF IT TURNS OUT THAT YOU HEAR ALL OF THE  
5 EVIDENCE IN THIS CASE AND YOU DECIDE THAT THE EVIDENCE  
6 PROVES BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS  
7 GUILTY AND THAT THERE WAS A MURDER AND THAT THE DEFENDANT DID  
8 IT AND IT ALSO TURNS OUT THAT YOU DON'T LIKE THE VICTIM IN  
9 THIS CASE, YOU BELIEVE HE WAS KILLED AND YOU BELIEVE THE  
10 DEFENDANT KILLED HIM BUT YOU JUST DON'T LIKE THE GUY, WOULD  
11 THAT CAUSE YOU TO VOTE NOT GUILTY?

12 MS. SCHWARTZ: NO.

13 MR. WAPNER: DO YOU THINK THAT SHOULD PLAY ANY PART IN  
14 YOUR DECISION WHATSOEVER?

15 MR. SCHWARTZ: NO.

16 MR. WAPNER: DO YOU HAVE ANY CHILDREN?

17 MR. SCHWARTZ: YES.

18 MR. WAPNER: HOW MANY?

19 MR. SCHWARTZ: A DAUGHTER 29 AND A SON 25.

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

21 MR. SCHWARTZ: YES.

22 MR. WAPNER: WHAT DO THEY DO?

23 MR. SCHWARTZ: MY DAUGHTER GRADUATED AS A -- WITH A  
24 DEGREE IN FINE ARTS. SHE IS A DANCER. SHE APPEARS IN SMALL  
25 PRODUCTIONS. SHE HAS A PART-TIME JOB AS A CLERK WITH A DANCE  
26 APPAREL COMPANY AND SHE HAS ANOTHER PART-TIME JOB, SELF-  
27 EMPLOYED, AS A CATERER.

28 MR. WAPNER: AND YOUR SON?

1 MR. SCHWARTZ: MY SON IS NOW TOURING THE UNITED STATES  
2 WITH A BAND.

3 MR. WAPNER: WHAT KIND OF A BAND?

4 MR. SCHWARTZ: I DON'T KNOW WHAT THE LABEL IS. IT IS  
5 EITHER HEAVY METAL OR LOUD AND RAUCOUC TO ME.

6 MR. WAPNER: A LOUD AND RAUCOUC BAND?

7 MR. SCHWARTZ: RIGHT.

8 MR. WAPNER: OBVIOUSLY, HE HAS CHOSEN A LIFESTYLE  
9 SUBSTANTIALLY DIFFERENT THAN THE ONE YOU HAVE CHOSEN, RIGHT?

10 MR. SCHWARTZ: VERY SUBSTANTIALLY DIFFERENT.

11 MR. WAPNER: GOD FORBID SOMEONE SHOULD KILL HIM AND WAS  
12 ON TRIAL FOR HIS MURDER, YOU WOULDN'T WANT THE PERSON --  
13 YOU WOULDN'T WANT THE JURY DECIDING THE MURDER TO TAKE INTO  
14 CONSIDERATION THAT HE WAS IN A LOUD AND RAUCOUS BAND, WOULD  
15 YOU?

16 MR. SCHWARTZ: NO, SIR.

17 MR. WAPNER: HOW OFTEN DO YOU SEE OR TALK TO YOUR SON?

18 MR. SCHWARTZ: WELL, HE IS ON TOUR. WHEN HE LIVES IN  
19 THE CITY, EVERY OTHER DAY.

20 NOW I TALK TO HIM TWICE A WEEK.

21 MR. WAPNER: WHEN HE IS ON TOUR YOU TALK TO HIM TWICE  
22 A WEEK?

23 MR. SCHWARTZ: UH-HUH.

24 MR. WAPNER: THANK YOU.

25 MAY I HAVE A MOMENT?

26 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

27 MR. BARENS: MAY WE APPROACH THE BENCH, YOUR HONOR?

28 THE COURT: YES.

1 MR. BARENS: THANK YOU.

2 (THE FOLLOWING PROCEEDINGS WERE HELD  
3 AT THE BENCH OUTSIDE THE HEARING OF  
4 THE PROSPECTIVE JURORS:)

5 THE COURT: I WILL TELL YOU THIS CATEGORICALLY, I WON'T  
6 LET YOU STIPULATE.

7 MR. BARENS: I AM NOT GOING TO SAY THAT, YOUR HONOR.  
8 I SIMPLY APPROACH TO SAY THAT I HAVE BECOME CONVINCED AFTER  
9 HEARING THIS FURTHER -- HIS FURTHER ANSWERS THAT NEITHER A  
10 STIPULATION NOR A CAUSE IS APPROPRIATE.

11 THE COURT: THAT IS GOOD. I THOUGHT SO.  
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1 MR. BARENS: I WITHDRAW IT. THAT IS ALL I HAD TO SAY.

2 THE COURT: AND YOU WANT TO EXERCISE YOUR PEREMPTORY  
3 OF HIM NOW?

4 MR. BARENS: YES. THANK YOU, YOUR HONOR.

5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN OPEN COURT IN THE HEARING AND PRESENCE  
7 OF THE PROSPECTIVE JURORS:)

8 THE COURT: ALL RIGHT, I THINK IT IS THE DEFENDANT'S  
9 PEREMPTORY.

10 MR. BARENS: THANK YOU, YOUR HONOR. THE DEFENSE WOULD  
11 ASK YOUR HONOR TO THANK AND EXCUSE MR. SCHWARTZ.

12 THE COURT: ALL RIGHT, THANK YOU, MR. SCHWARTZ.

13 THE CLERK: CECIL J. YOUNG, Y-O-U-N-G.

14 THE COURT: MR. YOUNG, I THINK SOMETIME AGO YOU TOLD  
15 US THAT YOU OR SOME MEMBER OF YOUR FAMILY HAVE BEEN IDENTIFIED  
16 WITH LAW ENFORCEMENT WORK OF SOME KIND.

17 MR. YOUNG: MY NEXT DOOR NEIGHBOR FOR 25 YEARS WAS A  
18 GUARD AT THE MEDICAL FACILITY UP IN VACAVILLE.

19 MY SECRETARY WAS -- I KNOW HER SON WAS A POLICE  
20 OFFICER -- IS A POLICE OFFICER.

21 MY BOSS, HER HUSBAND WAS THE ASSISTANT DISTRICT  
22 ATTORNEY OF FAIRFIELD, CALIFORNIA.

23 THE COURT: THE FACT THAT YOU HAVE HAD THESE FRIENDS  
24 AND ACQUAINTANCES WHO ARE IDENTIFIED WITH LAW ENFORCEMENT  
25 WORK, WOULD THAT IN ANY WAY PREJUDICE YOU FOR THE PEOPLE OR  
26 AGAINST THE DEFENDANT IN THIS CASE?

27 MR. YOUNG: NO, IT WOULD NOT.

28 THE COURT: ALL RIGHT. OTHER THAN THAT, IF I WERE TO



1 ASK YOU THE SAME GENERAL QUESTIONS WHICH WERE ASKED OF THE  
2 OTHER JURORS, DID ANYTHING OCCUR TO YOU IN THE COURSE OF  
3 THAT QUESTIONING WHERE YOU MIGHT HAVE VOLUNTEERED SOME  
4 ANSWER WHICH IS DIFFERENT FROM THEIRS?

5 MR. YOUNG: NO, I WOULD NOT.

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

7 MR. YOUNG: I AM AN AIR FORCE CIVIL SERVICE EMPLOYEE.

8 THE COURT: WHAT IS THE NATURE OF THE WORK YOU  
9 PERFORM?

10 MR. YOUNG: I HANDLE AIR FORCE RESERVE PROGRAM.

11 THE COURT: WHAT IS THAT EXACTLY, IF IT IS NOT  
12 CONFIDENTIAL?

13 MR. YOUNG: IT IS AN AIR FORCE PROGRAM THAT COMES IN  
14 PART TIME -- YOU WOULD DEFINE ME AS A MINI-PERSONNEL OFFICER.

15 THE COURT: I SEE.

16 MR. YOUNG: I HANDLE ALL OF THEIR DISCIPLINE, HIRING.

17 THE COURT: WHAT IS YOUR EDUCATIONAL BACKGROUND?

18 MR. YOUNG: I HAVE A B.S. OUT OF SOUTHERN ILLINOIS  
19 UNIVERSITY.

20 THE COURT: IS THERE A MRS. YOUNG?

21 MR. YOUNG: YES, THERE IS.

22 THE COURT: DOES SHE HAVE ANY EMPLOYMENT OUTSIDE OF THE  
23 HOME?

24 MR. YOUNG: THIS YEAR, SHE BECAME AN AVON REPRESENTATIVE.

25 THE COURT: BEFORE THAT, WHAT DID SHE DO?

26 MR. YOUNG: SHE DID NOT WORK.

27 THE COURT: WHERE DO YOU LIVE?

28 MR. YOUNG: TORRANCE.

1 THE COURT: HAVE YOU EVER SERVED AS A JUROR ON A  
2 CRIMINAL CASE BEFORE?

3 MR. YOUNG: NOT A CRIMINAL CASE, NO.

4 THE COURT: A CIVIL CASE, DID YOU SERVE?

5 MR. YOUNG: YES.

6 THE COURT: YOU UNDERSTAND THE DIFFERENCE BETWEEN THE  
7 BURDEN OF PROOF IN A CIVIL ACTION AS CONTRASTED WITH THAT IN  
8 A CRIMINAL ACTION?

9 MR. YOUNG: YES, I DO.

10 THE COURT: IN A CIVIL ACTION, YOU ENVISION SCALES WHICH  
11 ARE EVENLY BALANCED, THE PLAINTIFF MAY BE IN AN ACCIDENT  
12 CASE HAS THE BURDEN OF PROOF BY JUST TIPPING THAT SCALE EVER  
13 SO SLIGHTLY IN HIS FAVOR AND THAT WOULD CONSTITUTE A SUFFICIENT  
14 BURDEN OF PROOF FOR THE PLAINTIFF IN A CIVIL ACTION; DO YOU  
15 UNDERSTAND THAT?

16 MR. YOUNG: YES, SIR.

17 THE COURT: IN A CRIMINAL CASE IT IS ALTOGETHER DIFFERENT.  
18 BY THIS TIME, YOU HAVE HEARD A LOT ABOUT THE BURDEN OF PROOF,  
19 ABOUT BEYOND A REASONABLE DOUBT AND THE PRESUMPTION OF  
20 INNOCENCE AND YOU WILL FOLLOW THAT, WILL YOU NOT?

21 MR. YOUNG: YES, I WOULD.

22 THE COURT: ALL RIGHT. ANY QUESTIONS?

23 MR. BARENS: YOUR HONOR, DO YOU WISH TO --

24 THE COURT: ALL RIGHT, WE WILL TAKE A 10-MINUTE --  
25 15-MINUTE RECESS AT THIS TIME.

26 LADIES AND GENTLEMEN, WE WILL TAKE A 15-MINUTE  
27 RECESS.

28 (RECESS.)

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1 THE COURT: I THINK I FINISHED WITH MR. YOUNG, HAD I  
2 NOT?

3 MR. BARENS: YES, YOUR HONOR. THANK YOU, YOUR HONOR.

4 GOOD AFTERNOON, MR. YOUNG.

5 MR. YOUNG: GOOD AFTERNOON.

6 MR. BARENS: MR. YOUNG, DO YOU HAVE ANY HOBBIES?

7 MR. YOUNG: I LIKE TO DANCE.

8 MR. BARENS: ALL RIGHT. AND DO YOU DO BALLROOM DANCING?

9 MR. YOUNG: YES.

10 MR. BARENS: AND DO YOU DO ANY OF THAT COMPETITIVELY,  
11 MR. YOUNG?

12 MR. YOUNG: COMPETITIVELY AND I TEACH.

13 MR. BARENS: IT IS VERY INTERESTING AND A SOMEWHAT  
14 EMERGING SOCIAL ACTIVITY NOW. IT WAS ON TELEVISION AND I  
15 SAW IT I THINK ON WIDE WORLD OF SPORTS OR KCET DID A SPECIAL  
16 OR WHATEVER. IT OCCURS TO ME THAT HOW YOU EVALUATE THE  
17 PERFORMANCE OR THE GRADING SEEMS TO BE A BIT OF A MYSTERY.  
18 THEY HAVE A JURY, I THINK THEY CALL THEM, OF PEOPLE IN THOSE  
19 MAJOR CONTESTS THAT JUDGE THAT, ISN'T THAT THE CASE?

20 MR. YOUNG: YES.

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23-1  
1 MR. BARENS: DO YOU HAVE IN THAT TYPE OF A JUDGMENT-  
2 MAKING PROCESS SOME FORMAL CRITERIA? HOW DO THEY MAKE THAT  
3 DECISION ON WHO IS THE BEST IN THAT?

4 MR. YOUNG: THAT IS ON THEIR EXPERIENCE.

5 MR. BARENS: JUST ON THEIR EXPERIENCE?

6 MR. YOUNG: YES.

7 MR. BARENS: THERE IS NO -- YOU KNOW, IN GYMNASTICS,  
8 FOR EXAMPLE, OR IN DIVING COMPETITION THERE ARE SOME FORMAL  
9 FACTORS THAT ARE INTRODUCED IN A PERFORMANCE THAT MAKE A  
10 DIFFERENCE ON THE POINTS THAT ARE AWARDED PER DIVE, ALTHOUGH  
11 THE JUDGES OBVIOUSLY CAN DISAGREE. YOU DON'T HAVE THAT IN  
12 BALLROOM DANCING?

13 MR. YOUNG: OH, YES, THE SAME THINGS. THERE ARE POINTS,  
14 DEPENDING UPON HOW YOU DO THE STEPS. YOU ARE REQUIRED TO  
15 DO CERTAIN STEPS.

16 MR. BARENS: RIGHT. AND NOT ONLY IS THE PERFORMANCE  
17 GRADED IN GENERAL, BUT YOU HAVE TO BE ABLE TO PERFORM IN MORE  
18 THAN ONE DANCE FORMAT?

19 MR. YOUNG: YES. FOUR.

20 MR. BARENS: I BELIEVE THERE ARE FOUR YOU HAVE TO DO  
21 IN ONE GIVEN CONTEXT?

22 MR. YOUNG: YES.

23 MR. BARENS: AND YOU ARE GRADED ACROSS THE BOARD ON  
24 THOSE?

25 MR. YOUNG: YES.

26 MR. BARENS: IN ESTABLISHING THE CORPUS DELICTI OF A  
27 CRIME THERE ARE ELEMENTS AS WELL, THERE IS NOT JUST ONE, BUT  
28 FOR INSTANCE IN THIS ONE, WE HAVE AT LEAST TWO, WHICH IS THAT

1 A PERSON DIED AND DIED BY CRIMINAL MEANS; DO YOU UNDERSTAND  
2 THAT?

3 MR. YOUNG: YES.

4 MR. BARENS: AND DO YOU UNDERSTAND THAT THE BURDEN OF  
5 PROOF THAT THE GOVERNMENT HAS APPLIES ACROSS THE BOARD ON  
6 BOTH OF THEM, NOT IF THEY MAKE ONE OR MAKE THE OTHER, BUT  
7 RATHER BOTH?

8 MR. YOUNG: YES, SIR.

9 MR. BARENS: SO THAT IS SIMILAR, THEY DON'T THROW OUT  
10 ONE OF THE FOUR PERFORMANCES AND JUST GRADE THREE OR WHATEVER;  
11 YOU SEE MY POINT?

12 MR. YOUNG: RIGHT.

13 MR. BARENS: SO IT IS A COMMON FACTOR, THAT BURDEN OF  
14 PROOF IS A COMMON FACTOR FOR ALL OF THEM?

15 MR. YOUNG: YES, SIR.

16 MR. BARENS: HOW DO YOU FEEL ABOUT THE PRESUMPTION OF  
17 INNOCENCE THAT A DEFENDANT COMES TO YOU WITH?

18 MR. YOUNG: I HOPE IT STAYS HERE FOREVER.

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

20 MR. YOUNG: IT IS.

21 MR. BARENS: YOU DO?

22 MR. YOUNG: SURE DO.

23 MR. BARENS: DO YOU THINK, AS YOU LOOK OVER AT JOE HUNT  
24 SITTING OVER THERE AT THE END OF THE COUNSEL TABLE, DO YOU  
25 IN YOUR HEART FEEL HE IS INNOCENT AT THIS POINT?

26 MR. YOUNG: SURE DO.

27 MR. BARENS: YOU DO?

28 MR. YOUNG: YES.

27 ●  
1 MR. BARENS: YOU UNDERSTAND THAT THE PRESUMPTION OF  
2 INNOCENCE GIVEN HIM IS NOT SOMETHING WHERE WE JUST SAY --  
3 I HOPE THERE IS NO SUGGESTION THAT IT IS JUST SOME KIND OF  
4 A LABEL ON A GUY, YOU CALL HIM A DEFENDANT, OKAY, YOU GIVE  
5 HIM THAT PRESUMPTION OF INNOCENCE LABEL AND THEN WE GO ON  
6 ABOUT OUR BUSINESS HERE; IT IS NOT SOMETHING LIKE THAT, IS  
7 IT, SIR?

8 MR. YOUNG: NO.  
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1 MR. BARENS: YOU PREVIOUSLY HAD SOME CIVIL JURY  
2 EXPERIENCE?

3 MR. YOUNG: YES, I HAVE.

4 MR. BARENS: AND I TAKE IT BY NOW, SINCE I DISCUSSED  
5 THIS QUITE A BIT, I AM SURE SINCE YOU HAVE BEEN HERE AND  
6 CERTAINLY WITH THE PREVIOUS PANEL, THAT THE BURDEN OF PROOF  
7 IS MARKEDLY, ALMOST TOTALLY DIFFERENT IN WHAT YOU DID IN THAT  
8 CIVIL CASE, AS OPPOSED TO WHAT YOU DO HERE?

9 MR. YOUNG: YES. IT WOULD BE.

10 MR. BARENS: YOU WERE IMPRESSED WITH THAT?

11 MR. YOUNG: YES, I AM.

12 MR. BARENS: WERE YOU AWARE OF THAT AT THE TIME YOU  
13 PARTICIPATED IN THE CIVIL JURY?

14 MR. YOUNG: WE WERE TOLD THAT.

15 MR. BARENS: DID THE JUDGE ACTUALLY GET INTO A  
16 DISCUSSION WITH YOU ABOUT THE DIFFERENCE BETWEEN A PREPONDER-  
17 ANCE OF THE EVIDENCE AND BEYOND A REASONABLE DOUBT?

18 MR. YOUNG: I BELIEVE HE DID.

19 MR. BARENS: AND HE MADE REFERENCE TO THE LATTER AS  
20 BEING APPLICABLE SOLELY IN CRIMINAL MATTERS?

21 MR. YOUNG: YES.

22 MR. BARENS: I MAY BE MISSPEAKING WHEN I SAY "SOLELY  
23 IN CRIMINAL MATTERS" BUT IN CRIMINAL MATTERS.

24 HOW DID YOU FEEL ABOUT THAT CASE, THE JURY  
25 PROCESS AND ALL? HOW WERE YOU IMPRESSED WITH THE JURY  
26 PROCESS AS A RESULT OF THAT?

27 MR. YOUNG: IT WAS GOOD.

28 MR. BARENS: AND COULD YOU TELL US GENERALLY IF YOU CAN,

1 MR. YOUNG, WHAT THAT CASE WAS?

2 MR. YOUNG: IT WAS ASSAULT AND BATTERY.

3 MR. BARENS: AND YOU KNOW, THAT COULD HAVE BEEN IN A  
4 CRIMINAL FORM, AS WELL.

5 MR. YOUNG: IT DIDN'T GO INTO THAT, NO.

6 MR. BARENS: IN THAT INSTANCE, THE PLAINTIFF WAS  
7 SEEKING DAMAGES AS A RESULT OF INJURIES ALLEGEDLY RECEIVED  
8 IN THAT INCIDENT?

9 MR. YOUNG: YES.

10 MR. BARENS: AND WHAT GENERALLY DESCRIBED WAS THE  
11 DEFENSE OF THE DEFENDANT? WHAT WAS THE THEME OF THE DEFENSE?

12 MR. YOUNG: HE HAD WITNESSES.

13 MR. BARENS: HE HAD WITNESSES THAT SAID WHAT? THAT HE  
14 DID NOTHING OR THAT HE ACTED IN SELF-DEFENSE OR --

15 MR. YOUNG: I DON'T RECALL ALL OF THE WORDS OR WORDING.

16 IF I RECALL, SOME OF THEM WERE THAT HE DIDN'T DO  
17 IT AND OTHER THINGS IN TERMS OF THAT HE ACTED IN SELF-DEFENSE.  
18 HE WAS PROVOKED INTO DOING IT. THOSE KINDS OF THINGS.

19 MR. BARENS: THEY SEEMED TO BE SAYING BOTH IN THAT  
20 INSTANCE? I GUESS YOU CAN SAY BOTH BECAUSE WHEN YOU ARE  
21 SAYING HE DIDN'T DO IT IT MEANS HE DIDN'T COMMIT AN ASSAULT  
22 AND BATTERY, EVEN THOUGH HE MAY HAVE HAD A HARMFUL TOUCHING  
23 OF THE PLAINTIFF, HE WAS ACTING IN SELF-DEFENSE.

24 MR. YOUNG: RIGHT.

25 MR. BARENS: SO, THERE COULD HAVE BEEN INSTANCES WHERE  
26 A GUY IS SAYING, "I DIDN'T DO IT," BUT "I DID IT IN SELF-  
27 DEFENSE." WAS THAT ABOUT WHAT --

28 MR. YOUNG: THAT WAS IT, YES.



1 MR. BARENS: DID THE JURY HAVE A PROBLEM IN REACHING  
2 A VERDICT? WAS IT A LENGTHY DELIBERATION?

3 MR. YOUNG: NO. IT WAS NOT LENGTHY. BUT WE DID HAVE  
4 A PROBLEM WITH IT, YES.

5 MR. BARENS: YOU HAD SOME DISAGREEMENT AMONG THE  
6 JURORS?

7 MR. YOUNG: YES, I DID.

8 MR. BARENS: WAS THERE MORE THAN ONE JUROR INVOLVED IN  
9 THE DISAGREEMENT?

10 MR. YOUNG: THERE WERE TWO.

11 MR. BARENS: THERE WERE TWO?

12 MR. YOUNG: YES.

13 MR. BARENS: DID THEY EVENTUALLY COME AROUND?

14 THE COURT: IN A CIVIL TRIAL, IT COULD BE 9 TO 3, AS  
15 YOU KNOW.

16 MR. BARENS: BUT, BEFORE THAT, I WAS ASKING HIM IF THEY  
17 HAD EVER COME AROUND, CHANGED THEIR POINTS OF VIEW.

18 THE COURT: ALL RIGHT.

19 MR. BARENS: MY NEXT QUESTION BEING, DID THEY EVER COME  
20 AROUND? DID THEY EVER COME AROUND WITH THE OTHER EIGHT OR  
21 DID THEY ALWAYS STAY THE OUTSIDE TWO?

22 MR. YOUNG: THEY CAME AROUND.

23 MR. BARENS: THEY DID COME AROUND? SO YOU HAD A 12-  
24 PERSON VERDICT, EVENTUALLY?

25 MR. YOUNG: YES.

26 MR. BARENS: WERE YOU BY CHANCE, THE FOREPERSON ON THAT  
27 JURY?

28 MR. YOUNG: PARDON ME?

1 MR. BARENS: WERE YOU THE FOREPERSON ON THAT JURY?

2 MR. YOUNG: NO.

3 THE COURT: THE FOREMAN?

4 MR. YOUNG: I DIDN'T HEAR THE WORD.

5 MR. BARENS: WELL, WITH THE GALLERY THAT WE PRESENTLY  
6 HAVE, I AM GETTING REAL SENSITIVE.

7 MR. WAPNER: YOU FINALLY GOT SMART.

8 MR. BARENS: WELL, AFTER 18 YEARS I HAVE NEVER USED THAT  
9 EXPRESSION UNTIL HERE, YOUR HONOR. IT IS FOREPERSON. WE NOW  
10 HAVE FOREPERSONS.

11 THE COURT: AS LONG AS IT IS A MAN, YOU CAN ASK WHETHER  
12 IT WAS A FOREMAN. IF IT WAS A LADY, YOU COULD ASK WHETHER  
13 SHE WAS A FORELADY. YOU DON'T HAVE TO USE THE WORD "FOREPERSON",  
14 DO YOU?

15 MR. BARENS: I SUPPOSE IT ISN'T MANDATORY. AS LAWYERS,  
16 WE WILL ALWAYS TAKE THE SAFEST -- RETREAT AND SAY THAT IT WAS --  
17 RETREAT AND SAY THAT IT WAS DONE OUT OF AN ABUNDANCE OF  
18 CAUTION, YOUR HONOR.

19 IN ANY EVENT, DID YOU CHANGE YOUR MIND DURING THE  
20 DELIBERATION PROCESS AT ALL ABOUT WHETHER OR NOT YOU THOUGHT  
21 THE DEFENDANT WAS GUILTY OF AN ASSAULT AND BATTERY?

22 MR. YOUNG: I THINK I DID IT QUITE FREQUENTLY.

23 MR. BARENS: YOU DID?

24 MR. YOUNG: YES.

25 MR. BARENS: WHAT SORTS OF THINGS MADE YOU CHANGE YOUR  
26 MIND, MR. YOUNG?

27 MR. YOUNG: SOME OF THE EVIDENCE PRESENTED.

28 MR. BARENS: BY THE WAY, YOU MENTIONED THAT THE DEFENDANT

1 HAD SOME WITNESSES TO ASSIST THE DEFENSE POSITION? DID THE  
2 PLAINTIFF?

3 MR. YOUNG: YES.

4 MR. BARENS: SO, AS IT TURNED OUT, WE HAD WITNESSES WHO  
5 HAD ALLEGEDLY OBSERVED THAT SAME CONDUCT, WHO WERE  
6 INTERPRETING THAT CONDUCT DIFFERENTLY?

7 MR. YOUNG: YES.

8 MR. BARENS: DID YOU THINK THAT THOSE WITNESSES WERE  
9 LYING?

10 MR. YOUNG: NO. I HAD NO REASON TO.

11 MR. BARENS: THEREFORE, YOU HAD ACTUALLY, A REAL, LIVE  
12 EXAMPLE IN THE COURTROOM OF HOW REASONABLE, HONEST MINDS  
13 VIEWING THE SAME CONDUCT, CAN DIFFER ON WHAT IT MEANS?

14 MR. YOUNG: YES, SIR.

15 MR. BARENS: NOW, DID ANY OF THEM SEEM UNREASONABLE IN  
16 WHAT THEY WERE SAYING?

17 MR. YOUNG: NOT TO MY KNOWLEDGE.

18 MR. BARENS: THUS, WE GET INTO ANOTHER DIMENSION, THAT  
19 PEOPLE CAN BE REASONABLE IN WHAT THEY ARE SAYING YET COME TO  
20 MARKEDLY DIFFERENT CONCLUSIONS ABOUT WHAT THEY OBSERVE?

21 MR. YOUNG: YES, SIR.

22 MR. BARENS: WELL, IF YOU HAD AN ISSUE BEFORE WHETHER  
23 SOMEONE WAS MURDERED OR MISSING -- I SUPPOSE -- DO YOU  
24 THINK THE SAME COULD HAPPEN?

25 MR. YOUNG: YES.

26 MR. BARENS: PEOPLE COULD COME IN AND YOU COULD HEAR  
27 MAYBE SOMEBODY SAY "I HAVE NOT HEARD FROM SOMEBODY FOR A  
28 WHILE." SOMEBODY ELSE COMES IN AND SAYS THAT "I SAW HIM."

1 NOW, YOU HAVE THE SAME SITUATION GOING ON WHERE IT APPEARS  
2 THAT YOU COULD HAVE TWO TOTALLY HONEST PEOPLE COMING TO  
3 DIFFERENT CONCLUSIONS ABOUT THE SAME SET OF CIRCUMSTANCES?

4 MR. YOUNG: YES.

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5-1  
1 MR. BARENS: SO THAT IS NOT BEYOND THE REALM OF  
2 REASONABLENESS OR POSSIBILITY, IS IT?

3 MR. YOUNG: NO, IT IS NOT.

4 MR. BARENS: DID THE DEFENDANT IN THAT CASE TESTIFY?

5 MR. YOUNG: NO, HE DIDN'T.

6 MR. BARENS: HOW DID YOU FEEL ABOUT THAT?

7 MR. YOUNG: IT WAS HIS PREROGATIVE.

8 MR. BARENS: DID YOU FEEL IT WAS SOMETHING THAT  
9 INFLUENCED YOUR DECISION IN THE CASE, HONESTLY?

10 MR. YOUNG: NO.

11 WE ALL THOUGHT THAT IT WOULD HAVE BEEN NICE IF  
12 HE HAD BUT --

13 MR. BARENS: DID YOU, IN YOUR OWN MIND, DEVELOP A  
14 CERTAIN BELIEF AS TO WHY HE HAD NOT TESTIFIED?

15 MR. YOUNG: NO.

16 MR. BARENS: YOU HAD NO OPINION ON THAT?

17 MR. YOUNG: NO OPINION.

18 MR. BARENS: DO YOU THINK PERHAPS IT WAS SOMETHING HIS  
19 LAWYER HAD SUGGESTED HE NOT DO?

20 MR. YOUNG: NO, I HAVE NO WAY OF KNOWING.

21 MR. BARENS: COULDN'T TELL?

22 MR. YOUNG: NO.

23 MR. BARENS: WAS THAT TALKED ABOUT AT ALL IN THE JURY  
24 ROOM?

25 MR. YOUNG: YES, IT WAS.

26 MR. BARENS: IT WAS KIND OF A HOT TOPIC, WAS IT?  
27 WAS IT SOMETHING, DID YOU FEEL IT WAS BETTER EVIDENCE IF THE  
28 FELLOW HAD TESTIFIED?

25-2  
1 MR. YOUNG: NOT BETTER EVIDENCE BUT BETTER INSIGHT IF  
2 WE HAD KNOWN WHAT HAD TAKEN PLACE.

3 MR. BARENS: YOU MIGHT HAVE KNOWN THE STATE OF MIND  
4 ABOUT HIM OR STUFF OF THAT NATURE?

5 MR. YOUNG: TRUE.

6 MR. BARENS: IF THE DEFENDANT TESTIFIES IN THIS CASE,  
7 DO YOU HONESTLY BELIEVE THAT HE COULD BE TELLING THE TRUTH  
8 ABOUT WHAT HE SAID OR DO YOU THINK THAT HE WOULD BE SO BIASED  
9 AS A DEFENDANT THAT YOU WOULD HAVE TO BE KIND OF SKEPTICAL  
10 ABOUT WHATEVER HE SAID?

11 MR. YOUNG: OH, NO.

12 MR. BARENS: YOU WOULDN'T HAVE THAT?

13 MR. YOUNG: NO.

14 MR. BARENS: MR. YOUNG, DID YOU MENTION THAT YOUR BOSS'S  
15 SISTER WAS A D.A.?

16 MR. YOUNG: NO.

17 MY BOSS'S HUSBAND IS OR WAS -- I MOVED SINCE THEN --  
18 BUT HER HUSBAND WAS AN ASSISTANT D.A. IN FAIRFIELD.

19 MR. BARENS: AND DID YOU KNOW THE GENTLEMAN?

20 MR. YOUNG: YES, I DID.

21 MR. BARENS: DID YOU HAVE MUCH CONTACT WITH HIM?

22 MR. YOUNG: SOCIALLY.

23 MR. BARENS: YOU DID, SIR?

24 MR. YOUNG: SOCIALLY.

25 MR. BARENS: WERE YOU FRIENDLY WITH HIM?

26 MR. YOUNG: SURE.

27 MR. BARENS: OVER WHAT PERIOD OF TIME DID YOU HAVE  
28 SOCIALIZING?

5-3  
1 MR. YOUNG: TEN, FIFTEEN YEARS.

2 MR. BARENS: INDEED, YOU SAW A LOT OF HIM DURING TEN,  
3 FIFTEEN YEARS?

4 MR. YOUNG: YES.

5 MR. BARENS: DID YOU EVER GO ON ANY TRIPS TOGETHER?

6 MR. YOUNG: NO.

7 MR. BARENS: WERE YOU EVER PRESENT IN A COURTROOM IN  
8 WHICH THAT GENTLEMAN WAS CONDUCTING A PROCEEDING?

9 MR. YOUNG: NO, I WASN'T.

10 MR. BARENS: DID HE EVER AT ALL MAKE REFERENCE TO HIS  
11 WORK WITH YOU?

12 MR. YOUNG: NO.

13 MR. BARENS: NEVER, EVER IN 15 YEARS?

14 MR. YOUNG: NOT THAT I RECALL.

15 HE MAY HAVE BUT --

16 MR. BARENS: DO YOU FEEL, MR. YOUNG, AND I AM SURE YOU  
17 KNOW WHEN YOU HAVE A RELATIONSHIP WITH SOMEONE FOR TEN OR  
18 FIFTEEN YEARS, OBVIOUSLY YOU HAVE SOME RESPECT AND  
19 CONFIDENCE IN THAT INDIVIDUAL OVER THAT PERIOD OF TIME --  
20 DO YOU THINK THERE IS ANYTHING THAT MIGHT, AS A RESULT OF  
21 THAT RELATIONSHIP, HAVE CAUSED YOU TO HAVE ANY SORT OF A BIAS  
22 FOR THE DISTRICT ATTORNEY IN THIS CASE?

23 MR. YOUNG: NO.

24 MR. BARENS: YOU WOULD NOT?

25 MR. YOUNG: NO.

26 MR. BARENS: COULD YOU TELL ME AGAIN -- I UNDERSTAND  
27 THAT YOU ARE INVOLVED IN MAINTAINING AN ADJUNCTIVE FOR THE  
28 SERVICE. I DIDN'T QUITE UNDERSTAND WHAT YOU SAID, SIR.

25-4  
1 MR. YOUNG: I WORK FOR THE AIR FORCE AS A CIVIL SERVICE  
2 EMPLOYEE. MY JOB IS TO ASSIST IN HIRING RESERVE PERSONNEL  
3 WHO ARE ON CALL, SO I AM IN A SENSE A MINI PERSONNEL PERSON.  
4 I HANDLE ALL OF THEIR PERSONNEL MATTERS.

5 MR. BARENS: I SEE. IT IS SORT OF A CROSS-OVER JOB  
6 YOU HAVE BETWEEN CIVILIAN LIFE AND MILITARY LIFE, IT APPEARS.

7 MR. YOUNG: YES.

8 MR. BARENS: MR. YOUNG, HOW LONG HAVE YOU BEEN DOING  
9 THAT?

10 MR. YOUNG: THIS PARTICULAR JOB I HAVE BEEN DOING IT  
11 FOR TWO YEARS.

12 MR. BARENS: HOW WERE YOU EMPLOYED PRIOR TO THAT?

13 MR. YOUNG: I WAS AN AIR FORCE EMPLOYEE BUT I WAS IN  
14 EMPLOYEE RELATIONS.

15 MR. BARENS: HAVE YOU BEEN GENERALLY ASSOCIATED WITH  
16 THE AIR FORCE DURING YOUR ADULT LIFE?

17 MR. YOUNG: THIRTY-SIX YEARS.

18 MR. BARENS: AND PREVIOUSLY, YOU KNOW, THE JOBS YOU  
19 HAVE BEEN DOING, WOULD GENERALLY DESCRIBE AS BEING MORE  
20 IN THE ADMINISTRATIVE SIDE AS OPPOSED TO THE MILITARY SIDE?

21 MR. YOUNG: YES.

22 MR. BARENS: IF I CAN LEGITIMATELY MAKE THAT BIFURCATION.

23 WERE YOU ALWAYS ON THE ADMINISTRATIVE SIDE?

24 MR. YOUNG: AS FAR BACK AS I CAN REMEMBER, YES.

25 MR. BARENS: DID YOU EVER HAVE ANY CONTACT OR ANY  
26 ACTIVITIES WITH ANY TYPE OF LAW ENFORCEMENT IN THAT CAPACITY?

27 MR. YOUNG: DURING HEARINGS, YES.

28 MR. BARENS: WHAT SORT OF HEARINGS?



5-5  
1 MR. YOUNG: CIVIL SERVICE HEARINGS WHERE SOMEBODY STOLE  
2 SOMETHING FROM THE AIR FORCE WHERE WE HAD TAKEN ACTION  
3 AGAINST THAT PERSON AND WE WORKED CLOSELY WITH THE FBI.

4 MR. BARENS: AND WHAT WAS YOUR FUNCTION IN THAT CAPACITY,  
5 MR. YOUNG?

6 MR. YOUNG: WELL, RESIDENT EXPERT, I GUESS YOU WOULD  
7 CALL IT IN TERMS OF RULES AND REGULATIONS.

8 MR. BARENS: YOU WERE IN ALL INSTANCES IN THAT CAPACITY  
9 UNIFORMLY ALLIED WITH THE PROSECUTING PERSON?

10 MR. YOUNG: YES, I WAS.

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25-A-1  
1 MR. BARENS: WERE YOU A WITNESS IN THOSE HEARINGS?

2 MR. YOUNG: SOMETIMES.

3 MR. BARENS: AND YOU WOULD ASSIST THE PROSECUTOR IN  
4 PUTTING HIS CASE TOGETHER?

5 MR. YOUNG: YES, I WOULD.

6 MR. BARENS: NOW, WHO WOULD BE THE TRIER OF FACT? WOULD  
7 YOU HAVE THREE MILITARY PEOPLE THAT WOULD SIT EN BANC  
8 TO MAKE A DECISION?

9 MR. YOUNG: NO.

10 MR. BARENS: HOW WAS THAT DONE?

11 MR. YOUNG: IT IS AN INFORMAL SITUATION. THEY HAVE  
12 AN EXAMINER WHO COMES IN AND BOTH SIDES GIVES IT TO THE  
13 EXAMINER AND THEN AN EXAMINER DETERMINES GUILT OR INNOCENCE.

14 MR. BARENS: AN EXAMINER ACTING ALONE?

15 MR. YOUNG: YES.

16 MR. BARENS: THE EXAMINER, WHERE DOES HE COME FROM?

17 MR. YOUNG: HE COMES FROM A CENTRAL POINT.

18 MR. BARENS: THAT PERSON WOULDN'T BE LIKE A RETIRED  
19 JUDGE OR --

20 MR. YOUNG: NO.

21 MR. BARENS: -- A JUDGE ADVOCATE, CAREER-TYPE PERSON?

22 MR. YOUNG: NO, THEY WOULD NOT.

23 MR. BARENS: THIS IS A CIVIL SERVANT?

24 MR. YOUNG: CIVIL SERVICE EMPLOYEE.

25 MR. BARENS: CIVIL SERVICE-TYPE PERSON?

26 MR. YOUNG: YES.

27 MR. BARENS: WHAT QUALIFIES THEM FOR MAKING THAT  
28 DECISION?

1 MR. YOUNG: THEY HAVE HAD A LOT OF WORK ON THE RULES  
2 AND REGS IN CIVIL SERVICE.

3 MR. BARENS: SOME OF THAT STUFF SOUNDS LIKE IT WAS JUST  
4 A COPS AND ROBBERS-TYPE DEAL RATHER THAN RULES AND REGULATIONS.

5 MR. YOUNG: WELL, SOMEWHAT.

6 IT IS OUT OF THE REALM OF ATTORNEYS.

7 MR. BARENS: THERE ARE NO LAWYERS IN THAT SETTING?

8 MR. YOUNG: NO.

9 RECENTLY, THEY HAVE STARTED THAT.

10 BUT WHEN IT STARTED, THERE WERE NO ATTORNEYS  
11 INVOLVED.

12 MR. BARENS: WERE THERE CRIMINAL IMPLICATIONS; IN OTHER  
13 WORDS, THAT SOMEBODY STOLE SOMETHING FROM THE AIR FORCE?  
14 WHAT DO YOU STEAL FROM THE AIR FORCE, AIRPLANES?

15 (LAUGHTER IN COURTROOM.)

16 MR. BARENS: WELL, YOU STEAL EQUIPMENT OF SOME KIND?  
17 YOU WOULD STEAL RATCHETS THAT MAKE THINGS GO IN AIRPLANES?

18 MR. YOUNG: YES.

19 MR. BARENS: I AM ABOUT AS GOOD AT THAT AS --

20 JUROR DEEG: AS FARMING.

21 MR. BARENS: THEY STEAL THAT SORT OF THING, DO THEY?

22 MR. YOUNG: YES, THEY DO.

23 MR. BARENS: WERE THERE CRIMINAL IMPLICATIONS FOR THAT  
24 WHERE YOU CALL THE POLICE?

25 MR. YOUNG: YES.

26 MR. BARENS: WERE YOU INVOLVED IN SOME OF THAT?

27 MR. YOUNG: YES, I WAS.

28 MR. BARENS: WHO COMES IN?

1 I GUESS THAT IS ON A FEDERAL RESERVATION, WHATEVER  
2 THEY CALL THAT AND THE FBI COMES IN?

3 MR. YOUNG: NO.

4 THE POLICE COME IN, JUST LIKE ANYTHING ELSE WHERE  
5 THEY HAVE TO COME THROUGH SECURITY POLICE AND THEY GET  
6 PERMISSION TO COME ONBOARD TO PICK THE INDIVIDUAL UP.

7 MR. BARENS: AND YOU WOULD BE TALKING TO THEM ABOUT  
8 EVIDENCE?

9 MR. YOUNG: YES.

10 MR. BARENS: DOES ANYBODY HAVE A PRESUMPTION OF  
11 INNOCENCE IN THAT KIND OF SITUATION?

12 MR. YOUNG: OH, YES.

13 MR. BARENS: IS IT RESPECTED?

14 MR. YOUNG: YES, IT IS.

15 MR. BARENS: HOW DID YOU FEEL ABOUT THAT?

16 HOW WOULD SOMEBODY COME TO YOU? LET'S JUST TAKE  
17 THE SIMPLEST SITUATION, BECAUSE I LIKE TO SEE HOW YOU WOULD  
18 EVALUATE IT, OBVIOUSLY, MR. YOUNG.

19 DOES SOMEONE COME TO YOU AND SAY, YOU KNOW,  
20 CORPORAL SO AND SO, OR WHATEVER KIND OF A PERSON THAT YOU  
21 HAVE, STOLE 18 RATCHETS; IS THAT HOW IT WOULD COME TO YOU?

22 MR. YOUNG: NO.

23 IN THAT CASE, IT WOULD HAVE BEEN INVESTIGATED  
24 BY THE SECURITY POLICE AND THE SECURITY POLICE WOULD HAVE  
25 BROUGHT IT TO THEIR SUPERVISOR AND THE SUPERVISOR WOULD HAVE  
26 BROUGHT ALL OF THE INFORMATION TO ME.

27 MR. BARENS: AT THE MOMENT THEY BRING THAT TO YOU, WHAT  
28 DO THEY ASK YOU TO DO?

1 MR. YOUNG: THEY DIDN'T ASK ME.

2 I ASKED THEM WHAT DO THEY WANT ME TO DO.

3 MR. BARENS: AND THEN THEY SAY, "WE WOULD LIKE YOU TO  
4 PROSECUTE THAT FELLOW"?

5 MR. YOUNG: "WE WOULD LIKE TO EITHER FIRE THEM OR  
6 SUSPEND THEM," AND FROM THAT TIME I WILL TAKE THEIR EVIDENCE  
7 AND DEVELOP IT INTO WHETHER THEY DO HAVE ENOUGH EVIDENCE TO  
8 DO WHAT THEY WANT TO DO.

9 MR. BARENS: IF THEY HAVE ENOUGH EVIDENCE TO TAKE  
10 PUNITIVE ACTION, WHAT WOULD YOUR ROLE THEN BE?

11 MR. YOUNG: I WOULD DEVELOP THE PAPER THAT IS INVOLVED  
12 AND HAND IT TO THE EMPLOYEE FROM THAT EVIDENCE.

13 MR. BARENS: WOULD IT EVER GO BEYOND THAT WHERE IT  
14 ACTUALLY GOT INTO A CRIMINAL ACCUSATION?

15 MR. YOUNG: YES, IT COULD.

16 MR. BARENS: WHEN IT GOT TO THAT LEVEL, WOULD YOU IN  
17 FACT HAVE WORKED WITH A DISTRICT ATTORNEY?

18 MR. YOUNG: NO, I WOULD NOT HAVE.

19 THAT WOULD HAVE BEEN OUT OF MY HANDS IF IT GOES  
20 TO THAT.

21 MR. BARENS: WERE YOU EVER CALLED UPON TO BE A WITNESS  
22 FOR THE PROSECUTION?

23 MR. YOUNG: YES.

24 MR. BARENS: AND YOU WOULD THEN WORK WITH THE D.A.S  
25 IN THAT SETTING?

26 MR. YOUNG: YES.

27

28

1 MR. BARENS: OR UNITED STATES DEPUTY ATTORNEYS?

2 MR. YOUNG: RIGHT.

3 MR. BARENS: AND WOULD YOU BE ABLE TO TELL ME MR. YOUNG,  
4 THAT NOTHING FROM THOSE YEARS OF EXPERIENCE IN THAT CAPACITY,  
5 WOULD BIAS YOU TOWARD THE PROSECUTION IN THIS CASE?

6 MR. YOUNG: WELL, I HOPE IT WOULDN'T.

7 MR. BARENS: I HOPE SO, TOO. BUT WHAT I AM REALLY  
8 ASKING YOU IS, CAN YOU ASSURE ME OF THAT?

9 MR. YOUNG: I GUESS SO. SURE. I THINK I COULD, SURE.

10 MR. BARENS: I NEED YOU TO. MAKE ME FEEL BETTER, MR.  
11 YOUNG. WHAT DO YOU THINK? DO YOU THINK YOU COULD ASSURE ME  
12 OF THAT?

13 MR. YOUNG: SURE, YES.

14 MR. BARENS: I SEEK TO ASK YOU FOR AS CANDID A RESPONSE  
15 AS I CAN ELICIT TO THE SAME QUESTIONS I ASKED MR. SCHWARTZ  
16 AND SOME JURORS PRIOR THERETO, BEING THAT I ASK YOU TO REALLY  
17 TRY TO IMAGINE THIS FOR A MOMENT IF YOU WOULD, MR. YOUNG.

18 YOU ARE ACCUSED OF A FIRST DEGREE MURDER.  
19 OBVIOUSLY, THERE HAS GOT TO BE SOMETHING GOING ON BUT YOU ARE  
20 NEXT TO ME AT THAT COUNSEL TABLE AND I REPRESENT YOU. YOU  
21 HAVE HEARD ALL OF THE QUESTIONS I JUST ASKED OF YOU, OKAY?

22 AND ALL 12 OTHER PEOPLE UP THERE HAVE YOUR LIFE  
23 EXPERIENCE, POINT OF VIEW, ORIENTATION, BIASES, CONSCIENCE  
24 AND SUBLIMINALLY, HOW WOULD YOU FEEL TRYING TO GO TO TRIAL  
25 UNDER THAT SETTING?

26 MR. YOUNG: WELL, I FEEL THAT I WOULD BE AS HONEST AS  
27 I CAN BE.

28 MR. BARENS: I KNOW YOU ARE GOING TO BE HONEST BECAUSE

1 I THINK YOU ARE AN HONEST GUY. I AM ASKING YOU IF YOU WOULD  
2 BE OPEN-MINDED AND NEUTRAL?

3 MR. YOUNG: SURE.

4 MR. BARENS: DO YOU THINK SO?

5 MR. YOUNG: SURE I WOULD.

6 MR. BARENS: IF YOU WERE MY CLIENT, WOULD YOU BE  
7 COMFORTABLE IF YOU WERE THE TRIER OF FACT, THE ONLY TRIER  
8 OF FACT AND IF THEY JUST HAD PUT --

9 MR. YOUNG: YES, I WOULD.

10 MR. BARENS: YOU WOULD BE?

11 MR. YOUNG: YES, I WOULD.

12 MR. BARENS: WHY WOULD YOU FEEL THAT WAY?

13 MR. YOUNG: BECAUSE -- I DON'T KNOW. I THINK I AM  
14 FAIR. I THINK I WOULD BE ABLE TO EVALUATE THE EVIDENCE. THAT  
15 IS ALL.

16 MR. BARENS: HAVE YOU HAD A LOT OF EXPERIENCE IN THAT  
17 AREA?

18 MR. YOUNG: YES, I HAVE.

19 MR. BARENS: DID YOU EVER EVALUATE CASES WHERE YOU  
20 THOUGHT THE DEFENDANT WAS INNOCENT?

21 MR. YOUNG: NUMEROUS TIMES.

22 MR. BARENS: YOU DID?

23 MR. YOUNG: SURE.

24 MR. BARENS: AND WHAT TYPES OF THINGS PLAYED A ROLE IN  
25 HELPING YOU COME TO THAT CONCLUSION?

26 MR. YOUNG: WHATEVER THE EVIDENCE WAS.

27 MR. BARENS: WOULDN'T THAT ALSO INVOLVE LOOKING AT  
28 EVIDENCE?

1 MR. YOUNG: YES.

2 MR. BARENS: HOW DID YOU FEEL ABOUT ALL THAT PIE  
3 BUSINESS? I KNOW THAT YOU HEARD THE EXAMPLE AND YOU HEARD  
4 ALL THOSE ANSWERS. HOW DID YOU FEEL ABOUT THE ANSWERS YOU  
5 HEARD?

6 MR. YOUNG: SOME WERE OKAY.

7 MR. BARENS: SOME WERE ENTERTAINING?

8 MR. YOUNG: YES.

9 MR. BARENS: NOW, WHAT DID YOU THINK? DID YOU THINK  
10 EVERYBODY WAS REASONABLE IN THE WAY THEY RESPONDED?

11 MR. YOUNG: SURE. THAT'S THE WAY THEY THOUGHT.

12 MR. BARENS: DID YOU FEEL LIKE A LOT OF THE PEOPLE  
13 WERE REALLY JUST ASKING MORE QUESTIONS THAN THEY WERE  
14 ANSWERING MR. WAPNER'S INQUIRIES?

15 MR. YOUNG: SURE.

16 MR. BARENS: NEEDING MORE INFORMATION?

17 MR. YOUNG: RIGHT.

18 MR. BARENS: AND WOULD YOU AGREE THAT JUST GIVEN THE  
19 CONSTRAINTS OF THE HYPOTHETICAL MR. WAPNER CREATED AND MR.  
20 SCHWARTZ SAID IT WAS ALMOST ALGEBRAIC, I BELIEVE, WE HAD A  
21 QUESTION. DID YOU REALLY THINK THERE WERE A LOT OF DIFFERENT,  
22 YOU KNOW, AFTER SAYING THAT, MR. WAPNER TURNS INNOCENTLY AND  
23 SAYS, "WELL, WHO DO YOU THINK ATE THE PIE?"

24 DO YOU REALLY THINK THERE IS A QUESTION BEING  
25 PUT TO YOU OR HAD THE ANSWER BEEN PROVIDED?

26 MR. YOUNG: WELL, IT IS REALLY HARD TO SAY. NO, THERE  
27 WAS A QUESTION THERE. SURE THERE IS.

28 MR. BARENS: ALL RIGHT. THE QUESTION IS WHETHER YOU HAVE



1 BEEN GIVEN ENOUGH DATA?

2 MR. YOUNG: YES.

3 MR. BARENS: OKAY. WHAT DO YOU DO IF YOU DON'T HAVE  
4 ENOUGH DATA? WHAT DO YOU DO -- WHAT DID YOU DO BEFORE ON YOUR  
5 JOB? SOME GUYS COME IN AND THEY SAY, "WE HEARD LIEUTENANT  
6 SMITH WAS STEALING RATCHETS. THERE ARE RATCHETS MISSING."  
7 AND THERE IS A GUY THAT LIEUTENANT SMITH KNOWS THAT HAS  
8 RATCHETS FOR SALE AT A DISCOUNT. YOU KNOW, DO YOU WANT A  
9 HOT RATCHET?

10 WHAT DO YOU DO? RATCHETS ARE BETTER THAN PIES  
11 RIGHT NOW. WHAT DO YOU DO?

12 MR. YOUNG: WELL, IN THOSE CASES YOU HAD TO TELL THE  
13 PEOPLE WHO WERE MAKING THE ACCUSATIONS THAT THEY DID NOT HAVE  
14 ENOUGH EVIDENCE.

15 MR. BARENS: ALL RIGHT. THERE IS A DIFFERENCE BETWEEN  
16 SUSPICIOUS APPEARANCES, WOULDN'T YOU SAY AND PROOF BEYOND A  
17 REASONABLE DOUBT?

18 MR. YOUNG: YES.

19 MR. BARENS: DO YOU THINK THAT IN THIS SETTING HERE,  
20 THAT YOU VOTE GUILTY BECAUSE SOMEBODY LOOKS GUILTY? NOW, I  
21 DON'T MEAN LOOKS LIKE THE PHYSICAL APPEARANCE OF MR. HUNT,  
22 YOU KNOW, WE HAD A JUROR SAY THAT HE DOESN'T LOOK LIKE A  
23 MURDERER IS SUPPOSED TO LOOK.

24 I HAVE NEVER READ THAT BOOK, THAT MURDERERS LOOK  
25 A CERTAIN WAY, THEY ARE ALL SUPPOSED TO LOOK LIKE QUASIMODO  
26 OR LIKE SONNY LISTON OR SOMEONE.

27 WE DON'T HAVE THAT GOING ON. WHAT WE HAVE,  
28 SUPPOSING WE HAD A SITUATION WHERE A GUY LOOKS GUILTY. HE

1 IS SURROUNDED BY FACTS. HE KIND OF LOOKS GUILTY. DO YOU  
2 CONVICT HIM?

3 MR. YOUNG: NO.

4 MR. BARENS: NO? IT IS NOT A MORE LIKELY KIND OF  
5 LOOKING GUILTY. YOU DIDN'T EVEN DO THAT IN YOUR JOB WHERE  
6 YOU WEREN'T HERE UNDER OATH TO DECIDE ONLY BEYOND A REASONABLE  
7 DOUBT, DID YOU, MR. YOUNG?

8 MR. YOUNG: NO, SIR.

9 MR. BARENS: THAT WOULD BE A LOT DIFFERENT THAN JUST  
10 CONVICTING A GUY BECAUSE HE LOOKS GUILTY. DO YOU AGREE WITH  
11 THAT, SIR?

12 MR. YOUNG: RIGHT.

13 MR. BARENS: ARE YOU MARRIED, SIR?

14 MR. YOUNG: YES, I AM.

15 MR. BARENS: WHAT DOES YOUR WIFE DO?

16 MR. YOUNG: SHE JUST RECENTLY BECAME AN AVON  
17 REPRESENTATIVE.

18 MR. BARENS: SORRY? I AM CORRECT. I RECALL YOU SAYING  
19 THAT.

20 MR. YOUNG: SHE WAS A HOUSEMAKER OR WHATEVER YOU WANT  
21 TO CALL THEM. SHE WAS MY WIFE.

22 MR. WAPNER: IN THE BUILDING BUSINESS?

23 MR. BARENS: THE SUPREME COURT HAS DEFINED THAT AS A  
24 PROFESSION, BASED ON THE SULLIVAN DECISION, WHERE BEING A HOUSE-  
25 WIFE IS ELEVATED ACTUALLY, FOR ALL RESPECTS TO A PROFESSIONAL  
26 CONSIDERATION CONCEPT.

27 I AGREE WITH IT AND IT IS GOING TO BE A VERY --  
28 WELL, IT IS PROVIDING A WHOLE NEW, EXCITING AREA OF LAW AND

1 DISPUTE IN DOMESTIC RELATIONS CASES NOW, WHICH HIS HONOR MAY  
2 OR WE ALL MAY HAVE TO DEAL WITH IN OUR CAREERS.

3 THAT BEING AS IT MAY, DID SHE HAVE EMPLOYMENT  
4 PRIOR TO THAT, PRIOR TO YOUR MARRIAGE?

5 MR. YOUNG: PRIOR TO OUR MARRIAGE, SHE WORKED FOR  
6 CBS IN CHICAGO.

7 MR. BARENS: I SEE. DO YOU HAVE ANY CHILDREN, SIR?

8 MR. YOUNG: I HAVE THREE.

9 MR. BARENS: AND THEIR AGES ARE?

10 MR. YOUNG: TWENTY-FIVE, A BOY; TWENTY-THREE, A GIRL;  
11 NINETEEN, A GIRL.

12 MR. BARENS: AND YOUR ELDEST SON IS ENGAGED IN WHAT  
13 WORK?

14 MR. YOUNG: HE WORKS FOR NORTHROP. HE WORKS AS A  
15 PARTS CHASER. I THINK THAT IS WHAT HE CALLS HIMSELF.

16 MR. BARENS: YOUR 23-YEAR-OLD, SIR?

17 MR. YOUNG: SHE WORKS FOR -- WHAT SCHOOL IS IT? SHE  
18 IS A -- ONE OF THE CHURCH SCHOOL DAY CENTERS. I HAVE  
19 FORGOTTEN WHICH ONE IT IS.

20 MR. BARENS: YOUR YOUNGEST CHILD, SIR?

21 MR. YOUNG: SHE ATTENDS EL CAMINO COLLEGE.

22 MR. BARENS: AND WHAT IS SHE MAJORING IN, IF ANYTHING?

23 MR. YOUNG: DANCE.

24 MR. BARENS: ASIDE FROM DANCE, DO YOU HAVE ANY OTHER  
25 HOBBIES?

26 MR. YOUNG: I HELP MY BOY RESTORE '67 MUSTANGS.

27 MR. BARENS: DO YOU BELONG TO ANY SERVICE ORGANIZATIONS,  
28 CLUBS OR CHARITABLE INSTITUTIONS?

1 MR. YOUNG: NOT SINCE I HAVE BEEN HERE. BUT I USED TO  
2 BELONG TO THE VOCATIONAL EDUCATION COMMITTEE UP IN FAIRFIELD,  
3 BOTH THE COLLEGE AND THE HIGH SCHOOL.

4 MR. BARENS: WHAT WAS THE LAST BOOK YOU READ, SIR?

5 MR. YOUNG: I HAVE NOT. IN SCHOOL, I GUESS I READ THE  
6 CATCHER IN THE RYE.

7 MR. BARENS: THE LAST MOVIE YOU SAW?

8 MR. YOUNG: ROCKY IV OR ROCKY II OR WHATEVER THEY CALL  
9 IT NOW.

10 MR. BARENS: IT IS ONE OF THEM.

11 MR. YOUNG: WHATEVER MY BOY GOES TO, I GO WITH HIM  
12 SOMETIMES.

13 MR. BARENS: INDEED, SIR. IS THERE ANYTHING ELSE YOU  
14 THINK THAT I HAVE OVERLOOKED TO ASK YOU THAT MIGHT HELP IN  
15 EVALUATING YOU AS A PROSPECTIVE JUROR IN THIS CASE? IS THERE  
16 ANYTHING THAT YOU CAN HELP ME OUT WITH?

17 MR. YOUNG: WELL, I DON'T KNOW WHAT WOULD BOTHER YOU.  
18 I AM IN THE AIR FORCE, THE AIR FORCE RESERVE. HOPEFULLY IN  
19 THE MIDDLE OF NEXT MONTH, I WILL BE BACK INTO THE SERVICE.

20 MR. BARENS: WHAT WOULD YOU BE DOING? IT DOES NOT BOTHER  
21 ME AT ALL. WHAT WOULD YOU BE DOING IN THE SERVICE?

22 MR. YOUNG: I WILL BE WORKING IN MUCH THE SAME JOB AS  
23 I AM RIGHT NOW.

24

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27-1  
1 MR. BARENS: YOU KNOW THE SERVICE IS ALWAYS PROTECTING  
2 THE CONTINUATION OF OUR EXPRESSION OF OUR CONSTITUTIONAL  
3 RIGHTS THAT WE ARE HERE ABOUT.

4 THANK YOU, MR. YOUNG.

5 PASS FOR CAUSE, YOUR HONOR.

6 MR. WAPNER: THANK YOU, YOUR HONOR.

7 GOOD AFTERNOON, MR. YOUNG.

8 THE FACT THAT YOU HAD A BOSS WHOSE WIFE WAS A  
9 DEPUTY DISTRICT ATTORNEY, THAT IS NOT GOING TO CAUSE YOU  
10 AUTOMATICALLY TO VOTE GUILTY IN THIS CASE, IS IT?

11 MR. YOUNG: NO.

12 MR. WAPNER: YOU HAVE TO HEAR THE FACTS FIRST?

13 MR. YOUNG: RIGHT.

14 MR. WAPNER: AND LIKEWISE, THE FACT THAT YOU MAY HAVE  
15 ASSISTED IN THE PROSECUTION OF PEOPLE IN CIVIL SERVICE  
16 HEARINGS ISN'T GOING TO CAUSE YOU TO SAY AUTOMATICALLY, "WELL,  
17 I HAVE GOT TO VOTE GUILTY IN THIS CASE"?

18 MR. YOUNG: NO.

19 MR. WAPNER: THOSE CIVIL SERVICE HEARINGS DON'T HAVE  
20 ANYTHING TO DO WITH THE FACTS IN THIS CASE, DO THEY?

21 MR. YOUNG: NO.

22 MR. WAPNER: WHEN YOU WERE IN FAIRFIELD COUNTY, WERE  
23 YOU WORKING AT TRAVIS AIR FORCE BASE?

24 MR. YOUNG: YES, I WAS.

25 MR. WAPNER: HOW LONG HAVE YOU BEEN LIVING IN TORRANCE?

26 MR. YOUNG: TWO AND A HALF YEARS.

27 MR. WAPNER: WHERE DO YOU WORK NOW?

28 MR. YOUNG: SPACE DIVISION OUT OF EL SEGUNDO.

27-2  
1 MR. WAPNER: IS THAT ACTUALLY AN AIR FORCE FACILITY?

2 MR. YOUNG: IT IS AN AIR FORCE STATION.

3 MR. WAPNER: WELL, I LEARN SOMETHING NEW EVERY DAY.  
4 I DIDN'T KNOW WE HAD ONE THERE.

5 HAVE YOU EVER BEEN THE VICTIM OF A THEFT OR ANY  
6 KIND OF A CON SCHEME?

7 MR. YOUNG: MY BOY JUST LOST A BICYCLE IN A HIT AND  
8 RUN IN FRONT OF HIS HOUSE.

9 MR. WAPNER: ANYTHING ELSE?

10 MR. YOUNG: NO.

11 MR. WAPNER: IF YOU LISTEN TO ALL OF THE FACTS IN THIS  
12 CASE AND YOU DECIDE THAT THE EVIDENCE PROVES THE DEFENDANT  
13 GUILTY BEYOND A REASONABLE DOUBT AND YOU ALSO CONCLUDE THAT  
14 THE PERSON WHO WAS KILLED WAS JUST NOT A NICE GUY AND YOU  
15 DIDN'T LIKE HIM, WOULD THAT HAVE ANY EFFECT ON YOUR ABILITY  
16 TO FIND THE DEFENDANT GUILTY?

17 MR. YOUNG: NO, IT WOULD NOT.

18 MR. WAPNER: IT SHOULDN'T ENTER INTO YOUR DELIBERATIONS  
19 IN ANY WAY, SHOULD IT?

20 MR. YOUNG: IT WOULDN'T ENTER INTO THEM.

21 MR. WAPNER: DOES YOUR SON LIVE AT HOME?

22 MR. YOUNG: YES, HE DOES.

23 MR. WAPNER: AND DO YOUR DAUGHTERS BOTH LIVE AT --  
24 MAYBE I DON'T HAVE THIS RIGHT -- THE OTHER TWO CHILDREN ARE  
25 DAUGHTERS, RIGHT?

26 MR. YOUNG: YES.

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

28 MR. YOUNG: YES, THEY DO.

7-3  
1 MR. WAPNER: AND DO EITHER ONE OF THEM LIVE AT HOME?

2 MR. YOUNG: THE YOUNGER ONE LIVES AT HOME.

3 MR. WAPNER: AND THE ONE WHO DOESN'T LIVE AT HOME, HOW  
4 OFTEN DO YOU SEE OR TALK TO HER?

5 MR. YOUNG: I TALK TO HER PROBABLY EVERY DAY AND I SEE  
6 HER ON THE WEEKENDS.

7 MR. WAPNER: IS IT A FAIRLY CLOSE FAMILY?

8 MR. YOUNG: YES, IT IS.

9 MR. WAPNER: IF YOU ARE IN THE JURY ROOM IN THIS CASE  
10 AND YOU TAKE A POSITION AND YOU DISCUSS THE FACTS WITH THE  
11 OTHER JURORS AND THEN DECIDE THAT YOUR INITIAL POSITION, YOU  
12 BELIEVE, WAS INCORRECT, CAN YOU CHANGE YOUR MIND?

13 MR. YOUNG: YES, I COULD.

14 MR. WAPNER: IF YOU DISCUSS THE CASE WITH THE OTHER  
15 JURORS AND YOU DECIDE YOUR INITIAL POSITION WAS CORRECT, CAN  
16 YOU HOLD FAST TO YOUR VIEWS?

17 MR. YOUNG: YES, I WOULD.

18 MR. WAPNER: YOU SAID THAT YOU THOUGHT ALL OF THE PEOPLE  
19 WHO RESPONDED TO THE CHERRY PIE EXAMPLE WERE REASONABLE; WHAT  
20 DO YOU MEAN BY THAT?

21 MR. YOUNG: WELL, THAT IS HARD TO EXPLAIN.

22 MR. WAPNER: WELL, MAYBE I CAN GET YOU OFF THE HOOK  
23 A LITTLE BIT.

24 DID YOU HAVE AN OPINION WHEN THE QUESTION WAS  
25 ASKED, DID YOU HAVE AN OPINION ABOUT WHAT HAD HAPPENED?

26 MR. YOUNG: SURE.

27 MR. WAPNER: WHAT WAS YOUR OPINION?

28 MR. YOUNG: HE ATE THE PIE.

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MR. WAPNER: OKAY. REGARDLESS OF WHERE THE HOUSE WAS,  
WHETHER IT WAS MOVING, WHETHER IT WAS ON STILTS, HOW MANY  
PEOPLE LIVED NEXT DOOR, THAT KIND OF STUFF.

MR. YOUNG: SURE.

MR. WAPNER: IT IS FUNNY, BECAUSE WHEN I STARTED WITH  
THAT EXAMPLE, I THOUGHT THE ANSWER WAS OBVIOUS, TOO, UNTIL  
I STARTED HEARING SOME OF THESE THINGS THAT CAME UP.

MR. BARENS: WE HOPE WE CAN CHANGE YOUR MIND, TOO.

27-4

27AF



27A-1  
1 MR. WAPNER: DO YOU HAVE ANY DIFFICULTY USING THE SAME  
2 STANDARDS, THE SAME SCALES, SO TO SPEAK, IN EVALUATING THE  
3 TESTIMONY OF ALL OF THE WITNESSES?

4 MR. YOUNG: NO, I DON'T.

5 MR. WAPNER: SO THAT IF IT IS FAIR TO TAKE INTO  
6 CONSIDERATION THE BIAS OF A WITNESS WHO TESTIFIES FOR THE  
7 PROSECUTION, IT WOULD BE FAIR TO JUST TAKE INTO CONSIDERATION  
8 A BIAS FOR A WITNESS WHO TESTIFIES FOR THE DEFENDANT?

9 MR. YOUNG: YES.

10 MR. WAPNER: DO YOU THINK ALL PEOPLE WHO ARE SWORN TO  
11 TELL THE TRUTH ACTUALLY DO TELL THE TRUTH UNDER OATH?

12 MR. YOUNG: NOT NECESSARILY.

13 MR. WAPNER: IF WE DID THAT, WE PROBABLY WOULDN'T NEED  
14 COURTS, WOULD WE?

15 MR. YOUNG: I DON'T KNOW ABOUT THAT.

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

18 (UNREPORTED COLLOQUY BETWEEN COUNSEL.)

19 MR. BARENS: MAY WE APPROACH JUST FOR ONE MOMENT, YOUR  
20 HONOR?

21 THE COURT: ALL RIGHT.

22 MR. BARENS: THANK YOU.

23 (THE FOLLOWING PROCEEDINGS WERE HELD  
24 AT THE BENCH:)

25 MR. BARENS: I JUST WANT TO ADVISE THE COURT, TO AVOID  
26 ANY APPEARANCE OF EMBARRASSMENT OR AWKWARDNESS, THAT WE ARE  
27 NOT GOING TO STIPULATE ON MR. SPEARMAN UNTIL AFTER WE  
28 QUESTION HIM A LITTLE BIT AND SEE WHAT IS GOING ON WITH HIM.

27A-2  
1 THE COURT: ALL RIGHT. WELL, OBVIOUSLY, WE ARE RUNNING  
2 SHORT OF JURORS.

3 MR. BARENS: THAT'S RIGHT.

4 THE COURT: I DON'T KNOW WHETHER THERE WILL BE ANY MORE  
5 PEREMPTORY CHALLENGES OR NOT. IF IT RUNS ALL DOWN THE LINE,  
6 THEN WE WILL HAVE TO HAVE HIM HERE.

7 MR. BARENS: THAT IS WHY, JUST IN CASE, I JUST WANTED  
8 TO SAY THAT BECAUSE --

9 THE COURT: YOU INTEND TO EXERCISE A PEREMPTORY AT THIS  
10 TIME?

11 MR. WAPNER: AT THIS TIME, NO. PASS.

12 THE COURT: YOU PASS PEREMPTORY, ALL RIGHT.

13 NOW WHAT IS YOUR PROBLEM?

14 MR. BARENS: I HAVE NO PROBLEM, YOUR HONOR.

15 THE COURT: YOU JUST HAVE ONE PEREMPTORY LEFT OUT OF  
16 THE THREE.

17 MR. BARENS: NO, I HAVE TWO. I HAVE USED TWO.

18 MR. WAPNER: NO. YOU HAVE ONE.

19 THE COURT: YOU HAVE EXERCISED TWO ALREADY.

20 MR. WAPNER: YOU HAVE ONE LEFT.

21 MR. BARENS: I HAVE THREE I CAN USE.

22 THE COURT: YES.

23 MR. WAPNER: YOU HAVE THREE AND YOU HAVE EXERCISED TWO.

24 THE COURT: YOU HAVE EXERCISED TWO ALREADY. YOU  
25 EXCUSED MR. SCHWARTZ.

26 MR. BARENS: YOU ARE RIGHT, I EXERCISED TWO.

27 I THOUGHT I HAD FOUR TOTAL.

28 THE COURT: NO. THERE ARE ONLY THREE HERE. I TOLD

1 YOU.

2 MR. BARENS: OKAY. I AM SORRY. I AM CONFUSED, YOUR  
3 HONOR.

4 THE COURT: I DON'T WANT TO RUN SHORT OF JURORS. IF  
5 BOTH OF YOU PASS FOR CAUSE, THEN WE CAN HAVE THE FOURTH  
6 ALTERNATE JUROR AND YOU CAN EXERCISE ANOTHER PEREMPTORY.

7 MR. BARENS: OKAY. I NEED A MOMENT TO DETERMINE I AM  
8 GOING TO EXERCISE IT OR NOT, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. BARENS: YOU PASSED, DIDN'T YOU?

11 MR. WAPNER: YES.

12 MR. BARENS: OKAY, LET ME GO MAKE MY DECISION.

13 THE COURT: SO TO BE PERFECTLY CLEAR, IF YOU PASS THEN  
14 YOU HAVE --

15 MR. BARENS: THEN IT IS OVER.

16 THE COURT: NO. THEN WE WILL GET ANOTHER FOURTH JUROR.

17 MR. BARENS: RIGHT.

18 THE COURT: WE SELECT THE FOURTH THEN WE WILL HAVE  
19 ANOTHER JUROR, SO HE IS ENTITLED TO A PEREMPTORY AND YOU WILL  
20 BE ENTITLED TO A PEREMPTORY.

21 MR. BARENS: SO I WOULD STILL HAVE ONE LEFT.

22 THE COURT: SO WE HAVE THREE JURORS LEFT FOR THAT.

23 MR. BARENS: I UNDERSTAND. I FINALLY UNDERSTAND,  
24 YOUR HONOR.

25 MR. WAPNER: SO THE RECORD IS OBVIOUSLY CLEAR, IF WE  
26 PASS ON THESE THREE PEOPLE, THEN WHEN THE FOURTH ONE IS  
27 SEATED, THAT PEREMPTORY GOES ONLY TO THE PERSON IN THAT SEAT?

28 THE COURT: THAT IS CORRECT.

1 MR. BARENS: OH, JUDGE, YOU MEAN --

2 THE COURT: YES, THAT IS ALL.

3 MR. BARENS: -- I COULD ONLY USE IT AS TO THE FOURTH  
4 ONE?

5 THE COURT: YES, THAT IS IT.

6 MR. BARENS: I COULDN'T ACCEPT THE FOURTH AND THEN GO  
7 BACK AGAIN TO ONE OUT OF THE ORIGINAL THREE?

8 THE COURT: NO.

9 YOU SEE, THE PURPOSE OF THIS IS I DON'T WANT TO  
10 RUN SHORT OF JURORS.

11 MR. BARENS: I UNDERSTAND THAT, YOUR HONOR.

12 THE COURT: IF I DO IT THE WAY YOU WANT TO DO IT, I  
13 AM NOT GOING TO HAVE ENOUGH JURORS.

14 MR. BARENS: I DID NOT MEAN TO OCCASION THAT, YOUR HONOR.

15 COULD I HAVE A MOMENT THEN?

16 THE COURT: SURE.

17 MR. BARENS: THANK YOU, YOUR HONOR.

18 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
19 AND MR. CHIER.)

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

3 MR. BARENS: I BELIEVE THE RECORD SHOULD REFLECT  
4 THAT --

5 THE COURT: THE RECORD REFLECTS THAT THE PEOPLE ACCEPTED  
6 THE ALTERNATES. NO PEREMPTORIES.

7 MR. WAPNER: CORRECT.

8 MR. BARENS: AND THE DEFENSE WOULD ASK THAT HIS HONOR  
9 THANK AND EXCUSE MR. YOUNG.

10 THE COURT: THANK YOU VERY MUCH, MR. YOUNG.

11 THE CLERK: SALLY C. BONE, B-O-N-E.

12 THE COURT: GOOD AFTERNOON, MS. BONE.

13 MS. BONE: GOOD AFTERNOON.

14 THE COURT: WHERE DO YOU LIVE?

15 MS. BONE: I LIVE IN PACIFIC PALISADES.

16 THE COURT: WHAT DO YOU DO, PLEASE?

17 MS. BONE: I AM A TEACHER.

18 THE COURT: WHAT SCHOOL SYSTEM?

19 MS. BONE: IN THE SANTA MONICA/MALIBU SCHOOLS.

20 THE COURT: AND WHAT EDUCATIONAL BACKGROUND DO YOU HAVE?

21 MS. BONE: I HAVE A B.A. IN GENERAL EDUCATION AND MUSIC  
22 AND MOST OF MY MASTERS IS ON HOLD.

23 THE COURT: AND YOU LIVE IN SANTA MONICA, DO YOU?

24 MS. BONE: PACIFIC PALISADES.

25 THE COURT: IS THERE A MR. BONE?

26 MS. BONE: YES, THERE IS.

27 THE COURT: WHAT DOES HE DO, PLEASE?

28 MS. BONE: HE IS AN ELECTRICAL CONTRACTOR, SELF-EMPLOYED.

1 THE COURT: AND WHAT IS HIS EDUCATIONAL BACKGROUND?

2 MS. BONE: HE IS A GRADUATE OF PASADENA CITY COLLEGE.

3 THE COURT: AND DO YOU HAVE ANY CHILDREN?

4 MS. BONE: SIX. DO I WIN?

5 THE COURT: YOU GET THE CROWN.

6 MR. WAPNER: NO.

7 MS. BONE: I CAN'T TAKE THE CREDIT?

8 MR. WAPNER: SHE HAS SEVEN.

9 MS. GHAEMMAGHAMI: YES.

10 THE COURT: SORRY. DON'T LET THEM BEAT YOU.

11 MS. BONE: I AM SECOND-HAND ROSE.

12 THE COURT: BOTH OF YOU STILL HAVE A CHANCE FOR SOME  
13 MORE.

14 MS. BONE: I HAD FOUR STEPCHILDREN. SO SHE MIGHT AS  
15 WELL WIN.

16 THE COURT: IN ADDITION TO THE SIX?

17 MS. BONE: NO.

18 THE COURT: WHAT IS THE RANGE OF AGES?

19 MS. BONE: MY HUSBAND'S OLDEST BOY IS 32. THEN MY  
20 SON IS 29. WE HAVE TWO DAUGHTERS 27 AND WE LOST OUR 25-YEAR-  
21 OLD BOY. OUR YOUNGEST DAUGHTER IS 22.

22 THE COURT: LET'S START FROM THE BOTTOM. WHAT DOES YOUR  
23 DAUGHTER 22 DO?

24 MS. BONE: SHE JUST LEFT SATURDAY FOR THE PHILIPPINES  
25 WITH THE U.S. NAVY.

26 THE COURT: WHAT KIND OF A JOB WILL SHE HAVE?

27 MS. BONE: SHE IS A QUARTERMASTER BUT EVIDENTLY, SHE  
28 IS GOING INTO COMMUNICATIONS IN THE PHILIPPINES.

1 THE COURT: THE NEXT ONE?

2 MS. BONE: SHE IS AN ENGINEERING STUDENT AT THE  
3 UNIVERSITY OF OREGON. SHE WORKS FOR THE FIRE DEPARTMENT IN  
4 THE CITY OF ALBANY.

5 AND MY DAUGHTER WORKS IN COMPUTERS AND SECRETARIAL  
6 WORK FOR GRAY HOUND CORPORATION IN PHOENIX, ARIZONA.

7 MY SON IS AN ELECTRICIAN IN COWETA, OKLAHOMA,  
8 OUTSIDE TULSA.

9 THE COURT REPORTER: HOW DO YOU SPELL THAT?

10 MS. BONE: C-O-W-E-T-A.

11 AND MY OLDEST BOY IS A MINISTER IN OHIO, WHO HAS  
12 JUST MOVED HERE AND IS JOB-HUNTING.

13 THE COURT: WHAT DENOMINATION IS IT?

14 MS. BONE: COMMUNITY TYPE CHURCH.

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

16 MS. BONE: PACIFIC PALISADES.

17 THE COURT: HAVE YOU EVER SERVED ON A JURY IN A CRIMINAL  
18 CASE?

19 MS. BONE: YES, I HAVE.

20 THE COURT: WHAT KIND OF CASE WAS IT?

21 MS. BONE: IT WAS BOTH CIVIL AND CRIMINAL CASES THAT  
22 I WAS ON. THE JURY -- I BELIEVE THAT IT WAS LABELED AN  
23 ASSAULT.

24 THE COURT: A CRIMINAL CASE?

25 MS. BONE: PARDON ME?

26 THE COURT: A CRIMINAL CASE?

27 MS. BONE: YES, SIR.

28 (MR. CHIER ENTERS THE COURTROOM.)

1 THE COURT: WAS THAT MUNICIPAL COURT OR SUPERIOR?

2 MS. BONE: SUPERIOR.

3 THE COURT: AND THE CIVIL CASE?

4 MS. BONE: IT WAS ALSO -- I DON'T KNOW WHETHER THE CIVIL  
5 CASE WAS SUPERIOR OR MUNICIPAL. I AM NOT SURE.

6 THE COURT: IT COULD BE BOTH.

7 MS. BONE: I AM NOT CERTAIN.

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1 THE COURT: YOU ARE NOT CERTAIN? AT ANY RATE, YOU  
2 UNDERSTOOD THE DIFFERENCE IN THE BURDEN OF PROOF IN THE CIVIL  
3 CASE AND IN THE CRIMINAL CASE?

4 MS. BONE: YES. IT WAS DISMISSED.

5 THE COURT: WITHOUT GIVING IT TO YOU AGAIN, THAT WOULD  
6 BE AD NAUSEAM -- ALL RIGHT?

7 MS. BONE: YES.

8 THE COURT: HAVE YOU EVER BEEN THE VICTIM OF ANY KIND  
9 OF CRIME?

10 MS. BONE: NOTHING SERIOUS. MY CLASSROOM WAS VANDALIZED  
11 TWO WEEKS AGO.

12 THE COURT: DOES THAT CREATE A STATE OF MIND WHERE YOU  
13 MIGHT FAVOR OR BE AGAINST PEOPLE WHO COMMIT CRIMES OF ANY  
14 KIND?

15 MS. BONE: NO.

16 THE COURT: THANK YOU VERY MUCH.

17 MR. BARENS: THANK YOU, YOUR HONOR.

18 GOOD AFTERNOON, MRS. BONE? MRS. BONE, I SEEM TO  
19 RECALL IN EARLIER DISCUSSION THAT YOU AND I HAD TOGETHER, I  
20 HAD SOME CONCERN DURING THAT DISCUSSION ABOUT YOUR SENSE OF  
21 THE MEANING OF THE PRESUMPTION OF INNOCENCE.

22 MS. BONE: I REMEMBER EXACTLY WHAT I SAID AND WHAT YOU  
23 QUESTIONED ME ABOUT.

24 MR. BARENS: HOW DO YOU FEEL ABOUT THAT NOW? YOU KNOW,  
25 YOU HAVE GONE THROUGH THIS PROCESS WITH US. YOU HAVE HEARD  
26 ME GO ON ABOUT THE PRESUMPTION OF INNOCENCE.

27 AND I DO SO, YOU KNOW, OUT OF THE SENSE OF DUTY  
28 AND OBLIGATION AND CONCERN.

1                   HOW DID YOU FEEL?   HOW DO YOU FEEL ABOUT THE  
2   PRESUMPTION OF INNOCENCE?   DO YOU THINK IT IS SOMETHING  
3   SUBSTANTIVE?

4           MS. BONE:   DEFINITELY.   INNOCENT UNTIL PROVEN GUILTY.

5           MR. BARENS:   DO YOU NECESSARILY FEEL THAT YOU ULTIMATELY  
6   WOULD PROVE SOMEBODY GUILTY IF YOU WERE A JUROR ON THIS CASE?

7           MS. BONE:   NOT UNLESS I HAVE ALL OF THE FACTS.   I WOULD  
8   HAVE TO KNOW ALL OF THE FACTS.

9           MR. BARENS:   IN YOUR HEART OF HEARTS, CAN YOU HONESTLY  
10   TELL ME AS YOU SIT THERE WITH MY CLIENT SITTING HERE AT THE  
11   END OF THE COUNSEL TABLE, ACCUSED OF A FIRST DEGREE MURDER,  
12   THE GOVERNMENT OBVIOUSLY THINKING THAT THEY HAVE GOT SOMETHING  
13   OR WE WOULDN'T ALL BE HERE.   DO YOU HONESTLY FEEL THAT YOU  
14   ARE GIVING MY CLIENT A PRESUMPTION OF INNOCENCE, EVEN WHEN  
15   WE ARE SITTING HERE?

16          MS. BONE:   DEFINITELY.

17          MR. BARENS:   AS I RECALL, HIS HONOR MADE A STATEMENT  
18   TO YOU IN THAT SETTING, WHERE THERE WAS SMOKE, THERE IS  
19   NOT NECESSARILY FIRE.   DO YOU RECALL THAT?

20          MS. BONE:   I THINK SO.

21          MR. BARENS:   DO YOU UNDERSTAND WHAT HIS HONOR MEANT?

22          MS. BONE:   YES.   I BELIEVE SO.

23          MR. BARENS:   A LOT OF TIMES IN LIFE AND YOU KNOW, HECK,  
24   I HAVE USED THAT EXPRESSION A LOT IN MY LIFE, TOO AT TIMES  
25   WHERE I DIDN'T HAVE AN AWFUL LOT OF STAKES IN WHAT I WAS  
26   SAYING.   A LOT OF TIMES, YOU CAN BE A LITTLE MORE CAVAILIER  
27   THAN YOU ARE WHEN YOU ARE IN HERE AS A JUROR, SWORN TO  
28   PERFORM A SERIOUS DUTY.

1 DO YOU REALLY UNDERSTAND THIS IS A SETTING WHERE  
2 YOU JUST CAN'T THINK THAT WAY?

3 MS. BONE: YES.

4 MR. BARENS: THE FACT THAT YOU HAVE GOT A SITUATION WHERE  
5 WE ARE DISCUSSING THIS, WHERE YOU CAN SAY TO YOURSELF, THE  
6 GUY LOOKS LIKE HE IS GUILTY -- TO ME, YOU HAVE PROBABLY EVEN  
7 USED THAT EXPRESSION. HE LOOKS GUILTY, RIGHT? YOU SEE A  
8 THING ON TV WHERE THEY DON'T TELL YOU WHETHER THE GUY IS  
9 GUILTY OR INNOCENT UNTIL THE END OF THE SHOW OR YOU HAVE  
10 IT COME UP IN ANY NUMBER OF SITUATIONS WHERE A GUY LOOKS  
11 GUILTY.

12 COULD YOU SEE WHERE, IN A SITUATION WHERE EVEN  
13 THOUGH YOU MIGHT THINK TO YOURSELF THE GUY LOOKS GUILTY, THAT  
14 YOU HAVE TO VOTE FOR ACQUITTAL BECAUSE IT WAS NOT BEYOND  
15 A REASONABLE DOUBT?

16 MS. BONE: DEFINITELY.  
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1 MR. BARENS: DO YOU UNDERSTAND THAT THERE COULD BE A  
2 DIFFERENCE BETWEEN THE APPEARANCE OF GUILT IN A LEGAL SETTING  
3 AND THE REALITY OF GUILT IN TERMS OF DID THEY MEET THEIR  
4 BURDEN OF PROOF?

5 MS. BONE: YES.

6 MR. BARENS: DO YOU UNDERSTAND THAT THERE IS A BIG  
7 DIFFERENCE BETWEEN THE TWO?

8 MS. BONE: YES.

9 MR. BARENS: AND I UNDERSCORE THAT TO YOU AND UNDERSCORE  
10 THAT TO YOU BECAUSE I CAN ASSURE YOU IF YOU SIT AS AN  
11 ALTERNATE IN THIS CASE WITH THE REST OF THE JURORS, THAT WILL  
12 BE A FUNDAMENTAL CONCERN TO YOU, THE DIFFERENCE BETWEEN THE  
13 APPEARANCE OF SOMETHING AND WHETHER OR NOT THAT SOMETHING  
14 IS ESTABLISHED BEYOND A REASONABLE DOUBT.

15 MS. BONE: YES.

16 MR. BARENS: ALL RIGHT. YOU HAD PRIOR JURY EXPERIENCE  
17 IN SOMETHING THAT I CALL A CROSS-OVER. AND I DISCUSSED THAT  
18 WITH ANOTHER JUROR A LITTLE WHILE AGO, AN ASSAULT AND BATTERY  
19 CASE. THAT CAN BE CRIMINAL OR CIVIL. IT CAN BE BOTH, AS  
20 YOU FOUND OUT. YOU PARTICIPATED ON THE CRIMINAL LEVEL OF  
21 THAT.

22 MS. BONE: I PARTICIPATED IN TWO. ONE WAS CRIMINAL AND  
23 ONE WAS A CIVIL CASE THAT DID NOT COME TO A JURY VERDICT.

24 MR. BARENS: THIS INVOLVED OBVIOUSLY, DIFFERENT --

25 MR. BONE: TWO DIFFERENT COURTROOMS AT THE SAME TIME.

26 MR. BARENS: LET'S FOCUS ON THE CRIMINAL EXPERIENCE THAT  
27 YOU HAD. HOW LONG AGO WAS THAT MATTER?

28 MS. BONE: I THINK IT IS FOUR YEARS. IT WAS FOUR OR

1 FIVE YEARS.

2 MR. BARENS: WHAT COURT WERE YOU IN?

3 MS. BONE: SANTA MONICA.

4 MR. BARENS: AND IT DID NOT INVOLVE JUDGE RITTENBAND?

5 MS. BONE: I DON'T KNOW. I AM SORRY. I DON'T. I HATE  
6 TO BE SO UNOBSERVANT.

7 MR. BARENS: WHAT DO YOU REMEMBER?

8 MS. BONE: I REMEMBER ROSEMARIE. AND UNLESS ROSEMARIE  
9 WORKED IN ANOTHER COURT --

10 THE COURT: HOW LONG AGO WAS THAT?

11 MS. BONE: ABOUT FOUR YEARS.

12 THE COURT: WELL, SHE HAS BEEN HERE FOR A NUMBER OF  
13 YEARS.

14 MS. BONE: BUT I DON'T KNOW IF SHE HAS ALWAYS BEEN WITH  
15 YOU OR IN OTHER COURTS.

16 MR. BARENS: IS THIS THE CIVIL CASE WE ARE TALKING  
17 ABOUT OR THE CRIMINAL?

18 MS. BONE: I HAD ONE CRIMINAL AND ONE CIVIL, WHERE THE  
19 COURT REPORTER WAS ROSEMARIE.

20 THE COURT: WELL, ROSEMARIE HAS GOT AN INFALLIBLE  
21 MEMORY. DO YOU REMEMBER MS. BONE?

22 THE COURT REPORTER: YES.

23 MS. BONE: I KNOW WHY SHE DOES, TOO.

24 THE COURT REPORTER: YES.

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9-1  
1 MR. BARENS: HOW DID YOU FEEL ABOUT THE EXPERIENCE YOU  
2 HAD AS A JUROR IN A CRIMINAL CASE THAT TIME?

3 MS. BONE: IT WAS VERY ENLIGHTENING.

4 MR. BARENS: IT WAS?

5 MS. BONE: YES, IT WAS.

6 MR. BARENS: DID YOU THINK THE SYSTEM WORKED?

7 MS. BONE: VERY WELL.

8 MR. BARENS: COULD YOU GENERALLY TELL ME WHAT THAT  
9 CASE WAS ABOUT, THE CRIMINAL CASE?

10 MS. BONE: YES. A MAN, I BELIEVE HE WAS ACCUSED OF  
11 DRUNKENNESS, AND I AM NOT POSITIVE WHETHER THIS CASE WAS  
12 LABELED ASSAULT OR FALSE ARREST, BUT HE WAS ACCUSED OF BEING  
13 DRUNK AND DISORDERLY AND THAT WAS THE ESSENCE OF IT.

14 THE COURT: WAS THAT IN THE SUPERIOR COURT OR MUNICIPAL  
15 COURT?

16 MS. BONE: I HATE TO APPEAR -- I AM REALLY NOT CERTAIN  
17 WHETHER -- I AM NOT SURE OF THE DIFFERENCE.

18 THE COURT: WAS IT DOWNSTAIRS OR UPSTAIRS?

19 MS. BONE: ONE WAS IN THE BUNGALOW AND THAT ONE WAS  
20 IN HERE.

21 THE COURT: WAS THAT THE CRIMINAL CASE OR CIVIL CASE?

22 MS. BONE: THE CRIMINAL CASE WAS HERE ON THE SECOND  
23 FLOOR, I BELIEVE.

24 MR. BARENS: ON THIS FLOOR?

25 MS. BONE: AND ONE WAS IN THE BUNGALOW.

26 THE COURT: THAT WAS THE CIVIL CASE, THAT IS WHERE THEY  
27 HEAR CIVIL CASES.

28 MS. BONE: OH, I AM SORRY.

29-2  
1 MR. BARENS: YOU WERE UP HERE ON A FELONY CASE? DID  
2 THEY CALL IT A FELONY?

3 MS. BONE: I AM SORRY. I DON'T RECALL.

4 MR. BARENS: WERE THEY TALKING ABOUT PUTTING THE GUY  
5 IN STATE PRISON OR COUNTY JAIL?

6 MS. BONE: JAIL. IN FACT, THEY DID PUT HIM IN JAIL.

7 MR. BARENS: BUT -- WELL, ALL RIGHT. BE THAT AS IT  
8 MAY, DID THE DEFENDANT TESTIFY DURING THE TRIAL?

9 MS. BONE: I BELIEVE HE DID.

10 MR. BARENS: HOW DID YOU FEEL ABOUT THE DEFENDANT WHEN  
11 HE TESTIFIED, DID YOU THINK HE WAS BEING HONEST WITH YOU?

12 MS. BONE: I FELT THAT HE WAS, YES.

13 MR. BARENS: DID YOU ANTICIPATE, AS A HUMAN BEING, THAT  
14 BEFORE HE TESTIFIED, HE PROBABLY WOULD SAY A CERTAIN THING  
15 ABOUT WHAT HE WAS ACCUSED OF DOING?

16 MS. BONE: NO, I DIDN'T.

17 MR. BARENS: YOU DIDN'T?

18 MS. BONE: I WAS SURPRISED WITH WHAT HE SAID.

19 MR. BARENS: YOU WERE SURPRISED BY WHAT HE SAID?

20 MS. BONE: YES, I WAS.

21 MR. BARENS: IT WASN'T WHAT YOU MIGHT HAVE PREDICTED  
22 HE WAS GOING TO SAY?

23 MS. BONE: NOT AT ALL.

24 MR. BARENS: COULD YOU, NONETHELESS, ACCEPT WHAT HE  
25 WAS SAYING AS BEING TRUE?

26 MS. BONE: YES.

27 MR. BARENS: REASONABLE?

28 MS. BONE: VERY REASONABLE.

9-3  
1 MR. BARENS: A LOT OF TIMES HAVE YOU FOUND, HAS IT BEEN  
2 YOUR PERSONAL EXPERIENCE THAT WHAT TURNS OUT TO BE TRUE MIGHT  
3 BE SOMETHING ENTIRELY UNEXPECTED?

4 MS. BONE: AS A MATTER OF FACT, I JUST FINISHED A  
5 STATISTICS COURSE WHERE I DISPROVED MY OWN HYPOTHESIS. IT  
6 IS MIND-BOGGLING.

7 SO, YES.

8 AND I HAD SOMETHING I WAS CERTAIN ABOUT.

9 MR. BARENS: SOMETIMES IT IS NOT REAL GOOD TO BE REAL  
10 CERTAIN IN THIS WORLD, EVEN ABOUT STATISTICAL PROBABILITY.

11 MS. BONE: THAT'S RIGHT.

12 MR. BARENS: IT IS SOMETHING THAT PROBABLY BEHOOVES  
13 US, WOULD YOU SAY, TO KEEP AN OPEN MIND ABOUT HEARING THINGS  
14 BEFORE CLOSING ANY DOORS?

15 MS. BONE: DEFINITELY.

16 MR. BARENS: YOU SEEMED RATHER TAKEN ABACK WHEN YOU  
17 DISPROVED YOUR OWN HYPOTHESIS, AND I HAD IT HAPPEN TO ME A  
18 FEW TIMES, EVEN THOUGH I KNEW IT NEVER COULD.

19 MS. BONE: I UNDERSTAND THAT.

20 MR. BARENS: HAS THAT EVER HAPPENED TO YOU BEFORE?

21 MS. BONE: OH, YES.

22 IN DISCUSSING THINGS WITH FRIENDS, THIS WAS  
23 SOMETHING I WAS SO CERTAIN ABOUT THAT I WAS ASTOUNDED THAT  
24 IT WAS, YOU KNOW, PROVED TO BE INCORRECT.

25 MR. BARENS: WOULD YOU SUBMIT NOW THAT THERE IS A PRETTY  
26 GOOD VIRTUE IN BEING OPEN-MINDED TO THINGS THAT MIGHT SEEM  
27 IMPROBABLE IN THE FIRST INSTANCE, UNTIL YOU HAVE REALLY SEEN  
28 ALL OF THE EVIDENCE THERE IS?



29-4  
1 MS. BONE: DEFINITELY.

2 MR. BARENS: DO YOU THINK YOU COULD DO THAT IN THIS  
3 CASE?

4 MS. BONE: DEFINITELY.

5 MR. BARENS: DO YOU THINK THAT IF A HYPOTHESIS WAS  
6 ESTABLISHED AS CONVINCING AS THE GOVERNMENT MADE ON THEIR CASE  
7 IN CHIEF, THAT YOU COULD RESIST THE OVERTURE TO BE ENRAPTURED  
8 SO BY THE PRESENTATION AS TO HAVE YOUR MIND MADE UP BEFORE  
9 THE DEFENSE HAS PROCEEDED?

10 MS. BONE: I WOULD HAVE TO HAVE ALL OF THE FACTS, MOST  
11 DEFINITELY.

12 MR. BARENS: YOU UNDERSTAND THAT MIGHT BE A HARD THING  
13 FOR YOU TO DO.

14 I MEAN WE GO ON FOR WEEKS, IF NOT MONTHS, IN  
15 LISTENING TO ONE SIDE OF THE CASE AND WE ARE SITTING OVER  
16 THERE AND CAN'T DO MUCH WHILE THEY ARE STILL PUTTING ON THEIR  
17 WITNESSES; COULD YOU RESIST COMING TO A CONCLUSION DURING  
18 THAT PART OF THE PROCESS?

19 MS. BONE: OH, YES.

20 MR. BARENS: YOU WOULD WAIT UNTIL YOU HEAR IT, IF I  
21 ASSURE YOU THAT YOU WILL HAVE ANOTHER SIDE?

22 MS. BONE: DEFINITELY.

23 MR. BARENS: YOU PROBABLY FIGURED WE WOULD.

24 MR. BONE: DEFINITELY.

25 MR. BARENS: HOW DID YOU THINK THE LAWYERS DID IN THAT  
26 ASSAULT CASE YOU PARTICIPATED IN?

27 MS. BONE: AGAIN, TO BE VERY TRUTHFUL, I AM NOT SURE  
28 WHICH LAWYER WAS ON WHICH CASE. THERE WERE TWO FEMALE

29-5  
1 LAWYERS IN ONE OF THE CASES AND I AM NOT SURE WHETHER THEY  
2 WERE WITH THE ASSAULT CASE OR WITH THE CIVIL CASE.

3 I FELT VERYDISTURBED BY ONE OF THE FEMALE LAWYERS  
4 BECAUSE I FELT THAT HER CLIENT WOULDN'T HAVE HAD A CHANCE  
5 AND THE OTHER ONE, HER CLIENT WOULD HAVE STOOD A MUCH STRONGER  
6 CHANCE BECAUSE OF THE WAY THE LAWYERS HANDLED THE SITUATION.

7 MR. BARENS: I AM TRYING TO STAY CURRENT WITH YOU ON  
8 THIS.

9 THE LAWYER THAT YOU SAID DIDN'T PERFORM WELL,  
10 THE CLIENT DIDN'T HAVE A CHANCE, WAS THAT A PERSON  
11 REPRESENTING A DEFENDANT OR A PLAINTIFF OR THE GOVERNMENT?

12 MS. BONE: I -- I AM NOT CERTAIN. I AM SORRY.  
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29A-1

1 MR. BARENS: OKAY, IT IS ALL RIGHT.

2 AGAIN, IT IS KIND OF HARD TO REMEMBER THESE THINGS  
3 AND, AGAIN, THE CASES SOUND LIKE THEY BLENDED A BIT IN YOUR  
4 MIND.

5 MS. BONE: THEY DID. THEY WERE AT THE SAME TIME PERIOD  
6 AND I HAD A TWO-WEEK DUTY AND I HAD THOSE TWO CASES WITHIN  
7 THAT TWO-WEEK PERIOD.

8 MR. BARENS: WAS THERE ANYTHING THAT YOU COULD BE MORE  
9 SPECIFIC ABOUT IN THE PERFORMANCE OF THE LAWYER YOU HAD A  
10 NEGATIVE FEELING TOWARD THAT YOU COULD TELL ME?

11 MS. BONE: YES.

12 I DIDN'T FEEL NEGATIVE ABOUT HER.

13 I FELT SORRY FOR HER. SHE WAS A -- SHE SEEMED  
14 VERY DISORIENTED. SHE WAS AN EXTREMELY NERVOUS PERSON. SHE  
15 KIND OF REMINDED ME OF A NEW TEACHER WAITING FOR THE BELL  
16 TO RING ON THE FIRST DAY OF SCHOOL AND SHE WAS -- DID NOT  
17 SEEM TO HAVE HER FACTS AT HER FINGERTIPS. SHE WAS REALLY  
18 SEARCHING AND I KIND OF FELT FOR HER CLIENT.

19 MR. BARENS: A BIT OF LACK OF PREPARATION?

20 MS. BONE: I WOULD SAY YES. I WOULD SAY SHE WAS TRYING  
21 TO COME OFF THE TOP OF HER HEAD.

22 MR. BARENS: YOU NEEDN'T CONCERN YOURSELF HERE ABOUT  
23 THAT ON EITHER SIDE, I MIGHT SUBMIT.

24 SIX CHILDREN? MY KIDS' FAVORITE SHOW IS "THE  
25 BRADY BUNCH" AND HERE YOU HAVE THAT THROUGH UNION.

26 I WAS SHOCKED THAT THE APPARENT WINNER,  
27 MRS. GHAEMMAGHAMI, HAD HOBBIES BUT, I WILL, NONETHELESS, ASK  
28 YOU IF YOU HAVE ANY HOBBIES.

29A-2  
1 MS. BONE: I HAVE MANY. I DIRECTED THE SANTA MONICA --  
2 I DID -- I DIRECT THE SAN FERNANDO VALLEY CHAPTER OF SWEET  
3 ADELINES AND I SING WITH A BARBERSHOP QUARTET AND PINCH HIT  
4 IN THE SYMPHONY ORCHESTRAS WHEN THEY NEED A PLAYER.

5 MR. BARENS: WHAT DO YOU PLAY?

6 MS. BONE: FRENCH HORN AND TRUMPET.

7 AND I LIKE TO READ VERY MUCH AND CROCHET AND KNIT.

8 MR. BARENS: IT IS KIND OF INTERESTING THAT THERE ARE  
9 TWO IN A ROW, WE HAVE A BALLROOM DANCER AND A MEMBER OF A  
10 BARBERSHOP QUARTET, WHICH I THOUGHT YOU DON'T SEE ANY MORE.  
11 THAT IS KIND OF STATISTICALLY IMPROBABLE, WOULD YOU SAY,  
12 MRS. BONE?

13 MS. BONE: DEFINITELY.

14 MR. BARENS: INTERESTING, NONETHELESS.

15 IN THAT BARBERSHOP QUARTET, THE CRITICAL ELEMENT  
16 IN THAT IS THAT ALL OF YOU HARMONIZE AND WORK CLOSELY  
17 TOGETHER TO PRODUCE A RESULT?

18 MS. BONE: THAT IS TRUE.

19 YOU WOULD MAKE A MARVELOUS BASE.

20 MR. BARENS: THANK YOU VERY MUCH. THANK YOU.

21 MS. BONE: BUT THERE IS NO EATING CHERRY PIE EITHER.

22 THE COURT: IT IS THE FIRST TIME THAT YOU ARE LOST FOR  
23 WORDS.

24 MR. BARENS: INDEED.

25 MR. WAPNER: YOU SHOULD HAVE TRIED COMPLIMENTING  
26 HIM EARLIER.

27 MS. BONE: HE IS BLUSHING.

28 MR. BARENS: DO YOU UNDERSTAND THAT IN THIS SETTING

1       THERE IS NO OBLIGATION FOR YOU TO HARMONIZE WITH THE OTHER  
2       PEOPLE, THAT THIS IS AN INDIVIDUAL JUDGMENT WE COME TO?

3             MS. BONE:    RIGHT.    YES, I DO.

4             MR. BARENS:   IN FACT, YOU HAVE AN OBLIGATION TO MAKE  
5       YOUR OWN JUDGMENT AS YOU SEE THE WORLD AND THE FACTS IN THIS  
6       CASE, NOT NECESSARILY IN CONCERT WITH THE OTHERS?

7             MS. BONE:    DEFINITELY.

8             MR. BARENS:   HAVE YOU EVER HAD OCCASION TO WATCH A  
9       CRIMINAL TRIAL, ALTHOUGH YOU HAVE NOT PARTICIPATED IN IT?

10            MS. BONE:    NO, I HAVEN'T.

11            MR. BARENS:   HAVE YOU HAD MUCH CONTACT WITH LAW  
12       ENFORCEMENT PEOPLE AS A RESULT OF YOUR ACTIVITY ON CAMPUS?

13            MS. BONE:    NO.

14                        THAT IS GENERALLY LEFT UP TO COUNSELORS AND THE  
15       PRINCIPAL.    I CAN ONLY REFER.

16            MR. BARENS:   DO YOU TEACH A PARTICULAR CLASS AT  
17       SCHOOL?

18            MS. BONE:    I TEACH AS A CHORUS DIRECTOR.    I ALSO TEACH  
19       ENGLISH, CREATIVE WRITING AND HISTORY.

20            MR. BARENS:   YOU ARE AT WHAT GRADE LEVEL?

21            MS. BONE:    SIXTH, SEVENTH, EIGHTH AND NINTH.

22            MR. BARENS:   HAVE YOU ALWAYS BEEN PRETTY MUCH IN THAT  
23       GRADE LEVEL?

24            MS. BONE:    NO.    I STARTED IN KINDERGARTEN THROUGH SIXTH  
25       GRADE.

26                        AND I ALSO TEACH ADULT EDUCATION.

27            MR. BARENS:   WHAT WOULD YOU TEACH IN ADULT EDUCATION?

28            MS. BONE:    I TEACH MUSIC.

1 MR. BARENS: AND HOW IS YOUR HUSBAND EMPLOYED?

2 MS. BONE: HE IS AN ELECTRICAL CONTRACTOR.

3 MR. BARENS: AND YOUR PREVIOUS HUSBAND, MRS. BONE, HOW  
4 WAS HE EMPLOYED?

5 MS. BONE: HE WAS A PILOT, A PILOT IN THE AIR FORCE  
6 AND HE NOW WORKS IN ALASKA. HE WORKS FOR PHILLIPS  
7 PETROLEUM.

8 MR. BARENS: WITH SIX CHILDREN AND PROBABLY HUNDREDS,  
9 IF NOT THOUSANDS OF CHILDREN THAT YOU HAD DIRECT CONTACT WITH,  
10 HOW DID YOU FEEL ABOUT THE PIE EXAMPLE? WHAT DID YOU THINK  
11 ABOUT THE PIE?

12 MS. BONE: I HAD A FEW MORE QUESTIONS ALSO ON THE PIE.  
13 IN WORKING WITH CHILDREN ALL OF THE TIME, I HAVE MANY STUDENTS  
14 THAT APPEAR GUILTY ONLY BECAUSE THEY HAD BEEN IN TROUBLE  
15 BEFORE, AND SO I HAVE TO DO A LOT OF QUESTIONING ON THAT TYPE  
16 OF THING, SO I AM QUITE USED TO THAT SO I WASN'T SATISFIED  
17 WITH JUST SEEING IT ON HIM.

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1 MR. BARENS: WELL, YOU JUST SAID SOMETHING THAT REALLY  
2 IS CRITICALLY IMPORTANT. THAT WAS THE STATEMENT "APPEARED  
3 GUILTY." YOU HAVE GOT TO BE REALLY CAREFUL WHEN YOU ARE IN  
4 A ROOM LIKE THIS, ABOUT THINGS THAT APPEAR GUILTY.

5 MS. BONE: I UNDERSTAND.

6 MR. BARENS: THINGS ARE EITHER PROVEN GUILTY AS YOU  
7 KNOW, OR THEY ARE NOT PROVED. A THING IS NOT GUILTY IF IT  
8 JUST APPEARS GUILTY.

9 MS. BONE: THAT'S RIGHT.

10 MR. BARENS: IF IT JUST APPEARS SUSPICIOUS, IT IS NOT  
11 GUILTY. YOU CAN'T GO THROWING PEOPLE IN JAIL FOREVER AND DOING  
12 THINGS TO THEM BECAUSE THEY WERE GUILTY OF SUSPICIOUS CONDUCT.  
13 DO YOU UNDERSTAND THAT?

14 MS. BONE: I CERTAINLY DO.

15 MR. BARENS: YOU WANTED TO ASK QUESTIONS YOU SAID ABOUT  
16 THE EXAMPLE THAT WAS GIVEN. YOU THOUGHT THAT -- CERTAINLY,  
17 YOU ARE WITH YOUNG PEOPLE. YOU HAVE ASKED QUESTIONS OVER THE  
18 YEARS BECAUSE YOU SIMPLY NEEDED TO KNOW MORE INFORMATION.

19 DO YOU UNDERSTAND THAT IT IS TOTALLY PROPER AND  
20 LEGITIMATE THAT YOU ASK QUESTIONS, FOR GOODNESS SAKE, THAT YOU  
21 DON'T NEED TO JUST ACCEPT WHAT YOU ARE TOLD AND THAT IS IT?

22 MS. BONE: DEFINITELY.

23 MR. BARENS: AND THE FACT THAT YOU ARE HERE AS JURORS  
24 AND YOU HEAR JURORS ASKING QUESTIONS, EVEN QUESTIONS THAT  
25 MIGHT SEEM A BIT FAR AFIELD IN THE FIRST INSTANCE, THERE IS  
26 NOTHING WRONG WITH THAT EITHER, BECAUSE UNTIL YOU ELIMINATE  
27 POSSIBILITIES BEYOND A REASONABLE DOUBT, THEY ARE STILL  
28 GERMANE AND RELEVANT. DO YOU UNDERSTAND THAT?

30-2

1 MS. BONE: YES.

2 MR. BARENS: NOW, THEY SAY THAT ONE OF THE BEST THINGS  
3 OF COURSE FOR A LAWYER, THERE IS NO POSSIBILITY OF KNOWING ALL  
4 THE RIGHT ANSWERS. THE SKILL IS TO ASK THE RIGHT QUESTIONS.

5 HAVE I ASKED YOU ALL THE RIGHT QUESTIONS? IS THERE  
6 ANYTHING THAT I SHOULD KNOW ABOUT YOU AS A POTENTIAL JUROR ON  
7 THIS CASE THAT PERHAPS I HAVE NOT TOUCHED UPON THAT WOULD HELP  
8 ME EVALUATE YOU, MS. BONE?

9 MS. BONE: I DON'T THINK SO. I WORK A GREAT DEAL WITH  
10 ALMOST THE TYPE OF THING YOU ARE DOING, WORKING WITH STUDENTS.  
11 I FEEL THAT I AM VERY FAIR.

12 EVEN THE STUDENTS THAT I DON'T HAVE WILL COME TO  
13 ME AND THEY WILL SAY ASK MRS. BONE. THEY SAY TO ASK MRS. BONE  
14 AND SHE WILL TELL YOU FAIRLY WHAT HAPPENED. AND SHE WILL  
15 LISTEN TO BOTH SIDES OF THE CONFLICT. I FEEL VERY CONFIDENT  
16 ABOUT DOING THIS.

17 MR. BARENS: YOU HAVE HAD TO TRY TO TRAIN YOURSELF, HAVE  
18 YOU NOT, NOT TO BE OVERWHELMED JUST BY ONE SIDE WHEN YOU SEE  
19 JOHNNY OR SUSIE AND THEY SAY THEY DID SO AND SO?

20 MS. BONE: YES. YOU DO RUN INTO IT DAILY.

21 MR. BARENS: A LOT OF TIMES THE KIDS ARE GETTING INTO  
22 PROBLEMS AND A LOT OF TIMES IT IS UNFORTUNATELY THE LESS  
23 ATTRACTIVE CHILDREN THAT ARE SOMETIMES LESS ABLE AND THEY  
24 BECOME MORE VULNERABLE TO ACCUSATION. HAVE YOU SEEN THAT?

25 MS. BONE: SOMETIMES. I HAVE SEEN IT, YES. NOT AS  
26 OFTEN.

27 MR. BARENS: AND A LOT OF TIMES YOU REALLY HAVE TO  
28 ENCOURAGE YOURSELF TO KEEP AN OPEN MIND UNTIL YOU HAVE HEARD



30-3

1 EVERYTHING, BECAUSE THE TEST OF OUR JUSTICE SYSTEM IS NOT HOW  
2 IT TREATS ITS BEST BUT HOW IT TREATS ITS WORST, ISN'T IT?

3 MS. BONE: YES.

4 MR. BARENS: HAVE YOU EVER HAD TO KEEP AN OPEN MIND  
5 THROUGHOUT IN MAKING YOUR DECISION AND MAKING THOSE PIVOTAL  
6 DECISIONS BEFORE YOU COME TO A CONCLUSION?

7 MS. BONE: YES.

8 MR. BARENS: DO YOU THINK YOU CAN DO THAT?

9 MS. BONE: DEFINITELY.

10 MR. BARENS: ARE YOU COMFORTABLE NOW WITH THE  
11 PRESUMPTION OF INNOCENCE?

12 MS. BONE: VERY.

13 MR. BARENS: THANK YOU FOR YOUR TIME. I THANK YOU,  
14 YOUR HONOR. I PASS FOR CAUSE.

15 THE COURT: OKAY. SHALL WE TAKE OUR ADJOURNMENT AT THIS  
16 TIME?

17 MR. WAPNER: THANK YOU.

18 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE OUR  
19 ADJOURNMENT AT THIS TIME UNTIL TUESDAY MORNING. MONDAY IS  
20 A HOLIDAY.

21 I WILL ASK YOU ALL TO REPORT IF YOU WILL PLEASE,  
22 TO THE JURY ASSEMBLY ROOM AND WHEN WE ARE FINISHED WITH OUR  
23 MORNING CALENDAR HERE, WE WILL ASK YOU ALL TO COME IN.

24 HAVE A VERY PLEASANT, GOOD WEEKEND. GOOD NIGHT.

25 THE JURORS: WHAT TIME?

26 THE COURT: THAT WILL BE 10:30. THANK YOU.

27 (AT 4:28 P.M. AN ADJOURNMENT WAS TAKEN

28 UNTIL TUESDAY, JANUARY 20, 1987 AT 10:30 A.M.)