SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against-

Indictment No.
1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.
----------x

Mineola, New York
August 15, 2006

B E F O R E: HON. ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

HON. KATHLEEN RICE
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BY: ROBERT HAYDEN, ESQ.
MAUREEN MCCORMICK, ESQ.
Assistant District Attorneys
For the People

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Attorneys for the Defendant

MINUTES OF JURY TRIAL
VOL I of V

Christa Flash, R.P.R.
Official Court Reporter

PA 021451

THE CLERK: Indictment number 1910N-2005, People v. Martin Heidgen.

People's appearance, please?

MR. HAYDEN: Robert Hayden and Maureen McCormick for the People, your Honor.

THE CLERK: Defense?

MR. LAMAGNA: For the defendant, Stephen LaMagna, 666 Old Country Road, Garden City, New York.

Good afternoon, your Honor.

THE COURT: Good afternoon.

THE CLERK: The defendant is present, your Honor. This case is on for hearing.

THE COURT: It's on for trial.

Would you call it for trial, please?

THE CLERK: This case is on for trial.

People ready?

MR. HAYDEN: People ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE COURT: Let's talk about Antommarchi and Sandoval. Is there a Sandoval issue?

MR. HAYDEN: No, your Honor.

THE COURT: That's the end of that.

Antommarchi?

MR. LAMAGNA: Judge, I've had the opportunity to explain the law in that area with my client. We're going to be waiving that.

THE COURT: Do we have the written form, Jean?

I'm going to provide you with a written form. At the moment, Jean will be placing the defendant under oath.

M A R T I N H E I D G E N, after having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: Mr. Heidgen, are you aware that it is the law in the State of New York that during jury selection you have the right to be present here at the bench in the event there is a conference between prospective jurors and the lawyers? Are you aware of that?

THE DEFENDANT: I do, your Honor.

THE COURT: Are you aware your lawyer just told me you intend to waive or give up that right and, instead, the procedure would be if there is a conference at the bench with a prospective juror, your lawyer will attend that conference and report back to you the contents of it. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: Is that what you want to do following the conference that you had with your lawyer?

THE DEFENDANT: Yes, your Honor.

THE COURT: You understand this is revocable. By this I mean if you change your mind, you can revoke the waiver and still have the opportunity to come up to the bench. Do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: The waiver is accepted.

Mr. LaMagna, if you fill out that document, please, we'll have it marked as Court Exhibit I.

This case is on trial. It is adjourned until September 5th for jury selection.

Now, Mr. Hayden should put on the record the conference we had in chambers with respect to the evidentiary issue.

MR. HAYDEN: Yes, your Honor.

THE COURT: Please do that.

MR. HAYDEN: Yes, your Honor.

The People have no intention of introducing into evidence photographs of the

deceased in this case, Stanley Rabinowitz or Kathleen Flynn. There might be testimony about observations made of Katie Flynn and Stanley Rabinowitz at the scene of the collision, but we have no intention of introducing photographic evidence of their dead bodies.

THE COURT: Okay.

MR. LAMAGNA: Judge, I'm going to have an application with respect to that issue. From the discovery material, from what I've received thus far and pursuant to the testimony at the hearing, there was some testimony elicited, number one, with respect to an observation of the child's mother cradling the child's head at the side of the road. I would argue that that testimony must be precluded as being too prejudicial, and the weighing of the prejudicial value versus the probative value--certainly the probative value is outweighed by the prejudice that this jury would have towards my client.

With any evidence, whether it's testimonial, whether it's objects, whether it's photographs or demonstrative evidence, even if relevant, and I don't even concede that that particular testimony would be relevant to any

material issue in this case whatsoever, but even if it were to be relevant, the balancing test of whether the probative value outweighs the prejudicial effect of that testimony must be weighed by the Court. There will be an indelible thought, an image in the minds of the jury with respect to that testimony or that issue, that has no bearing whatsoever on any issue presented in this case.

I would argue, and the case law is clear, that the prejudicial value outweighs the probative value, and that the Court, in its discretion, will make rulings commensurate with that issue. There is nothing with respect to that image that goes to any facts in this case, and the prejudice that would endure to my client getting a fair trial and having this jury get through that image will be insurmountable.

THE COURT: That was one of the reasons I asked in chambers for a preview, if you will, of what photographs the People intended to produce with respect to the victims in this case, and Mr. Hayden informed us he does not intend to use such photographs, and let me go to Mr. Hayden and hear what he has to say.

MR. HAYDEN: I'd just like to start off,

your Honor, by reading People v. Pobliner, 32 NY2d 356, pages 369 through 370:

"It is well-settled that where they are otherwise properly admitted as having a tendency to prove or disprove some material fact in issue, photographs of a corpse are admissible even though they 'portray a gruesome spectacle and may tend to arouse passion and resentment against the defendant in the minds of the jury.'"

The Court acknowledges they're talking about photographs. We don't even intend to offer photographs in evidence. We're talking about a central fact of this case. You cannot get around this fact: Katie Flynn was decapitated. That's the way she was killed. That fact tends to establish that she was killed in that head-on motor vehicle collision. That fact tends to establish that the defendant behaved with a depraved state of mind. The observations of Jennifer Flynn clutching Katie's head in her arms, that's evidence of the fact that Katie was decapitated. That's the evidence we have. To distort that evidence would be to distort reality and to distort the truth. We're not here to do that, Judge.

THE COURT: Let me go a little farther

down that road and see if we can agree on different points, although related.

As I understand the case, and I don't know all the facts, but as I understand the case, the mother of the child is supposed to have taken with her to the hospital, the child's head.

MR. HAYDEN: That's correct, your Honor.

THE COURT: Would you agree with me that that would be something that the jury doesn't need to hear?

MR. HAYDEN: Absolutely.

THE COURT: All right. And in that case, as to your application--

MR. LAMAGNA: Judge, may I just respond?

THE COURT: Yes.

MR. LAMAGNA: Sorry. I agree with Mr. Hayden's case that he cited, People v. Pobliner, but the case stands for the proposition, as it is articulated in the case, if the sole and only purpose of the testimony or of the exhibit is to arouse, in an undeniably inflammatory way, the emotions of the jury without tending to prove or disprove any material fact. There is no dispute that these two individuals died in this car accident. There is no dispute that these two

individuals died as a result of a head-on collision. There is no dispute this is how they died. The manner in which an individual may have perished in a car accident does not bear upon the mental state of an individual who was involved in that car accident.

THE COURT: Let's approach it this way: I'm going to ask you and the district attorney to fashion a stipulation, if you can. Until that time, unless you cannot, decision is reserved.

MR. LAMAGNA: A stipulation as to?

THE COURT: As to what you agree or disagree as to Mr. Hayden's intention to use testimonial evidence that the mother cradled the child's head.

MS. MCCORMICK: Your Honor, if I might, I know Mr. Hayden is making the argument, but I'd like to add something to the Court's consideration and just inform counsel of what would be necessary as part of that stipulation.

The arrival of the first responding emergency workers on that scene and their observation of Mrs. Flynn cradling her daughter's head is so inextricably woven into the fats of this case and into the responses of those emergency workers in what they did and didn't do and weren't

able to do, and there would also be testimony from the four adults inside the limousine as to positioning, the movement of the bodies during the crash, the location of people after the crash. The attempt to remove these facts from this case would make it impossible for the witnesses to testify.

THE COURT: It's something I'm going to let the three of you wrestle with unless you require me to make a decision. Right now I'm reserving decision in the hope you will be able to agree on just what the jury should hear between the two sides. If you cannot, I will help you all out and make a decision. Between now and then the decision is reserved.

MS. MCCORMICK: Judge, earlier this morning when we were first here we also had a discussion with Howard that it would probably be in the interest of the trial for both defense counsel and the People to fashion a charge with the new Feingold language with respect to depraved indifference.

THE COURT: If you can agree, that would be great. If you cannot agree, each of you give me a proposed draft and I'll look it over.

Thank you. September 5th.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against- Indictment No. 1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.
----------x

Mineola, New York
September 5, 2006

B E F O R E: HON. ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

(Same as previously noted.)

* * * *

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

Appearances, please?

MR. HAYDEN: Robert T. Hayden and Maureen McCormick for the People, your Honor.

People ready.

MR. LAMAGNA: Steven LaMagna, 666 Old Country Road, Garden City, New York.

Defendant ready, your Honor.

THE CLERK: The defendant is present.

THE COURT: Just a couple of comments before we bring the jury in. As you know, this is just a prescreening of jurors. This is not voir dire. This is to find out who can devote this amount of time, or what we would expect this amount of time to be, and listen to the charges involving the kind of injuries that are involved in this case.

I note that we have some family members in the courtroom. I feel for all of you. However, I must instruct you that at no time, please, ever approach a juror in this case under any circumstances. Please don't do that. I suggest that you also refrain from contact from one family to another. I don't see what good can come of that. So until this trial is over, please keep to yourselves, if you can.

At this point please produce the jury.

MR. LAMAGNA: Judge, before we do that-- I'm sorry-- I was just informed by my client that he did not get access to his clothing that his mom brought to the jail for the purposes of trial, and, secondly, he requested to shave last night and this morning, and that was denied. Obviously, we know

that's important, and he should be having access to his clothes.

THE COURT: I will see what I can do, but at the moment we're going to--

MR. LAMAGNA: I understand for today.

THE COURT: I'll see what I can do to help.

MR. LAMAGNA: Thank you.

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-2005, People v. Martin Robert Heidgen.

People ready?

MR. HAYDEN: People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE COURT: Good morning, ladies and gentlemen. I am going to tell you a little bit about this case. I'm going to give you the option to serve in this trial or not.

This case involves the charge of murder in the second degree. In this case you will hear of some terrible injuries. However, there will be no photographs. You will hear about the

alcohol-related drunk-driving deaths of a man by blunt force trauma and a young child by decapitation. The case may last as long as five weeks. It's possible, although I have not yet decided, that during deliberations the jury may be sequestered in a hotel.

Due to the nature of the case and the time commitment I've just discussed with you, we are allowing the decision as to whether you choose to be screened up to you. If you choose not to be screened, which is your right now, you will go back to central jury. You will be screened for other juries. None of them will involve a murder. Some of them might last longer. If you choose to be screened for this case, the Court staff will give you further instructions.

This case has gotten and will continue to receive media attention. Please do not discuss the case if you are approached by the media.

The Court staff will now give you further instructions.

(Whereupon, a brief recess was taken.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment

number 1910N-05, People v. Martin Heidgen.

The People are present, the defendant is present and defense counsel is present, your Honor.

THE COURT: Thank you.

Good morning, ladies and gentlemen. My name is Alan Honorof. I am a judge in the Supreme Court part in relation to a criminal case which is starting now.

This jury selection is going to be a little bit off the beaten track in that I'm going to give you your choice as to whether or not to be screened for jury duty on this case. In order to do that, I have to tell you a little bit about this case.

This case involves murder in the second degree. In this trial the jury will hear about gruesome and terrible injuries, but there will be no photographs. You will hear-- the jury will hear about the alcohol-related drunk-driving deaths of a man by blunt force trauma and to a young child by decapitation.

The case may last as long as five weeks. It is possible, although I haven't yet decided, that during the jury's deliberations they may be sequestered at a hotel. I'm not sure about that

yet.

Due to the nature of the case and the time commitment involved, we're allowing the decision as to whether you choose to be screened to serve on this jury up to you. If you choose not to be screened, you will go back to central jury and be screened for other juries. They will not involve murder. They might last longer. If you choose to be screened, my staff will give you further instructions.

This case has gotten and will continue to receive attention from the media. If you are approached by the media, please do not discuss any aspect of this case with them.

My court staff will now take over.

(Whereupon, a luncheon recess was taken.)

* * * A F T E R N O O N S E S S I O N * * *

THE CLERK: Case on trial, indictment number 1910-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Would you produce the jury, please?

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Good afternoon, ladies and gentlemen. This is jury selection in a case that is a little bit unusual in that I'm going to give you an option to opt out of the trial. You will not be excused from jury duty. If you opt out of the trial, you'll be assigned to a different case.

This case involves a charge of murder in the second degree. In this case those people who are selected as jurors will hear of some gruesome

and terrible injures. There will be no photographs of those injuries. This case is about an alcohol-related drunk-driving death of a man by blunt force trauma and a young child by decapitation.

The case may last five weeks. It's possible, and I have not yet made this decision, but it is possible that the jury who hears this case will be sequestered during their deliberations at a hotel.

Due to the nature of the case and the time commitment, I'm allowing the decision as to whether you choose to be screened to serve up to you. If you choose not to serve, you will be taken back to central jury and screened there for another case. It will not be a murder case. It could last longer than this. If you choose to be screened, my court staff will give you further instructions.

This case has gotten media attention. It will continue to get media attention. If you are approached by the media and are asked about this case, please do not discuss it with them.

I am now going to turn the proceedings over to my court staff.

(Whereupon, the Court stood in recess for

the day.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against- Indictment No. 1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.
----------x

Mineola, New York
September 6, 2006

B E F O R E: HON. ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

(Same as previously noted.)

* * * *

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you. Good morning, ladies and gentlemen. My name is Alan Honorof. I am the judge here in the Supreme Court part in relation to the criminal trial which is about to commence.

This jury selection is going to be different, at least this part, than in most jury selections.

Can everybody hear me?

This case involves the charge of murder in the second degree. In this case those people selected as the jury will hear of gruesome and terrible injuries. There will be no photographs of those injuries. This case involves the alleged alcohol-related drunk-driving deaths of a man by blunt force trauma and a young girl by decapitation.

The case may last as long as five weeks. It's possible, and there has not been a decision made on this yet, but I am telling you now that it is possible that during deliberations I may sequester the jury at a hotel.

Due to the nature of the case and the time commitment involved, I am allowing the decision as

to whether or not you choose to be screened for this case up to you. If you choose not to be screened, you'll simply go back to the Supreme Court where you will be screened for another case. The case could last longer, but it will not be a murder case. If you choose to be screened, the Court staff will give you further instructions.

This case has gotten media attention. It will continue to receive media attention. If you are approached by the media, please do not discuss the case with them.

At this point I'm turning the proceedings over to my staff.

(Whereupon, a recess was taken.)

(Whereupon, the jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: People ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE CLERK: Defendant is present, your Honor.

THE COURT: Thank you.

Good morning, ladies and gentlemen. My name is Alan Honorof. This jury selection is going to be commenced in a little bit of an unorthodox manner in a sense that I am giving everyone an option to leave the courtroom, to leave this jury panel.

This case involves a charge of murder in the second degree. In this case the jury will hear of gruesome and terrible injuries. They will not see any photographs. The case involves the alleged alcohol-related drunk-driving deaths of a man by blunt force trauma and a young child by decapitation.

The case may last as long as five weeks. The jury might be sequestered during their deliberations. I haven't made that decision yet. Due to the nature of the case and the time commitment involved, I am allowing the decision as to whether you choose to be screened to serve on this jury panel up to you. If you choose not to serve on this panel, you will be taken back to central jury, and you will be screened for another case. It will not be a murder case. It could last longer. If you choose to be screened, the Court

staff will give you further instructions.

This case has received media attention. It will continue to receive media attention. If you are approached by members of the media, please do not discuss the case with them.

I am turning the proceedings over to my staff.

(Whereupon, a recess was taken.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: The People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Good morning, ladies and gentlemen. This is supposed to be jury selection. My name is Alan Honorof. We're going to start a criminal case; however, this will be slightly different. I am

going to give everyone in the room the opportunity to leave this jury panel.

This case involves the charge of murder in the second degree. The jury in this case will hear of gruesome and terrible injuries. They will not see any photographs. The jury will hear of the alleged alcohol-related drunk-driving deaths of a man by blunt force trauma and by a young child by decapitation.

The case may last as long as five weeks. It's possible, and I have not yet decided this, during the deliberations the jury may be sequestered in a hotel room. Due to the nature of the case and the time commitment involved, I am leaving the decision as to whether you choose to be screened to be on this jury up to you. If you choose not to serve on this panel, you will be taken back to central jury, and you will be screened for another case. It will not be a murder case. It could last longer. If you choose to stay and be screened, my staff will give you further instructions.

This case has received media attention. It will continue to receive media attention. If the media approaches you about this case, please do not discuss the case with them.

My staff will take over at this point.

(Whereupon, a recess was taken.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: The People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Good afternoon, ladies and gentlemen. My name is Alan Honorof.

This is jury selection in the case you've just heard called. This jury selection is going to be a little different than what would normally take place.

This case involves the charge of murder in the second degree. In this case the jury will hear of gruesome and terrible injuries. They will not see any photographs. The jury in this case will hear of the alleged alcohol-related drunk-driving

deaths of a man by blunt force trauma and by a young child by decapitation.

The case may last five weeks. The jury may be sequestered in a hotel during their deliberations. Due to the nature of the case and the time commitment involved, I am allowing the decision as to whether or not you choose to be screened in this case up to you. If you choose not to serve on this case, you will be taken back to central jury and you will be screened for another case. It will not be a murder case. It might last fewer or longer days or weeks than this case.

This case has received media attention. It will receive more media attention. If you are approached by members of the media, please do not discuss this case with them.

I am now going to turn these proceedings over to my staff.

(Whereupon, a recess was taken.)

(Whereupon, proceedings continued in the Judge's chambers.)

THE COURT: Mr. Hayden, Ms. McCormick, explain to me what this is all about.

MR. HAYDEN: Certainly, your Honor.

We obtained copies of letters that the

defendant sent to a friend, and in the course of those letters he mentioned a particular letter that was sent to Mr. Zigman in which he talked about using certain movies to prepare a defense in this case. We prepared a subpoena for Mr. Zigman asking for production of that letter. In the course of the previous letters he referred to another potential witness in that letter in the possession of Mr. Zigman.

We prepared a subpoena for Mr. Zigman. That subpoena was prepared this morning. It was served on Mr. Zigman, and I've just been informed Mr. Zigman tells us that he doesn't have that letter any longer.

THE COURT: Would you please put your name and address on the record.

MR. ZIGMAN: Joshua Zigman, Z-I-G-M-A-N, 225 Rector Place, New York, New York.

THE COURT: Would you stand up, Mr. Zigman?

Do you swear the evidence you are about to give will be the truth so help you God?

MR. ZIGMAN: I do.

THE COURT: Sit down.

Do you know the letter the district

attorney is referring to?

MR. ZIGMAN: I do.

THE COURT: Do you have it?

MR. ZIGMAN: I don't.

THE COURT: Do you know where it is?

MR. ZIGMAN: It's gone. I threw it out a long time ago when I moved into my new apartment.

THE COURT: All right. I'm ordering you to look for it.

MR. ZIGMAN: Okay.

THE COURT: If you locate it or know where it is, it is to be produced or its whereabouts made known to the Court. If it turns out that you are not being forthcoming and candid about what we are now talking about, that will constitute grounds for application by the District Attorney's Office to hold you in contempt of Court. I assure you, sir, I will grant that application, which will result in you being most likely incarcerated.

MR. ZIGMAN: I understand.

THE COURT: Okay. Thank you.

MS. MCCORMICK: Pardon me, your Honor. The witness lives with another person, who was also subpoenaed and has also made a claim that the letter requested does not exist.

THE COURT: Where is that person?

MS. MCCORMICK: That person is not here, which is what I was verifying. We will bring him before the Court. I should note for the record, Judge, that the reference in this letter, and why the People believed that Mr. Zigman would have the letter, is that there was a specific reference made that the defendant did not have a copy machine and that he was requesting people, other associates, other friends, to see Mr. Zigman to see this letter. So we had every reason to believe that the letter was still in existence and, frankly, still is in existence.

THE COURT: Well, Mr. Zigman is going to give it his best shot finding it, I assure you.

MR. ZIGMAN: I certainly will.

That's it?

THE COURT: That's it.

MR. ZIGMAN: Thank you.

(Whereupon, proceedings continued in open court.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-2005, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defense ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Good afternoon, ladies and gentlemen. My name is Alan Honorof. Ordinarily, we would be proceeding to give you certain instructions then have you come up here in the box, but this case is a little bit off the beaten track for that. So if you just pay attention to me, I'm going to give you some information.

Can everybody hear me?

This case involves the charge of murder in the second degree. The jury who hears this case will hear about gruesome and terrible injuries. The jury who hears this case will hear of the alleged alcohol-related drunk-driving deaths of a man by blunt force trauma and of a young child by decapitation.

The case might last five weeks. I have not yet decided, but the jury might be sequestered

in a hotel during their deliberations. Due to the nature of the case and the time commitment involved, I'm allowing the decision as to whether you choose to be screened to serve in this case up to you. If you choose not to serve on this panel, you'll be taken back to the Central Jury. You will be screened for another case. The case will not be a murder case. The case might be shorter, it might be longer. If you choose to be screened for this case, my clerk will give you additional instructions.

This case has received attention from the media. It will receive additional attention from the media. If you are approached by the media about this case, please do not speak with them.

My staff will now take over.

(Whereupon, a recess was taken.)

THE COURT: Are there any applications?

MR. LAMAGNA: Yes, Judge.

I received today some subpoenaed materials in the nature of certain letters that allegedly were made by Mr. Heidgen to, I believe, Amanda Goldman. I do not know what the district attorney's intention is with respect to those, however, but I would object to their use on their direct case, certainly in that I had again asked for those materials in my

discovery demands dated September 20, 2005, and Amanda Goldman is certainly not a witness, though she is relevant to this case. This was the actual person whose home this party was at.

THE COURT: What exactly did you request, theoretically, from Amanda Goldman?

MR. LAMAGNA: I didn't request anything from Amanda Goldman.

THE COURT: I'm saying in terms of your request, what did you contemplate an Amanda Goldman person to be producing?

MR. LAMAGNA: I requested from the District Attorney's Office in my discovery demands any statements made by my client, number one, to any law enforcement. Number two--

THE COURT: We agree she's not law enforcement.

MR. LAMAGNA: We do.

THE COURT: And?

MR. LAMAGNA: And, number two, to any civilian witnesses, any statements that my client may have made to any civilians, if they intend to use those statements, and if they do intend to use those statements, what were they, who were they made to, and, furthermore, whether they were inculpatory

or exculpatory.

THE COURT: Please hold on. You agree those demands were made by Mr. LaMagna as he says, either one of you?

MR. HAYDEN: I haven't reviewed his demand recently, your Honor. I'm not certain that's what he demanded. I'm certain we didn't become aware of these letters until just recently, I'm talking about within days.

THE COURT: I was going to get to that, but I'm trying to get to Mr. LaMagna'S point that the demand was made. It's reasonable to agree, is it not, Mr. Hayden, Miss McCormick, it's reasonable he would have made such demand because it's a common demand to make?

MR. HAYDEN: Yes. We're not at all conceding he's entitled to everything in that request.

THE COURT: You are conceding it's more than likely he made that demand, and it's reasonable to assume he did?

MR. HAYDEN: If Mr. LaMagna represents that to the Court, we would accept his representation.

MR. LAMAGNA: I have the demand in my

hand.

THE COURT: I'm sure you do.

MR. LAMAGNA: Now, there has been, over the course of time in leading up to today, various pieces of evidence that have come in, in my view, inexcusably late to the defense by the prosecution, whether they were statements precluded pursuant to 710.30, which Judge Donnino had actually dealt with, whether they're search warrants, whether they're tapes, all of these things that should have been done for the last year pursuant to their investigation of this case.

The purpose of discovery and the time limits for such discovery is to give the defendant knowledge of what the evidence is against him so that he can adequately and in a timely manner prepare a defense for the case. We are now on trial, we started jury selection, and now I have letters written, or allegedly written, by my client to this Amanda Goldman, who they have known all these kids were interviewed, I believe, months ago and they knew this.

Now, my position is simply I don't know when they plan on using them, but certainly on their direct case, anything that's in their possession, it

is just too late. We have prepared our defense based upon what we were given by the prosecution as evidence that they will use in their direct case against my client. This case has been going on for a year.

THE COURT: Give me a moment, please.

(Whereupon, a brief recess was taken.)

THE COURT: The same way, Mr. LaMagna, you don't dispute or Mr. Hayden does not dispute the fact that you made such a demand, do you dispute the prosecutor's representations that these items have only been recently, a day or so, received?

MR. LAMAGNA: Yes, Judge. I was actually getting to that point.

The fact that the prosecution has now just asked for those materials or if they just thought of subpoenaing those materials is of no moment to the prejudice that my client is going to enure. We've prepared our defense based upon the discovery we received.

THE COURT: Are you asking for an offer of proof?

MR. LAMAGNA: No. What I'm saying is--

THE COURT: Wouldn't you like one, though? Good idea, since you don't know what they want to

use it for?

MR. LAMAGNA: That is true.

THE COURT: I don't either. Why don't we find that out, then we'll know whether or not your objection is necessary to address.

MR. LAMAGNA: Okay. I agree, Judge.

THE COURT: Offer of proof?

MR. HAYDEN: I'd just like to put some facts on the record so they're there.

First of all, the Goldmans, Justin, Amanda, their parents, refused to speak with investigators or us for months and months. It was only after I spoke with their attorney, Marvin Hirsch, that he made arrangements for us to speak with Amanda Goldman. It was only when we spoke with Amanda Goldman just a week or so ago that we learned of the existence of these letters. We immediately then went and prepared subpoenas for the Court's signature to order production, not to us, but to the Court.

We have no intention of using the contents of the letters on our direct case, but we have every intention of using the contents of the letters, where appropriate, during cross-examination of the defendant.

THE COURT: Well, to me, Mr. LaMagna, that sounds like a reasonable position for the People to take.

MR. LAMAGNA: Judge, I'm glad we have clarity, at least, on that issue. However, Amanda Goldman is such a central figure in the case in that that is the home where this party was.

THE COURT: If she refused to speak with him until Marvin said it was okay--

MR. LAMAGNA: My point is they spoke to their attorney two weeks ago to do all this. They could have done this eleven months ago.

THE COURT: Let me ask you this: Certainly the fact that he wrote to Amanda was known to your client. Certainly Amanda was equally within your capability to interview as well as the prosecutor. The witness is not necessarily, in fact, not at all, under the People's dominion or control. The witness is equally available to both of you, and you, Mr. LaMagna, in fact, is in the superior position because the knowledge was unique to your client that he had written letters to her and certainly he knew what he wrote.

MR. LAMAGNA: However, it is the prosecution that has the burden of proof.

THE COURT: There's no question about that. I'm talking about the equal availability of witnesses.

MR. LAMAGNA: But I'm not planning on using them. What I'm saying--

THE COURT: I didn't think so.

MR. LAMAGNA: What I'm saying is that's why there are statutes dealing with discovery and timeliness, so that we, as the defendant who is defending the charges, can have an idea of what they are going to be using, whether it be on their direct case--

THE COURT: Let me do this: Every time I read these statutes, at the very bottom in little fine print it always says at the discretion of the Court. It always says that. When it says that, it usually gives you an opportunity to avoid the terrible surprise that has just occurred to have an adjournment of these proceedings. Do you want the case adjourned for a day?

MR. LAMAGNA: I don't want the case adjourned.

THE COURT: There you go. Now, the People's position being reasonable, what is your request?

MR. LAMAGNA: My request is for the Court, based upon this late stage of these proceedings, to exercise its discretion, given--

THE COURT: I view it the other way.

MR. LAMAGNA: --to exercise its discretion in this particular case, given where we are, to preclude any use of this. I understand on their direct case it's a moot issue. They're not planning on using it.

THE COURT: That's a good thing to know, right?

MR. LAMAGNA: Yes. But even on their-- even on cross-examination, now we have to rethink at this late stage of these proceedings, where we're on trial, trial strategy with respect to my client.

THE COURT: The one thing I learned in trying cases and in listening to cases now as a judge over the last 32 years, these things are real fluid. They change minute by minute, and as a trial lawyer, the good ones react to these changes instantly, and I know I'm dealing with good ones. So that's why I'm denying your application.

MR. LAMAGNA: You know, Judge, that's the opinion of the Court and that's your judgment.

THE COURT: Hold on one minute.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Incidentally, just so the record is clear, I've read all of these letters. Some of them were as recent as April.

MR. LAMAGNA: I have not read through all of them, I must say.

THE COURT: My opinion earlier was to provide them to both of you so you'll have them.

MR. LAMAGNA: Judge, I received them this morning. I have not gotten through them all. However, what I would ask the Court, then, if you're going to allow some of the contents of those letters to be used for cross-examination purposes of my client--

THE COURT: I presume for impeachment purposes, otherwise, it's a nonissue. Otherwise it's just paper.

MR. LAMAGNA: I would ask, then, for the prosecution to articulate with specificity what parts of those letters--

THE COURT: He might deny his name is Marty. You've got to wait and see.

MR. LAMAGNA: We can agree, then, however, at least any articulations about anything that he

was planning or going to do in the future when he gets out or anything is not germane to this?

THE COURT: I promise that when an objection is made, I will sustain those that are irrelevant, or I will sustain according to my thinking at that time, and being that there's no objection before me at present, it's difficult to rule on it.

MR. LAMAGNA: All right. The ruling would be--

THE COURT: Wait and see.

MR. LAMAGNA: In spite of the application.

THE COURT: In spite of-- the ruling on your application is denied. The preruling on objections is also denied.

MR. LAMAGNA: Judge, also, if we can, just so the record is complete, I know we've had various discussions amongst the lawyers and the Court on the issue of the testimony of the decapitation of the child.

THE COURT: I'm going to allow, within limits, a description of the scene that the first responders came upon and, to an extent, the testimony of the mother regarding the first moments following the incident until such time as first

responders came to her assistance.

MR. LAMAGNA: Judge, just with respect to me understanding that, I've received a witness list this morning. There potentially could be over ten witnesses on that list who could maybe articulate those issues.

THE COURT: I asked you earlier off the record if all of you could agree to stipulate as to the chain of custody and eliminate eight of these witnesses. Can you do that?

MR. LAMAGNA: I've spoken to my client and his family, and there will be no stipulation on that.

THE COURT: No stipulation. Okay.

MR. LAMAGNA: On the chain of custody and police witnesses.

However, I did mention to Miss McCormick earlier with respect to-- there's a list of doctors or physicians or care providers that provided subsequent care to the victims in this case. I said I would stipulate to the serious physical injury they're going to testify to.

THE COURT: Let me ask you this, because-- I'm asking the People this. Out of the ten doctors listed on the witness list, are any of those doctors

the doctors who performed the autopsies of the child and the older gentleman?

MS. MCCORMICK: Yes, Judge.

THE COURT: Can you stipulate those results are not necessary? Is that something you want necessarily to have in front of this jury or can we stipulate to what those doctors would say?

MR. LAMAGNA: Judge, can I just--

THE COURT: Or are the People not willing--

MR. HAYDEN: The People will call the medical examiner. The testimony will be relatively brief.

THE COURT: I guess that's that.

All right. I will urge you to stipulate to those things that are inescapable. There's no reason to prolong this trial.

MR. LAMAGNA: That's why, with respect to the doctors who treated the victims for the last year or so, I would ask for that stipulation.

THE COURT: You know what? Maybe you've got some horses to trade.

(Whereupon, a brief recess was taken.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen. People

are present. The defendant is present. Defense counsel is present, your Honor.

THE COURT: Thank you.

Applications?

MS. MCCORMICK: Yes, your Honor.

After the last on-the-record exchange, I raised with your law secretary, Howard Sturim, in a hope not to slow down the trial when it occurs-- the Court has been very clear you don't want to deal with objections until they occur, but the nature of this testimony that I'm proposing I thought might be something that the Court might want to consider ahead of time.

THE COURT: The expert witness on the question of tolerance.

MS. MCCORMICK: The People were intending to call Dr. Closson, a toxicologist, to testify as to the effects of alcohol and tolerance.

THE COURT: First off, let's see if there's an objection.

MR. LAMAGNA: That's the issue. With respect to the issue of tolerance, I do have an objection.

THE COURT: All right. The objection is overruled. The question of tolerance is one that I

think the jury is entitled to know about and should know about, so I'm going to allow it.

MR. LAMAGNA: Judge, just for the record, I want to make my objection. From what I understand, from talking with the prosecution, the issue of tolerance is going to relate and infer to this jury in this case that my client drinks a lot.

THE COURT: I was afraid of the same thing when I first heard the application, not just this second, when I dealt with it earlier this afternoon. I think that on the question of intoxication and the effects of alcohol on people that it is relevant testimony without necessarily referring your client is either a regular drinker or an alcoholic. Certainly were the testimony starting to head down that road and cast that dispersion, I would not permit that kind of testimony.

But in terms of education value for the jury, so they understand the effects of alcohol with someone who drinks on a regular basis as compared to someone who drinks infrequently or never, I think it's relevant testimony, and I think it's of value to this jury to decide on those issues.

MR. LAMAGNA: I suspect that, I could be wrong, but I suspect that after that testimony we

are going to hear on summation that based upon his level, my client was a heavy drinker.

THE COURT: So we will agree--

MR. LAMAGNA: That is what I'm afraid of. I believe that is going to happen in this case, and that is prejudicial.

THE COURT: First of all, in the absence of other testimony tending to link your client to the use of alcohol, I would never allow it, and I don't imagine that I know what the testimony is going to be, but it's not unreasonable to believe that since there was some kind of a party at which the defendant was present-- I've heard through both of your applications on these various points that alcohol was being served at that party-- that the defendant may have been drinking some of that alcohol.

Certainly other people at that party were drinking alcohol. Certainly some of these people saw and heard and observed and participated in what was going on. If that kind of testimony comes in, then I will allow the district attorney appropriate comment on it, but if there is no such testimony, then the district attorney would not be able to comment.

MR. LAMAGNA: For clarity, that I agree with. I believe that if that happens, comment can be made with respect to the evidence that was presented by the People who were able to observe and saw and all of those things.

However, what my problem with the tolerance issue is is if a toxicologist testifies and indicates to the jury what the effects of alcohol does to an individual and how it affects their perception and coordination and dexterity and all those things, that's one thing. But to articulate that in a situation like in this case, a person who drinks a lot can have this reading and do all these things, they are inferring, and I guarantee you they're going to argue that on summation and we're done, the issue of tolerance is going to infer to this jury a propensity of prior conduct by my client that he drinks a lot, and in this case that is too prejudicial versus whatever probative value there may be, and, again, I ask for what their expert is going to say.

THE COURT: If I was going to guess about this stuff and imagine myself in the shoes of the prosecution, I don't know that I would want to put on or suggest to the jury that there was such heavy

drinking going on that the defense of intoxication could be more easily relied upon. So you're both walking a pretty fine line.

MR. LAMAGNA: I think their argument is just the opposite. Their argument is going to be that he is a heavy drinker, has been a heavy drinker, is a consistently heavy drinker, that's why they're putting that expert on for tolerance. That's what this jury is going to hear. That's what's wrong. That's what I object to. If he wants to testify how alcohol, especially a high level, can affect a person mentally or physically, that I agree with.

THE COURT: We can agree on, all the lawyers and I, that alcohol affects people in different ways, and it affects people particularly in different ways if they are light, casual, social teetotalers or heavy drinkers. That same amount of alcohol would affect each one of those people in a different way.

MR. LAMAGNA: Then what would the effect of that evidence be? To suggest my client is a heavy drinker. That's exactly why I'm objecting to that line of testimony. If he wants to testify as to what alcohol does to the system, I have no

problem with that, but if it's exactly as you articulated, which is what I believe is going to happen, that is exactly my feeling, and that is why we will not get a fair trial if that kind of testimony comes out, because, again, they're going to infer that propensity in this case, and that is what the problem is.

MS. MCCORMICK: Your Honor, excuse me. If I might, there is no criminality involved in drinking alcohol when you are a person of age, as this defendant was at the time. There is no prior bad act, there is no propensity to drive drunk, which is part of this underlying charge, in suggesting or presenting evidence that this defendant does drink on a regular basis.

There are two separate issues, the ability of the toxicologist to give the educational information that the Court has described, but the Court plainly articulated exactly the point. Each person can and does react to and is affected by alcohol differently. Evidence of this defendant's drinking history, not to show his propensity to drink and drive, but this defendant's social drinking-- there is not going to be an allegation he's a heavy drinker, but, rather, that he drinks on

a regular basis with friends-- is appropriate for the toxicologist to say that a person who would drink on a weekly basis would be more likely to hold--

THE COURT: Now--

MR. LAMAGNA: She just said it.

THE COURT: Now you've raised a Molineux issue which has not been brought forward nor addressed by this Court, and I am disinclined, as I sit here now, to permit testimony of his drinking on previous occasions as he is not charged with that. It is not a prior bad act, and I'm not going to have the jury conclude that he's an alcoholic or a drunk or someone who is prone to become intoxicated.

I will permit testimony as to what happened that night, and I will permit testimony as to what effect alcohol has on a person who drinks not at all or to the other end of the spectrum, in such a heavy manner so a .28 could leave him with a normal functioning capability and simply violated the statute saying he can't have more than .08.

MS. MCCORMICK: Your Honor, I would take issue with the concept being Molineux.

THE COURT: Do you want to put in evidence on prior occasions he has been known to drink?

MS. MCCORMICK: I would like to do that, Judge, but not-- it is not a prior bad act. That was the reason I framed it in this context.

THE COURT: Maybe he likes to brush his teeth, too.

MS. MCCORMICK: The difference being this is relevant to his ability to be affected by alcohol that evening.

THE COURT: I'm not going to allow it. That would be unfair. What he did that night, you're home free. I've already given you the capability of putting the expert on. You are sort of in the position of needing to quit while you're ahead. Now you raised an issue I didn't know about, and, thank you, because now I'm not going to allow you to do that. It's not fair.

MS. MCCORMICK: I wanted to make sure the Court was aware of the dual issue of the toxicologist testifying, on the one hand, but I think that, with the Court's framing of the issue, in terms of the effects on individuals being different, that is clearly relevant evidence to this jury about what the effects would be on this defendant and his history.

THE COURT: I'll tell you what I'm going

to do, which I've been trying to do from the start and so far both sides have been resisting to it. You can together fashion a precharge as to what the scope of this testimony will be insofar as I'll explain to the jury why this witness is being heard by them before he is heard, or a curative charge, for want of a better word, following his testimony as to what was intended by his production and testimony, but I have to have you guys working together. The same as with the stipulation on the chain of custody, the number of doctors, you guys have got to work together, and I don't know what else I can say.

MS. MCCORMICK: Judge, I understand that. I certainly agree that a charge to the jury is appropriate under all of these circumstances, but a charge to the jury does not, in and of itself, mean the underlying testimony is inappropriate or the background of this defendant is inappropriate. We're not suggesting that he engaged in prior criminal behavior.

THE COURT: No. No. What you're suggesting is he's an alcoholic, or well on the way, or in some fashion or other a guy who does not mind going to a party and kicking back a few, and that is

not relevant to what he is charged with, which is murder on that night.

Mr. Hayden?

MR. HAYDEN: I have to speak, Judge.

This defendant's knowledge of the effects of alcohol on him goes directly to whether or not he was depraved when he went out and drove that night anyway in spite of having consumed alcohol. I would ask the Court to please consider that when making rulings in this area.

MR. LAMAGNA: Judge--

THE COURT: I absolutely believe that, but at the same time, Mr. Hayden, your table is going to have to prove these charges of what happened that night.

MR. HAYDEN: But, your Honor, we have to get into his head. As your Honor is aware, now depraved mind is a state of mind.

THE COURT: Are you claiming that this depraved state of mind was the process of some type of disease of alcoholism, which is progressive, therefore he was sick?

MR. HAYDEN: Absolutely not. There is no mention, no allegation, of alcoholism here. There is--

THE COURT: Then why try to prove it?

MR. HAYDEN: We're not. What we're trying to--

THE COURT: The conclusion is inescapable.

MR. HAYDEN: We're talking about social drinking and the knowledge of the effects of alcohol on his senses, because if he's aware that alcohol affects his senses, he should know enough not to go out. It takes depravity to go out and drive anyway even knowing, as he would from prior experience, that alcohol has profound effects upon his senses.

It has nothing to do with alcoholism, it has nothing to do with falling down drunk, nothing like that, but we have to establish he understands-- if this was a guy who was drinking for the first time that night and was overwhelmed by alcohol, he has no idea what the effects are going to be. We have to establish this man understands what those effects are going to be to establish that he was depraved when he went out that night and drove anyway.

MR. LAMAGNA: Judge, that is exactly-- again, the prosecution has just articulated what I've been saying. They want to use prior drinking in the past, that has nothing to do with what

happened that night, to prove that he has a propensity to drink.

THE COURT: I understand.

MR. LAMAGNA: So everybody who ever drank before, according to Mr. Hayden, not never or for the first time ever, everybody who socially drank before then would be in the position to know the effects of alcohol. That's nonsense.

MS. MCCORMICK: Exactly.

MR. LAMAGNA: If that's not the case, they want to show that he drank a lot in the past to prove it.

THE COURT: Hold on.

(Whereupon there was a pause in the proceedings.)

MS. MCCORMICK: Your Honor, may I clarify one point? Out of the dozen or so interviews we have done, there is no intention on the part of the People, and we would not be attempting to present evidence, that the defendant is an alcoholic. Simply the testimony is that-- or what we propose is that over the course of this man's time in New York that he would drink once a week or so as a social drinker. There is testimony he never drank during the week.

THE COURT: I find myself-- I have this thought, and I just want to be able to get to it while I'm still thinking about it. I'm in a bit of a unique situation, I think. Since the defendant's indictment, the standard of the charge with which he is charged and the proof of that charge has changed. Feingold makes his state of mind relevant. Feingold, by the way, gives you the opportunity to defend by the defense of intoxication, which was previously unavailable.

Having said that, I don't want to prerule while you both still have things to say, but I see it a little more clearly right now.

Go ahead, Mr. LaMagna.

MR. LAMAGNA: Thank you, Judge.

Feingold articulated a new standard by which depraved indifference has to be judged by a jury. It is a state of mind. The state of mind is not intoxication. The mere fact a person is intoxicated is not, in and of itself, sufficient for a depraved-mind murder. It just isn't. You need more. It's what he was doing, what he was saying, how he was acting, what his demeanor was and all of those things put together to infer a state of mind.

THE COURT: The district attorney makes a

good point. The point made by the district attorney, which has clarified this for me, is that a person wholly unacquainted with the effects of alcohol, to drink to a blood-alcohol content of .28, would be wholly in another category to a person who had taken drinks on previous occasions and was consequently able to begin to judge the effects of alcohol, forget about other people, but on himself.

MR. LAMAGNA: But that's not the issue for the depravity.

THE COURT: No, I agree with you.

MR. LAMAGNA: It's not necessarily alcohol, it's what the individual's state of mind was with respect to not having the regard for the lives of others.

THE COURT: That makes their point for them, because if I preclude-- and I'm not saying that I'm going to allow even if on 20 previous occasions in the prior two weeks he become falling-down drunk every night, but I think it is relevant to the jury that he was at least, to some degree, acquainted with the effects of alcohol on himself because he has been known, on prior occasions, to have had an alcoholic beverage.

MR. LAMAGNA: Judge, I implore you that on

this issue it is going to propensity, and this is what this jury is going to infer with a DWI-related homicide, especially where the top charge is murder here, and I fear, and I implore you, Judge, they will be more inclined to believe that he drinks a lot rather than on occasion, and the fear is that they will convict of murder rather than manslaughter or any other lesser charge because of that.

To show his prior drinking habit is so speculative on a depraved mind. You could have a depraved mind whether you're drunk, not drunk, completely sober, have drank before or never drank a single drink. They are boot-strapping the alcohol and drinking and propensity to drink to make a case.

THE COURT: The never drank a single drink is where your argument fails because--

MR. LAMAGNA: It could go both ways. They want their cake and to eat it, too.

THE COURT: If in this case, while the defendant not having the burden, they chose to introduce, even through the testimony of their own witnesses, that the defendant had never before taken a drink--

MR. LAMAGNA: That's a different story. I can see where you're going. That would be a

different story. If we said, well, hey, the defense here of intoxication was--

(Whereupon there was a pause in the proceedings.)

MR. LAMAGNA: Judge, may I continue?

As I was saying, I see where you're going with that intellectually. I agree if the defendant then proffered evidence saying he never drank before and you could argue that somehow the intoxication had something to do with the depraved mind, that is one thing. If he had five DWI convictions which would show not just drinking, it's the drinking and driving, you wouldn't allow that in.

This is a depraved-mind murder. It's not, it's not, whether he drank before or if he drank a lot. If it was completely somebody who knew the effects of alcohol on their bodies, like most people, probably the issue isn't whether or not he decided to drive, because that's a reckless manslaughter, what this is-- what this is is a depraved-mind murder, an indifference to human life. That's the state of mind. They have to prove that, not just by the alcohol. That's the manslaughter. If they just prove that, that's not murder. I implore you you cannot allow this prior drinking

habit or his prior drinking history to come in.

THE COURT: You're using a word which, of course, is beneficial to your argument but somewhat distorts my thinking. It doesn't distort my thinking, it distorts how I'm expressing my thinking.

I think it's important that the jury know, if it's true, that the defendant was not unacquainted with the effects of alcohol insofar as it affected his own capabilities. I do not intend to allow evidence of heavy drinking on many previous occasions. I do intend to allow that the defendant was not unacquainted with drinking alcoholic beverages on previous occasions, not a history, not a history of heavy drinking, but an acquaintance with drinking alcoholic beverages on previous occasions.

Remember, he's up here from Arkansas. So the period of time with which these witnesses are acquainted with his prior history is abbreviated. I'm certainly not going to have them calling witness from high school and Old Miss to come in to testify as to what he did at his fraternity house.

What we're talking about is the acquaintance of the witnesses who the People intend

to bring in. There are no secrets here. I know that some of these people are going to testify they tried to stop him. I've been made aware of that by both of you.

MR. LAMAGNA: I don't know if that's the case.

THE COURT: It's one of the theories I've heard. It's one of the scenarios that's been--

MR. LAMAGNA: That's actually news to me.

THE COURT: That's one of the things I've heard.

MR. LAMAGNA: I don't know. Could I ask the prosecution right now? I don't believe there is anybody that night that tried to stop him from driving.

(Whereupon there was a pause in the proceedings.)

MR. LAMAGNA: Judge, I believe, just for clarity of the record, I just had a quick conversation, there is no testimony or evidence that's going to be presented that anybody that night tried to stop my client from driving.

THE COURT: I stand corrected. One of the things that I recall from the volumes of information that's been made of available to me was that--

MR. LAMAGNA: What I think it was is that I think somebody in the past, prior to this occasion, may have taken his keys, but that is not coming in either.

THE COURT: Here is the ruling of the Court. Thank you for your argument. I've heard enough to be able to make a decision.

Sorry, Bob. I've heard enough to make a decision.

I'm allowing the toxicologist in terms of the ability by the People to educate this jury as to what tolerance people have to alcohol and what tolerance different classes of people, familiar and unfamiliar with alcohol, have to alcohol and its effects.

I will permit a limited inquiry by the People into the fact that on prior occasions some of the People's witnesses have seen the defendant engage in social drinking, not to the extent that he ever became intoxicated, not to the extent anyone took his keys, but to the extent that on prior occasions the defendant had been seen by some of these witnesses to have been drinking alcoholic beverages at social occasions, period.

That's not comfortable with either of you,

therefore, it's correct. If you both don't like it, that's the way to do it.

I know you're dying to talk, Bob.

MR. HAYDEN: Just briefly.

It's our job to get into his head. That's the challenge now with depraved state of mind. We have to be able to establish what he knew. We have to be able to establish he understood the risks and decided to take them anyway, to a degree, that it was depraved.

THE COURT: That night.

MR. HAYDEN: Yes. But, Judge, in order to establish that what he did that night was depraved, we have to be able to establish what was going on in his mind. We have to get in there--

THE COURT: That night.

MR. HAYDEN: --to see what he knew, but if keys are taken from him on a prior occasion, then the danger of drinking and driving has been made very plain to him by other people showing concern. The fact he's aware of that is extremely important when he ignores it and goes out and drives anyway.

THE COURT: That application is denied. I've given you more than I intended to. I've given them more than I intended to. It's fair. What I've

done now, in my opinion, so I can sleep tonight, is fair.

MR. HAYDEN: Certainly, should he take the stand, what he knew that night--

THE COURT: If he takes the stand, we are talking about a completely different horse race.

MR. HAYDEN: Thank you, your Honor.

THE COURT: That's a whole different story. I'm not going to prerule on an objection. If he gets on the stand and places his credibility at issue, whatever they decide to ask him about, if there's an objection, I'll listen to it then.

MR. LAMAGNA: Judge, we did have a Sandoval hearing though, and we did ask for prior bad acts they want to cross-examine him about, drinking and driving or driving while intoxicated. We've passed that.

THE COURT: Gentlemen, or everybody, let's not cross that bridge.

MR. LAMAGNA: We did cross it at the Sandoval hearing.

THE COURT: We're now talking about--

MR. LAMAGNA: If he said I never did something, that I understand.

THE COURT: If wishes were horses, beggars

would ride.

MR. LAMAGNA: We did have a Sandoval.

THE COURT: Yes, we did, and I ruled on it.

(Whereupon the Court stood in recess for the day.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against- Indictment No. 1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.
----------x

Mineola, New York
September 7, 2006

B E F O R E: HON. ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

(Same as previously noted.)

* * * *

(Whereupon, the jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910-2005, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defense ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Thank you.

Good morning, ladies and gentlemen. My name is Alan Honorof. This is a criminal trial here in the Supreme Court which is about to commence. I am going to be doing jury selection a little bit out of the ordinary in the following way: I am letting anyone who wants to be off this trial off this trial.

This case involves the charge of murder in the second degree. In this case the jury will hear of gruesome and terrible injuries. They will not see any photographs. The jury will hear of the alleged alcohol-related drunk-driving deaths of an adult by blunt force trauma and a young child by decapitation.

The case may last as long as five weeks. I have not made this decision yet, but it's possible the jury will be sequestered during their deliberations at the end of the case.

Due to the nature of the case and the time commitment involved, I'm allowing the decision as to whether you choose to be screened for this trial up to you. If you choose not to serve and be screened

for this trial, you will be taken back to central jury and you will be screened for other cases. They will not be murder cases. They may last longer than this case. If you choose to be screened, my staff will give you additional instructions.

This case has received media attention and it will continue to receive media attention. If you are approached by members of the press, please do not discuss any aspect of this case with them.

At this time I am turning the proceedings over to my staff.

(Whereupon, a recess was taken.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant is ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Would you please take over, Jean?

(Whereupon, the prospective jury panel was sworn.)

THE COURT: Fill the box, Jean.

THE CLERK: Ladies and gentlemen, when you hear your name, please follow the directions of the officers. Have your questionnaires out and available. Take all of your personal property with you. Thank you.

Seat number one, Linda Capoziello, C-A-P-O-Z-I-E-L-L-O.

(No response.)

No response, your Honor.

THE COURT: All right.

THE CLERK: Seat number one, Aldasola Okunboro, O-K-U-N-B-O-R-O.

(No response.)

THE CLERK: Migdalia Tromp, seat number one, M-I-G-D-A-L-I-A, T-R-O-M-P; seat number two, Daniel Paul, P-A-U-L; seat number three, Alex Gutierrez, G-U-T-I-E-R-R-E-Z; seat number four, Kenneth Kircher, K-I-R-C-H-E-R; seat number five, Zidnary Kinnard; K-I-N-N-A-R-D; seat number six, James Essig; E-S-S-I-G; seat number seven, Loy Malcolm, M-A-L-C-O-L-M; seat number eight, Bette O'Hare, O-H-A-R-E; seat number nine, Dawn Connors,

C-O-N-N-O-R-S; seat number ten, Angela Grasso, G-R-A-S-S-O; seat number eleven, Triptarani Drugal.

(No response.)

THE CLERK: Seat number eleven, Edward Callaghan, C-A-L-L-A-G-H-A-N; seat number twelve, Lea Kwartler, K-W-A-R-T-L-E-R; seat number thirteen, Cara Aghabakian, A-G-H-A-B-A-K-I-A-N; seat number fourteen, Rubin Coryat, C-O-R-Y-A-T.

THE COURT: Welcome once again, ladies and gentlemen. To those of you standing, I apologize. I have some remarks which I'd like you all to hear, then those of you standing would be accompanied to a room where you'll be able to sit until we need more people than we will then have in the courtroom, but I would like you to hear what I have to say at this time.

Ladies and gentlemen, as you know, my name is Alan Honorof. I am the judge assigned in this trial part here in the Supreme Court with relation to the trial of the criminal case which is about to commence.

First thing, can everybody hear me?

Thank you.

I am going to address myself to all members of the jury panel, including those of you

who may be seated or standing in the back of the courtroom. I would ask that you be kind enough to give your attention to the various remarks and instructions which I am about to give. During the course of my remarks I will explain briefly what this trial involves, and I will explain to you the separate functions that the judge and the jury perform in a trial of this nature.

You have been selected to appear in this Court as possible jurors in relation to the trial of a case entitled the People of the State of New York against Martin Heidgen, Defendant.

The People are represented by Robert Hayden and Maureen McCormick, the assistant district attorneys. The defendant is represented by his attorneys, Stephen LaMagna and Greg Martello.

May I caution you that simply because this legal proceeding is brought in the name of the People of State of New York, this does not in any manner indicate the public desires a specific verdict one way or the other. The People of this state will be served by whatever verdict is justified by the evidence at this trial.

During this portion of the trial a determination will be made as to who will actually

sit as jurors in this case. That determination is made as a result of a series of questions which will be put to prospective jurors whose names are drawn at random from the selection drum who will, as a result, be seated in the jury box. In commencement of this process we have already selected and seated fourteen persons in this manner.

The purpose of questioning each prospective juror in the jury box we'll be going through in a moment is to elicit information concerning each proposed juror in order to be able, the Court and the attorneys, to select, so far as is humanly possible, a jury free from disposition, prejudice or bias. That is to say, the objective we all desire to accomplish is the selection of a jury that is both impartial and qualified to hear and determine the facts in this case.

The process of jury selection is an important part in the trial procedure in a criminal case. The nature of the questioning may be somewhat intensive. This is a necessary procedure in order that the objective of a fair and impartial trial jury may be fulfilled.

However, the questions which will be put to each of you either by myself or by either

attorney are not intended to pry into your personal life or to embarrass you in any way. The purpose of these questions is simply to permit the respective attorneys to gain insight into the manner in which you believe you would serve as a juror if selected at this trial. Therefore, I must request that you answer all of the questions as candidly and as completely as you are able.

If for any reason whatsoever any prospective juror feels an answer will be sensitive or embarrassing, please raise your hand and I will have you approach the bench so that you can answer the question more privately.

Under indictment number 1910N-05, the defendant is charged with the crimes as follows: Murder in the second degree, two counts, assault in the first degree, three counts, reckless endangerment in the first degree, two counts, driving while intoxicated, two counts, as follows:

The Grand Jury of the County of Nassau by this indictment accuses the defendant of the crime of murder in the second degree, in violation of Section 125.25(2) of the Penal Law of the State of New York, committed as follows:

The defendant, Martin Heidgen, on or about

the 2nd day of July, 2005, in the County of Nassau, State of New York, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to another person and thereby caused the death of Stanley Rabinowitz.

Second count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of murder in the second degree, in violation of Section 125.25(2) of the Penal Law of the State of New York, committed as follows:

The defendant, Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to another person and thereby caused the death of Katherine Flynn.

Third count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of assault in the first degree, in violation of Section 120.10(3) of the Penal Law of the State of New York, committed as follows:

The defendant Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to another person and thereby caused serious physical injury to Christopher Tangney.

The fourth count is identical with the exception being the physical injury was caused to Denise Tangney.

The fifth count is identical with the exception being that the physical injury was caused to Neil Flynn.

Sixth count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of reckless endangerment in the first degree, in violation of Section 120.25 of the Penal Law of State of New York, committed as follows:

The defendant, Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to Elizabeth Serwin.

Seventh count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of reckless endangerment in the first degree, in violation of Section 120.25 of the Penal Law of the State of New York, committed as follows:

The defendant, Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, under circumstance evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to Joseph Caruso.

Eighth count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of operating a motor vehicle while under the influence of alcohol, in violation of Section 1192.2 of the Vehicle and Traffic Law of the State of New York, committed as follows:

The defendant, Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, operated a motor vehicle on a public highway while he had .08 of one per centum or more by weight of alcohol in his blood as shown by chemical analysis of his blood pursuant to Section

1194 of the Vehicle and Traffic Law, to wit: .28.

Ninth count.

And the Grand Jury of the County of Nassau by this indictment further accuses the defendant of the crime of operating a motor vehicle while under the influence of alcohol in violation of Section 1192.3 of the Vehicle and Traffic Law of the State of New York, committed as follows:

The defendant, Martin Heidgen, on or about the 2nd day of July, 2005, in the County of Nassau, State of New York, operated a motor vehicle on a public highway while he was in an intoxicated condition.

All of the acts and transactions alleged in each of the several counts of this indictment are connected together and form part of a common scheme and plan.

Dated: Mineola, New York, August 31, 2005, signed by Denis Dillon, who was the district attorney at that time.

Now, before we go any further, members of the panel, I wish to inform you that an indictment is simply an accusation against the defendant. It creates no presumption of the defendant's guilt since under our system of justice the defendant is

presumed innocent, and this presumption of innocence remains with the defendant all throughout the trial and until proven otherwise by a verdict of a jury. In a sense, the indictment is a medium which brings us all together in this courtroom for the purpose of hearing testimony concerning the charges.

This trial is the process by which we will determine if the charges will be proven by sufficient evidence. In that process those of you who are to be selected as jurors and I as the judge perform separate and distinct functions. As jurors, you are going to be called upon to determine whether or not the evidence which you will hear and possibly see in this case establishes the defendant's guilt beyond a reasonable doubt.

In order to do this you will have to evaluate all the evidence at the end of the trial to determine whether the testimony you have heard from the witnesses and any exhibits you might see is, in fact, true and what weight you will give to such evidence. This is called finding the facts. That will be your function alone. I will find no facts at this trial. The jury alone will render a verdict in this case.

In a criminal case the burden of proof is

on the People to prove the guilt of the defendant beyond a reasonable doubt. This burden remains on the People throughout the trial. The defendant in a criminal case is not required to prove or disprove anything in relation to the charges made against him.

Under our system of law the defendant is not obligated to take the witness stand or call any witnesses. The law provides that you may not draw any inference unfavorable to the defendant from the fact that he does not take the stand.

At the appropriate time at the end of the case I will define for you the term "reasonable doubt." Suffice it to say at this time, however, you will be required to find the defendant not guilty if, because of the evidence or lack of evidence presented to you, you have a reasonable doubt as to guilt. On the other hand, the People are not required to prove guilt beyond all doubt or beyond an absolute certainty or to a mathematical certainty. If you find, therefore, that the People have met the burden of proof which is required of them, then it would be equally your responsibility to return a verdict of guilty.

Your function as jurors will terminate

when you make your determination as to whether the defendant is found guilty or not.

Punishment of the defendant, if he should be found guilty, is not the jury's concern. Any punishment required is the sole function of the Court, nor may you permit sympathy or pity to influence your deliberations.

As jurors, your ultimate decision as a result of the trial process is called a verdict. Your verdict will be either guilty or not guilty. Whatever the verdict of the jury may be, it must be by unanimous vote.

My role at the trial is to ensure that you reach your verdict in accordance with the law, and at the appropriate time I will explain to you what the law is in relation to the issues at this trial. In this respect you must bear in mind that you are required to accept the law as I give it to you, even if you should privately disagree with it.

Upon the conclusion of the questioning of prospective jurors, particular persons may be challenged by either or both of the attorneys. You must not be embarrassed or upset if this occurs. It is no reflection upon the ability, honesty or integrity of any juror. It simply means in the

light of the experience and expertise of the particular attorney, a prospective juror may not fulfill all the desires the attorney may have with regard to the duty that he or she must perform in representing his or her client.

At this time, Jean, I think we can take the People who are standing and make them more comfortable, then we'll turn our attention to the fourteen people up here.

(Whereupon, the standing jurors exit the courtroom.)

THE COURT: I am addressing myself to the fourteen of you up here, although the rest of you please pay attention. I'm informed-- first of all, I've introduced all of us. Do any of you know any of us?

PROSPECTIVE JUROR #14: Yes.

THE COURT: Who do you know?

PROSPECTIVE JUROR #14: ADA McCormick.

THE COURT: Okay. In that case, sir, thank you for that. Would you please go back to central jury.

(Whereupon, the prospective juror was excused.)

THE CLERK: Seat number fourteen, Qwing

Wang.

THE COURT: Do you know any of us, sir? Do you know any of us?

PROSPECTIVE JUROR #14: No. Who?

THE COURT: The People I've just introduced, the lawyers, the defendant?

PROSPECTIVE JUROR #14: I know, yeah. Sorry.

THE COURT: Sir, why don't you go back to central jury, sir.

(Whereupon, the prospective juror was excused.)

THE CLERK: Seat number fourteen, Heather Tolliner, T-O-L-L-I-N-E-R.

THE COURT: Ma'am, do you know any of us?

PROSPECTIVE JUROR #14: No.

THE COURT: Okay. I'm told by the lawyers that the following people might be called as witnesses. It's a bit on the lengthy side, so stay with me here. If you know any of these people, please raise your hand:

Michael Stafford, Sergeant Scott Crawford, Linda Lindenthaler, John Whittall, Eric Baez, Michael Harris, Daniel O'Hare, Michael Drake, Maureen Roman, John Kwasnoski, Frank Lynch, John

Ramos, Chris Sweeney, Laurence Hemmerich, Patrick Siegler, Steed Davidson, Denise Tangney, Christopher Tangney, Jennifer Flynn, Neil Flynn, Christopher Pandolfo, Timothy Nolan, Del Lisk, Keith Rabinowitz, Michael Ierardi, I-E-R-A-R-D-I, Dorothy Busco, Michael Tangney, Matthew Sussingham, Greg Nizewitz, Amy Hauck, Josh Sodikoff, Ilana Fromme, Tracey Sodikoff, David Weiss, Mike Amato, Jamie Ormond, Joshua Zigman, Justin Goldman, Brian Burkhart, Amanda Goldman, Jane Gerner, Stephen Weber, James Schiro, Elizabeth Serwin, Joseph Caruso, Joseph Todaro, Wade Bartlett.

The following ten witnesses are all doctors:

Gerard Catanese, Michael DeMartino, William Closson, Alain Derzie, David Zarat.

All right. How do you know him?

PROSPECTIVE JUROR #9: I work with him.

THE COURT: You know him personally?

PROSPECTIVE JUROR #9: He's a doctor.

THE COURT: Have you met and spoke with him?

PROSPECTIVE JUROR #9: Yes.

THE COURT: Thank you, ma'am. You go back to Supreme Court.

(Whereupon, the prospective juror was excused.)

THE CLERK: Filling seat number nine, Diane Swenson, S-W-E-N-S-O-N.

THE COURT: Ma'am, before you go down there, do you know any of us?

PROSPECTIVE JUROR #9: No.

THE COURT: Did you know any of the names I've read so far?

PROSPECTIVE JUROR #9: No.

THE COURT: Please have a seat.

Continuing, these are still doctors: Andrew Pomerantz, Sean McCance, Peter Gelfand, Rosie O'Regan, Christian Nahas, and this is not a doctor, John Cunningham, Joe Foster, Dustin Pitonyak, Aire Moreledge, Steven Schneider.

Now, this is in anticipation of what the lawyers are probably also intending to ask you, do any of you know anything about this case besides what you've learned in this courtroom over the last day or two?

PROSPECTIVE JUROR #13: Yes.

THE COURT: What do you know about it?

PROSPECTIVE JUROR #13: I've been following it.

THE COURT: You read about it in the papers or heard about it on the radio?

PROSPECTIVE JUROR #13: Yes.

THE COURT: Anybody else?

Everybody heard about this case in some way or another. Those of you who have heard about it, have any of you already made up your mind and are consequently unable to be fair?

PROSPECTIVE JUROR #13: Yeah.

THE COURT: You feel you could be fair or you cannot be?

PROSPECTIVE JUROR #14: No.

PROSPECTIVE JUROR #13: No.

THE COURT: You say you can't be fair?

PROSPECTIVE JUROR #14: No. I know people who know of the family.

THE COURT: You say you can't be fair. That's fine. You're excused. Go back to Supreme Court.

(Whereupon, the prospective juror was excused.)

Anybody else?

So far you've heard no evidence whatsoever. You know exactly nothing about this case except whatever was written in the newspaper or

magazine you might have read about it in. You have no evidence at all.

Is anybody else unable to be fair?

You are unable?

PROSPECTIVE JUROR #13: Unable. That's what I said.

THE COURT: I misunderstood you. Go back to Supreme Court.

(Whereupon, the prospective juror was excused.)

THE COURT: Before we fill the box, for everybody, this case is going to be in the papers. It's going to be on News 12 and probably some of the major channels. Also it's going to be on the radio. As hard as it might be, don't listen, don't watch, don't read. You know what? It's not fair. If you take an oath to be fair, you've got to be fair. The only people who are going to really know what's going on in this case are you. You're going to hear the witnesses. Newspapers, TV, radio, they don't know what's going on. They're not here. There might be a reporter here from time to time, but they don't know. You know. And the only way it will be fair to him is not to read the papers about this case, not to listen to radio reports and not to

watch TV reports.

Can you all do that?

Great.

Fill the box.

THE CLERK: Seat number thirteen, Roberto Espinosa.

(No response.)

THE COURT: We're a little bit delayed, obviously. The person we just called is one of the people who were standing and had to go to another room. Please bear with us.

Why don't you call the second one in the meantime.

THE CLERK: Seat number fourteen, John Doyle, D-O-Y-L-E.

THE COURT: Mr. Doyle, let me ask you at the moment, first of all, do you know any of us?

PROSPECTIVE JUROR #14: No.

THE COURT: Did you know anybody on the witness list?

PROSPECTIVE JUROR #14: No.

THE COURT: You've read or heard something about this case before you got here today?

PROSPECTIVE JUROR #14: Yes.

THE COURT: By virtue of what you've read

or heard or seen, do you feel that you could not be fair or do you feel you can give this guy a fair shot and listen to the evidence?

PROSPECTIVE JUROR #14: I feel I could be fair.

(Whereupon, Mr. Espinosa entered the courtroom.)

THE COURT: Mr. Espinosa, before you sit down, I've briefly introduced all of us while you were here earlier. Do you know any of us?

PROSPECTIVE JUROR #13: No.

THE COURT: Have a seat.

I want to show you something. I'm going to bring to you, sir, a copy of the list of witnesses I've already read. Have a look at these names, sir, and see if you know anybody on either of those lists.

You don't know anybody?

PROSPECTIVE JUROR #13: No.

THE COURT: Now, some of the other jurors-- in fact, most of the other jurors indicated before they came to court, over the last year they've heard or read or have seen something about this case. Have you? Do you know anything about this case?

PROSPECTIVE JUROR #13: No.

THE COURT: Perfect. Okay.

Who will conduct questioning on behalf of the prosecution?

MS. MCCORMICK: I will, your Honor.

THE COURT: Go ahead.

MS. MCCORMICK: I always had a really big mouth. I hope everybody back here can hear me.

Good morning, ladies and gentlemen. I want to thank you for hanging in there. The judge gave a recitation of some of the terrible facts in this case, and right up front you could have relieved yourself of this duty, of this opportunity, if you see it that way, but I appreciate you didn't do that.

The defendant, as you know, as the judge has told you, is charged with murder. It's the most serious crime in our law, but there is some facts about this case that are, themselves, unique and may be too troubling for some people to be able to sit on the jury, so I'm going to ask you some questions. I think you probably saw me scribbling furiously notes. If I refer to my notes or butcher your name, please forgive me.

Everyone in the room, my colleague, Bob

Hayden from the District Attorney's Office, Mr. LaMagna, Mr. Martello, the Judge, of course, are hoping for a fair jury, and fair, of course, means straight down the middle, not leaning one way or the other, able to sit here in the courtroom and listen only to the facts here in this courtroom, for you to be the judge of those facts.

In this particular case the allegations are that the defendant, Martin Heidgen, was driving on July 1st, the overnight of a Friday night into a Saturday morning, at about two o'clock in the morning. He had consumed enough alcohol that, we're alleging, we're going to prove, that he had a .28 blood alcohol concentration.

He got onto, at some point, the Meadowbrook Parkway going northbound but in the southbound lanes of the Meadowbrook Parkway. He continued driving, we're going to allege, a few miles.

MR. LAMAGNA: Judge, I'm going to object to the facts.

THE COURT: It started out as foundation.

MS. MCCORMICK: I'm just trying to--

THE COURT: That's it, Miss McCormick.

MS. MCCORMICK: Yes, your Honor.

The point is that there was a horrific crash, a head-on collision, and so that's why we are here. This is a crash case. It is a case involving two vehicles colliding on a roadway in Nassau County. People drive everywhere every day in Nassau County.

Is the fact that this case involves a crash of two vehicles, is that, itself, troubling to any one of you, that a criminal charge could result from a crash of two vehicles?

Mrs. Tromp, what are you thinking? Do you think a crime can derive out of a car crash or do you think it should only be a civil suit and that no crime should result from it? What do you think?

PROSPECTIVE JUROR #1: Yes, I think a crime should result.

MS. MCCORMICK: Of course you haven't heard the facts. You're going to have to hear what those facts are from the evidence. Do you think a crime can result from from it?

PROSPECTIVE JUROR #2: I think it can.

PROSPECTIVE JUROR #3: Yes.

PROSPECTIVE JUROR #4: Yeah.

PROSPECTIVE JUROR #5: Yes.

PROSPECTIVE JUROR #6: Yes.

PROSPECTIVE JUROR #14: Yes.

PROSPECTIVE JUROR #13: Yes.

PROSPECTIVE JUROR #12: Yes.

PROSPECTIVE JUROR #11: Yes.

PROSPECTIVE JUROR #10: Yes or no.

MS. MCCORMICK: Okay.

PROSPECTIVE JUROR #9: Yes.

PROSPECTIVE JUROR #8: Yes.

PROSPECTIVE JUROR #7: Yes.

MS. MCCORMICK: Is there anyone who, by a show of hands, has ever been involved in a crash?

THE COURT: Excuse me, ladies and gentlemen. My court reporter is having a very hard time hearing you. If you wouldn't mind, please speak up as loud as you can.

MS. MCCORMICK: Before I get there, why don't I ask who here drives a car?

Do you drive?

PROSPECTIVE JUROR #1: I do.

MS. MCCORMICK: By a show of hands.

Everybody in Nassau County. Okay.

Has anyone in the course of driving their car ever been involved in a scratch of any sort?

Okay.

Again, from a show of hands, has anybody

been involved in a crash wherein there were criminal charges brought after that crash against any of the drivers?

No criminal charges.

So we're right back to where I started from. Is there any reason from your own experiences in being involved in traffic crashes, anything that happened there, that you thought criminal charges should have been brought and weren't or that you think will impact you on sitting on this case?

(No response.)

Is there anyone who raised their hand?

If you can raise it again, anybody having been involved in a traffic crash who thinks that by being involved in a crash, how the police responded, whatever, will affect you in this case? Anybody think they'll be affected?

(No response.)

Silence. Okay. I'm going to take that as a no, then.

Let me ask you my next question. Part of what you've already heard is that alcohol was involved in this crash. I presume, but I hope I'm right, that since no one was charged in any of the crashes in which you were involved, that alcohol was

not involved in any of those cases. Is that a correct assumption?

Has anyone been involved in a traffic crash where one of the drivers was accused of driving while intoxicated? No?

PROSPECTIVE JUROR #12: I just want to mention my car was totaled by a drunk driver who got out and was belligerent with the police in front of my house. I wasn't involved in the crash, but my car was totaled.

MS. MCCORMICK: You were involved to the extent your car-- you weren't in it at the time?

PROSPECTIVE JUROR #12: I was not in it or was my daughter.

MS. MCCORMICK: Was the driver of that car charged, do you know?

PROSPECTIVE JUROR #12: She was. She served time.

MS. MCCORMICK: Is there anything about that fact, about your experiences with having been the victim of a drunk driver, albeit your car was the victim, that would affect you in this case?

PROSPECTIVE JUROR #12: Well, just to be honest, if I was in the car and my daughter was in the car, we probably would have been dead as the car

was completely totaled, smashed into a tree. I do think that that is a concern of mine.

MS. MCCORMICK: As it would be with anybody. But now that you know-- you've had that experience and you were not in the car, but now that you know this is a case where that exact accusation is being made, that Martin Heidgen was driving drunk and did cause the death of two people, do your own experiences-- do you think your own experiences will impact on your ability to be fair in this case?

PROSPECTIVE JUROR #12: I don't think so.

MS. MCCORMICK: Meaning you can be fair?

PROSPECTIVE JUROR #12: Yes.

MS. MCCORMICK: Do you think you can put that aside and judge this case only on the facts?

PROSPECTIVE JUROR #12: Yes.

MS. MCCORMICK: Okay. Thank you.

Does anyone along those lines know of anyone who themselves have been accused of driving while intoxicated? A relative? A friend?

Yes? Okay.

And in terms of how those cases were handled, can you tell me, sir, was there anything about that person being--

PROSPECTIVE JUROR #2: It's actually

several people.

MS. MCCORMICK: Several people. Okay.

Is there anything about those facts-- do you mind my asking what your relationship is to those people?

PROSPECTIVE JUROR #2: Just friends.

MS. MCCORMICK: Friends. Anything about that-- do you think they were unfairly accused or is there anything about those experiences that you think would impact your ability to sit on this case?

PROSPECTIVE JUROR #2: No.

MS. MCCORMICK: How about the disposing of their cases? Do you think that they received too harsh or too lenient treatment?

PROSPECTIVE JUROR #2: I really couldn't say. I know they had been arrested. I don't really know.

I'm a bartender, so this has actually come up quite a bit, but, no, I think it's not really my place to say-- you know, I don't know the specifics of their cases.

MS. MCCORMICK: So in this case you'd be able to only listen to what occurred in this case on these facts and judge it not based on those outside experiences?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Who else knows someone who has been arrested?

You, sir?

PROSPECTIVE JUROR #4: Yes.

MS. MCCORMICK: Can I ask what your relationship is to that person?

PROSPECTIVE JUROR #4: It was me.

MS. MCCORMICK: It was you. Okay.

Can I ask you, is there anything about that-- it's not still pending, is it?

PROSPECTIVE JUROR #4: No. It's long gone.

MS. MCCORMICK: Okay. About how long gone?

PROSPECTIVE JUROR #4: Ten years.

MS. MCCORMICK: Okay. Was that case prosecuted here in Nassau County?

PROSPECTIVE JUROR #4: Absolutely.

MS. MCCORMICK: Is there anything about that experience, either the way you were treated by the police or the District Attorney's Office, that would impact your ability in this case?

PROSPECTIVE JUROR #4: There were half truths spoken.

MS. MCCORMICK: There was some false accusations?

PROSPECTIVE JUROR #4: Absolutely.

MS. MCCORMICK: Do you think-- would you apply your experiences, then, to listening to the evidence in this case?

PROSPECTIVE JUROR #4: I would hope not but--

MS. MCCORMICK: See, this is a critical issue. This is a hard thing to do. We're in an open place, but, everyone, the only way we're going to get a fair jury here is by being completely honest.

I really appreciate your honesty. If you have any hesitations that you think even subliminally in your good conscience may affect your ability to be fair, now would be the time to say so.

PROSPECTIVE JUROR #4: It's hard to say, you know, right at the moment, but probably.

MS. MCCORMICK: Okay, sir. Thank you. I really appreciate your honesty. That was tough.

Anybody else? Nobody?

PROSPECTIVE JUROR #6: Yes.

MS. MCCORMICK: Who was it, sir?

PROSPECTIVE JUROR #6: A relative.

MS. MCCORMICK: Again, just like this gentleman here, is there anything about that experience that would impact on your ability to listen fairly and openly to the facts in this case?

PROSPECTIVE JUROR #6: No.

MS. MCCORMICK: You're sure?

PROSPECTIVE JUROR #6: Yes.

MS. MCCORMICK: Who else? I'm just going to--

PROSPECTIVE JUROR #8: My brother-in-law.

MS. MCCORMICK: He was accused?

PROSPECTIVE JUROR #8: We don't talk much. I know he was in jail for a little bit.

MS. MCCORMICK: Do you have any feelings, any gut reactions, it was wrong, it was right, anything like that?

PROSPECTIVE JUROR #8: No. We're not very close.

MS. MCCORMICK: Okay. Is there anything about your brother-in-law being arrested for DWI that would impact on your ability to be fair in this case?

PROSPECTIVE JUROR #8: Not at all.

MS. MCCORMICK: You, sir?

PROSPECTIVE JUROR #11: I also have

in-laws, both arrested, both served time, one turned his life around, one didn't.

MS. MCCORMICK: Okay. Again--

PROSPECTIVE JUROR #11: I know a lot of people who have never been caught who have run into parked cars and trees, things like that.

MS. MCCORMICK: When you take the gamut of all your experiences--

PROSPECTIVE JUROR #11: Taking the whole gamut of my experiences, when you say that the blood alcohol was two-eight, it's starting to affect me.

MR. LAMAGNA: Judge, I'm going to object. This is why I didn't want to object before. His response was that-- what he said is that his blood-alcohol level was a two-eight. There's been no evidence of that. It's just an allegation. That's why--

THE COURT: Let me help you out there, Mr. LaMagna.

At this moment in time you've heard no evidence at all. The fact that I read the indictment, some piece of paper someplace-- there has to be an accusatory instrument or we can't get here. They, the People, have to prove the allegations in the indictment, each and every one,

beyond a reasonable doubt. At the moment they have proven nothing. If you had to vote right now, by law the verdict would be not guilty on all counts. You've heard no evidence.

MS. MCCORMICK: We're clear on that, right?

Let me get back to you, sir. Let me see if I can read my own chart. Are you Mr. Callaghan?

PROSPECTIVE JUROR #11: Correct.

MS. MCCORMICK: Mr. Callaghan, with all of your experiences, do you think that they will affect your ability to be a fair and impartial juror in this case?

PROSPECTIVE JUROR #11: At this point, yes. Now that I've dwelled on that number and I'm putting things together-- like I know highway policemen, I know those tests are not inaccurate.

MS. MCCORMICK: Okay. Thank you. Again, I appreciate your honesty.

Is there anybody sitting here who has stuff creeping in the corners of their brain that you think you should bring to our attention?

(No response.)

Does anybody else know someone who has been arrested for drunk driving?

No? Okay.

Well, still this involves a crash. It involves-- I guarantee you that somewhere along the line in this case you will hear the word "accident" used.

Mr. Doyle, could you tell me, sir, how would you define the word "accident"?

PROSPECTIVE JUROR #14: An unintentional event.

MS. MCCORMICK: An unintentional event is a perfectly good definition. You know, in this case it might apply to the extent that-- you will not hear from anyone in this courtroom that the defendant went out with the intent in his mind to murder Katie Flynn and Stanley Rabinowitz. You're not going to hear that in this courtroom. So we're going to start with a couple of things. All right?

Accident. Unintentional event. That covers a lot of ground, doesn't it, Miss Kinnard? Supposing you have someone who decides they need to paint a two-story house. They buy a ladder, they head up the ladder and they slip and they fall. Would you call that an accident?

PROSPECTIVE JUROR #5: Yes.

MS. MCCORMICK: Now I have to look at my

chart. I'm sorry.

Mr. Gutierrez, supposing the same person went to a store to buy a ladder then chose to take a lawn chair, balance it on a picnic table-- I don't know if you know people like this-- balance it on a picnic table and reach up to paint and they also fell. Would you still call that an accident?

PROSPECTIVE JUROR #3: Yes.

MS. MCCORMICK: It is different than the first accident, isn't it?

PROSPECTIVE JUROR #3: Yes.

MS. MCCORMICK: Taking it one more step, Miss Swenson, if that same person balances that lawn chair on the picnic table and does it knowing that kids are playing underneath and fell and injured them, would you still call that an accident?

PROSPECTIVE JUROR #9: No.

MS. MCCORMICK: Now, some people might think-- it's an unintended result, right?

PROSPECTIVE JUROR #9: Yes.

MS. MCCORMICK: Yet all three of those things are very different from one another, aren't they?

PROSPECTIVE JUROR #9: Yes.

MS. MCCORMICK: Do you promise in

listening to the evidence in this case that you'll assess the choices made? Whether this is unintentional or whether it's unavoidable, there's a difference in those two things.

Will you listen to the evidence, Miss Malcolm?

PROSPECTIVE JUROR #7: Yes.

MS. MCCORMICK: Will you also listen to the evidence and the distinction in this evidence in addition to that?

The judge has already told you you are the judges of the facts in this case. You and you alone will decide what happened that night based on the evidence in this case. The judge, of course, will define the law for you, and you have to follow that law. That sounds really easy to do, but as the judge told you, you have to follow the law.

Everyone raised their hand and said that you are a driver, so let me ask you, Miss Tromp, how do you feel-- this is not a case about wearing seat belts. What do you think about the law that requires you to wear seat belts in your car?

PROSPECTIVE JUROR #1: It's a good law.

MS. MCCORMICK: It's a good law. Do you think so?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Everybody thinks it's a good law?

You're all better than my dad. Okay? My dad happens to think that New York State has no business telling him that he has to wear a seat belt in his car. You can imagine Thanksgiving dinner at our house, but, nonetheless, if this were a case about wearing a seat belt, it's not, but if it was a case about that and he was sitting where you're sitting, he would be swearing and taking an oath to follow that law even though he's telling you right up front I hate this law, I don't think they have any business telling me what I should have to do.

It's not so easy, is it? Do you think that you can put aside how you feel about the law and follow the law the way the judge gives it to you? This one is so big, I'm going to ask each one of you.

PROSPECTIVE JUROR #1: Yes.

PROSPECTIVE JUROR #2: Yeah.

MS. MCCORMICK: Can you do that? I want you to really think about this.

PROSPECTIVE JUROR #3: Yes.

PROSPECTIVE JUROR #4: Hopefully.

MS. MCCORMICK: Okay. You're honest. Okay.

PROSPECTIVE JUROR #5: Yes.

PROSPECTIVE JUROR #6: Yes.

PROSPECTIVE JUROR #14: Yes.

PROSPECTIVE JUROR #13: Yes.

PROSPECTIVE JUROR #12: Yes.

PROSPECTIVE JUROR #11: I think I can.

PROSPECTIVE JUROR #10: Yes.

PROSPECTIVE JUROR #9: Yes.

PROSPECTIVE JUROR #8: Yes.

PROSPECTIVE JUROR #7: Yes.

MS. MCCORMICK: Thank you.

I guarantee you that somewhere along the line in this case, like I said, you heard the word "accident," you're going to feel sympathy. You're going to feel it. You're human beings. The reason you're here is to bring your life experiences into this courtroom. You would not be human if you did not feel sympathy during this case. You're likely to feel sympathy for the victims, for the people injured, but you may also feel sympathy for this young man sitting here on trial for these very serious charges.

I have to ask you specifically, Miss

Swenson, you have a 25-year-old son. This man is about that age. Does the fact that you have a son that age, would that make you hesitate, even if you believed the evidence beyond a reasonable doubt, of convicting this man for murder?

PROSPECTIVE JUROR #9: No.

MS. MCCORMICK: No? You're sure?

PROSPECTIVE JUROR #9: Yes.

MS. MCCORMICK: You know I'm coming to you, Miss Tromp. Miss Tromp, you're in the same situation. You have a 25-year-old son. Has he ever been involved in something where you said, what are you crazy? How could you do such a thing? Has he ever done something like that?

PROSPECTIVE JUROR #1: Yes, of course. Yes, of course. Yes, I will probably hesitate seeing him comparing him to my son. I will feel sympathy.

MS. MCCORMICK: So you're going to-- thanks for your honesty. Again, I appreciate that more than you know. It will be difficult for you to convict him even if the evidence is there because of the similarity to your own son's age?

PROSPECTIVE JUROR #1: Exactly.

THE COURT: In the final, analysis,

however, could you do it?

PROSPECTIVE JUROR #1: Can I say I will try or do I have to say yes or no?

THE COURT: You don't have to say anything. I'm asking you if you're selected as a juror, despite the fact that you feel sympathy for another person, that when you deliberate with your fellow jurors and you all talk about the facts and you come to a particular conclusion, whatever that conclusion may be, can you come up with that conclusion?

PROSPECTIVE JUROR #1: I don't know.

MS. MCCORMICK: Your Honor, if I might, could you tell me how much time I have left? I don't want to--

THE COURT: You have eight minutes.

MS. MCCORMICK: Okay. Thank you.

So then I've got to move along.

Miss O'Hare, you're in the same boat. You have a 21-year-old son. Are you going to be able to convict a person who is so like in age to your own son?

PROSPECTIVE JUROR #8: It depends on the facts.

MS. MCCORMICK: But you will be able to

set aside the fact that you have a near-aged son and listen to the evidence and make that decision?

PROSPECTIVE JUROR #8: Yes.

MS. MCCORMICK: I'm afraid, since I was checking the time, I didn't hear your bottom-line answer. Can you be a fair juror?

PROSPECTIVE JUROR #1: I said I don't know.

MS. MCCORMICK: Thank you.

Mr. Doyle, of course you've got a pile of kids, 32, 30, 27, 25. So what about you, sir? Would you be able to set aside any empathy you feel toward the defendant?

PROSPECTIVE JUROR #14: I believe so, yes.

MS. MCCORMICK: You do? Yes? Thank you.

You're going to hear from the judge that the heart of this case-- that the charge is murder, but it's something called depraved indifference. He's going to define that for you. You've said that you can follow the law as the judge gives it to you. Okay. But, you know, depraved indifference, it's a state of mind. As judges of the facts of what happened, you're going to have to come in and listen to the evidence and decide what was going on in his head at the time that this happened. That's not an

easy task.

I can assure you, like I have assured you, you'll hear the word "accident" and that he did not intend to kill those people. You will not hear evidence that as he drove down the road he shouted out the window, I don't care what happens to anybody. You're not going to hear that.

So we put you in a position, as prospective jurors in this case, of having to decide what was in somebody's mind from the things they were doing. You probably do this every day. You know, you probably look at did my child mean to take that thing or did they just inadvertently take it? Did they get into that fight on purpose?

You assess credibility every day. You assess what people are thinking every day, but in a murder charge where you have to decide it based on what he did, the choices he made, is there anybody here who, on that fact alone, that you'll have to decide what's in somebody's head from what they were doing, what they chose to do, things they said in context, will you be able to do that?

PROSPECTIVE JUROR #6: Yes.

MS. MCCORMICK: Do you think so?

PROSPECTIVE JUROR #4: Yes.

PROSPECTIVE JUROR #3: Yes.

PROSPECTIVE JUROR #2: Yes.

PROSPECTIVE JUROR #1: I think so.

PROSPECTIVE JUROR #7: Yes.

PROSPECTIVE JUROR #8: Yes.

PROSPECTIVE JUROR #9: Yes.

PROSPECTIVE JUROR #10: Yes.

PROSPECTIVE JUROR #11: Yes.

PROSPECTIVE JUROR #12: Yes.

PROSPECTIVE JUROR #13: Yes.

PROSPECTIVE JUROR #14: Yes.

MS. MCCORMICK: You can do that? Okay. Thank you for thinking about it before you answered.

You realize, of course, what you find-- the decision you make at the end of the trial doesn't have to be logical or reasonable or sensible, you just have to find that's what it was. Does the fact it doesn't have to make sense, that it just is, does that trouble you on any level, that you don't think you'll be able to do this? Anybody? Show of hands?

I have to move this along or I'll get in trouble with the judge. Thank you.

Is anybody sitting here so uncomfortable with the notion of judging another person, you know,

being a judge--

THE COURT: Hold on. Hold on. Nobody answer that question.

Nobody in this courtroom, myself included, is going to judge another person. If you are selected as jurors, you are going to decide facts which may or may not have happened. That's all you're doing. You're not judging any human being about anything. You're deciding whether certain facts happened or didn't happen.

MS. MCCORMICK: Thank you, Judge.

Actually, he made the point I was trying to get to. You would not be making a declaration on another person but on his acts and decisions and choices just at that time.

Do you each understand that? Does anybody have a problem with that?

(No response.)

No? Okay.

Alcohol is not on trial in this case. Okay? Do we all understand if you're over the age of 21 that you're allowed to drink? Does everybody understand that?

Is there anybody here who does not consume alcohol ever?

PROSPECTIVE JUROR #7: I don't.

MS. MCCORMICK: Do you have any strong feelings about people who do consume alcohol?

PROSPECTIVE JUROR #7: No.

MS. MCCORMICK: How about you?

PROSPECTIVE JUROR #5: No. If people desire to drink, they drink. It's their business. I choose not to drink, personally.

MS. MCCORMICK: Do we all also agree-- can you agree with me that even a person of age, if they choose to get drunk, falling down stumbling drunk, it's not a crime unless and until you get in a car? Would you agree with that? Do we all agree? Does anybody have issues with that?

You're a bartender, so you probably have had more experience with people drinking alcohol than most. How would you define somebody who is intoxicated?

PROSPECTIVE JUROR #2: It's tough. There's obviously varying levels, but it starts with-- the first one goes to-- you know, clear intoxication starts early. I don't know how to define it but--

MS. MCCORMICK: But you know it when you see it.

PROSPECTIVE JUROR #2: Most times.

MS. MCCORMICK: As a bartender have you had experience with people who appear to be a good drunk?

PROSPECTIVE JUROR #2: Yeah.

MS. MCCORMICK: A person from the outside who looks like they can hold their liquor?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Have you had that experience?

Has anybody here had the experience of someone they know, a relative, maybe, who can really drink a lot and just does not look that bad on the outside?

So everybody knows somebody they call a "good drunk"?

PROSPECTIVE JUROR #12: I don't know any.

PROSPECTIVE JUROR #10: I don't know anybody like that.

THE COURT: Two minutes, Miss McCormick.

MS. MCCORMICK: Could we agree, all of us, that alcohol affects each individual differently? Would you agree with that?

PROSPECTIVE JUROR #4: Absolutely.

MS. MCCORMICK: Do we all agree with that?

Do we agree someone's appearance on the outside doesn't necessarily match up with what's going on on the inside, depending upon how much alcohol someone consumed?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Would you agree someone who consumes a little bit can be stumbling and falling down just like someone who drank ten beers based on their tolerance, their personal tolerance?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Does everyone agree with that?

Since I have two minutes, I have to go quick. Do we all agree you're going to listen carefully to how alcohol affected Martin Heidgen on July 1st into July 2nd? Can you do that?

You're the experts in this case, toxicology and crash reconstruction, math and science. Is there anybody so intimidated by the prospect of scientific tests, some gas chromatographs, anybody intimidated by that that they can't endure listening to math formulas on this trial and they couldn't be fair? Do you all think you can do that?

You're all shaking your head. Thanks.

I'm sorry I'm speeding right along here, but also along those lines, this is not-- who watches CSI? Anybody?

Okay. This is not CSI. Could we all agree on that? This is real life. We don't wrap it up neat and clean in an hour. Okay?

Do we all agree when you're judging-- when you're assessing credibility of real people that you'll take into consideration that people sometimes have inconsistencies and mistakes that aren't in the CSI script that don't necessarily affect outcomes? Can you agree with that?

THE COURT: That's time, Miss McCormick.

MS. MCCORMICK: Thank you, your Honor.

THE COURT: Mr. LaMagna?

MR. LAMAGNA: Thank you, your Honor.

Good morning, ladies and gentlemen, your Honor, Counsel, Mr. Martello, Mr. Heidgen, you heard from the Court and we heard from Miss McCormick what this endeavor is all about. It's about picking a fair and impartial jury.

Now, what I just want to pick up on is what Miss McCormick was just saying. This clearly is not CSI. In fact, this is real. This is real life. This isn't television. This isn't actors.

You would agree?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: This is about a person's life, and would you agree that inconsistencies, excuses and mistakes play no role here when a person's life is at stake? You would agree with that, right?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Would anybody disagree that in real life we're not looking for excuses or mistakes?

Wouldn't that be correct?

PROSPECTIVE JUROR #10: Correct.

MR. LAMAGNA: In fact, what we're looking for, ma'am, isn't it true, we want facts; is that correct?

PROSPECTIVE JUROR #8: Yes.

MR. LAMAGNA: Sir, you would want to be sure when the judge tells you about reasonable doubt, you'd want to make sure you don't have a reasonable doubt before you judge the facts against another human being. Don't you agree?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Does anybody disagree with that?

This is not CSI. This most certainly is not television or the movies. This is real life. As the assistant district attorney told you, my client is charged with murder, murder for an unintentional act, as she had told you, too.

Now, you're going to hear a lot of evidence-- Miss O'Hare is it? I'll put my glasses back on. And I think everybody pretty much, except for a couple, have said, you know, I've heard about this case. You would agree, would you not, that often times things in life aren't as simple as they seem? Has anybody heard that expression?

Mr. Essig?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Now, you knew I would be starting with you. You're a New York City police officer, correct?

PROSPECTIVE JUROR #6: Correct.

MR. LAMAGNA: You do investigations all the time in your career, correct?

PROSPECTIVE JUROR #6: That's correct.

MR. LAMAGNA: Isn't it a fact an investigation leads to a conclusion? In other words, you gather facts before you make up your mind?

PROSPECTIVE JUROR #6: That's correct.

MR. LAMAGNA: You don't rush to judgment certainly, correct?

PROSPECTIVE JUROR #6: Correct.

MR. LAMAGNA: That would be incorrect. You'd want to know what actually happened based upon the facts, correct?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: And Mr. Gutierrez?

PROSPECTIVE JUROR #3: Gutierrez.

MR. LAMAGNA: Gutierrez. I'm sorry.

I'm going to make a blanket apology to anybody's name I mispronounce. It happens to me all the time.

What I was asking you, then, is did you ever hear of an experience where a person who rushes to judgment fails to see the truth?

PROSPECTIVE JUROR #3: Absolutely.

MR. LAMAGNA: That's very important. You know, a cliche is often said because there's some truth in it.

Mr. Doyle?

PROSPECTIVE JUROR #14: Doyle.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: You're an engineer, aren't you?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: You don't rush to judgment on things, correct?

PROSPECTIVE JUROR #14: Correct.

MR. LAMAGNA: If you rush to judgment, you may fail to see the truth, correct?

PROSPECTIVE JUROR #14: You can make a mistake.

MR. LAMAGNA: You can make a mistake.

Now, you would agree, Miss Kwartler?

PROSPECTIVE JUROR #12: Kwartler.

MR. LAMAGNA: Kwartler.

Would you agree that in some endeavors in life, you know what? We make mistakes. They may not mean much. Sometimes something is so serious, you make a mistake, you can't afford to make a mistake. There's too much riding on it.

You would all agree that in a situation, if you're picked as a juror, with a person on trial, there's no room to make mistakes.

Would you agree, Miss Malcolm?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: Would anybody disagree with

that? There's no room for mistakes in situations like this, correct?

Now, the Judge has already articulated to you it's the district attorney who has the burden of proof in this case. Now, we've all heard that term.

Mr. Paul, do you promise you'll follow the directions by the Court when they say that the burden of proof is on the district attorney, it stays with the district attorney, and the defense has no burden of proof at all in this case?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Does anybody instinctually or emotionally have a problem with that? Would anyone expect us, the defendant, to have to prove anything?

Mr. Espinosa, do you understand that the entire burden of proof is at that table and at that table only? You agree with that?

PROSPECTIVE JUROR #13: Right. Right.

MR. LAMAGNA: Miss Grasso-- I'm sorry-- Mrs. Swenson?

PROSPECTIVE JUROR #9: Yes.

MR. LAMAGNA: Now, certainly I'm not going

to sit here and do nothing during the trial. I am going to cross-examine witnesses. We may even produce witnesses. Just because I do that doesn't necessarily mean I now have a burden of proof, right?

PROSPECTIVE JUROR #9: Correct.

MR. LAMAGNA: The burden always stays with them, correct?

PROSPECTIVE JUROR #9: Yes.

MR. LAMAGNA: Now, there will be testimony concerning alcohol use. Is anybody familiar with any organizations like S.A.D.D. or M.A.D.D. or any of these other organizations? Is anybody a member or an affiliate or belongs to any of these organizations?

You understand that this is about facts, not about political agendas for any organization?

Mr. Gutierrez, do you agree with that? This isn't politics, right?

PROSPECTIVE JUROR #3: No.

MR. LAMAGNA: Your decision is not based upon what's popular or unpopular, correct?

PROSPECTIVE JUROR #3: No.

MR. LAMAGNA: Mr. Kircher?

PROSPECTIVE JUROR #4: Kircher.

MR. LAMAGNA: You would agree that whatever your decision is, it's going to be based upon the facts and the evidence, not what is a desirable result, not what's undesirable, popular or otherwise?

PROSPECTIVE JUROR #4: Correct.

MR. LAMAGNA: It's justice.

PROSPECTIVE JUROR #4: That's right.

MR. LAMAGNA: It's whether they prove their case beyond a reasonable doubt, correct?

PROSPECTIVE JUROR #4: Absolutely.

MR. LAMAGNA: And if they haven't, Mr. Callaghan, what's your verdict?

PROSPECTIVE JUROR #11: If they haven't proved their case, it would have to be--

MR. LAMAGNA: Every single element.

PROSPECTIVE JUROR #11: Every single element, it would have to be a not guilty,

MR. LAMAGNA: Now, you're going to hear witnesses testify, and you're going to have to all judge the credibility of these witnesses.

Miss Kinnard?

PROSPECTIVE JUROR #5: Um-hum.

MR. LAMAGNA: You're going to have to determine whether or not a particular witness or a

piece of evidence is credible, is believable. Do you understand?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: And you would agree we do that all the time. In our everyday lives we make decisions on credibility all the time.

How many people have children?

You know, say there's a dispute between kids, you don't know what happened, or between friends or family or at work. You've got to decide who do I believe. We make those decisions all the time. Here we're going to have professional witnesses, we're going to have police witnesses, we're going to have civilian witnesses.

Mr. Essig?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Now, you're going to have to use all your life experiences, like everybody else, in making a determination of what you believe and whether or not a particular person is credible or not. You can do that, certainly, sir?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Can we all do that?

Now, again, as Miss McCormick said, this is a murder case, the most serious charge in our

society.

Would it be fair to say, Miss Tromp, that in light of the serious nature of this case and the gravity of it, you will use a critical eye in making your determination of what you believe and whether or not a particular witness is credible? Would you do that?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Do we all agree that that is an important endeavor here?

Miss Grasso?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: That because of the gravity of this charge, you can't make mistakes here?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: You have to be sure. If you're not sure, not guilty.

PROSPECTIVE JUROR #10: Right.

MR. LAMAGNA: Now, would you promise me that you will look to witnesses to see whether or not a particular witness may have a bias not to tell the truth?

How about you, Mr. Doyle? A witness may all of a sudden change their testimony because it suits the position that they're on. Would that be

something that would strike you as maybe this person is not credible?

PROSPECTIVE JUROR #14: If I believed it.

MR. LAMAGNA: Assuming that they changed their testimony to suit a particular side.

PROSPECTIVE JUROR #14: How would I know that?

MR. LAMAGNA: I'm asking you if somebody says A, and then all of a sudden now they come into the courtroom and they change their story from A and now they say B because it fits some other side, wouldn't that be something you would consider?

PROSPECTIVE JUROR #14: I guess I would in the context of everything else, yes.

MR. LAMAGNA: How about you?

PROSPECTIVE JUROR #6: Same, in the context of what's going on.

MR. LAMAGNA: For example, if, for example, if there's an expert and you have an engineer or somebody says, well, the light was red, and then the person who hired him needs the light to be green, and that expert changes his testimony or his report from red now to green, would that be something you would consider on credibility?

I'm asking you again.

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Mr. Doyle?

PROSPECTIVE JUROR #14: I'd think about it, yes.

MR. LAMAGNA: If an expert all of a sudden changes his report from one thing to another because he's being paid for his opinion, Miss Malcolm, wouldn't that be something you would consider?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: How about you?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Mr. Gutierrez?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Would that be something that would concern you?

PROSPECTIVE JUROR #3: It would be questionable.

MR. LAMAGNA: All of a sudden testimony changes to a particular theory of the case to make the case sound better. Would that be something you would consider in judging the credibility of that witness?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: How about you, Mr. Kircher?

PROSPECTIVE JUROR #4: Kircher.

It sure would.

MR. LAMAGNA: Right? That shouldn't be happening, right?

Now, somebody gave a definition of an accident. Who gave that definition?

You did. Okay.

I'm not going to spend time on semantics of words. An accident, as you say, it's an unintentional act. Do we all agree with that? I'm not going to banter whether we call it a crash or an accident, whichever sounds maybe worse. We know what it is.

The issue is going to be under what circumstances, how this terrible tragedy occurred and why. And is it murder, to be held to the same standard as somebody who intentionally kills somebody in cold blood. That's what the issue is going to be here.

You will not hear from the defense this did not happen. This was a terrible tragedy of immeasurable proportion, and we all feel for this. This is terrible. However, two people did die, and we cannot change that, and four people were seriously injured.

When the judge related to you yesterday or

today some of the facts, we all agree, do we not, Mr. Espinosa, that in a car accident, people could get gruesomely injured because of the nature of what's happening. It doesn't always mean it's a criminal case or it's not a criminal case. The fact is, people get hurt terribly in a car accident.

Would you agree, as an engineer?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: We're not disputing these people died. We're certainly not disputing people being injured. I'm asking you the district attorney is going to bring in a lot of witnesses and produce a lot of evidence concerning the gruesomeness of how these people died. We are not disputing that. But yet you're going to end up having to sit through all of this.

What I'm saying to you is, Miss O'Hare, we would not be human if we didn't feel that sympathy, but what I'm asking you to do is not be persuaded by the use of sympathy and emotion, but look at the facts of the case. You're going to sit through all of this. We're not disputing it, but yet you're going to have to end up listening to it. And, unfortunately, Mr. Paul, one of the issues of how this young child died was she was decapitated. You

can't change that. The judge told you that.

What I need to know from all of you is based upon the terrible emotional feelings you'll have, can you look at the evidence through this filter of emotion and get beyond that point and concentrate on how it happened, why it happened and under under what circumstances it happened?

Miss Kinnard?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: We can't change how it happened. Accidents happen. Tragedies happen. You know, the issue here is going to be why, how, under what circumstances. Would you agree?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: Does anybody-- and this is a critical point because this was a tragedy of immeasurable proportions, but you're going-- they're going to bring in witnesses who are going to be doctors, not photographs, but testimony concerning this. We know that. You know this now. What I'm saying is can you get beyond that and listen to the facts about what's germane here?

Miss Kinnard?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: Now, the judge, Mr. Doyle,

will give you the charge on what depraved indifference to human life means. Will you promise to follow that law--

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: --as it relates to this?

Now, if the district attorney doesn't prove the element of depraved indifference, the state of mind of depraved indifference, even if you feel my client is responsible for the accident but they don't prove the depraved indifference state of mind, that evil and wicked state, how would you vote? Not guilty.

PROSPECTIVE JUROR #14: Not guilty.

MR. LAMAGNA: Is there any hesitation by anybody that if they can't prove his state of mind as being depraved it's a not guilty? Does anybody have any question about that?

Mr. Callaghan?

PROSPECTIVE JUROR #11: How could you tell? I had a question.

MR. LAMAGNA: Well--

PROSPECTIVE JUROR #11: We're sitting through your dissertation about how you understand everything is an accident.

MR. LAMAGNA: I'm going to--

PROSPECTIVE JUROR #11: You're saying there was a crash and two people passed away.

MR. LAMAGNA: That is a fact.

PROSPECTIVE JUROR #11: Then is the difference if your client wasn't driving?

MR. LAMAGNA: What I'm saying to you is--

PROSPECTIVE JUROR #11: I have a problem with the personal accountability.

MR. LAMAGNA: How about this: Let's say the district attorney doesn't prove that and the judge instructs you if you don't find that the district attorney has proved every element of the charges of murder, but I'm going to allow you to consider lesser charges where you may think he's guilty of that but not the murder, would you consider those lesser charges if the judge tells you to consider them?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: You would agree, Mrs. Grasso, you would agree that simply because somebody may be accused of one crime, that person may not be guilty of that crime but may be guilty of some lesser crime?

PROSPECTIVE JUROR #10: Right.

MR. LAMAGNA: Until you hear the evidence

you don't know.

PROSPECTIVE JUROR #10: Right.

MR. LAMAGNA: Now, Mr. Espinosa.

PROSPECTIVE JUROR #6: Espinosa.

MR. LAMAGNA: Would you agree with me that a person may be charged with one thing and maybe not guilty of that or maybe they don't prove that but they may prove something lesser? There's still culpability but not to what they're charged with. If the judge gives you those lessers, would you consider them?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: How about Mrs. Tromp?

PROSPECTIVE JUROR #1: Yes, I would consider them.

MR. LAMAGNA: Right? Because it's possible somebody may not be guilty of this top charge but maybe something in between.

Mr. Paul, have you ever heard the expression there are shades of gray in life?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: They may seek a charge of murder, to be held to the same standard as somebody who, essentially, kills somebody in cold blood. That may not be what happened here. It may have

been an accident but with liability.

Would you agree that that's possible?

PROSPECTIVE JUROR #2: Yeah.

MR. LAMAGNA: Mr. Callaghan, is that possible?

PROSPECTIVE JUROR #11: I'm not sure how you interpret liability. Is that the same as accountability?

MR. LAMAGNA: Yes.

PROSPECTIVE JUROR #11: It's not a civil case.

MR. LAMAGNA: No. No. This is a criminal case. The judge will give you the charges which they have to be able to prove. If they haven't proved one, is it possible maybe they proved another?

PROSPECTIVE JUROR #11: It's possible.

MR. LAMAGNA: Okay.

PROSPECTIVE JUROR #11: Depending on the--

MR. LAMAGNA: Depending how you see the facts.

PROSPECTIVE JUROR #11: Or if the judge were to give us alternate charges, how he would interpret those to see if the burden was met.

MR. LAMAGNA: If there's an element

missing out of any of these charges, how would you vote?

PROSPECTIVE JUROR #11: If they haven't proved their case, it would be not guilty.

MR. LAMAGNA: Would you agree-- I want everybody to hear this-- if there's, let's say, ten elements and they prove nine, that's pretty good, right? In normal things, nine out of ten is a 90. That's pretty good. But in this scenario, with so much on the line, and as the judge tells you, they have to prove every element, each individually beyond a reasonable doubt.

Now, what if they prove to your satisfaction nine out of ten elements beyond a reasonable doubt, but one element you're just not quite sure of and you have a doubt. How would you vote?

PROSPECTIVE JUROR #11: Depends on where that doubt was from.

MR. LAMAGNA: If there was a doubt, if there is a doubt-- well, okay.

How about Miss Grasso?

PROSPECTIVE JUROR #10: If there was doubt, I would have to say not guilty.

MR. LAMAGNA: Of course, if that's what

the judge told you the law was. If there's ten elements and they only prove nine elements, then how would you vote?

PROSPECTIVE JUROR #10: What you are saying?

MR. LAMAGNA: I'm saying-- let's say for one charge they have to prove ten things to prove that one charge.

PROSPECTIVE JUROR #10: Ten things equals one and one equals no? I'd have to say no.

MR. LAMAGNA: You'd have to say no. Not guilty, right?

The judge will tell you as my client sits here he's presumed innocent. We don't have to prove anything. They have to prove it all to your satisfaction beyond a reasonable doubt, correct?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: If there's 100 elements and they only prove 99 elements, how would you vote? Not guilty?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: Could we all agree with that? No hesitation? Because if there's hesitation, if that is what the judge tells you the law is, we need to know that now. You may not be

right to sit on this particular case. If you were sitting there-- that's the important thing with this kind of job, if you will, as a juror. I'm going to ask you to ask yourselves, you know, what if I was sitting there?

MS. MCCORMICK: Objection, Judge.

MR. LAMAGNA: Would you--

THE COURT: It's a fair question. I heard that question before. It's okay.

MR. LAMAGNA: So what I'm asking is just-- we can't get into your heads, especially in these few minutes, so you have to ask yourselves and be honest with us, it's about fairness and justice and a person's life. If you were sitting there, would you feel comfortable, with the law that the judge just gave you, beyond a reasonable doubt, burden of proof, would you feel comfortable being where he is with you as a juror?

PROSPECTIVE JUROR #6: Yes.

PROSPECTIVE JUROR #5: Yes.

PROSPECTIVE JUROR #4: Yes.

PROSPECTIVE JUROR #3: Yes.

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: You're hesitating. You hesitated before.

PROSPECTIVE JUROR #1: No.

PROSPECTIVE JUROR #14: Yes.

PROSPECTIVE JUROR #13: Yes.

PROSPECTIVE JUROR #12: I have a slight hesitation.

MR. LAMAGNA: That's okay.

PROSPECTIVE JUROR #12: I'm just being honest.

MR. LAMAGNA: I think that's wonderful. I think, as the Court said, there's no right or wrong answers here. The right answers are the open and honest answers, because you know what? You don't want to have to come to us in the middle of the trial and say, you know what? What I just heard, Mr. LaMagna, I'm sorry, I can't do this now. We don't want that.

So, please, anything, right now, this is the time. If there is any reservation, we have all these people here. If anybody has even the slightest reservation concerning the facts of this case, the gravity of the charge and the responsibility of doing what you're going to be asked to do, if you have any reservations and think you can't do it, please, now is the time.

Does anybody feel that after hearing this

now, you know what? I rather be on a different type of case. Everybody feels they can do it, other than your reservation?

PROSPECTIVE JUROR #12: I have a slight reservation.

MR. LAMAGNA: Would you rather not be on a case like this because of your experiences and--

PROSPECTIVE JUROR #12: To be honest, yes. I have a lot of alcoholism in my family and a lot of people who have been hurt by alcoholism.

MR. LAMAGNA: You have a certain bias?

PROSPECTIVE JUROR #12: I think I have a bias towards there needs to be accountability, so I'm just being honest. When you drink, that should be taken into account.

MR. LAMAGNA: I understand.

Is there anybody else who feels the same way?

THE COURT: Two minutes, Mr. LaMagna.

MR. LAMAGNA: Thank you, your Honor.

With respect to how this accident occurred, do you realize that accidents can happen for a lot of reasons? Right? We all are aware of that.

Mr. Paul?

PROSPECTIVE JUROR #2: Yep.

MR. LAMAGNA: There could be one reason for an accident occurring or a myriad of reasons all coming together causing an accident, correct?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Would you question whether the individual slowed down to try to self-correct, maybe too late? Would you question whether or not the street signs were okay or whether he's familiar with an area?

Mr. Espinosa, did you ever drive your own car in a place where you didn't know where you were going?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Maybe somewhere out of the State of New York or somewhere?

PROSPECTIVE JUROR #6: Yes, I have.

MR. LAMAGNA: Mr. Doyle, have you ever gotten lost driving?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: When you're driving and get lost, what do you do? You kind of slow down, right? You try to get your bearings straight.

Have we all experienced that? We slow down and look for a sign, right?

Miss Grasso, signs are for people who don't know where they're going, not for people who know where they're going.

PROSPECTIVE JUROR #10: Correct.

MR. LAMAGNA: Do you promise to consider all these things and what was happening that caused this accident, and if alcohol was involved, that's one aspect. The issue is going to be whether he acted with an evil, depraved mind-- okay? Do you understand that? --for murder. The judge may give you other lesser charges, that's one thing, but I'm talking about the murder case. Will you concentrate on all those issues?

Now, I need as my last question here a promise from all of you, and I think anybody who will be sitting where this young man is would ask the same question. Do you promise to make the prosecution fulfill its legal obligation to prove each and every element of the charge regardless of whether, under the circumstances, you think there's accountability or not? If their proof does not meet its burden beyond a reasonable doubt, every element, then it's not guilty. Remember, maybe guilty, possibly guilty, I think he's guilty is not enough. You agree with that, everybody? It's beyond a

reasonable doubt.

THE COURT: That's time, Mr. LaMagna.

MR. LAMAGNA: Thank you, Judge.

Thank you, ladies and gentlemen.

THE COURT: At this time I'm going to give counsel a couple of minutes with their notes, then I'd like to see counsel at the bench.

(Whereupon, a discussion was held at the bench on the record.)

THE CLERK: People, challenges for cause, one through twelve?

MS. MCCORMICK: Number one.

THE COURT: Granted.

MS. MCCORMICK: Number four.

THE COURT: Denied.

MS. MCCORMICK: Mr. Kircher--

THE COURT: Denied. He rehabilitated himself. Denied.

MS. MCCORMICK: Exception noted, Judge.

THE COURT: Yes.

MS. MCCORMICK: He specifically said that in his experience, he thought that a false statement had been used against him.

THE COURT: He said that in the beginning, and he became fairer, fairer and fairer. He started

to answer the questions like a fair juror.

Your challenge for cause is denied.

MS. MCCORMICK: Okay, your Honor.

THE CLERK: Anything else, People, one through twelve?

MS. MCCORMICK: No other for cause, Judge.

THE CLERK: Defense, first twelve, challenges for cause, one through twelve?

MR. LAMAGNA: One through twelve? Yes, number eleven.

THE COURT: Granted.

MR. LAMAGNA: And number twelve.

THE COURT: Granted.

MR. LAMAGNA: That's for cause.

THE CLERK: Any other challenges for cause, one through twelve?

MR. LAMAGNA: No.

THE CLERK: People, peremptory challenges, seats one through twelve?

MS. MCCORMICK: I'm sorry. Two, three and four, Judge.

Excuse me. Let me continue to look in the next row.

MR. LAMAGNA: So two, three and four?

MS. MCCORMICK: Yes.

No others, Judge.

THE CLERK: Defense?

MR. LAMAGNA: Judge, I have number five, number six, number nine and number ten.

THE COURT: Okay. Let's do thirteen and fourteen.

THE CLERK: Seat number seven, which was Loy Malcolm, is now going to become juror number one. Seat number eight, which was Bette O'Hare, now becomes juror number two.

We're addressing thirteen and fourteen, People, for cause?

MS. MCCORMICK: None for cause.

THE CLERK: Defense, addressing thirteen and fourteen for cause?

MR. LAMAGNA: Thirteen and fourteen for cause? No.

THE CLERK: People, peremptory challenges as to seats thirteen and fourteen?

MS. MCCORMICK: I'm going to challenge number thirteen.

MR. LAMAGNA: Number thirteen?

MS. MCCORMICK: Yes.

THE CLERK: Nothing further from the People?

MS. MCCORMICK: No, sorry.

THE CLERK: Defense, peremptory challenge on number fourteen?

MR. LAMAGNA: Number fourteen, yes.

THE CLERK: The People have used four and the defense has used five.

THE COURT: Okay.

(Whereupon, proceedings continue in open court.)

THE CLERK: If you hear your name called, please remain seated in the box:

Miss Malcolm and Miss O'Hare.

The rest of the jurors in the box, the Court would like to thank you for your service. Please follow the directions of the court officers.

(Whereupon, the unselected jurors were excused.)

(Whereupon, the jurors were duly sworn.)

THE COURT: Please have seats. What I'm going to do now, ladies and gentlemen, is I'm going to ask you to stay for this, even though you don't need to be back here until Monday at 9:30 in the morning. I have certain instructions which, when we break, I'm required by law to give you, but I don't want to send you off now with the admonitions then

fill the box and say the admonitions all over again. I'd like the two of you to please sit down over here.

We're going to fill the box, then we're going to break for lunch. Those of you who are in the box at the time that we break, please remember the seat that you're in at 2:15 when we resume. When you come back in, please take those seats.

THE CLERK: Ladies and gentlemen, please have your questionnaires out and follow the directions of the court officers.

Seat number one, Eddie Piazza, P-I-A-Z-Z-A; seat number two, Henry Thom, T-H-O-M; seat number three, Brian Straker, S-T-R-A-K-E-R; seat number four, Lorissa Edom; E-D-O-M; seat number five, Nina Lanci, L-A-N-C-I; seat number six, William Donald, Jr., D-O-N-A-L-D; seat number seven, Matthew Lander, L-A-N-D-E-R; seat number eight, Thomas Mayernik, M-A-Y-E-R-N-I-K; seat number nine, Anthony Macchiarulo, M-A-C-C-H-I-A-R-U-L-O; seat number ten, Nina Ward, W-A-R-D; seat number eleven, Lillian Puleo, P-U-L-E-O.

(No response.)

THE CLERK: Seat number eleven, Michael Orena, O-R-E-N-A; seat number twelve, Marla DeJesus,

D-E-J-E-S-U-S; seat number thirteen, Albert Giarretto, G-I-A-R-R-E-T-T-O; seat number fourteen, Lindsay Hamme, H-A-M-M-E.

THE COURT: Okay. Welcome, ladies and gentlemen, and ladies and gentlemen in the back, we are now breaking until 2:15. For your purposes, we are breaking until 9:30 Monday morning. Please be prompt, otherwise we can't stay to the schedule I told you about in the beginning.

For everybody in the room, all of you, until 2:15, and ladies, until 9:30 Monday morning, between now and then you must not discuss the case among yourselves or with anybody else. Do not form or express any opinions until the entire case has been completed and the Court has given you the charge as to the law. You must keep an open mind until all of the evidence is presented and you are charged as to the law.

You must not read or listen to any accounts or discussions of this case in the event it is reported by newspapers or other media. You must not visit or view the premises or place where the offense or offenses charged were allegedly committed or any other premises or place involved in the case.

You are not to permit any party to discuss

the case with you or attempt to influence you. Promptly report to the Court any incident within your knowledge involving an attempt by any person improperly to influence any member of the jury.

Prior to discharge you may not accept any payment or benefit in consideration for supplying any information concerning this trial.

I advise you if at any time any participant of the trial should meet you outside the building, you may not speak to or even acknowledge them to avoid any appearance of impropriety.

Have a nice lunch.

Have a nice weekend.

(Whereupon, a luncheon recess was taken.)

* * * A F T E R N O O N S E S S I O N * * *

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present your Honor.

THE COURT: Thank you.

All right. Standard introductory questions.

Any of you know any of us?

(No response.)

Does anybody know any names on the witness list I read off before?

(No response.)

Let me get to the issue I discussed with the previous panel. Many of you probably know something about this case through the last year from newspapers or TV or radio. Would that be correct?

Does anybody, as you sit here now, since you've heard no evidence yet, feel they are, as we sit here, influenced to such an extent that they could not give the defendant a fair trial?

You feel you could not, sir?

PROSPECTIVE JUROR #1: No.

THE COURT: All right. Go back to central jury, please.

(Whereupon, the prospective juror was excused.)

THE COURT: The rest of you are satisfied

with the frames of mind that you have you are ready to listen to evidence and come to conclusions?

All right. Fill the box, please.

THE CLERK: Seat number one, Nelson Figueroa, F-I-G-U-E-R-O-A.

Please have your questionnaires out.

THE COURT: Mr. Figueroa, do you know any of us?

PROSPECTIVE JUROR #1: No.

THE COURT: Do you know anybody on that witness list?

PROSPECTIVE JUROR #1: No.

THE COURT: You may have heard something about this case before you got here. Do you feel like you're in a position to be fair to this man?

PROSPECTIVE JUROR #1: I don't know if I can be fair.

THE COURT: Go back to Supreme Court, sir.

(Whereupon, the prospective juror was excused.)

THE CLERK: Seat number one, Stacey Haber, H-A-B-E-R.

THE COURT: Miss Haber, do you know any of us?

PROSPECTIVE JUROR #1: No.

THE COURT: Do you know anybody on that list?

PROSPECTIVE JUROR #1: No, I don't.

THE COURT: You might have heard something about this case already. Are you in the right frame of mind to be fair to this man?

PROSPECTIVE JUROR #1: Yes.

THE COURT: Please have a seat.

Mr. Hayden, go ahead, please.

MR. HAYDEN: Good afternoon, ladies and gentlemen. Good afternoon. I'm Assistant District Attorney Bob Hayden. I and Miss McCormick represent Kathleen Rice, District Attorney of Nassau County. We're trying this case on behalf of the People of the State of New York.

I'm sure each of you has a mental picture of an intoxicated person, a drunk. Some of you may have a picture of a falling down drunk. When you picture an intoxicated person, some of you may picture a man so drunk he can't even walk. Some of you may picture a man so drunk he can't even talk.

Would each of you accept that when it comes to driving a car, the standard for intoxication may be different? Can everyone accept that?

Would each of you accept that when it comes to driving a car, the standard for intoxication should be different? True?

Would each of you accept that a falling down drunk might not be able to find his car, much less drive it?

Would each of you accept a falling down drunk might not find his keys, much less use them to get into his car behind a steering wheel?

Would each of you accept a falling down drunk may not select an ignition key to use to drive that car?

That's not what we're talking about here. Can each of you assure us you'll look at the defendant's driving in determining whether he's intoxicated in this case? Everyone?

Would each of you accept that intoxication, social drinking, any kind of drinking is not on trial here? That's not what this is about. Can everyone accept that?

There's nothing wrong with social drinking. I'm sure all of us, or most of us, have probably consumed alcohol during the course of life. There's nothing wrong with that. That has nothing to do with it. The charges in this case are much

different than that.

Would each of you accept that drinking affects people differently? Everyone?

Some people are much more visibly affected by alcohol than others. Could everyone accept that? Some people are much less visibly affected by alcohol than others. Can everyone accept that?

You've learned that the defendant is charged with two counts of murder. You've learned that the defendant didn't intend to kill anyone. You'll learn that the defendant is not accused of intending to kill anyone. We're not alleging he intended to kill anyone.

You've learned that these murder charges involved depravity, not an intent to kill. These murder charges involve the use of a motor vehicle, a pick-up truck, not a gun or a knife or a club.

Do any of you feel you couldn't convict a man of murder unless he intended to kill? Anyone feel that way? It's not an unreasonable reaction. Do any of you feel that way? Anyone feel you can't convict a man with murder without an intent to kill?

Yes, sir?

PROSPECTIVE JUROR #13: I do.

MR. HAYDEN: You feel that way.

Does anyone else feel that way?

THE COURT: Sir-- excuse me, Mr. Hayden.

Sir, I haven't instructed you yet on what the law is. Depraved indifference to human life in the State of New York is a frame of mind or a state of mind that could render a person guilty of the charge of murder as it is written in the legislature. Do you think you could listen to my explanation of the law and go along with what I have to tell you constitutes depraved indifference to human life?

PROSPECTIVE JUROR #13: Yes.

THE COURT: Okay.

MR. HAYDEN: You'd be able to do that even without an intent to kill; is that correct?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: Ma'am, how about you?

PROSPECTIVE JUROR #1: I would have to hear more specification.

MR. HAYDEN: Can all of you assure us you'll listen very carefully when Judge Honorof explains these murder charges? Everyone?

Can each of you assure us you'll listen carefully when Judge Honorof explains the elements of depraved murder? Everyone?

Can each of you assure us you're going to accept the elements of depraved mind murder as Judge Honorof explains them? Everyone? Even if they don't include an intent to kill?

In the end, do each of you assure us you won't force us to prove intent to kill if the law doesn't require it? Everyone?

Defense counsel talked a lot about the state of mind. It's a state of mind. You've got to get into his head. You've learned that the defendant did not announce his state of mind. I'm really depraved, that's why I'm doing what I'm doing.

Can each of you assure us you're going to concentrate on the evidence in trying to determine the defendant's state of mind in spite of the fact he didn't announce it? Can everyone do that?

Can each of you assure us you're going to consider the observations of the defendant before he went out driving that night? Everyone? What he said? What he did?

Can each of you assure us you're going to consider the observations of the defendant while he was driving that night? Everyone?

Can each of you assure us you're going to

consider what the defendant had to say about his state of mind after the collision that night? Everyone?

And can each of you assure us you're going to consider what he did? If you happen to see a man walk up to another man holding a gun to the side of his head to his temple and fire a shot, if the man goes down and he leans down and fires two more shots, you say, what did you do, and the man says, I didn't intend to kill him, would any of you accept that having seen what you saw? Anyone?

Can each of you assure us you're going to concentrate and consider what he was doing that night in determining his state of mind? Everyone?

Okay. Defense counsel talked about this not being CSI. Everyone accepts this isn't CSI, right? This is real. Remember, defense counsel told you this is real. The People, Miss McCormick and I, want to join with defense counsel and tell you this is very, very, very real. Make no mistake about it. And defense counsel told you this affects a human life. Yeah, it does. We agree. It affects that young man's life. Can everyone accept that?

Would each of you also accept this case affects a lot of human lives? Would you accept

that?

Would all of you accept the fact this case affects human lives that were lost that night? Would you accept that?

Would all of you accept the fact this case affects human lives of people that were badly injured that night? Everyone?

Defense counsel talked about the extent of injuries and said we agree-- both sides agree the injuries are horrific. The deaths are horrific. They're gruesome. Everyone concedes that.

What I'm going to ask is can you assure me you're going to consider the nature of these injuries in determining whether the conduct that produced these injuries was depraved? You'll consider the extent of the injury. Will you all do that?

Defense counsel asked the previous group of jurors have you ever gotten lost. Have you ever driven in a car and have gotten lost.

I'll ask you, ma'am, how about you?

PROSPECTIVE JUROR #1: Right.

MR. HAYDEN: Of course. Everyone?

Has any of you ever gotten lost and driven the wrong way on a parkway for more than three miles

against oncoming traffic?

MR. LAMAGNA: Objection.

MR. HAYDEN: Anyone?

THE COURT: Sustained.

MR. HAYDEN: You can see that the defendant is a relatively young man who has been accused of a very serious crime. As has been mentioned before, you may feel sympathy, especially those of you who have 20, 25-year-old sons. There's nothing wrong with that. You're going to feel sympathy for the victims in this case, including the seven-year-old child.

Would each of you assure us-- would each of you accept that as jurors you're going to be fact finders? Everyone?

Would each of you accept as fact finders sympathy for anyone should have nothing to do with your finding of the facts? Everybody?

Would each of you accept that as fact finders sentencing considerations should have nothing to do with your finding of the facts? Everyone?

Would each of you accept as fact finders punishment should have nothing to do with your finding of facts? Can everyone accept that?

Can each of you assure us as fact finders you're going to leave sentencing considerations where they belong, in Judge Honorof's hands? Can everyone do that?

Can each of you assure us as fact finders you're going to leave punishment where it belongs, in Judge Honorof's hands? Can you all agree and assure us you'll be able to do that and not concern yourselves with that?

Over the course of the presentation of evidence in this trial you're going to hear from a number of police officers. Do any of you have strong feelings about police officers, positive or negative, based upon anything you may have seen or heard or read? Anybody?

Anyone have strong feelings about police officers based on any personal experience? Anyone?

I'm sure most of you have received traffic tickets. Has anyone received a traffic ticket and felt unfairly about it?

How about you, sir?

PROSPECTIVE JUROR #6: No, I deserved it.

MR. HAYDEN: Does anyone feel you were treated with disrespect? Anybody at all?

Anything you heard so far which gives you

any concern about your ability to be fair and impartial to both sides?

PROSPECTIVE JUROR #1: No.

MR. HAYDEN: I know you mentioned, ma'am, on your questionnaire that you know someone who has been accused of a crime.

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Tell us just a bit about that.

PROSPECTIVE JUROR #1: I was accused of a crime.

MR. HAYDEN: Is there anything about that experience that may affect you here?

PROSPECTIVE JUROR #1: I was a minor, no, so--

MR. HAYDEN: How do you feel you were treated?

PROSPECTIVE JUROR #1: Very fairly.

MR. HAYDEN: That wouldn't affect you at all?

PROSPECTIVE JUROR #1: No.

MR. HAYDEN: Mr. Thom, I noticed on your questionnaire you have the same thing checked off. You or someone you know has been accused of a crime?

PROSPECTIVE JUROR #2: Yes.

MR. HAYDEN: Could you tell us about that?

PROSPECTIVE JUROR #2: It was me. I was accused of a crime.

MR. HAYDEN: How do you feel you were treated?

PROSPECTIVE JUROR #2: I thought I was treated fairly.

MR. HAYDEN: Is there anything about that experience that would affect you at all during the course of the presentation of evidence at this trial?

PROSPECTIVE JUROR #2: No.

MR. HAYDEN: Do you feel you can be fair and impartial to both sides?

PROSPECTIVE JUROR #2: Yes.

MR. HAYDEN: Nothing you heard so far gives you any concern?

PROSPECTIVE JUROR #2: No.

MR. HAYDEN: Mr. Straker, you mentioned on your questionnaire you've been the victim of a crime?

PROSPECTIVE JUROR #3: Someone in my family.

MR. HAYDEN: Would you tell us a bit about that?

PROSPECTIVE JUROR #3: Robbed.

MR. HAYDEN: Is there anything about that experience that would affect you here?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: You mentioned on your questionnaire that you know members of law enforcement?

PROSPECTIVE JUROR #3: Yeah.

MR. HAYDEN: Tell us a bit about the people you know.

PROSPECTIVE JUROR #3: A friend of mine is a court officer.

MR. HAYDEN: A court officer? Is that in the city or here in Nassau County?

PROSPECTIVE JUROR #3: In the city.

MR. HAYDEN: Do you discuss his work with him?

PROSPECTIVE JUROR #3: Occasionally.

MR. HAYDEN: Anything about those conversations that might affect you here?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: Anything you've heard so far from anyone give you reason to think you might be less than fair and impartial?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: Miss Edom, ma'am, I noticed you, too, had indicated on your questionnaire you or someone you know has been accused and convicted of a crime.

PROSPECTIVE JUROR #4: It was a mistake.

MR. HAYDEN: You crossed it out.

PROSPECTIVE JUROR #4: I crossed it out.

MR. HAYDEN: Anything you've heard so far which would lead you to believe you couldn't be fair and impartial, not only to the defendant, but to the People?

PROSPECTIVE JUROR #4: No.

MR. HAYDEN: Miss Lanci-- is that correctly pronounced?

PROSPECTIVE JUROR #5: Yes.

MR. HAYDEN: Anything you've heard, ma'am, that gives you any concern?

PROSPECTIVE JUROR #5: No.

MR. HAYDEN: You can be fair and impartial, not only to the People, but to the defendant?

PROSPECTIVE JUROR #5: Yes.

MR. HAYDEN: Mr. Donald, you indicated on your questionnaire that you or someone you know has been the victim of a crime?

PROSPECTIVE JUROR #6: Yes.

MR. HAYDEN: Tell us about that.

PROSPECTIVE JUROR #6: Somebody stole my car.

MR. HAYDEN: Is there anything about that experience that would affect you one way or another here?

PROSPECTIVE JUROR #6: No, I don't think so.

MR. HAYDEN: Mr. Lander, you indicated on your questionnaire you or someone you know has been accused of a crime; is that right?

PROSPECTIVE JUROR #7: Yes.

MR. HAYDEN: Could you tell us a bit about that?

PROSPECTIVE JUROR #7: It was my mother. She was accused of a hit and run and leaving, and also my car was broken into.

MR. HAYDEN: Is there anything about your mom's experience that would affect you here?

PROSPECTIVE JUROR #7: No.

MR. HAYDEN: Do you feel your mom was treated fairly?

PROSPECTIVE JUROR #7: As far as I know, yes.

MR. HAYDEN: Does she feel she was treated fairly?

PROSPECTIVE JUROR #7: Yes.

MR. HAYDEN: Anything about that experience that would influence you at all in the prosecution of this case?

PROSPECTIVE JUROR #7: No.

MR. HAYDEN: Mr. Mayernik-- correctly pronounced?

PROSPECTIVE JUROR #8: Yes.

MR. HAYDEN: Mr. Mayernik, anything you've heard from anyone, from Mr. LaMagna, from Miss McCormick, from myself or from his Honor, that would lead you to believe you couldn't be fair and impartial?

PROSPECTIVE JUROR #8: No.

MR. HAYDEN: Mr. Macchiarulo?

PROSPECTIVE JUROR #9: Macchiarulo.

MR. HAYDEN: You indicated, sir, that you served on a criminal jury?

PROSPECTIVE JUROR #9: Yes.

MR. HAYDEN: What type of case?

PROSPECTIVE JUROR #9: Robbery.

MR. HAYDEN: Anything about that experience that would influence you in any way here?

PROSPECTIVE JUROR #9: No.

MR. HAYDEN: Any reason why you wouldn't want to serve?

PROSPECTIVE JUROR #9: No.

MR. HAYDEN: Miss Ward?

PROSPECTIVE JUROR #10: Yes.

MR. HAYDEN: Anything you've heard, Miss Ward, that gives you pause about your ability to sit fairly and impartially?

PROSPECTIVE JUROR #10: No.

MR. HAYDEN: Is there any reason why you wouldn't want to sit?

PROSPECTIVE JUROR #10: It's a lengthy trial. That's about it.

MR. HAYDEN: Can you assure us, with the understanding it could go as long as five weeks, you'd be able to give us your full, undivided attention?

PROSPECTIVE JUROR #10: If I was chosen to serve, yes, I would.

MR. HAYDEN: Mr. Orena?

PROSPECTIVE JUROR #11: Yes.

MR. HAYDEN: Anything you heard that gives you concern about your ability to be fair and impartial, not only to the defense, but to the

prosecution, as well?

PROSPECTIVE JUROR #11: No.

MR. HAYDEN: Miss DeJesus, correctly pronounced, ma'am?

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: Ma'am, you indicated on your questionnaire that you know people in law enforcement?

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: Could you tell us about those people?

PROSPECTIVE JUROR #12: My best friend's husband.

MR. HAYDEN: Where does he work?

PROSPECTIVE JUROR #12: Suffolk County.

MR. HAYDEN: What type of work does he do?

PROSPECTIVE JUROR #12: He is a state trooper.

MR. HAYDEN: Have you discussed his work with him?

PROSPECTIVE JUROR #12: No.

MR. HAYDEN: Anything about your relationship with him that would affect you here?

PROSPECTIVE JUROR #12: No.

MR. HAYDEN: You can treat a police

officer like anybody else?

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: Mr. Giarretto, correctly pronounced?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: Sir, you indicated you know people in law enforcement?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: Who are they?

PROSPECTIVE JUROR #13: My uncle. He's a retired New York City cop.

MR. HAYDEN: What type of work did he do for the NYPD?

PROSPECTIVE JUROR #13: I'm not sure.

MR. HAYDEN: Okay. Ever discuss his work with him?

PROSPECTIVE JUROR #13: No.

MR. HAYDEN: Anything about that relationship that would affect you here?

PROSPECTIVE JUROR #13: No.

MR. HAYDEN: You would treat police officers like anyone else?

PROSPECTIVE JUROR #13: Yes.

THE COURT: Two minutes.

MR. HAYDEN: Yes, your Honor.

Anything you've heard so far that would lead you to believe you couldn't be fair and impartial to either side?

PROSPECTIVE JUROR #13: No.

MR. HAYDEN: Miss Hamme, anything that you've heard so far that gives you concern that you couldn't be fair and impartial?

PROSPECTIVE JUROR #14: No.

MR. HAYDEN: Any reason why you wouldn't want to serve?

PROSPECTIVE JUROR #14: I'm getting married in a month. We'll be out of New York for the majority of next month.

MR. HAYDEN: Okay. So the time constraints would prevent you from serving?

PROSPECTIVE JUROR #14: Exactly.

MR. HAYDEN: Thank you all for your kind attention.

THE COURT: Mr. LaMagna?

MR. LAMAGNA: Thank you.

Good afternoon, ladies and gentlemen. Now, you have had the benefit of listening to the first round and some of the questions and some of the comments that both the district attorney and I have made. Does anything strike you other than what

most people have answered that's unusual, whether it's about the burden of proof or reasonable doubt or any of those basic concepts that the Court ultimately will be giving you?

We all accept it's the district attorney that has the burden of proof. As my client sits here right now, he is presumed innocent. Isn't that right, Mr. Lander?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: Miss Haber?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: So if the judge, as I think he might have asked the last panel, if you were to vote right now, it's not guilty, correct? We all agree with that?

Now, most of us have read something about this case, I think we've all said, most of us. Now, you understand anything you read in the paper may not be the whole truth. Would you all agree with that?

There could be reasons, Mr. Macchiarulo--did I get that right?

PROSPECTIVE JUROR #9: Close enough.

MR. LAMAGNA: Close. I have the same problem with my name.

Not everything you read in the paper is necessarily accurate. You can agree with that?

PROSPECTIVE JUROR #9: Of course.

MR. LAMAGNA: Would you agree there may be reasons, maybe to sell newspapers, they may sensationalize a case? We've all seen that, haven't we?

So what's very important, Mr. Straker, is that we need to know, all of us need to know, whether or not it's possible to wipe out everything that you may have heard, may have seen, may have discussed concerning this case, and listen only to the evidence that's presented in this case on that witness stand. Can you do that?

Can everybody do that?

It's not easy to wipe something out when you think you know something. Is that fair to say, Mr. Donald?

PROSPECTIVE JUROR #6: That's correct.

MR. LAMAGNA: Can you do that?

PROSPECTIVE JUROR #6: I'll try my best.

MR. LAMAGNA: Let me ask you this: Has anybody formed an opinion about, well, based upon what you read or maybe what you have heard in this case, has anybody formed an opinion concerning this

case?

PROSPECTIVE JUROR #6: I don't think so.

MR. LAMAGNA: This is the time to--

PROSPECTIVE JUROR #6: I know. I know. I know.

MR. LAMAGNA: So you may have?

PROSPECTIVE JUROR #6: Yeah.

MR. LAMAGNA: Is that a yes or--

THE COURT: Can you form an opinion without hearing what the law is?

PROSPECTIVE JUROR #6: No.

THE COURT: I haven't explained the law to anybody. None of you heard any evidence.

MR. LAMAGNA: So you'll keep an open mind knowing the Court is going to give you the law of exactly what depraved indifference to human life is?

Now, if the judge were to tell you just by merely a person being intoxicated and causing a terrible accident like that, in and of itself, by itself, does not constitute murder, would you follow that law?

PROSPECTIVE JUROR #6: I'll wait to hear what the judge says.

MR. LAMAGNA: But if he says that to you?

PROSPECTIVE JUROR #6: Yeah.

MR. LAMAGNA: Do we all understand that there's another element to this, it's a depraved indifference to human life, to be held to the same accountability as one who intentionally, in cold blood, killed somebody. That's what they have to prove, not just that he may have been drinking, not that he may have been responsible for causing a terrific accident, that's one thing.

THE COURT: Excuse me, Mr. LaMagna. I don't want the lawyers to try to explain the law to you. They will inadvertently confuse you. I will give you the smallest of examples about what depraved indifference is just so you can focus on it as the lawyers might discuss it with you.

If you were to take a loaded gun and fire it into a darkened theater, you may not intentionally be trying to kill anyone, but the fact that somebody does die, your state of mind at that time when you fired that gun was depraved indifference to human life. You didn't necessarily intend to kill anyone, but your state of mind at the time renders you liable in the State of New York to answer to the charge of murder.

MR. LAMAGNA: Thanks.

Miss Edom?

PROSPECTIVE JUROR #4: Edom.

MR. LAMAGNA: Do you believe that young people may drink more than older people? Does anybody feel that way?

Mr. Donald?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Do you feel that way?

Would you agree that that's a result of maturity, growing up, life experiences and things like that?

Mr. Lander?

PROSPECTIVE JUROR #7: Yeah.

MR. LAMAGNA: Would you agree, Mr. Mayernik, that sometimes young people do foolish and irresponsible things not realizing the consequences of their actions, and that's part of maturity?

PROSPECTIVE JUROR #8: Only minors or--

MR. LAMAGNA: No. I'm saying--

PROSPECTIVE JUROR #8: Yeah.

MR. LAMAGNA: Can we all accept that concept, Mr. Giarretto, that sometimes young people do foolish and irresponsible things which may cause terrible tragedy, but that happens. Would you agree?

PROSPECTIVE JUROR #13: I would agree. I don't think it's just young people. Older people do also.

MR. LAMAGNA: I agree with you.

Now, would you agree, Mr. Orena, that if somebody acts in a terribly foolish or irresponsible way and ultimately causes a tragedy, that doesn't necessarily mean they have a depraved mind, being held to the same standard as somebody who intentionally killed somebody. Would you agree with that?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: Mrs. DeJesus?

PROSPECTIVE JUROR #12: Yes.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #12: Yes.

MR. LAMAGNA: Mrs. Ward, would you agree with that?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: Does anybody disagree with that?

You will wait to hear actual evidence, Mrs. Lanci, of whether this was a terrible tragedy as a result-- we know what resulted. The issue is is it murder. That's what we're going to be talking

about, and I had asked the last panel if the judge gives you the opportunity to consider lesser charges, would you consider those if the judge gives them to you?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: Will we all consider those if the judge gives them to you?

Now, Mr. Straker, you would agree, would you not, that simply because somebody may be charged with something, they can be overcharged, too? Do we all agree with that, too?

And somebody, Mr. Thom, could be charged with something and be not guilty of that charge but maybe they are guilty of something lesser. Would you agree with that?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Would we all agree with that?

Now, accidents can occur for many reasons.

Miss Haber, would you agree?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: It may be one reason, it could be a confluence of many reasons.

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Would you promise in judging

this case, Mr. Orena, that you will consider the road conditions, how much traffic was on the road, whether the roadway was safely designated with proper signage?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: Would you promise that you will look, Mr. Thom, to whether or not, in causing the accident, that Mr. Heidgen attempted to try to correct but it was just too late? Would that be something you would consider?

PROSPECTIVE JUROR #2: I don't know.

MR. LAMAGNA: You would not consider that?

PROSPECTIVE JUROR #2: I don't know.

MR. LAMAGNA: Does anybody feel they wouldn't consider what he was doing while he was driving, like Mr. Thom?

PROSPECTIVE JUROR #2: Can you repeat the question?

MR. LAMAGNA: Would you consider the manner in which he was driving to determine whether he was depraved, if he was trying to self-correct, to get safe, but it was just too late?

PROSPECTIVE JUROR #2: I don't know.

MR. LAMAGNA: Would anybody consider that? Does anybody feel that's something that's not

appropriate?

PROSPECTIVE JUROR #6: Yes.

MR. LAMAGNA: Of course you would consider that to determine was he trying to avoid this. That would, would it not, negate whether or not he was depraved at the time.

Mr. Mayernik?

PROSPECTIVE JUROR #8: Mayernik.

MR. LAMAGNA: Now, we know, Mr. Mayernik, what happened here, but simply knowing the result of what happened doesn't necessarily help us about how it happened, why it happened and under what circumstances, correct?

PROSPECTIVE JUROR #8: Right.

MR. LAMAGNA: Some people, we would agree, would we not, Miss Lanci, are bad, evil people, and they do bad and evil things. Wouldn't you agree with that?

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: Some people, would you agree, Mr. Lander, are good people that may do a bad thing?

PROSPECTIVE JUROR #7: Yeah.

MR. LAMAGNA: It's going to be your determination to say although something tragic

happened, it was a tragedy, it may very well be a liability for but not murder. Would you all consider that?

For example, you drive on the road-- just as an example, somebody drives. Let's say they're lost or they're not paying attention. A squirrel comes across the street. We've all seen that. He hits the squirrel. That person caused a tragedy. I mean, people love animals, but he wasn't depraved from other people, even if he was drunk. Other people could be driving who are not even drunk at all and sees a squirrel and speeds up trying to see it run, and he ends up killing it because he didn't care whether it died or it didn't die, he was just trying to see it scurry. See the difference between those two people? Do we all see that?

That's what you're going to be determining, not just simply whether there was alcohol involved, whether there was drinking involved. We all agree people do irresponsible things, that's not murder. What was in his mind? Was he evincing that evil wickedness?

Now, you're going to base your decision, are you not, Miss Hamme--

PROSPECTIVE JUROR #14: Hamme.

MR. LAMAGNA: --based upon the quality of evidence produced by the District Attorney's Office, right?

PROSPECTIVE JUROR #14: Um-hum.

MR. LAMAGNA: Not the quantity of it. Did you ever hear it's quality, not quantity?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: Now, if, for example, there are inconsistencies with which an important witness is testifying, we have to judge credibility. Would that be something you would consider in judging a person's credibility?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: Sir?

PROSPECTIVE JUROR #6: (Indicating.)

MR. LAMAGNA: For example, if somebody gets hired as an expert to give their opinion for one side or the other, and let's say he makes an opinion and it doesn't fit their theory and all of a sudden he changes it. Would that be something you would consider in judging the credibility of that so-called expert?

PROSPECTIVE JUROR #6: Of course.

MR. LAMAGNA: Because people have motives, whether it's for a particular party that's paying

them. Would you agree, Mr. Lander?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: Would you determine this expert is nothing more than a hired gun to testify in any way that suits his employer?

PROSPECTIVE JUROR #7: Um-hum.

MR. LAMAGNA: Certainly, would we all agree to do that?

Now, Mr. Straker, if mistakes are made, critical mistakes, and then all of a sudden they're fixed, paperwork is changed, would that be something you would be a little suspicious of in judging the credibility of a witness like that?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Especially in a case like this?

PROSPECTIVE JUROR #3: Yeah.

MR. LAMAGNA: Where a person is charged with murder?

PROSPECTIVE JUROR #3: Um-hum.

MR. LAMAGNA: This isn't going to be about excuses or mistakes. We want quality evidence, don't we? We want to be sure before we make a decision concerning this man's life, don't we?

Mr. Straker?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Now, we wouldn't be human if we didn't feel pain, even anger, for what happened in a terrible tragedy like this. The problem is, though, we have to be able to get beyond that, to look at the facts.

Does anybody feel that simply because this tragedy occurred, you know what, I've heard it all, I can't think. I can't do this. Does anybody feel like that?

(No response.)

I take the silence as a no? You'll all be able to do that?

Just remember, I was talking about that filter of emotion. This person is here on trial for murder. If you're a juror, if you're picked as a juror, you're going to have to make that sober-- to use that word-- decision about whether or not they have proved their case beyond a reasonable doubt.

Mr. Donald, now let's say there's five elements and they only proved four. How would you vote?

PROSPECTIVE JUROR #6: If--

MR. LAMAGNA: I'm sorry. Did I catch you? If I said they had to prove five elements to prove

murder and they only proved four, how do you vote?

PROSPECTIVE JUROR #6: Not guilty for that.

MR. LAMAGNA: Is there any hesitation by anybody, sir, that if they don't prove all of the elements of murder, that's a not guilty?

PROSPECTIVE JUROR #9: According to what you say.

MR. LAMAGNA: If the judge tells you you have to prove A, B, C and D and they only prove A, B, and C, they don't prove D, how do you vote?

PROSPECTIVE JUROR #9: Not guilty.

MR. LAMAGNA: Even if they proved A, B and C, then there's no doubt-- you have a doubt on D, how do you vote?

PROSPECTIVE JUROR #9: Beyond a reasonable doubt.

MR. LAMAGNA: Then it would be not guilty, right?

PROSPECTIVE JUROR #9: Correct.

MR. LAMAGNA: Does everybody agree with that?

Mr. Giarretto?

PROSPECTIVE JUROR #13: Yes.

THE COURT: Two minutes, Mr. LaMagna.

MR. LAMAGNA: Thank you, your Honor.

Now, alcohol affects everybody. Would we agree, Mr. Giarretto, that alcohol could also diminish your response time to something?

PROSPECTIVE JUROR #13: Yes.

MR. LAMAGNA: That your perception may be dulled, that you don't react fast enough as you would, Mr. Orena, had you not been drinking?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: The judge will tell you what depraved indifference means. So simply because a tragedy occurred, if they don't prove a depraved-- a state of mind of depravity, and the judge gives you the opportunity for a lesser offense, would you consider that?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: I'm going to ask everybody what I asked the last panel. Given the gravity of this charge against this young man, if you were sitting where he is, would you want yourself to be a juror on this case?

PROSPECTIVE JUROR #6: I think so.

PROSPECTIVE JUROR #5: Yes.

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: No hesitation? This is the

time to respond. If you can't, that's okay.

Is that how you feel?

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: You can do this?

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: Sir?

PROSPECTIVE JUROR #3: Yeah.

PROSPECTIVE JUROR #2: Yeah.

PROSPECTIVE JUROR #1: Yes.

PROSPECTIVE JUROR #7: Yes.

PROSPECTIVE JUROR #8: Yes.

MR. LAMAGNA: Could I ask you, you're involved with the Bellmore School District?

PROSPECTIVE JUROR #5: Bellmore Central High School.

MR. LAMAGNA: Do you know Michelle LaMagna?

PROSPECTIVE JUROR #5: The central high school has over 600 employees.

MR. LAMAGNA: I'm just trying to make sure that you don't know me.

THE COURT: That's time, Mr. LaMagna.

MR. LAMAGNA: Thank you, your Honor.

THE COURT: At this time I'm going to give everybody in the courtroom a five or ten-minute .

break.

You're going to want to talk about the case. Please don't talk about the case. It would not be fair. You have to be fair. Don't talk about the case.

See you in five or ten minutes.

(Whereupon, the jury panel exited the courtroom.)

(Whereupon, a brief recess was taken.)

THE CLERK: People, challenges for cause, seats one through ten?

MR. HAYDEN: None for cause, your Honor.

THE CLERK: Defense, challenges for cause, one through ten?

MR. LAMAGNA: Judge, six, Mr. Donald.

THE COURT: Denied.

THE CLERK: Anything further?

MR. LAMAGNA: That's it one through ten.

THE CLERK: Thank you.

People, peremptory challenges, one through ten?

MR. HAYDEN: Number one, number seven and number ten, your Honor.

THE CLERK: Defense counsel, peremptory challenges, seats one through ten?

MR. LAMAGNA: Number three, number four, number five and number eight.

THE CLERK: Juror number three will be Mr. Thom, juror number four will be Mr. Donald, juror number five will be Mr. Macchiarulo.

Seats eleven through fourteen, People, challenges for cause?

MR. LAMAGNA: Your Honor. I'm sorry. I'm sorry.

THE COURT: Hold on.

MR. LAMAGNA: I had on my sheet for cause. I had forgotten that you had denied the cause for number six.

THE COURT: Okay. You would like to use a peremptory challenge; is that correct?

MR. LAMAGNA: Yes.

THE COURT: So that makes juror number nine juror number four.

THE CLERK: That's Anthony Macchiarulo.

People, we're addressing seats eleven through fourteen at this time. Challenges for cause?

MR. HAYDEN: Miss Hamme, your Honor.

THE COURT: Pardon?

MR. HAYDEN: Miss Hamme?

THE COURT: Granted.

THE CLERK: Any further applications for cause, eleven through fourteen?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenges for cause, seats eleven through fourteen?

MR. LAMAGNA: No, thank you.

THE CLERK: People, peremptory challenges, seats eleven through fourteen?

MR. HAYDEN: Eleven and thirteen, your Honor.

THE CLERK: Defense counsel, peremptory challenges, seat number twelve?

MR. LAMAGNA: Seat number twelve.

THE COURT: Okay. We've got two. Round three in two minutes.

(Whereupon, a brief recess was taken.)

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: People ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: Would you take over, please, Jean?

THE CLERK: The two names I call out, please remain seated: Henry Thom and Anthony Macchiarulo, remain seated in the box.

Everyone else in the box, you're excused with the thanks of the Court. Please follow the directions of the officers.

(Whereupon, the unselected prospective jurors exit the courtroom.)

(Whereupon, the jurors were duly sworn.)

THE COURT: As you know, it's my hope to be able to start this trial in terms of opening statements and testimony on Monday morning. Sometimes I'm wrong, but I need you to be here Monday morning at 9:30, no later. Please bring a book that morning to read. You're way ahead of me. You already know the admonitions I gave to you right before lunch. Please observe them.

Have a nice weekend. We'll see you Monday. Thank you.

(Whereupon, the jurors exit the courtroom.)

THE CLERK: Ladies and gentlemen, have your questionnaires out and available and follow the instructions of the officers, please.

Seat number one, Mary Bastien, B-A-S-T-I-E-N.

(No response.)

Seat number one, Diana Rodriguez, R-O-D-R-I-G-U-E-Z; seat number two, Tiranda Griffin, G-R-I-F-F-I-N; seat number three, Enandanie, E-N-A-N-D-A-N-I-E, last name Bherwani, B-H-E-R-W-A-N-I; seat number four, Russell Zucker, Z-U-C-K-E-R; seat number five, Robert Pike, P-I-K-E; seat number six, Lisa Cartegena, C-A-R-T-E-G-E-N-A; seat number seven, Nicole Memnon, M-E-M-N-O-N; seat number eight, Patrick Clark, C-L-A-R-K; seat number nine, Michael Colantonio, C-O-L-A-N-T-O-N-I-O; seat number ten, Craig Cavaco, C-A-V-A-C-O; seat number eleven, Ronald Ricardo.

(No response.)

Seat number eleven, Kenneth Kim, K-I-M; seat number twelve, Calvin Chung.

(No response.)

Seat number twelve, Patrick Nielsen, N-I-E-L-S-E-N; seat number thirteen, Sylvia Goldkranz, G-O-L-D-K-R-A-N-Z; seat number fourteen,

Elvis Dacosta, D-A-C-O-S-T-A.

THE COURT: Welcome. Just to make sure we have a full pack, do any of you know any of us?

(No response.)

Did any of you recognize any of the names I read on the witness list?

Ma'am?

PROSPECTIVE JUROR #7: I know the family, the Flynn family.

THE COURT: Go back to central jury, ma'am.

(Whereupon, the prospective juror was excused.)

THE CLERK: Seat number seven, Joseph Carola, C-A-R-O-L-A.

THE COURT: Mr. Carola, before you go up there, do you know any of us?

PROSPECTIVE JUROR #7: No, sir.

I am an attorney. I did have a deposition with Mr. Flynn three or four years ago.

THE COURT: Go back to central jury, sir.

THE CLERK: Seat number seven, Laura Montaniao, M-O-N-T-A-N-I-A-O.

THE COURT: Go back and get your questionnaire. We'll call someone else.

THE CLERK: Seat number seven, Thomas Augustine, A-U-G-U-S-T-I-N-E.

THE COURT: Mr. Augustine, do you know any of us?

PROSPECTIVE JUROR #7: No.

THE COURT: Do you know anybody on the witness list?

PROSPECTIVE JUROR #7: No.

THE COURT: Have a seat.

Let's get back to the issue of how much about this case did any of you know before you got here? Is it fair to say that many of you knew something of this case before you got here for jury selection? Yes? Fair to say? Raise your hands if you knew something about the case.

Despite whatever you may have heard of the case or about the case, as jurors you have heard no evidence at all. Do any of you feel as you sit here now that because of whatever it is you know or thought you knew about this case that you're not inclined to sit fairly at the present time?

All of you can be fair as you sit here, despite anything you might have heard of the case?

Great.

Miss McCormick?

MS. MCCORMICK: Thank you.

Good afternoon. Good afternoon. I can't decide whether you're at an advantage or disadvantage having sat through everything else that's gone on before. I guess you know what's coming. We'll start with that.

Let me ask first, who here drives a car? Everyone almost?

Not you?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Do you drive a car?

PROSPECTIVE JUROR #1: No.

MS. MCCORMICK: Have you ever driven a car?

PROSPECTIVE JUROR #1: No.

MS. MCCORMICK: You live in Nassau County?

PROSPECTIVE JUROR #1: I take the train.

MS. MCCORMICK: Okay. Has anyone been involved in a traffic crash of any sort? Show of hands?

Did any of those traffic crashes result in serious injury or criminal charges being brought?

You had your hand up momentarily, sir?

PROSPECTIVE JUROR #5: No.

MS. MCCORMICK: Lawsuits. Anybody

involved in a lawsuit as a result of a traffic crash?

(No response.)

No? Okay.

Then let me go onto the next question. And I apologize if it seems intrusive in your lives, but do you know of anyone or have you, yourselves, ever been accused of driving while intoxicated? I'm going to go down the line. I didn't spend too much time on this before.

Can you tell us a little bit about that?

PROSPECTIVE JUROR #1: Yes. A friend of mine was arrested for driving while impaired and he pled guilty.

MS. MCCORMICK: Was there anything about that or was your friend unfairly treated by the police or anybody--

PROSPECTIVE JUROR #1: No.

MS. MCCORMICK: --in any way, shape or form that would affect your ability to be a fair juror in this case?

PROSPECTIVE JUROR #1: No.

MS. MCCORMICK: Nothing from you?

PROSPECTIVE JUROR #3: No.

PROSPECTIVE JUROR #4: No.

MS. MCCORMICK: Sir, do you know anyone?

PROSPECTIVE JUROR #5: No.

Miss Cartegena?

PROSPECTIVE JUROR #6: No.

PROSPECTIVE JUROR #7: Yes, several of my friends. One in particular was a roommate. He was in a drunk driving accident.

MS. MCCORMICK: Was anybody seriously injured?

PROSPECTIVE JUROR #7: He was injured.

MS. MCCORMICK: He was accused of driving drunk?

PROSPECTIVE JUROR #7: Um-hum.

MS. MCCORMICK: Okay. When you say several of your friends--

PROSPECTIVE JUROR #7: Two others, but not as close as he was. They were just accused.

MS. MCCORMICK: They're still pending?

PROSPECTIVE JUROR #7: They're still pending.

MS. MCCORMICK: Are they pending here in Nassau County?

PROSPECTIVE JUROR #7: One. I'm not sure if one is in Suffolk.

MS. MCCORMICK: Is there anything about

that, your friends having been accused, is there anything about that, your one friend had a crash, that would impact on your ability to sit as a fair juror in this case?

PROSPECTIVE JUROR #7: No.

MS. MCCORMICK: What about the issue itself of driving while intoxicated and the driving while intoxicated laws? Do you have a gut reaction of them being fair or unfair or anything like that?

PROSPECTIVE JUROR #7: No, it's fair. I can be fair.

MS. MCCORMICK: So the fact your friends have been accused is not bothersome to you in sitting in this case?

PROSPECTIVE JUROR #7: No.

MS. MCCORMICK: Okay. I have to check the time.

Do you know anybody, Mr. Clark?

PROSPECTIVE JUROR #8: No.

MS. MCCORMICK: Mr. Cavaco?

PROSPECTIVE JUROR #10: I was convicted eight years ago.

MS. MCCORMICK: I appreciate your honesty, sir.

Was that the only time you have ever been

accused?

PROSPECTIVE JUROR #10: Yes.

MS. MCCORMICK: When you say you were "convicted," did you take the case to trial?

PROSPECTIVE JUROR #10: No.

MS. MCCORMICK: You pled guilty?

PROSPECTIVE JUROR #10: I pled guilty.

MS. MCCORMICK: Is there anything about that in your life which would prevent you from being a fair juror in this case?

PROSPECTIVE JUROR #10: No.

MS. MCCORMICK: You believe-- you didn't feel you were unfairly treated?

PROSPECTIVE JUROR #10: I was not unfairly treated.

MS. MCCORMICK: Okay. Is there anything else that we should know about that would prevent you from being a fair juror? That's all. I'm not trying to pry about anything in your life. Is there anything about that that bothers you? Since the accusation is depraved indifference, certainly it's not all about driving while intoxicated, but is there anything about it that troubles you?

PROSPECTIVE JUROR #10: No.

MS. MCCORMICK: Okay, sir.

Mr. Kim, do you know of anyone?

PROSPECTIVE JUROR #11: A good friend of mine died in an accident in Queens.

MS. MCCORMICK: He suffered serious injuries?

PROSPECTIVE JUROR #11: His passenger suffered serious injuries.

MS. MCCORMICK: Was your friend the person accused of driving drunk?

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: Were there charges that stemmed from that?

PROSPECTIVE JUROR #11: He hit into a tree, so, yeah. Not criminal, but he was prosecuted.

MS. MCCORMICK: He was prosecuted for DWI?

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: And with respect to your friend, was there anything about that incident, the way he was treated, the fact he was charged, that hits too close to home for you to be on this particular jury?

PROSPECTIVE JUROR #11: No.

MS. MCCORMICK: What about the fact he got into a crash and this is about a DWI crash, at least

on some level? Does that bother you at all as a juror?

PROSPECTIVE JUROR #11: No.

MS. MCCORMICK: You can be fair and impartial?

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: How about you, Mr. Nielsen? Do you know anybody?

PROSPECTIVE JUROR #12: No.

MS. MCCORMICK: Ms. Goldkranz?

PROSPECTIVE JUROR #13: No.

MS. MCCORMICK: Mr. Dacosta?

PROSPECTIVE JUROR #14: No.

MS. MCCORMICK: Okay. Thank you very much for your honesty. I appreciate that very much.

You all heard the earlier discussions about following the law, my dad and the seat belt thing? I did that loud enough so you could all hear that.

If you are going to sit as a juror on this case, you're going to have to be able to swear to follow the law as the judge gives it to you, regardless of how you feel about it, even if after you've been listening to it you say to yourself that's crazy. I don't have to be worried about

that? You can be like my dad? Even though he thinks the seat belt laws are intrusive, in his words, if he was a sworn juror on a seat belt case, he would swear to follow that law even though he disagreed with it.

Are you able to do that, Miss Rodriguez? Can you follow what the judge tells you and put your own feelings aside?

Please think about this. I'm going to ask you all. It's very important.

PROSPECTIVE JUROR #1: Yes.

MS. MCCORMICK: Miss Griffin?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: You can do that, Miss Bherwani?

PROSPECTIVE JUROR #3: Yes.

MS. MCCORMICK: Mr. Zucker?

PROSPECTIVE JUROR #4: Yes.

MS. MCCORMICK: Mr. Pike?

PROSPECTIVE JUROR #5: Yes.

MS. MCCORMICK: Miss Cartegena?

PROSPECTIVE JUROR #6: Yes.

MS. MCCORMICK: Mr. Augustine?

PROSPECTIVE JUROR #7: Yes.

MS. MCCORMICK: Mr. Clark?

PROSPECTIVE JUROR #8: Yes.

MS. MCCORMICK: Mr. Colantonio?

PROSPECTIVE JUROR #9: Yes.

MS. MCCORMICK: If I mispronounce your name, I apologize.

Mr. Cavaco?

PROSPECTIVE JUROR #10: Yes.

MS. MCCORMICK: Mr. Kim?

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: Mr. Nielsen?

PROSPECTIVE JUROR #12: Yes.

MS. MCCORMICK: Miss Goldkranz?

PROSPECTIVE JUROR #13: Yes.

MS. MCCORMICK: Mr. Dacosta?

You can all follow the judge's instructions?

Going along those lines, you just heard the defense attorney get up and in rather animated terms keep saying this is depraved murder, tantamount to cold-blooded murder. Do you understand that the instructions on a depraved mind are going to come from the judge, and there's nothing in those instructions about it being cold-blooded murder. It's not about an intentional murder.

Do we all agree that you're going to listen to the judge for your instructions? Do we agree on the fact this is not about an intentional murder?

You heard earlier that no one is going to say that the defendant, Martin Heidgen, intentionally got in a car that night with the idea, with the intent, to go out and kill people. That fact-- and because this charge is called murder, he's going to define it for you. You're going to apply the facts to his definition.

But are you able, do you think, to follow the law and convict somebody of murder when it wasn't their intent to kill somebody? That's not part of what we have to prove. Do you think you can do that, if we meet our burden of proof?

PROSPECTIVE JUROR #1: Yes.

MS. MCCORMICK: The burden of proof, of course, is that we have to show that he had a depraved mind, that he just didn't care about what was going to happen to himself or anybody else that night. Can you find somebody guilty of murder if we meet that burden of proof? Can you do it?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: Miss Bherwani?

PROSPECTIVE JUROR #3: Yes.

MS. MCCORMICK: Mr. Zucker?

PROSPECTIVE JUROR #4: Yes.

MS. MCCORMICK: How about-- I'm going to ask you all, is there anybody who is troubled that the charge itself doesn't involve the defendant intending to kill somebody but it's called murder? Is there any gut reaction, any-- even a subliminal or subconscious reaction to that? Anybody?

Mr. LaMagna was just talking about how-- he asked the jury whether in their experience young people maybe drink more than older people, and there were some smiles, maybe a little laughter. Of course in human experience would it be fair to say that all people drink according to their own social wants, needs, or don't drink at all?

Is there anybody in the jury box who does not-- has not consumed alcohol? Is there anybody who doesn't drink at all for any reason? Nobody?

So like everybody else, then, do you understand that alcohol is not on trial in this case, that you're allowed to drink alcohol? Do you understand that you're allowed to get absolutely obliterated as long as you don't drive a car? Do you understand that?

PROSPECTIVE JUROR #5: Yes.

MS. MCCORMICK: Is there anybody who thinks there's a dispersion cast on drinking at all because of the facts of this case?

What do you think?

PROSPECTIVE JUROR #1: Um-hum.

MS. MCCORMICK: You think it looks badly--people who drink are looked upon worse than people who don't drink or do you think it's about driving a car?

PROSPECTIVE JUROR #1: I think it's about driving a car.

MS. MCCORMICK: What about you, sir, and your friends? Is there a distinction in your mind about drinking or it's just driving a car after you've been drinking is the problem?

PROSPECTIVE JUROR #7: Yes.

MS. MCCORMICK: Okay. Mr. LaMagna also talked in his last round of jury selection about things you should consider, things that the jury should consider in determining the state of mind of the defendant. You know, there are some things I'm going to ask you whether or not you will take into account.

You know, this is not a case about

squirrels. I understand he was trying to make an analogy about squirrels and crossing the road and aiming for squirrels and not aiming for squirrels, but do you think there's something in between the aiming for the squirrel and the not seeing the squirrel and the not caring whether there's anything in the way?

Would you all agree to consider, when you listen to the judge's charge, when you're thinking about state of mind, you'll think about the actions? From the evidence that you're going to hear, you'll consider whether the defendant's state of mind was one of not caring? Can you think about that as you listen to the evidence?

Can you do that?

PROSPECTIVE JUROR #1: Um-hum.

MS. MCCORMICK: Can you do that?

PROSPECTIVE JUROR #2: Yes.

PROSPECTIVE JUROR #5: Yes.

MS. MCCORMICK: Can you do that?

PROSPECTIVE JUROR #6: Yes.

MS. MCCORMICK: Everybody?

Do you think that because a person is young and does foolish things, as the defense attorney said, that that is an excuse for not

thinking about consequences, not thinking about things that are obvious and serious and dangerous? Is that an excuse? Do you think so?

PROSPECTIVE JUROR #6: No.

MS. MCCORMICK: Do you think it should be allowed to be a defense?

PROSPECTIVE JUROR #5: No.

MR. LAMAGNA: Objection, Judge.

THE COURT: Sustained.

MS. MCCORMICK: Do you think it's an excuse?

PROSPECTIVE JUROR #3: No.

PROSPECTIVE JUROR #2: No.

PROSPECTIVE JUROR #1: No.

PROSPECTIVE JUROR #7: No.

MS. MCCORMICK: What about you, sir?

PROSPECTIVE JUROR #8: Age?

MS. MCCORMICK: That a person is young, somehow that absolves responsibility for consequences of their actions? You don't think so?

PROSPECTIVE JUROR #8: No.

MS. MCCORMICK: They should be held equally accountable for the obvious results and choices they make.

Do you think so, Mr. Colantonio?

PROSPECTIVE JUROR #9: Yes.

MS. MCCORMICK: How about you?

PROSPECTIVE JUROR #10: No.

MS. MCCORMICK: Would you consider, as you're listening to the evidence and whether the defendant had a depraved state of mind, a disregard for human life, his own included? Would you consider-- the defense attorney talked about actions to correct, to slow down, to avoid a crash. I'm going to ask you the opposite. Will you consider the failure to act, the failure to avoid the crash or to get out of the way as something that might show you the state of mind of the defendant at the time of the crash? Would you think about that, if someone failed to take an opportunity to get out of the way?

What do you think?

PROSPECTIVE JUROR #2: Yes.

PROSPECTIVE JUROR #7: Yes.

PROSPECTIVE JUROR #9: Yes.

PROSPECTIVE JUROR #10: Yes.

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: Does anybody think that's not an important point?

How about would you consider as the

roadway opens up, and you're going to see pictures of the roadway and you're going to hear witnesses testify, that if you hear there were places, wide shoulders, where somebody could get off and stop, would you take that into account, that they weren't used, to show the defendant's state of mind?

What do you think?

PROSPECTIVE JUROR #10: Yes.

MS. MCCORMICK: Would you, sir?

PROSPECTIVE JUROR #11: Yes.

MS. MCCORMICK: How about if there's no evidence that the defendant tried to stop at all? Would you take that into your consideration of his state of mind?

You, sir?

PROSPECTIVE JUROR #14: Yes.

MS. MCCORMICK: How about if he appeared to completely ignore the warnings of other cars oncoming or any other kind of warnings and just kept driving straight? Is that something you would consider as an important fact in determining whether the defendant had a depraved state of mind?

PROSPECTIVE JUROR #3: Yes.

MS. MCCORMICK: Does anybody think that's not important, not relevant in this case?

How about the idea-- just the general notion that you're going to have to determine what the state of mind of the defendant is from his actions? Once again, you know, we usually don't have the benefit of somebody announcing what they're thinking as they're doing something.

Would you say, Miss Griffin, in your everyday life that you look at what people do and from what they do you determine what they meant to do and when they intended to do? You do that on an everyday basis.

PROSPECTIVE JUROR #2: No.

THE COURT: Two minutes.

MS. MCCORMICK: Thank you.

Do you have children, ma'am?

PROSPECTIVE JUROR #2: Yes.

MS. MCCORMICK: So if your kids do something, they do one thing but they tell you something else, would you consider, along with what they said, what they did in determining what they actually meant to do? Would you do that?

PROSPECTIVE JUROR #2: To determine what they did?

MS. MCCORMICK: What they actually meant to do. They do one thing and they say something

else. How are you going to decide what they meant to do?

PROSPECTIVE JUROR #2: I would have to think about it more. I would have to get more information on exactly what they did in order to determine whether or not to punish them for what they did.

MS. MCCORMICK: Would you all agree that taking into account what someone did and matching it to what they said and whether the two things match up is an important thing to consider?

This trial-- again, alcohol-- you heard the defense attorney talk about the fact that alcohol can dull perception and slow reaction time. Is there anybody here who has the idea about alcohol that it will make you blind? Do you think alcohol makes you blind or do you think it could affect how quickly you percept?

PROSPECTIVE JUROR #1: If you have enough alcohol, I'm sure it's quite difficult to see.

MS. MCCORMICK: Do you think if you had alcohol and it's difficult to see, you'd know it?

PROSPECTIVE JUROR #1: Yeah.

MS. MCCORMICK: Yes. Do you think that each person reacts differently to alcohol in their

system? Does everybody agree that people are affected by alcohol differently?

Will you promise to listen to what effects of alcohol had on this defendant that night? Can you do that?

THE COURT: Time, Miss McCormick.

MS. MCCORMICK: Thank you, your Honor.

THE COURT: Mr. LaMagna, please.

MR. LAMAGNA: Good afternoon, ladies and gentlemen. Much of what we have been trying to articulate to the group you've heard over and over again. However, there's some things I'd like to just go over again.

Miss Rodriguez, Miss McCormick was saying, well, it's about the driving and it is about drinking and driving. You understand that the charge is murder. It's not just about drinking and driving. Otherwise, every DWI homicide would be a murder, wouldn't it? So we're not just talking about that.

And, Miss Cartegena, if the Court would give you lesser charges to consider after the evidence is in, wouldn't you consider those?

PROSPECTIVE JUROR #6: Yeah.

MR. LAMAGNA: Would anybody feel they're

not going to consider them, that I'm only going to consider the murder charge?

Mr. Clark?

PROSPECTIVE JUROR #8: No.

MR. LAMAGNA: In fact, you would agree that there's degrees of culpability, that somebody may be charged with something, maybe they're not guilty of that, maybe they're guilty of something else?

Miss Bherwani?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: It's a matter of degree, isn't it?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: There's an extreme degree and different degrees after that, correct?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: And it's only going to be based on what the evidence is, Mr. Zucker, before you can feel comfortable making a decision with such gravity of a murder charge. Would you agree with that?

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: Mr. Colantonio, you would agree it's the quality of the evidence. We know the end result here. It is a tragedy, and we all know that. What I need to ask you, and all of you, is tragedies unfortunately in life happen. The issue is going to be what, if anything, is the culpability of somebody who caused that tragedy. Would you agree?

PROSPECTIVE JUROR #9: (Indicating.)

MR. LAMAGNA: Are you open-minded enough to say I'm going to wait for the evidence before I decide what I think, correct?

PROSPECTIVE JUROR #9: Yes.

MR. LAMAGNA: Mr. Cavaco?

PROSPECTIVE JUROR #10: Cavaco.

MR. LAMAGNA: Would you agree with that, that that's reasonable?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: Now, Miss Goldkranz, we were talking about youth. Well, youth, you would agree, would be a consideration to determine was this just a foolish, terrible, irresponsible act by a young man or a depraved mind. That would be a question that you would want to ask yourself, wouldn't it? It would be reasonable.

PROSPECTIVE JUROR #13: Sure.

MR. LAMAGNA: Mr. Nielsen, would that be something that you would want to make a decision on after the evidence is in, was what happened here a terrible, foolish act, an irresponsible act, that may have criminal liability, but I still don't know necessarily if it was a depraved mind that did this. Would that be reasonable?

PROSPECTIVE JUROR #12: I'm not quite clear on your question.

MR. LAMAGNA: Would you consider all the factors of a person's age, that there may have been other reasons that are reasonable as to why this happened other than having a depraved mind, an evil mind?

PROSPECTIVE JUROR #12: I would consider a lot of things.

MR. LAMAGNA: Would we all agree to consider them, Mr. Kim?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: Now, Mr. Kim, if ten people were with Mr. Heidgen before that the whole day and that night and articulated he was in a perfect mood, he was as happy and as excited as everybody else, he was having a great time, he was laughing, he was

singing, he was dancing, wouldn't that be something that you would consider of whether or not all of a sudden he turned into a depraved person--

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: --to determine his state of mind? Wouldn't that be relevant?

PROSPECTIVE JUROR #11: Yes.

MR. LAMAGNA: Mr. Zucker, would you consider what everybody else who was with him said and their perception of what this person-- how he was acting and what his demeanor was?

PROSPECTIVE JUROR #4: I think that would have to be considered, yes.

MR. LAMAGNA: Miss Rodriguez, you heard what Mr. Zucker said. Wouldn't that have to be considered in determining what a person's state of mind is?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Miss Cartegena, did you ever go out with a whole group of people sitting in a restaurant, a bunch of people, and if somebody is sitting there, they're not talking, they're looking down at their plate, they're not laughing, they're not engaging with anybody, you would say what's wrong, right? Because you would perceive, because

of all of your life experiences would tell, something is wrong, right?

Mr. Augustine, let's say you're at that same dinner party and the person you were talking about is engaging people, is talking, is happy, is telling jokes, everything is fine. That, as Mr. Zucker said, would be a reasonable thing to take into consideration if you were to decide what a person's state of mind is, how he was acting, what he was doing?

PROSPECTIVE JUROR #7: I guess so.

MR. LAMAGNA: Well, does anybody feel that wouldn't be relevant?

Miss Bherwani?

PROSPECTIVE JUROR #3: I would think it's relevant.

MR. LAMAGNA: Anybody?

Mr. Cavaco?

PROSPECTIVE JUROR #10: It's relevant.

MR. LAMAGNA: Of course. This is how he was acting.

Now, Mr. Kim, we talked about the effects of alcohol, and I don't want to spend so much time on that because that's not all there is to this charge. We're talking about, on top of which, a

depraved mind. But you would agree that in determining whether or not this was a horrific, unintentional act without a depraved mind, you would determine how alcohol may have affected somebody, wouldn't you?

PROSPECTIVE JUROR #11: Definitely.

MR. LAMAGNA: As we know from life experiences, your perception gets changed. You don't react fast enough. Things that probably should have attracted your attention may not as fast.

You agree with that, don't you?

PROSPECTIVE JUROR #11: Um-hum.

MR. LAMAGNA: Can we all agree with that, that those are things that happen?

The issue in this case-- this is a murder case. We have to determine whether the district attorney has presented sufficient evidence, not only to show that this tragedy occurred and somebody is at fault and whether they were drinking or not, but that he was of a depraved mind.

Miss Griffin, would you promise that you will listen to all of the evidence coming from that witness stand, and if they don't prove that aspect of their case, how would you vote? Not guilty,

right?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Are we all in agreement with that?

Mr. Cavaco?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: If they don't prove to your satisfaction beyond a reasonable doubt that this young man was of a depraved mind, how do you vote?

PROSPECTIVE JUROR #10: Not guilty.

MR. LAMAGNA: Are we all in agreement with that?

Mr. Augustine?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: And if the judge were to give you lesser charges to consider, would you?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: Mr. Clark?

PROSPECTIVE JUROR #8: Yes.

MR. LAMAGNA: Mr. Nielsen, you would agree that there's degrees of culpability. Would you not agree?

PROSPECTIVE JUROR #12: I would agree.

MR. LAMAGNA: For example, if somebody gets charged with stealing a coat from a store-- by

no means am I trying to equate these examples to this case, I think we all understand that-- but if somebody steals a coat and he's charged with grand larceny because the law says it's over $1,000, what you stole makes it a grand larceny, and it turns out the coat was only worth $500 and it doesn't reach the level of grand larceny but it means it's a petit larceny, he's still guilty of something. He still stole, but would you agree then it's not grand larceny, it's the lesser petit larceny?

PROSPECTIVE JUROR #12: Yes.

MR. LAMAGNA: Miss Bherwani, would you agree with that, too? There are degrees of culpability?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Somebody may be charged with something and may not be guilty of that charge but guilty of something else?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Would you promise to consider that when you're-- after you hear all the evidence?

PROSPECTIVE JUROR #3: Yes.

MR. LAMAGNA: Miss Rodriguez, would you consider that?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Miss Griffin, would you agree that just because you're charged with something doesn't necessarily mean you're guilty of that?

PROSPECTIVE JUROR #2: I agree.

MR. LAMAGNA: People can get overcharged, right?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: They can be overcharged for other reasons, too. You know that, right?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: There could be a bias, politics, a lot of things. You would agree with that?

PROSPECTIVE JUROR #2: Yes, I do.

MR. LAMAGNA: Mr. Zucker, you agree that's not fair, is it?

PROSPECTIVE JUROR #4: Correct.

MR. LAMAGNA: If a person is guilty of something, they should be guilty of what they did, not because it may be popular or politically expedient.

You agree with that, don't you?

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: Especially when a person's life is at stake.

PROSPECTIVE JUROR #4: Yes.

MR. LAMAGNA: How about you, Miss Cartegena. Would you agree with that?

PROSPECTIVE JUROR #6: I do.

MR. LAMAGNA: Mr. Dacosta, I almost forgot you back there. Do you agree with that?

PROSPECTIVE JUROR #14: Yes.

MR. LAMAGNA: That fairness and justice--somebody should be held accountable for what it is that they did, nothing more, especially when it comes to a murder charge. Would

You agree with that?

PROSPECTIVE JUROR #14: Right.

MR. LAMAGNA: Miss Goldkranz, would you agree that it would be wrong to overly convict somebody of such a serious charge for reasons other than the evidence?

PROSPECTIVE JUROR #13: Yes.

MR. LAMAGNA: That no matter how terrible this result was, Mr. Kim, your job is to determine the facts, not to give a verdict that is popular or unpopular.

You agree with that, right?

PROSPECTIVE JUROR #11: That's correct.

MR. LAMAGNA: It's about his life, right?

PROSPECTIVE JUROR #11: That's correct.

MR. LAMAGNA: Mr. Cavaco, you would agree with that, too, wouldn't you?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: It's not about what's popular or unpopular, what is politically expedient or what other people may want, even the victims. It's not about that either, is it?

PROSPECTIVE JUROR #10: No.

MR. LAMAGNA: It's not about meeding out vengeance, is it?

PROSPECTIVE JUROR #10: No.

MR. LAMAGNA: Do we all agree, Mr. Colantonio, this isn't about vengeance, this is about justice. If somebody is guilty of something, they should be found guilty of what it is they're guilty of. Isn't that what makes our country better than others, our justice system?

PROSPECTIVE JUROR #9: Um-hum.

MR. LAMAGNA: Okay? It's fairness. That's why we have a jury here.

Miss Griffin, just because the government may say we're charging somebody with murder, that

doesn't mean it's necessarily so, correct? Just because they're charging a charge of murder doesn't mean it's necessarily so.

PROSPECTIVE JUROR #2: If it is, they have to prove it.

MR. LAMAGNA: Exactly. You haven't heard any evidence, correct?

PROSPECTIVE JUROR #2: Right.

THE COURT: Two minutes, Mr. LaMagna.

MR. LAMAGNA: Thank you, your Honor.

Now, you're going to hear a lot of evidence. You're going to have to determine the credibility of the witnesses who testify, and if a witness changes his testimony to fit a particular theory, that would be wrong, wouldn't it, Miss Cartegena?

PROSPECTIVE JUROR #6: (Indicating.)

MR. LAMAGNA: Mr. Dacosta?

PROSPECTIVE JUROR #14: Right.

MR. LAMAGNA: Miss Goldkranz?

PROSPECTIVE JUROR #13: Um-hum.

MR. LAMAGNA: If evidence is changed just to make my employer happy, I'll get more business at the expense of somebody's life. That would be wrong, wouldn't it, Mr. Colantonio?

PROSPECTIVE JUROR #9: Yes.

MR. LAMAGNA: Mr. Cavaco?

PROSPECTIVE JUROR #10: Yes.

MR. LAMAGNA: Would you promise when you listen to these witnesses you'll look at them critically? If there are mistakes, ask yourself why. If there are excuses, excuses aren't evidence.

You don't fill in the blanks here, right, Mr. Pike?

PROSPECTIVE JUROR #5: Yeah.

MR. LAMAGNA: It's the evidence. If the evidence is not there, you're not going to fill it in, right?

PROSPECTIVE JUROR #5: Correct.

MR. LAMAGNA: And if a person is not guilty of what the charge is, despite a terrible tragedy, you would agree that they may be guilty of something else. Would you agree?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: If that's the case, you would find Marty not guilty of that charge, wouldn't you?

PROSPECTIVE JUROR #7: (Indicating.)

MR. LAMAGNA: You would consider the lesser charges?

PROSPECTIVE JUROR #7: Yes.

MR. LAMAGNA: Would we all agree with that?

Miss Goldkranz?

PROSPECTIVE JUROR #13: Yes.

MR. LAMAGNA: That would be the right thing to do.

THE COURT: That's time, Mr. LaMagna.

MR. LAMAGNA: Thank you.

THE COURT: Ladies and gentlemen, I'm going to give you all about a five-minute break. I'm going to ask you all to leave the courtroom for that five minutes.

Please don't talk about the case.

(Whereupon, the jury panel exited the courtroom.)

(Whereupon, a brief recess was taken.)

THE COURT: Counsel?

THE CLERK: People, challenges for cause as to seats one through eight at this time?

MS. MCCORMICK: None nor cause.

THE CLERK: Defense, seats one through eight for cause?

MR. LAMAGNA: Nothing, your Honor.

THE CLERK: People, peremptory challenges,

seats one through eight?

MS. MCCORMICK: Number three, your Honor, and also number seven.

THE CLERK: Bherwani and Augustine?

MS. MCCORMICK: Yes.

MR. LAMAGNA: One through eight?

Two and six, Griffin and Cartegena.

THE CLERK: That leaves us with seat number one becomes juror number five, which is Rodriguez. Seat number four becomes juror number six, which is Zucker. Seat number five becomes juror number seven, which is Pike. Seat number eight becomes juror number eight, which is Clark.

We'll address seats nine through twelve at this time.

People, for cause, nine through twelve?

MS. MCCORMICK: No one for cause, your Honor.

THE CLERK: Defense?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenges, nine through twelve at this time?

MS. MCCORMICK: Number twelve.

THE CLERK: Nielsen?

MS. MCCORMICK: Yes.

THE CLERK: Defense, peremptory challenges, nine through twelve at this time?

MR. LAMAGNA: No, your Honor.

THE CLERK: Seat number nine becomes juror number nine, which is Colantonio. Seat number ten becomes juror number ten, which is Cavaco. Seat number eleven, becomes juror number eleven, which is Kim.

And seat number thirteen, People, for cause?

MS. MCCORMICK: No.

THE CLERK: Defense, for cause, seat number thirteen?

MR. LAMAGNA: No.

THE CLERK: People, peremptory challenge, seat number thirteen?

MS. MCCORMICK: No.

THE CLERK: Defense, peremptory challenge, seat number thirteen?

MR. LAMAGNA: Yes, your Honor, which is Goldkranz.

THE CLERK: People, for cause, this is seat number fourteen?

MS. MCCORMICK: None for cause.

THE CLERK: Defense, for cause, seat

number fourteen?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory, seat number fourteen?

MS. MCCORMICK: Give me one minute.

I'm going to challenge number fourteen.

THE CLERK: We have seven jurors out of that round, your Honor.

THE COURT: Please produce the jury.

(Whereupon, a brief recess was taken.)

(Whereupon, the jury panel entered the courtroom.)

THE COURT: Welcome back, ladies and gentlemen.

MR. LAMAGNA: Jean, take over, please.

THE CLERK: The following jurors remain seated, please:

Diana Rodriguez, Russell Zucker, Robert Pike, Patrick Clark, Michael Colantonio, Craig Cavaco and Kenneth Kim remain seated.

The other jurors in the box, please step out. You're excused with the thanks of the Court. Follow the directions of the court officers.

(Whereupon, the unselected jurors were excused.)

(Whereupon, the jurors were duly sworn.)

THE COURT: Ladies and gentlemen, I now have a much more optimistic feeling that Monday morning at 9:30 we'll be able to get to opening statements and take testimony. I was starting to despair a little bit. No longer.

Except for present juror number one, make sure you bring in a good book. Juror number one has a good book.

You all know the admonitions I gave to you before lunch. Please observe them.

Have a nice weekend. See you Monday morning.

(Whereupon, the jurors exited the courtroom.)

THE COURT: As for the rest of you, ladies and gentlemen, please don't panic. We're going to fill the box, and that's all. We'll get fourteen of you to go through questioning, and that will give the lawyers an opportunity to review the questionnaires overnight, which will be a refreshing change for them. We are going to fill the box at this time.

THE CLERK: Please have your questionnaires out.

Seat number one, Phyllis Cheng, C-H-E-N-G; seat number two, Robert Tingwall, T-I-N-G-W-A-L-L; seat number three, Joseph Larson, L-A-R-S-O-N; seat number four, Michael Derita, D-E-R-I-T-A; seat number five, Susan Gledhill, G-L-E-D-H-I-L-L; seat number six, Tom Cassidy.

(No response.)

Seat number six, Stacey Baez, B-A-E-Z; seat number seven, William Hopkins, H-O-P-K-I-N-S.

PROSPECTIVE JUROR #7: I know one of the names on the witness list.

THE COURT: Go back to central jury.

THE CLERK: Seat number seven, Charmen Brown, B-R-O-W-N; seat number eight, Peter Frosos, F-R-O-S-O-S; seat number nine, James Cosgrove.

(No response.)

Seat number nine, Susan Kaul, K-A-U-L; seat number ten, Joseph Sheridan, S-H-E-R-I-D-A-N; seat number eleven, Jill Tung, T-U-N-G; seat number twelve, Christina Rivas, R-I-V-A-S; seat number thirteen, Meryl Shields, S-H-I-E-L-D-S; seat number fourteen, Shannon Yearwood, Y-E-A-R-W-O-O-D.

THE COURT: Welcome, ladies and gentlemen. Let's see if we have a full box.

Do any of you know any of us?

(No response.)

Did anybody know any of the names on the witness list?

Sir?

PROSPECTIVE JUROR #10: I have a cousin with a similar name.

THE COURT: Would you tell us what your cousin's name is?

PROSPECTIVE JUROR #10: Chris Sweeney.

THE COURT: Is he an investigator with the police department?

PROSPECTIVE JUROR #10: No, sir.

THE COURT: Is that who that is, Investigator Sweeney?

He's with the state police, sir. He's not your cousin?

PROSPECTIVE JUROR #10: No.

THE COURT: Third, and probably most important, many of you, if not all of you, know something about this case from reports you may have heard on TV, the radio, the newspaper, perhaps. Are any of you in that category?

Does anybody feel that because you might have heard something about this case since its inception, instead of only learning about this case

in the courtroom, that you may have come to some conclusion which renders you incapable of being fair? Does anybody feel that way?

(No response.)

In that case, everybody, we're keeping to the timetable I've given you. I'm giving you a responsibility one another. Please be present at 9:30. If you are, I promise you we will be-- I promise you if we get things going in a timely manner in the morning, we'll be able to start opening statements and the calling of witnesses Monday.

Everybody, have a nice night. See you all tomorrow morning at 9:30.

(Whereupon, the jury panel exited the courtroom.)

(Whereupon, a brief recess was taken.)

THE COURT: Sworn juror Rodriguez, juror number five, I thought I was clear when I said that the case was going to last upwards of five weeks and anybody who wanted to leave could leave. She forgot that she was a full-time student and she's going to lose the whole semester. She's on this jury. I don't know why she stayed, but she did.

Do we have consent to release her as a

sworn juror?

MR. HAYDEN: Yes, your Honor.

MR. LAMAGNA: Yes, your Honor.

THE COURT: We're now down to ten sworn jurors. We'll deal with it tomorrow. We're going to move everybody up one.

(Whereupon, the Court stood in recess for the day.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against- Indictment No. 1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.
----------x

Mineola, New York
September 8, 2006

B E F O R E: HON. ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

(Same as previously noted.)

* * * *

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment 1910N-2005, People v. Martin Heidgen.

People ready?

MR. HAYDEN: The People are ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Defendant ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE COURT: All right. Would you fill the box, please?

THE CLERK: Seat number one-- please have your questionnaires out-- James Cosgrove, C-O-S-G-R-O-V-E.

(No response.)

Seat number one, Michelle Vargas, V-A-R-G-A-S.

THE COURT: Miss Vargas, before you go down there, do you know any of us?

PROSPECTIVE JUROR #1: No.

THE COURT: Do you know anybody on that witness list?

PROSPECTIVE JUROR #1: No.

THE COURT: Have a seat.

Mr. Hayden?

MR. HAYDEN: May I proceed?

THE COURT: Please.

MR. HAYDEN: Good morning, ladies and gentlemen. Good morning.

You heard a lot of talk about evil, as defense counsel was speaking yesterday, evil, evil

man. Was he an evil man? Was he a murderer?

Would each of you accept that you can't accept anything defense counsel told you about a depraved mind? That's for the judge to tell you. Can all of you accept that?

You disregard anything defense counsel told you about evil and depravity. It's all going to be coming from Judge Honorof. Would each of you accept that?

Can each of you assure us you'll listen very carefully when Judge Honorof explains depraved indifference to human life, which is what we're talking about here? You can all do that?

If Judge Honorof charges you that we're talking about depraved indifference to human life at the time of the crash to cause these gruesome injuries and death, will you accept that?

When you're trying to determine whether the defendant showed a feeling of depraved indifference to human life, will you consider what it was he was doing out on the Meadowbrook Parkway that night? Will all of you do that? Will you all consider it?

Will you consider whether what he was doing made gruesome brutal injuries and death

inevitable? Will you consider that?

And will you consider whether or not that establishes that at the time of the crash he was feeling a depraved indifference to human life? Can all of you do that?

Miss Vargas, is there anything you've heard so far that gives you concern about your ability to be fair and impartial?

PROSPECTIVE JUROR #1: No.

MR. HAYDEN: Will you concentrate, during the course of this trial, on observations of the defendant before the crash?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Will you concentrate on whether he was aware of his surroundings that night?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Will you concentrate on whether he knew what was going on around him?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Will you concentrate on whether he was equally aware, in spite of intoxication, of his surroundings as he drove the way he did along the parkway?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: And will you consider whether

or not that establishes that at the time of the crash he was feeling a depraved indifference to human life?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Can you do that?

PROSPECTIVE JUROR #1: Yes.

MR. HAYDEN: Mr. Tingwall?

PROSPECTIVE JUROR #2: Yes.

MR. HAYDEN: Is that correctly pronounced?

PROSPECTIVE JUROR #2: That's correct.

MR. HAYDEN: Mr. Tingwall, do you have any grandchildren?

PROSPECTIVE JUROR #2: I have one.

MR. HAYDEN: Boy or girl?

PROSPECTIVE JUROR #2: Girl.

MR. HAYDEN: You mentioned on your questionnaire that you know someone in law enforcement?

PROSPECTIVE JUROR #2: Yes.

MR. HAYDEN: Who is that?

PROSPECTIVE JUROR #2: That's me. I was formerly a detective school supervisor in midtown south precinct in Manhattan.

MR. HAYDEN: Is there anything about your experiences as an officer that would prevent you--

PROSPECTIVE JUROR #2: No, I don't think so. It wouldn't.

MR. HAYDEN: --from being fair and impartial to both sides?

PROSPECTIVE JUROR #2: I've always been fair and impartial.

MR. HAYDEN: You indicated, sir, you've been the victim of a crime. Tell us a bit about that.

PROSPECTIVE JUROR #2: I had a burglary many years ago in my house. My daughter, my youngest daughter, had a cell phone and purse stolen.

MR. HAYDEN: Is there anything about that experience that would prevent you from being fair and impartial?

PROSPECTIVE JUROR #2: No. I don't see why it would.

MR. HAYDEN: You testified in a courtroom?

PROSPECTIVE JUROR #2: Yes, I have testified.

MR. HAYDEN: As an officer?

PROSPECTIVE JUROR #2: Yes.

MR. HAYDEN: Anything about those experiences that would affect you here?

PROSPECTIVE JUROR #2: Not that I can think of, no.

MR. HAYDEN: Mr. Larson?

PROSPECTIVE JUROR #3: Yes.

MR. HAYDEN: You indicated, sir, you, too, have testified in court?

PROSPECTIVE JUROR #3: Yes.

MR. HAYDEN: Tell us a bit about that experience.

PROSPECTIVE JUROR #3: It was an accident between a police car and, you know, a regular car, and I just, you know, was a witness.

MR. HAYDEN: That was a civil trial?

PROSPECTIVE JUROR #3: Yes.

MR. HAYDEN: Anything about that experience that would affect your ability to be fair and impartial?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: Also you indicated you were involved in a lawsuit?

PROSPECTIVE JUROR #3: Oh, my daughter fell a long time ago in a school district and broke her arm.

MR. HAYDEN: Nothing about that that would affect you here?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: You know someone in law enforcement?

PROSPECTIVE JUROR #3: Yeah, a lot of police officers in Williston Park.

MR. HAYDEN: You could still treat a police officer as a witness the same way you treat anyone else?

PROSPECTIVE JUROR #3: Yeah.

MR. HAYDEN: You also served on a civil jury?

PROSPECTIVE JUROR #3: Yeah.

MR. HAYDEN: What type of case?

PROSPECTIVE JUROR #3: It was an accident, where someone fell down a flight of stairs and hurt their knee.

MR. HAYDEN: There was a verdict?

PROSPECTIVE JUROR #3: They settled about 20 minutes after the trial started.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #3: No.

MR. HAYDEN: Mr. Derita?

PROSPECTIVE JUROR #4: Yes.

MR. HAYDEN: You, too, know someone in law

enforcement, sir?

PROSPECTIVE JUROR #4: No, I don't.

MR. HAYDEN: You served on a civil jury?

PROSPECTIVE JUROR #4: Yes, I did.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #4: No.

MR. HAYDEN: Did it go to verdict?

PROSPECTIVE JUROR #4: Yes, it did.

MR. HAYDEN: Do you feel you could be fair and impartial to both sides?

PROSPECTIVE JUROR #4: I sure can.

MR. HAYDEN: You'll concentrate on what the defendant did on the Meadowbrook Parkway in determining whether he was feeling a depraved indifference to human life at the time of that collision?

PROSPECTIVE JUROR #4: I can be fair.

MR. HAYDEN: Miss Gledhill?

PROSPECTIVE JUROR #5: Um-hum.

MR. HAYDEN: You mentioned, ma'am, you were involved in a lawsuit?

PROSPECTIVE JUROR #5: I wasn't, a friend of mine had-- his wife passed away. It was a malpractice lawsuit.

MR. HAYDEN: Thinking about that experience, would that affect you here?

PROSPECTIVE JUROR #5: No, I don't see why.

MR. HAYDEN: You can be fair and impartial to both sides?

PROSPECTIVE JUROR #5: Certainly.

MR. HAYDEN: You can be fair to the defendant and to the prosecution?

PROSPECTIVE JUROR #5: Sure.

MR. HAYDEN: And you're going to consider everything in trying to get into the defendant's head and determine his state of mind at the time of the collision?

PROSPECTIVE JUROR #5: I'll try, sure.

MR. HAYDEN: To see whether he was feeling depraved indifference to human life?

PROSPECTIVE JUROR #5: Of course.

MR. HAYDEN: Of course you're going to concentrate hard on what it was he was doing out on the parkway?

PROSPECTIVE JUROR #5: Right.

MR. HAYDEN: Miss Baez?

PROSPECTIVE JUROR #6: Yes.

MR. HAYDEN: Miss Baez, you indicated you

were the victim of a crime?

PROSPECTIVE JUROR #6: No. My sister's house was robbed in California four years ago.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #6: No. I wasn't even there. It's just something that--

MR. HAYDEN: Sure.

PROSPECTIVE JUROR #6: --she told me.

MR. HAYDEN: You know someone in law enforcement?

PROSPECTIVE JUROR #6: My dad retired in '78.

MR. HAYDEN: Where did he work?

PROSPECTIVE JUROR #6: In the city.

MR. HAYDEN: He was a police officer?

PROSPECTIVE JUROR #6: Yes.

MR. HAYDEN: Did he discuss his work with you?

PROSPECTIVE JUROR #6: Not really. I was young, no.

MR. HAYDEN: Okay. You can assure us you'll treat police witnesses just like anyone else?

PROSPECTIVE JUROR #6: Yes.

MR. HAYDEN: You'll give them no more

credibility than another witness?

PROSPECTIVE JUROR #6: No.

MR. HAYDEN: And no less credibility?

PROSPECTIVE JUROR #6: No.

MR. HAYDEN: You, too, will consider what the defendant was doing out on the Meadowbrook Parkway at around two o'clock on Saturday morning in determining whether at the time he was feeling a depraved indifference to human life?

PROSPECTIVE JUROR #6: Yes.

MR. HAYDEN: Miss Brown?

PROSPECTIVE JUROR #7: Yes.

MR. HAYDEN: Miss Brown, you indicated you served on a jury in 2002?

PROSPECTIVE JUROR #7: Yes.

MR. HAYDEN: What type of jury was that?

PROSPECTIVE JUROR #7: Civil.

MR. HAYDEN: No verdict?

PROSPECTIVE JUROR #7: No verdict.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #7: No.

MR. HAYDEN: What type of case was it?

PROSPECTIVE JUROR #7: I didn't hear anything about the case.

MR. HAYDEN: Anything you've heard so far make you feel you wouldn't be fair and impartial to both sides?

PROSPECTIVE JUROR #7: No.

MR. HAYDEN: You're going to consider all of the facts in trying to determine whether he was feeling a depraved indifference to human life at the time of the crash that caused those gruesome injuries and death?

PROSPECTIVE JUROR #7: Yes.

MR. HAYDEN: Mr. Frosos-- correctly pronounced, sir?

PROSPECTIVE JUROR #8: Yes.

MR. HAYDEN: You know someone in law enforcement?

PROSPECTIVE JUROR #8: I have a nephew who works in New York City.

MR. HAYDEN: As a police officer?

PROSPECTIVE JUROR #8: Yes.

MR. HAYDEN: Do you discuss your work with him?

PROSPECTIVE JUROR #8: No.

MR. HAYDEN: You served on a criminal jury?

PROSPECTIVE JUROR #8: Um-hum.

MR. HAYDEN: What type of case was that?

PROSPECTIVE JUROR #8: A fight in Eisenhower Park. It was a stabbing but no weapon was found.

MR. HAYDEN: Did it go to verdict?

PROSPECTIVE JUROR #8: Yeah.

MR. HAYDEN: You indicated you were involved in a lawsuit?

PROSPECTIVE JUROR #8: Out of state. It was in reference to an injury.

MR. HAYDEN: You can be fair and impartial to both sides?

PROSPECTIVE JUROR #8: Yes.

MR. HAYDEN: You can look at all the evidence, the facts and circumstances, in determining whether the defendant was feeling depraved indifference to human life at the time of this crash?

PROSPECTIVE JUROR #8: Yes.

MR. HAYDEN: Miss Kaul, you indicated on your questionnaire you know someone who has been the victim of a crime?

PROSPECTIVE JUROR #9: Yes, a friend. He was driving a car.

MR. HAYDEN: Driving?

PROSPECTIVE JUROR #9: A friend of mine, he was drunk and driving and he hit a boy and someone sitting next to him died.

MR. HAYDEN: Did you discuss the matter with him?

PROSPECTIVE JUROR #9: No.

MR. HAYDEN: Did his case go to trial?

PROSPECTIVE JUROR #9: Yes.

MR. HAYDEN: Were you involved in the trial in any way?

PROSPECTIVE JUROR #9: No.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #9: No.

MR. HAYDEN: You can be fair and impartial to both sides?

PROSPECTIVE JUROR #9: Yes.

MR. HAYDEN: Mr. Sheridan?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: You served on a criminal case?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: Did it go to verdict?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: What type of crime?

PROSPECTIVE JUROR #10: It was a rape, first degree assault, and he was convicted.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #10: No, sir.

MR. HAYDEN: You indicated that you know someone accused of a crime?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: Would you tell us a bit about that?

PROSPECTIVE JUROR #10: I was arrested for possession of drugs and the case was dismissed.

MR. HAYDEN: How do you feel you were treated?

PROSPECTIVE JUROR #10: Okay.

MR. HAYDEN: You were treated well by the police?

PROSPECTIVE JUROR #10: Yes. It was difficult.

MR. HAYDEN: Sure. Anything about that experience that would affect you here?

PROSPECTIVE JUROR #10: No, sir.

MR. HAYDEN: You can be fair and impartial to both sides?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: You, too, will consider all of the facts and circumstances which you're going to hear from the witness stand, how he was driving and what he was doing in determining whether he was feeling a depraved indifference to human life when he caused this crash?

PROSPECTIVE JUROR #10: Yes, sir.

MR. HAYDEN: Miss Tung?

PROSPECTIVE JUROR #11: Yes.

MR. HAYDEN: Is that correctly pronounced, ma'am?

PROSPECTIVE JUROR #11: Yes.

MR. HAYDEN: You mentioned, ma'am, you know someone in law enforcement?

PROSPECTIVE JUROR #11: My father is a retired bridge and tunnel officer.

MR. HAYDEN: Did you discuss his work with him?

PROSPECTIVE JUROR #11: No.

MR. HAYDEN: You can treat a police officer like any other witness?

PROSPECTIVE JUROR #11: Yes.

MR. HAYDEN: You can be fair and impartial to both sides?

PROSPECTIVE JUROR #11: Yes.

MR. HAYDEN: Miss Rivas, you indicated on your questionnaire that you know someone accused and convicted of a crime?

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: Tell us a bit about that, please.

PROSPECTIVE JUROR #12: It was a friend of mine. She was actually accused of two crimes. One was stealing from her former employer, one was driving while intoxicated.

MR. HAYDEN: Did you discuss those matters with her?

PROSPECTIVE JUROR #12: Um-hum.

MR. HAYDEN: Does she feel she was treated fairly?

PROSPECTIVE JUROR #12: For the first trial which was stealing, yes. For the drunken driving, no.

MR. HAYDEN: How do you feel?

PROSPECTIVE JUROR #12: I wasn't in the courtroom but--

MR. HAYDEN: Based upon what she told you, how do you feel she was treated?

PROSPECTIVE JUROR #12: Fairly. She was drunk.

MR. HAYDEN: Anything about her experiences and your conversations about them that would affect you here?

PROSPECTIVE JUROR #12: I don't think so.

MR. HAYDEN: When you say you don't think so--

PROSPECTIVE JUROR #12: No.

MR. HAYDEN: Any concern at all?

PROSPECTIVE JUROR #12: I think I can remove myself, yes.

MR. HAYDEN: You can concentrate on the facts and circumstances of this case--

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: --and determine for yourself whether or not at the time of this crash the defendant was feeling a depraved indifference to the human lives around him?

PROSPECTIVE JUROR #12: Yes.

MR. HAYDEN: Miss Shields?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: Ma'am, you served on a criminal jury?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: What type of crime?

PROSPECTIVE JUROR #13: Arson.

MR. HAYDEN: Anything about that experience that would affect you here?

PROSPECTIVE JUROR #13: Not at all.

MR. HAYDEN: You can be fair and impartial, not only to the defense, but to the prosecution, as well?

PROSPECTIVE JUROR #13: Yes.

MR. HAYDEN: You can concentrate on the facts and circumstances and make your own determination about whether or not at the time of this crash the defendant was feeling a depraved indifference to the human lives around him?

PROSPECTIVE JUROR #13: Yes.

THE COURT: Two minutes, Mr. Hayden.

MR. HAYDEN: Yes, your Honor.

Miss Yearwood?

PROSPECTIVE JUROR #14: Yes.

MR. HAYDEN: Can you assure us you can be fair and impartial to both sides?

PROSPECTIVE JUROR #14: Yes.

MR. HAYDEN: Any reason you think you'd be less than fair and impartial?

PROSPECTIVE JUROR #14: None.

MR. HAYDEN: Thank you all for your kind attention.

THE COURT: Mr. Martello?

MR. MARTELLO: Good morning, your Honor, good morning everyone. Ladies and gentlemen, my name is Greg Martello. I am cocounsel with Mr. LaMagna for Marty. Mr. LaMagna needed a break. He was talking too much. We need to save his voice for later.

I have the unenviable job of having to go over a lot of these concepts and things we've been talking about for the last two days with everyone here. You've already heard over and over again and you might be asking yourself at this point what do they think? We're not getting it? Why do they keep going over it?

I do agree with Mr. Hayden. It's not about what I say or what Mr. Hayden says, it's about what the judge says. The judge is going to give you the law. What we're doing-- what we're attempting to do is just go over concepts and get assurances from you that you understand these concepts and you're going to use these concepts as the fact finders in this trial, because this is a murder charge we're talking about. This is the most serious charge any citizen in America can be charged with, and so your job as jurors is that important.

That's why we're taking such lengths to go over this, just so that we can be assured that we're going to have a fair jury, a jury that knows its responsibility and understands the issues in this case.

Now, as I'm sure you concluded already, the most important concept here is this concept of the depraved mind, depravity, because after all, this was a terrible, terrible tragedy that resulted from a car accident, but yet our client, Marty, is charged with murder. The distinction here is-- what makes this car accident different and why he's being charged with murder is did he have a depraved mind at the time of the accident. At that time what was in his mind? That's really your job, your key job here.

Mr. Tingwall?

PROSPECTIVE JUROR #2: Yes.

MR. MARTELLO: As a police officer, as a former police officer, you very often had to-- when you're investigating a case, you had to find out what the person was thinking at the time of the crime to know whether he had intent to do something, right?

PROSPECTIVE JUROR #2: We don't-- police

don't figure out intent. We identify who may have done it and bring them before justice.

MR. MARTELLO: Okay. Then it's the jury who has to determine that.

PROSPECTIVE JUROR #2: Yeah.

MR. MARTELLO: That's right. And the way the jury determines what's intended is to look at the evidence and look at what was going on. Would that be fair to say?

PROSPECTIVE JUROR #2: That's fair.

MR. MARTELLO: Now, here, Mr. Larson, we have to determine whether he had a depraved mind. So basically we're asking you, Mr. Larson, Miss Gledhill, you have to determine what was he thinking? What was in his head at the time of the accident? How do you do that? I mean, it's easy to determine what people are doing. I just picked up a pen. That's what I just did right now. You know, if somebody asked what did Mr. Martello do, he picked up a pen.

If I asked you what am I thinking right now as we sit here in the courtroom today, Miss Brown, would you know what I'm thinking right now? No. I'm just standing here. You don't know what I'm thinking. But if you put things together, which

is, Miss Brown, what we're going to ask you to do in this trial, if you put things together, put the evidence together, maybe you could find out what I'm thinking right now.

For instance, in your everyday life Mr. Frosos, when you try to determine someone's intention, what they're thinking, one of the things you listen for is what they're talking about. Like if I said to the court officer could you please open up that door for me, you can probably figure out my intention is I want to walk through the door, right, just by what I said? So talking is a technique for you, as fact finders, to determine what someone is thinking. Another thing is surrounding circumstances, watching as the person is doing the thing, then observations of other people, what they see that person doing. Then you can all determine, maybe, what's going on in a person's head.

Would that be fair?

PROSPECTIVE JUROR #8: It could be, yeah.

MR. MARTELLO: Now, Mr. Sheridan, I had asked the jury before what am I thinking. Well, let's look at the evidence. I'm standing here in a courtroom picking a jury. That is the circumstances I find myself in. My actions, every once in a while

I look at these notes because, as I'm referring to them, I'm trying-- I'm thinking of something else to say, the next thing I'm going to say. What's coming out? My words. I'm asking questions of you. I'm explaining concepts that are important in this case.

If you put all those three things together, what am I talking about? The actions I'm doing, looking at this paper, and the circumstances we find ourselves in, you'd probably conclude what I'm thinking right now. It would be a fair guess to say I'm probably thinking that the most important concern in my head right now is that I pick a fair jury for Marty. I'm his lawyer, and I want him to get a fair shot and justice, and for him to get that fair shot, I have to know I have a jury that is going to be open-minded and is going to really carefully look at the facts in this case, because he's charged with murder. That's what's in my head right now.

If you actually put all those three things together, Miss Brown, it's actually not that hard to find out what was going on in my head, even though you don't know me, just putting together my words, the circumstances, and what I'm talking about. You probably could say to yourself, you know what? He's

concerned about Marty. He's concerned about making a good jury. You'd be right. That's what I'm thinking about.

I'm going to need, Mr. Derita, you to do that and to employ those same techniques in the trial. It's critical. Critical. So if I told you, Mr. Derita, that you might hear evidence of things Marty said, you'll take that into account to determine what was going on in his head at the time of this accident?

PROSPECTIVE JUROR #4: Sure.

MR. MARTELLO: If you were to hear evidence of witnesses that described what he was talking about, what he was feeling, his mood, his demeanor, whether he was happy, all that, those observations of his actions, in other words, would that be something you would put together in the equation about what's going on in his head?

PROSPECTIVE JUROR #4: I'd listen to everything, sure.

MR. MARTELLO: Now, what about the last part, the circumstances?

PROSPECTIVE JUROR #4: Sure.

MR. MARTELLO: Right? If you heard evidence that his life was, whatever, going fine,

all of the rest of that would be something you'd throw in the pot to say, you know what? I have a clear picture of this young man, and I know what was going on in his head.

PROSPECTIVE JUROR #4: Yeah.

MR. MARTELLO: Now, why am I so concerned about what's going on in his head? I'm concerned about what's going on in his head because you have to make that determination of whether he had a depraved mind, a wicked mind, at the time of this tragic accident.

Now, not surprisingly, we heard a lot of examples. The lawyers have been trying their best to come up with examples for you guys about what is a depraved mind, and the reason why we come up with examples is because it's the best way for someone to understand it.

Not surprisingly, the judge came up with the best example-- that's why he's the judge-- and I've got to tell you it's a great example. What the judge said yesterday was that, you know, if a guy is in a crowded, dark movie theater and shoots a gun and he doesn't care, he doesn't care, and he hits somebody, he doesn't care if he doesn't hit somebody, he doesn't care about life, he doesn't

care about who he hurts. The judge is right. That's a depraved mind. It's a wicked mind. He doesn't care. He just takes that gun, bang, shoots it in a crowded, dark movie theater and doesn't care if he hits a chair and doesn't care if he hits a person in the chair.

Miss Tung, by the judge's example, would you say that if you have evidence of a person doing that type of action, would that be a wicked mind, a depraved mind, at the time of the shooting?

PROSPECTIVE JUROR #11: Yes.

MR. MARTELLO: Would everyone agree with that?

Miss Kaul?

PROSPECTIVE JUROR #9: Yes.

MR. MARTELLO: Miss Yearwood?

PROSPECTIVE JUROR #14: Yes.

MR. MARTELLO: How about you, Miss Baez?

PROSPECTIVE JUROR #6: Yes.

MR. MARTELLO: Now, that's what a depraved mind is. What about the reverse of that? Same set of facts. A guy goes into the movie theater, a crowded movie theater, and shoots a gun. Let me change the facts around a little bit.

Miss Frosos, let's say the person shooting

the gun this time, in the second example, he didn't know anybody was in the theater. He didn't even know it was a movie theater. He was unfamiliar with the building. He walked in there and he didn't know anybody was there. In fact, he thought nobody was in the movie theater. He shoots a gun and somebody gets hurt.

Now, what he did was still stupid and still negligent and he probably shouldn't have done it and it was still a stupid thing to do, but what was going on in that second shooter's head, in your mind, was he an evil, wicked person or was he a stupid, negligent person? Do you see the distinction? Does everyone see that? That's critical.

But I'm in a quandary here. In both examples, with shooter number one with the judge, a person died when the person shot in that crowded movie theater, and a person died in example number two with the person that wasn't wicked, who didn't have a depraved mind and was just stupid and negligent. So you have the same result but the mindset is different.

Do you see the distinction, Miss Shields?

PROSPECTIVE JUROR #13: Yes.

MR. MARTELLO: Very much so. That's the critical thing here.

THE COURT: Two minutes, Mr. Martello.

MR. MARTELLO: All right.

So that goes to the extent of, Miss Brown, what Mr. LaMagna was talking about before. If you determine that at the end of the case he did not have that wicked mind, he was not depraved, even though the tragic accident happened, you would not be able to vote murder, right? That's very important. Okay?

Would you trust the law as the judge gives it to you? To trust the law, there are different degrees of accountability. He may not be accountable for murder, he's still accountable for doing a terrible, negligent thing, but he's not accountable for the charge that the district attorney has placed on him.

Do you see that, Miss Brown?

Mr. Frosos?

And so if, Miss Kaul, if you determine that the DA has overcharged him, would you not vote that way?

Lastly, Mr. LaMagna had talked about credibility of witnesses, and we talked about

whether there were reports changed and how do you determine if somebody is credible. Let me give you an example. Let's say someone is working for a pharmaceutical company and he changes his report so medicine could be sold.

You wouldn't buy that medicine, would you, Miss Vargas?

PROSPECTIVE JUROR #1: No.

MR. MARTELLO: You wouldn't buy it. You couldn't trust that scientist because he changed a report, because his employer who pays him told him to change the report. That's bad medicine. That's life and death. So you wouldn't take that medicine.

The same thing here. We're dealing with a young man's life. If you hear witnesses on that stand that aren't credible that change their reports, are you going to use that evidence, that witness' testimony that's not credible, to determine his life?

PROSPECTIVE JUROR #1: No.

MR. MARTELLO: You wouldn't do that?

PROSPECTIVE JUROR #1: No.

MR. MARTELLO: None of us would want that for ourselves.

THE COURT: Time, Mr. Martello.

MR. MARTELLO: Thank you, Judge.

THE COURT: At this time I'm going to give everyone in the courtroom a five-minute break, so please don't talk about the case. See you in a little bit.

(Whereupon, the jury panel exited the courtroom.)

(Whereupon, a brief recess was taken.)

THE CLERK: People, challenges for cause as to seats one and two at this time?

MR. HAYDEN: No, your Honor.

THE CLERK: Defendant, challenges for cause seats one and two?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenges as to seats one and two at this time?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenges as to seats one and two at this time?

MR. LAMAGNA: Number two, your Honor.

THE CLERK: Seat number one has now become juror number eleven.

People, challenge for cause seat number three?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number three?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number three?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number three?

MR. LAMAGNA: Yes, your Honor.

THE CLERK: People, challenge for cause seat number four?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number four?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number four?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number four?

MR. LAMAGNA: No, your Honor.

THE CLERK: That's juror number twelve.

People, challenge for cause seat number five?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number five?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number five?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number five?

MR. LAMAGNA: Yes, your Honor.

THE CLERK: People, challenge for cause seat number six?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number six?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number six?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number six?

MR. LAMAGNA: Yes, your Honor.

THE CLERK: People, challenge for cause seat number seven?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause

seat number seven?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number seven?

MR. HAYDEN: No, your Honor.

THE COURT: Juror number seven is alternate number one.

MR. LAMAGNA: That's our first alternate.

THE COURT: Try to work together. I want to try to get five or six alternates.

THE CLERK: People, challenge for cause seat number eight?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number eight?

MR. LAMAGNA: No.

THE CLERK: People, peremptory challenge seat number eight?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number eight?

MR. LAMAGNA: No, your Honor.

THE COURT: That's alternate number two.

THE CLERK: People, challenge for cause seat number nine?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number nine?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number nine?

MR. HAYDEN: Yes, your Honor.

THE CLERK: People, challenge for cause seat number ten?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number ten?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number ten?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number ten?

MR. LAMAGNA: No, your Honor.

THE CLERK: That's alternate number three, which is Sheridan.

THE COURT: You guys are doing good. Keep it up.

THE CLERK: People, challenge for cause seat number eleven?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number eleven?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number eleven?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number eleven?

MR. LAMAGNA: Yes, your Honor.

THE CLERK: People, challenge for cause seat number twelve?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number twelve?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number twelve?

MR. HAYDEN: Yes, your Honor.

THE CLERK: People, challenge for cause seat number thirteen?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, challenge for cause seat number thirteen?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number thirteen?

MR. HAYDEN: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number thirteen?

MR. LAMAGNA: No, your Honor.

THE CLERK: That's alternate number four, Shields.

People, challenge for cause, seat number fourteen?

MR. HAYDEN: No, not for cause.

THE CLERK: Defense for cause, seat number fourteen?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number fourteen?

MR. HAYDEN: No, your Honor.

THE CLERK: Defendant, peremptory challenge seat number fourteen?

MR. LAMAGNA: Yes, your Honor.

THE COURT: All right. We're going to put six people in the box. You can have five minutes for two more alternates.

Would you produce the jury, please?

(Whereupon, the prospective jury panel

entered the courtroom.)

THE CLERK: Case on trial, indictment 1910N-2005, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Ready, your Honor.

THE CLERK: The defendant is present, your Honor.

The following jurors please remain seated in the box:

Michelle Vargas, Michael Derita, Charmen Brown, Peter Frosos, Joseph Sheridan and Meryl Shields.

All other jurors follow the directions of the officers, please.

(Whereupon, the unselected jurors were excused.)

(Whereupon, the jurors were duly sworn.)

THE COURT: With the exception of two more alternates, which we'll select in a few minutes from the balance of people seated in the back of the courtroom, we will have a jury. We will be starting 9:30 Monday morning.

Between now and then, as you know, I'm

going to let all of you know, the same for those of you who will ultimately be selected as alternates, you must not discuss the case among yourselves or with anyone else until the entire case has been completed and the Court has given you its charge as to the law which applies to the counts of the indictment which will be given to you for your consideration.

You must keep an open mind until all of the evidence has been presented and you are charged as to the law.

You must not read or listen to any accounts or discussions of the case in the event it is reported by newspapers or other media. That's going to be a hard one. It probably is going to be reported. Please don't read about it or don't listen about it.

You must not visit or view the place or premises where the offenses charged were allegedly committed or any other premises or place involved in the case.

You are not to permit any party to discuss the case with you or attempt to influence you. You must promptly report to the Court any incident within your knowledge involving an attempt by any

person to improperly influence any member of the jury.

Prior to discharge you may not accept any payment or benefit in consideration for supplying any information concerning this trial.

I also advise you if at any time any of the participants in this trial should meet you in the hallways or outside the building, they may not speak to or even acknowledge you to avoid any appearance of impropriety.

Have a nice weekend. See you Monday morning.

(Whereupon, the jurors exited the courtroom.)

THE CLERK: Seat number one, Kathy Kneher, K-N-E-H-E-R; seat number two, Shari Dominianni, D-O-M-I-N-I-A-N-N-I; seat number three, Nancy Cannataro, C-A-N-N-A-T-A-R-O; seat number four, Marie Bastien, B-A-S-T-I-E-N; seat number five, Robert Winterton, W-I-N-T-E-R-T-O-N; seat number six, Peter Didangi, D-I-D-A-N-G-I.

THE COURT: Okay. Welcome, ladies and gentlemen. My first question is do any of you know any of us?

(No response.)

Did any of you recognize any names I read on the witness list?

PROSPECTIVE JUROR #6: I never saw the list.

THE COURT: Sir, why don't you have a look at this and see if you know any of these names.

PROSPECTIVE JUROR #6: No.

THE COURT: Now, would it be fair to assume, as in the last several panels, many of you, if not all of you, know something about this case from what you've read or learned over the course of time before you got here?

Some yes, some no.

Those of you who do know something about this case, in your present frame of mind do you think you could be fair to the defendant and listen fairly and impartially to the evidence that will be presented during this trial?

Everybody can give me a yes on that?

PROSPECTIVE JUROR #6: I'm not sure.

THE COURT: You are not sure?

PROSPECTIVE JUROR #6: No.

THE COURT: Go back to central jury, sir. Fill the box.

(Whereupon, the prospective juror was

excused.)

THE CLERK: Seat number six, Diana Lituma, L-I-T-U-M-A.

(No response.)

Mike Lomas, L-O-M-A-S.

(No response.)

Seat number six, Jeanne Kontje.

THE COURT: How about you, ma'am? Do you know any of us?

PROSPECTIVE JUROR #6: No.

THE COURT: Do you know anybody on the witness list?

PROSPECTIVE JUROR #6: No.

THE COURT: Despite anything you might have learned about this case before you got here, presently in your frame of mind do you think you can be fair to the defendant and listen to the evidence?

PROSPECTIVE JUROR #6: Yes.

THE COURT: Okay.

MS. MCCORMICK: Good afternoon. I appreciate that you've been listening to all of this day after day. Thinking about what you've heard, about the effects of alcohol on people or on someone's state of mind, or do you know anybody who has been accused of driving while intoxicated that

you think we should know about, is there anything about what you've heard you want to bring to our attention?

Then I have to talk about this example that Mr. Martello just used, taken from the judge, about shooting into a dark movie theater. I have to ask you if that same person who shot the gun into the movie theater did so after he passed a huge sign that said movie theater, after he passed a billboard that had the movie times listed and it said movie playing right now, that if he then took a gun and shot into a darkened room in that theater but after the fact said, gee, I didn't know, I didn't mean it, would you consider those things, all of those things, in determining whether he knew or should have known what effect that would have and if he was indifferent or depraved to other people and didn't care? Would you consider those things?

Would you, ma'am?

I'm going really fast. I'm sorry.

Do we all agree that you cannot undue something by saying sorry afterwards? Would you agree that you could be genuinely sorry afterwards, but it's not going to undue what you've done? Would you agree?

And also in your life experiences would you also agree that people wear social masks? Perhaps you don't know people as well as you think you do. Say you work with somebody and you work with them every day but you don't see them outside the office, do you think there could be another side to that person? Do you think that people have other sides than what they show the public? Do you agree?

Do you think it's possible that somebody could be set off by something and at that moment, though they are an entirely different person the rest of their life, at that moment they behave in a way unexpected to people who have dealt with them at work or at school?

Have each of you seen news reports or accounts where neighbors and friends, after some horrific event, were interviewed and said, my God, I never would have thought that. I am really so surprised. Does everybody agree that how well you know somebody is dependent on what they're willing to show you? Do you agree?

So the last thing, because you know that we're looking for a fair jury, and there's going to be a lot of testimony and there's going to be some science and some math, and there's going to be,

maybe, some distractions throughout this trial, can I ask each one of you for your assurance that while you are listening to the evidence in this case that you will keep your eye on the ball, or, more accurately, keep your eye on that pick-up truck and how the defendant was driving it at the time? Because you will be called upon, if you become a juror in this case, to decide about his behavior at that time and what that behavior says about whether or not he was indifferent to other people around him. Would you keep your eye on that truck?

Thank you.

I have nothing further, Judge.

THE COURT: Mr. LaMagna?

MR. LAMAGNA: Thank you, your Honor.

Hello, ladies and gentlemen. Put simply, as we all know as adults, this is going to be about fairness, about justice. You all agree with that?

If a person is charged with a crime, if you're a juror, it's about fairness. It's about whether the district attorney, the government, proves their case beyond a reasonable doubt; isn't that correct?

You would agree, would you not, that it's not about vengeance, it's about justice?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: You would agree it's not about sympathy or emotion, it's about justice, isn't it? It's not about politics, certainly. You would agree with that?

PROSPECTIVE JUROR #1: Yes.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #2: Yes.

MR. LAMAGNA: Would you agree with that?

PROSPECTIVE JUROR #3: Yes.

PROSPECTIVE JUROR #5: Yes.

MR. LAMAGNA: You would agree, would you not, that it's not about a political agenda of a district attorney to charge murder on a DWI case when she ran on being hard on DWI.

MS. MCCORMICK: Objection, Judge.

THE COURT: Sustained.

MR. LAMAGNA: You would agree that life isn't always black and white. There are shades of gray. Would you agree with that?

And no matter how terrible a result is, there are degrees of culpability, the most extreme being murder, as if somebody intentionally, in cold blood, killed somebody. There's never anything between? Would we agree that if the judge gives you

lesser charges of murder, it's still criminal charges, would you consider those?

In viewing the evidence can you all promise that you're going to be fair, especially with the gravity of the charge here and this person's life in your hands?

You promise you will take that responsibility with the same gravity of the charge and view all the evidence critically?

Whether there's changes, mistakes, excuses, that's not evidence. Thank could be doubt too, couldn't it?

You can all promise you can be fair and impartial?

Thank you.

THE COURT: All right, everybody. I'm going to give everybody a five-minute break. Don't go too far away. Don't talk about the case.

(Whereupon, the jury panel exited the courtroom.)

THE CLERK: People, challenge for cause as to seat number one?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defense, challenge for cause, seat number one?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number one?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number one?

MR. LAMAGNA: Yes, your Honor.

THE CLERK: People, challenge for cause seat number two?

MS. MCCORMICK: No cause, your Honor.

THE CLERK: Defense, challenge for cause seat number two?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number two?

MS. MCCORMICK: Yes, your Honor.

THE CLERK: People, challenge for cause seat number three?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defense, challenge for cause seat number three?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number three?

MS. MCCORMICK: No, your Honor.

THE CLERK: So that's alternate number five at this time. Cannataro becomes alternate number five.

People, challenge for cause, seat number four?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defense, challenge for cause, seat number four?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number four?

MS. MCCORMICK: Yes, your Honor.

THE CLERK: People, challenge for cause seat number five?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defendant, challenge for cause seat number five?

MR. LAMAGNA: No, your Honor.

THE CLERK: People, peremptory challenge seat number five?

MS. MCCORMICK: No, your Honor.

THE CLERK: Defense, peremptory challenge seat number five?

MR. LAMAGNA: No, your Honor.

THE COURT: We have a jury.

Okay. Would you produce the jury?

(Whereupon, the prospective jury panel entered the courtroom.)

THE CLERK: Case on trial, indictment number 1910N-05, People v. Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LAMAGNA: Ready, your Honor.

THE CLERK: The defendant is present, your Honor.

THE CLERK: Will Nancy Cannataro and Robert Winterton remain seated. The other jurors, please step out. Follow the directions of the officers.

(Whereupon, the unselected jurors were excused.)

(Whereupon, the jurors were duly sworn.)

THE COURT: Please have a seat. We now have selected our jury. We will begin this case, in terms of opening statements and calling of witnesses, on Monday morning.

My comments now are to the rest of you in the room who may feel as though you have been sitting here wasting your time and haven't had an

opportunity to participate in the process. Usually, I simply tell people that is true. I remind them by their participation, they assure all of us a fair trial, but you've gone even an extra mile.

I told you that the case involves terrible injuries. I told you it will be a very long ordeal, lasting as much as five weeks. I told you that you might even be sequestered in a hotel during deliberations. I told you that the task of being a juror in this case was likely and will probably be onerous, and yet here you are. You're each to be congratulated in insuring all of us that we, in Nassau County, no matter what the charges are against us, have jurors willing to give us a fair trial.

You now are all excused from jury duty.

Have a nice weekend. See you Monday morning.

(Whereupon, the jury panel exited the courtroom.)

(Whereupon, the Court stood in recess for the day.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL PART 31
----------x
THE PEOPLE OF THE STATE OF NEW YORK

-against-

MARTIN HEIDGEN,

DEFENDANT.
----------x
INDICTMENT #: 1910N-06

Mineola, New York
September 11, 2006
VOLUME II

B E F O R E: HONORABLE ALAN L. HONOROF
Acting Supreme Court Justice

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TRIAL
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Gigi Wright, R.P.R.
Official Court Reporter

PA 081 445

(In chambers. Ex parte proceeding.)

THE COURT: Good morning. Good morning. Would you please explain what this is about?

MS. McCORMICK: A subpoena had been issued for letters that were admitted to have been sent to Ms. Gerner from the defendant from jail. We had reason to believe that those letters might contain admissions or information relevant to this trial so we subpoenaed those letters.

Ms. Gerner produced only an empty envelope from a letter that she says she has thrown out. There is nothing about the content of this particular letter that would lead us to believe that it would have been retained, unlike the last letter that we brought to the Court's attention.

So all things being said, although we appreciate the Court asking her to search for the letter, she has assured us that she has searched for the letter, and I have no reason to believe that it is being withheld at this time.

THE COURT: Would you stand up please.

(Whereupon, Ms. Gerner, was duly sworn by the Court.)

THE COURT: Please a seat. Are you familiar with the letter the district attorney has been telling

me about?

MS. GERNER: The letter from Josh, I'm familiar.

THE COURT: Do you know where it is?

MS. GERNER: I gave it to them last week. I found it.

THE COURT: No. That is not the letter we are referring to. I'm referring to the letter sent directly to you.

MS. GERNER: No one specific letter. He never really discussed the case with me. It was like he said -- it was all small talk.

THE COURT: Did he send you a letter?

MS. GERNER: Yes.

THE COURT: Did he send you more than one letter?

MS. GERNER: Yes.

THE COURT: Where are the letters?

MS. GERNER: I don't know. I threw them out.

THE COURT: All right. I'm ordering you to search for the letters.

MS. GERNER: Okay.

THE COURT: If you find them, or if you don't find them, you are to contact the district attorney immediately and let her know, yes or no, as to the

search and what it revealed.

MS. GERNER: okay.

THE COURT: Okay. Thank you.

(In open court. Defendant present.)

THE CLERK: Case on trial. This is Indictment 1910N of 2005, People of the State of New York versus Martin Heidgen. All parties present. Defendant is present; jurors are not present.

Appearances for the record.

MR. HAYDEN: Robert Hayden for the People.

MR. LaMAGNA: Steven LaMagna for the defendant. Also present is Greg Martello for the defendant.

MS. McCORMICK: Maureen McCormick for the People.

THE COURT: Bring in the jury.

COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom, and upon taking their respective seats the following occurred:)

THE CLERK: Case on trial, Indictment number 1910N of 2005, People versus Martin Heidgen.

People ready?

MR. HAYDEN: Ready, Your Honor.

THE CLERK: Defendant ready?

MR. LaMAGNA: Defendant is ready, your Honor.

THE CLERK: The defendant is present, your Honor; the jurors are seated.

THE COURT: Thank you. We have already had one juror issue come up, which we resolved in chambers. I found, based on a phone conversation we had with juror number three, that juror number three was unavailable under the C.P.L. and, consequently, I exercised my authority, and replaced juror number three with alternate number one.

Members of the jury, we are about to begin the trial of this case. The trial has commenced with the selection of the jury. At this point I am required by law to instruct you generally concerning your basic functions, duties and conduct, and to acquaint you in a general way to trial procedure and the general rules which apply to jury trials, so you can better understand and help you reach a proper verdict. It is hoped that these remarks will be helpful, particularly those of you serving as jurors for the first time.

The comments and instructions which follow are designed to acquaint you with the separate functions, duties and responsibilities of the Court, attorneys and jury, and to give you a better understanding as to how you, as jurors, should conduct

yourselves during the trial.

As you know, this is a criminal case. And it has been brought by the People upon an indictment accusing the defendant, Martin Heidgen, of the crimes of Murder in the Second Degree, two counts; Assault in the First Degree, three counts; Reckless Endangerment in the First Degree, two counts and; Driving While Intoxicated, two counts.

Please keep in mind that an indictment is simply an accusation and it is not in any way evidence of the allegations that it contains. It is merely the device used in our law to bring the charges of the accused to trial. The defendant has pleaded not guilty to the indictment. According to the law, the People have the burden of proving beyond a reasonable doubt each and every element of each of the crimes charged in the indictment. The defendant does not have to prove anything. The defendant is presumed to be innocent.

The next step in the trial will be an opening statement by the People, represented by the district attorney, during which he is required by law to indicate to you what he intends to prove by way of evidence to support the charges set forth against the defendant.

Subsequent to that defense counsel, if he

desires, may also make an opening statement. The opening statement will enable the Court and the jury to better understand the testimony and the evidence that will follow at the trial.

What counsel for either party says in an opening statement is not evidence. You may consider the opening statement as a preview of what each side intends to prove by way of evidence in the case.

After the opening statement or statements the district attorney will present a witness or witnesses who will be questioned by him. This is called direct examination.

After the district attorney completes his questions defense counsel will be given an opportunity to question the witness. This is called cross-examination. After the People have concluded the calling of their witnesses and have accomplished the introduction of any exhibits admissible into evidence, the defendant may offer evidence in his defense and, also if he chooses, offer exhibits into evidence.

There may be legal motions at various times during the trial and at those times you will be excused.

After the defendant rests and the People have rested, the defendant may make a closing argument or

summation, following which the People may make a closing argument or summation, then I will charge you on the law and you will retire to deliberate for the purpose of reaching a verdict.

That is a general outline of the trial procedure. You, the members of the jury, are the sole judges of the facts. You, and you alone, will have the responsibility to find and determine the facts.

On the other hand, when I instruct you on the law during the course of or at the close of the trial you must follow my instructions on the law exactly as I give them to you, without any hesitation or reservation, even though you may disagree with my instructions.

Exhibits, such as photographs, documents or other tangible objects presented by counsel during the course of the trial will be first marked solely for identification. Such exhibits are not evidence unless and until they are received in evidence by order of the Court. For the most part, evidence consists of testimony of witnesses under oath and exhibits which are introduced into evidence.

Questions in and of themselves are not evidence. Therefore, you cannot infer any fact from the mere asking of a question. It is the answer,

coupled with the question, that constitutes evidence.

During the course of the trial either attorney, the district attorney or defense counsel may object to a question or an answer on the ground that somehow it is legally improper or inadmissible.

If I sustain the objection that means I believe the question or the answer was in some manner improper. Therefore, in the first instance the question may not be asked and; in the second instance, if an answer has been given I will strike it out and the answer is no longer evidence in the case, and you are to disregard it.

If I overrule the objection then it means that the question is proper, and I will permit it to be answered. Or if already answered, I will permit the answer to stand as evidence in the case. Please do not hold it against either attorney if I rule against them.

As I have already explained, you must not discuss this case amongst yourselves or with anyone else until the entire case has been completed and the Court has given you the charge on the law which applies to the counts of the indictment, which will be given to you for your consideration.

You must keep an open mind until all of the evidence is presented and you are charged as to the

law.

You must not read or listen to any accounts or discussion of the case in the event it is reported by any newspaper or other media.

You must not visit or view the premises or place where the offense or offenses charged were allegedly committed, or any other premises or place involved in the case.

You are not to permit any party to discuss this case with you or attempt to influence you. You must promptly report to the Court any incident within your knowledge involving an attempt by any person to improperly influence any member of the jury.

Prior to discharge you may not request, accept or discuss any payment or benefit in consideration for supplying any information concerning this trial.

I also advise you that if at any time either any of the participants in this trial shall meet you in the hallways or outside of the building they may not speak to you or even acknowledge you to avoid any appearance of impropriety.

We will now proceed with the next step in the trial which is the opening statement by the People.

MR. HAYDEN: I'm going to take you back to

around 2 o'clock on the early morning of Saturday, July 2nd of 2005. The air outside was warm and clear. Christopher and Denise Tangney were sitting in the comfort of a long, black limousine moving smoothly along the southbound Meadowbrook Parkway approaching the Babylon Turnpike overpass. There were on their way home to Long Beach.

Fifty-nine year old Stanley Rabinowitz was driving the limousine about 60 miles an hour, and the Tangneys had no care in the world.

Friday, July 1st, had provided a beautiful evening for Christopher and Denise. Their younger daughter, Lisa, had been married on the beach in Bayville. The scene was picture perfect, the food was good, the music was good. But most important they celebrated the day with loved ones, with Lisa and the groom, David; with their 34 year old son, Thomas; with their older daughter, Jennifer and her husband Neil and their granddaughters, seven year old Katie and five yea old Grace.

Christopher and Denise shared the passenger compartment in the limousine with Jennifer, Neil, Katie and Grace. The girls were sound asleep after one of the biggest days of their young lives. It was like a beautiful dream for the entire family.

Within seconds that beautiful dream shattered with the explosive impact of crunching metal and breaking glass. Within seconds that beautiful dream became a nightmare from which a tiny family were never fully awakened.

About 2 o'clock, early in the morning, there was another vehicle, a pickup truck, moving steadily along the southbound Meadowbrook Parkway. The only problem was it was moving northbound, ignoring several sets of oncoming headlights, ignoring cars with blaring horns. The defendant kept coming the wrong way with a blood alcohol content more than three times the legal limit. The defendant drove rapidly northbound along the southbound center lane of the parkway for miles before entering a collision course with the limousine. He never swerved, he never wavered, he just kept coming. The impact was horrific.

Denise suffered injuries, including a broken hip, and a shattered knee. Christopher suffered injuries, including compound fractures of the hip and leg, along with internal injuries. Neil suffered injuries, including a broken back and a collapsed lung. They were the luck lucky ones. Mr. Rabinowitz was crushed inside the driver's compartment of the limousine and died instantly. Katie was decapitated

and died in a heartbeat.

Family members will testify. They'll describe their injuries and establish their severity. Medical examiners will testify. They'll establish the blunt force trauma from the blunt force impact.

A young man named Greg Nizewicz will testify. He will tell you he is a friend of the defendant. He'll tell you how he met the defendant on the late afternoon of Friday, July 1st. They met at a bar, House of Brews, he saw the defendant consume six beers while together that late Friday afternoon.

A young woman named Tracy Sodikoff will testify. She will tell you she too was a friend of the defendant; she too met the defendant that Friday. She met him that Friday night at a house party in Merrick, not far from the Meadowbrook Parkway. She too will tell you she saw the defendant consume alcoholic beverages that Friday. She saw him consume Irish car bombs. These are drinks with a mixture of whiskey, Bailey's Irish Cream and Guinness. She never saw the defendant leave the party that night. She never saw the defendant say good night to anyone.

A 28-year-old waitress named Elizabeth Serwin will testify. She will tell you she was on her way home that early Saturday morning. She had worked at a

restaurant in Syosset. Yet she was on her way home to Long Beach. She was driving southbound along the southbound center lane of the parkway, and had her lights on, south of Merrick Road when she saw oncoming headlights. When she realized those headlights were being driven right at her, she veered across the parkway onto the shoulder to avoid an immediate collision. She hit her car horn three times to alert the driver. The vehicle, the pickup truck, kept coming at a high rate of speed. The driver never swerved, never wavered, never reacted to Ms. Serwin's headlights or horn in any way. She will tell you she noticed two other cars, headlights on, pulled off onto the shoulder of the road behind hers.

A 38-year-old Verizon employee, Mr. Shields, will testify. He'll tell you he too was out on the Meadowbrook Parkway at approximately 2 o'clock in the morning. He too was going southbound in the southbound center lane of the parkway, headlights on, south of Merrick Road, when he noticed oncoming headlights. Those headlights were approaching northbound along the southbound center lane. Mr. Shields moved over into the right-hand lane and began flashing his headlights and blaring his car horn to alert the driver. The vehicle, the pickup truck, just kept coming, high rate

of speed. The driver never swerved, the driver never wavered, the driver never reacted to those headlights or car horns in any way.

A 34-year-old film producer, Joseph Caruso will testify. He too was on his way home at 2 o'clock, early Saturday morning. He too was driving southbound along the southbound center lane of the parkway, headlights on, just south of Merrick Road, when he noticed oncoming headlights. His initial reaction was to drift slightly to his left. When Mr. Caruso drifted slightly to his left, he noticed that the oncoming headlights appeared to be slightly to Mr. Caruso's left. Mr. Caruso veered across the parkway on the shoulder road to avoid an immediate collision. The vehicle, the pickup truck, just kept coming at a high rate of speed. The driver never swerved, never wavered, the driver never reacted to Mr. Caruso's headlights in any way. Mr. Caruso will tell you he noticed another car pulled off onto the shoulder of the road. That car was in front of his.

A 19 year old Villanova student named Matthew Sussingham will testify. He too was on his way home at 2 o'clock that early Saturday morning. He was driving southbound along the right southbound lane of the parkway, headlights on, onto an exit ramp to Sunrise

Highway when he saw the pickup truck come up over northbound along the southbound center lane. The driver never swerved, never wavered, never reacted to Mr. Sussingham's headlights in any way; just kept coming right past Mr. Sussingham at a high rate of speed.

A 38-year-old pastor named Steed Davidson, from a Freeport United Methodist Church, will testify he too was on his way home at 2 o'clock that early Saturday morning. He was driving family members home in a Nissan Maxima automobile. He too was driving southbound along the southbound center lane of the parkway, headlights on, about 55 miles an hour, approaching the Babylon Turnpike overpass, when he noticed the headlights of a limousine coming up from behind him along the left southbound lane.

The limousine proceeded to pass the Reverend Davidson about 60 miles an hour. It was then that the Reverend noticed oncoming headlights northbound along the southbound parkway. The limousine began to move over toward the right into the southbound center lane where Reverend Davidson was. The oncoming headlights, the headlights of a pickup truck, moved slightly to the right and engaged the limousine in a massive head-on collision. At some point the limousine made contact

with the Reverend Davidson's Nissan Maxima, that spun out 180 degrees, finally coming to a rest.

You are actually going to see what the Reverend Davidson saw. You are actually going to see what Christopher Tangney saw inside the limousine, you're going to actually see what Stanley Rabinowitz saw in the last moments of his life.

You're going to learn there was a video camera installed in the limousine recording. You are actually going to see the defendant's headlights just as the Reverend Davidson saw it. You are actually going to see the defendant's pickup truck coming around the bend along the Babylon Turnpike overpass, just as Christopher Tangney saw.

You're going to actually receive the pickup truck move slightly to the right and slam head on into the limousine, just as Stanley Rabinowitz saw, the last thing he ever saw. You were going to see this collision for yourselves.

Police officers, including New York State Trooper Patrick Siegler and Danny O'Hare will testify. They will tell you how they responded to the scene of the collision and the devastation that they found. They'll describe massive front-end crush damage to both the limousine and the pickup truck. They'll describe

observations that they made of the occupants of the limousine.

They'll tell you how they found the defendant pinned behind the steering wheel of the pickup truck, and the police were able to pry him lose and bound him on a stretcher and got him over to a nearby ambulance.

Police Officer Tim Nolan of the Freeport Police Department will tell you how he tried to speak with the defendant then, how he kept asking the defendant's name, leaning closer and closer to the defendant to have him say Martin. How he kept asking where the defendant was coming from, leaning closer and closer to the defendant, until he finally understood that he was saying Long Beach. How he detected a powerful odor of an alcoholic beverage on the defendant's breath.

Trooper O'Hare will tell you how the defendant was rushed to the trauma room of the Nassau County Medical Center, where doctors and nurses surrounded him and cared for him.

At 2:45, early Saturday morning, a nurse drew samples of the defendant's blood, which Trooper O'Hare sealed in tubes, sealing the tubes in a blood kit, which eventually was sent to the New York State Police toxicology lab.

The toxicologist will tell you how she received the sealed tubes of the defendant's blood, unsealed those tubes, analyzed the blood and determined that the defendant had a blood alcohol content of .28, more than three times the legal limit, just after the collision.

Investigator Mike Harris of the State Police will testify, and he will describe a conversation with the defendant at the medical center, about a half day after the collision. He'll tell you how the defendant told him he had been driving the pickup truck at the time the collision; he had consumed a fifth of Old Parr Scotch whiskey before driving the pickup truck, and how he had been in what he described as a self-destruct mode on the night of the collision.

In short, the People will prove beyond a reasonable doubt, any reasonable doubt, that the defendant kept drinking that night until he was highly intoxicated; how he went out and drove the pickup truck anyway; he wound up driving it the wrong way against oncoming traffic; and how he kept driving it the wrong way; how he drove right at oncoming headlights, forcing drivers to chicken out, forcing drivers to veer out of his path to avoid deadly head-on collisions; until he came around the bend, out from beneath the Babylon

Turnpike overpass, and adjusted slightly to the right and engaged the limousine in the devastation head-on collision, Mr. Rabinowitz simply could not avoid, killing Mr. Rabinowitz and Katie, and in so doing showing a depraved indifference and utter lack of care for their precious human lives, and the human lives of anyone else out on the southbound Meadowbrook Parkway around the time of the collision. He just didn't care enough whether those people lived or died.

In short, the People will prove beyond any reasonable doubt that the defendant is guilty as charged of all of the counts of the indictment, including Murder in the Second Degree, depraved mind murder; Assault in the First Degree, depraved mind assault and; Reckless Endangerment in the First Degree.

Thank you, again for your time and a attention.

THE COURT: Mr. LaMagna.

MR. LaMAGNA: As reasonable people we all know what murder is, and as reasonable people we all know who murderers are. The evidence will show that this is not a case of murder, and that this young man is not any murderer.

Good morning, ladies and gentlemen of the jury. Your Honor, counsel for the prosecution,

Mr. Martello and Mr. Heidgen.

As you know, this portion of the trial is called the opening statement. And, of course, as the Judge had just told you, it is not evidence. And what we just heard from the prosecution, again, is not evidence. The purpose of the opening statement really is for the government, and the prosecutor, the prosecution, to articulate to you what they hope to prove and exactly how they intend or will attempt to prove each and every charge that they brought against Mr. Heidgen, and ask you to consider those charges. This is because they, and only they, have the burden of proof in this case. Before you, the jury, can even reach a verdict of guilty they must prove each and every element of the charges they have brought beyond a reasonable doubt.

The defense, unlike the prosecution, doesn't have to even give an opening statement, because we have no burden of proof. That burden falls squarely on the shoulders of the prosecution, and shall remain there for the course of the trial.

However, as you will see, we are nevertheless prepared to present evidence. We will question and at times aggressively cross-examine the government witnesses. We'll question their motives, we will

question their biases, we will question whether or not any of these government witnesses have changed their story, have changed their testimony to fit and to conform to the prosecution's unusual theory in this case of depraved indifference murder. We will explore inconsistencies about their evidence and about their witnesses. We will expose mistakes made during the course of their investigation and we will question the quality and sufficiency of their evidence.

And, most importantly, ladies and gentlemen, we'll question their conclusions, especially as it relates to the state of mind of Martin Heidgen on July 2nd 2005.

We'll make sure that this trial is about all the evidence; not just the piece of evidence that the prosecution wants you to hear, because it fits their agenda. We are going to make sure that this trial is about the truth, the truth concerning the circumstances leading up to this unintentional, yet tragic accident; the truth as to how this tragic accident occurred; and, most importantly, the truth about this young man's state of mind on that night. That is the critical issue in this trial.

We will make sure that your determination, as we discussed in jury selection, is about the evidence,

not about emotion; it is not about sympathy and certainly not about vengeance. This must be about justice and an accountability and responsibility, but accountability and responsibility for what it is that a person may be accountable and responsible for, nothing more.

This isn't about making examples of anybody or scapegoating anybody to get a headline in the paper. A person's life is on the line here.

Now, we heard Mr. Hayden state what he hopes the evidence will prove. Many of what -- much of what Mr. Hayden said we have no quarrel with; we agree. A terrible tragedy of immeasurable proportions occurred in this case: Two people lost their lives, a seven year old child, and many people were injured as a result of a car crash. We know and we would not be human if we didn't feel for them, but this is a trial about not what ultimately happened, we know that; this is going to be a trial about how it happened, under what circumstances it happened, and what was the state of mind of Marty Heidgen at the time that this occurred. What we heard from the prosecution is a theory. And just like pounding a square peg into a round hole that theory of depraved mind murder simply will not fit.

Put simply, ladies and gentlemen: The evidence will prove that on July 22nd 2005, a convergence of tragic circumstances all came together and made this perfect storm of tragic events that collectively came together and caused this tragic accident. Not as the prosecution so desperately wants you to believe, the sudden and remarkable transformation of a 24-year-old young man's mind from being happy, excited, in a pleasant mood that night, into a depraved mind murderer. That is what the evidence will prove did not happen, because that is the truth.

Every single person who was with Marty Heidgen that day, that evening, that night, will tell you that he was in a perfect mood, he was happy, he was engaging; not depressed in the least bit. And like all of his other friends were excited about this upcoming Fourth of July weekend that they had plans for.

The evidence will prove that the state of mind of Mr. Heidgen was perfect that day. He was happy. Anything but depraved. And, again, that is what the truth is, that is who he is, and that is who he was that night, and that is why the extreme charge of murder in this case should never have been charged and cannot be proven in this case.

Remember, in order for the prosecution to prove the case of murder in this unintentional accident, in addition to proving, if they do, that Mr. Heidgen was intoxicated, they have to prove that his mind was that of a depraved person.

Pay close attention to the evidence as they present it to you. I want you to ask yourselves as they present evidence, witness after witness, ask yourselves are there inconsistencies between their own witnesses? Are there inconsistencies between their own experts? Did the government continue to hire expert after expert until they finally got an expert willing to give an opinion that fit their theory? Ask yourselves did their experts change their opinions to fit this unusual theory of depraved mind murder.

For example, pay close attention to one of their experts in particular, Wade Bartlett. Ask yourselves why he would change his original testimony in the report and then changed his report to support it.

Now, Mr. Hayden mentioned some oral statements apparently made by Mr. Heidgen. Again, ask yourselves were these statements that you're going to hear, are they accurate, are they factually correct, was he lying, was he lied to by the police prior to

giving his statement, is his blood alcohol level accurate. Are there reasonable alternatives to the main issue of his state of mind as to whether it was depraved. You'll ask yourselves is there a single witness that they will bring you that will corroborate that theory, and the answer is no. Every single person who was with him will tell you that that is absolutely not the truth about his state of mind.

Ultimately, ladies and gentlemen, the evidence will prove that many factors unintentionally converged to cause this terrific and terrible accident, none of which was a depraved mind.

You will hear that Marty moved to New York just eight months before this occurred from Arkansas after he graduated college. That he moved in with his parents, or his mother in Valley Stream, and he worked in Manhattan. He commuted. He was unfamiliar with the roadways on Long Island. And you will hear that this group of friends that he had made had plans for that weekend, beginning with a party at the Goldman residence the night of this accident.

You will hear that the Goldman residence is in North Merrick. That is significant because where their house is is off the Meadowbrook Parkway by the Babylon Turnpike exit.

You will hear that at 9:40 that night Amanda Goldman gave Marty Heidgen directions to her house off the Meadowbrook Parkway at Babylon Turnpike, because he didn't know his way around.

You'll hear that on his way to that very party, after getting directions, he got lost getting to the house in that area. He called Amanda Goldman. She gave him further instructions and he got to the party.

You will hear that when he arrived at the party he was not drunk; he didn't drink an entire bottle of scotch. You will hear that he was in a perfect mood, happy, excited about the weekend, like everybody. No more, no less. You'll hear that at the party they were laughing, they were joking, they were even dancing to music and, yes, they were drinking. There is no question about that.

But you will hear that at 1:30, or approximately 1:30, Marty left to go home, back to Valley Stream. And you will hear, just like when he was driving from Valley Stream to the Goldman residence in Merrick, off of the Meadowbrook Parkway, off of the Babylon Turnpike exit, as he was going back home he got lost again. And you will see evidence that Mr. Heidgen again, just like he did before when he got lost going to the Goldman residence, he called Amanda at 1:45

because he was lost again. Fifteen minutes before this accident occurred.

You will hear that Amanda, who threw the party, didn't pick up the phone, and Marty had to navigate his way home, and he got lost and he got confused.

And you will hear from accident reconstruction experts and highway safety experts that the Meadowbrook Parkway is poorly constructed and unsafe in that it allows cars to get on that parkway in the wrong direction. You will hear at that time of night, at 2 o'clock in the morning on the south Meadowbrook Parkway, it is dark, it is empty and there is no exits.

Unfortunately, he did get on the wrong side of the parkway. It wasn't that it was for miles, because the salient point that is going to be in this case, is from the first time that a car passed him until the time of the accident was approximately only point eight miles, less than a minute. All of this was happening that fast.

And you will hear that Marty did take self-corrective measures. You will hear that he reduced his speed when he was seeing a car pass him, saying he didn't know if it was him that was wrong or

the other guy. You will hear that he reduced his speed from 70 miles an hour, 65 miles an hour to 30, all in that short period of time. And you will also hear that point one mile from the accident the whole area is point .08 miles.

As he is driving, as he is slowing down, he was looking for signs. And you will see on the Meadowbrook Parkway point one mile from where this terrible accident occurred, there is a sign on the Meadowbrook Parkway facing the wrong way. So an errant driver driving north on the southbound lanes would see a sign facing them on the right-hand side, where you would normally look for signs to get off, adding further confusion to what was happening that night.

You see, ladies and gentlemen, this was a tragedy of immeasurable proportions. And, unfortunately, we can't change the result. But we can determine how it happened and why it happened, and under what circumstances it happened. The evidence will prove that corrective measures were taken; unfortunately, too late.

Ladies and gentlemen of the jury, what the evidence will show is that there are times when a multitude of circumstances, unintentional and without malice, are created by mistake and irresponsibility

that come together in such a way that they create an atmosphere where a terrible tragedy occurred, and that is what happened in this case. But that does not amount to murder, and it does not amount to a depraved indifference to human life.

And that is why, ladies and gentlemen, at the end of this case you will find the defendant not guilty of murder or any related charge to show a depraved indifference to human life.

Thank you.

THE COURT: Mr. Hayden.

MR. HAYDEN: The People call Trooper Patrick Siegler.

COURT OFFICER: Step up. Remain standing, raise your right hand and face the clerk.

P A T R I C K S I E G L E R, a witness called on behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please be seated.

In a loud voice, state your name, spelling your last name, shield and command for the record the record.

THE WITNESS: Trooper Patrick Siegler, S-I-E-G-L-E-R, New York State Police, Brentwood, Shield

349.

THE CLERK: Thank you. Please take a seat.

DIRECT EXAMINATION

BY MR. HAYDEN:

Q Good morning, Trooper.

A Good morning.

Q How long have you been a member of the New York State Police?

A Approximately six and one-half years.

Q Have you covered the scenes of motor vehicle crashes?

A Yes, I have.

Q How many crash scenes have you covered?

A In six years, hundreds.

Q Do you know a man named Martin Heidgen?

A I do.

Q Please briefly describe him.

A White male, 20s, dark hair.

Q Do you see Martin Heidgen in this courtroom today?

A I do.

Q Please point him out to the jury, and describe for the record what he is wearing today.

A Seated at the table to my left, centered between counsel. He has a checked tie, white shirt.

MR. HAYDEN: Let the record reflect, your Honor, that the witness has indicated the defendant Martin Heidgen.

THE COURT: The record will so reflect.

Q I'm directing your attention to the early morning of Saturday, July 2nd of 2005.

Were you working then?

A Yes, I was.

Q What was your assignment that morning?

A I was assigned to patrol Post 9812, which includes the Meadowbrook Parkway.

Q How were you dressed then?

A In uniform.

Q Using a motor vehicle?

A Marked State Police vehicle.

Q Were you working with a partner?

A I was working with Trooper Brunz.

Q How was Trooper Brunz dressed?

A In uniform.

Q Describe the weather that morning?

A It was warm and humid.

Q Did you respond that morning to the vicinity of the southbound lanes of the Meadowbrook Parkway, just north of the Babylon Turnpike overpass?

A Yes, I did.

Q Where is the Babylon Turnpike overpass with relation to Sunrise Highway?

A It is north of Sunday Highway.

Q Where is the Babylon Turnpike overpass with relation to Merrick Road?

A It is north of Merrick Road. Two exits north.

Q When did you arrive along the southbound Meadowbrook Parkway just north of the Babylon Turnpike overpass?

A Approximately 2:10 a.m.

Q Describe the circumstances under which you responded there?

A Received a dispatch from S.P. Farmingdale communications to check for an accident, Meadowbrook Parkway northbound in the vicinity of Merrick Road.

Q Did you see a limousine when you arrived there?

A Yes, I did.

Q Where was the limousine?

A The limousine was facing southbound, center lane of the Meadowbrook Parkway, just north of the Babylon Turnpike overpass.

Q Describe for the jury any observations you made of the front of the limousine?

A Front end of the limousine was completely destroyed. Heavy front-end impact.

Q Did you see a man named Stanley Rabinowitz in the driver's compartment of the limousine?

A Yes.

Q Describe any observations you made of Stanley Rabinowitz?

A The driver's compartment was completely crushed around him. All I could see of Mr. Rabinowitz was part of his left arm and his left hand.

Q Did you see a woman named Jennifer Flynn with remains of her daughter in the vicinity of the limousine?

A Yes, I did.

Q Where was Jennifer Flynn?

A She was in the center median, sitting against the guide rail.

Q Did you look inside the limousine?

A Yes.

Q Tell the jury what you saw when you looked inside the limousine?

A Inside there were several people, all with various serious injuries, crying out in pain.

Q Did you see a pickup truck in the vicinity of the limousine?

A Yes.

Q Where was the pickup truck?

A Pickup truck was also southbound Meadowbrook

Parkway, mostly in the left-hand lane, facing south. Adjacent to the limousine more or less.

Q Describe any observations you made of the front of the pickup truck?

A The front end of the pickup truck was also heavily damaged. The frame of the vehicle was bent.

Q Did you see the defendant inside the pickup truck?

A Yes, I did.

Q Where was the defendant?

A He was behind the wheel of the pickup truck, sitting mostly upright.

Q Did you see anyone else inside the pickup truck?

A No.

Q Describe any observations you made of the defendant when you first saw him behind the steering wheel of the pickup truck?

A He was sitting mostly upright, his eyes were open. He had a small cut under his chin that I could see.

Q Where were you while you were making those observations of the defendant?

A To the left of the pickup truck, to the left of the driver's side of the pickup truck.

Q Did you see a man named Michael Ierardi when you arrived at the scene of the collision?

A Yes.

Q Who is he?

A He is a New York City court officer who was on his way home from work when he came upon the accident scene just after it happened.

Q Did you speak to him?

A Yes. He was standing in the roadway waving a flashlight.

Q When did you speak with Mr. Ierardi?

A As soon as I arrived.

Q Did you eventually speak with a man named Steed Davidson at the scene of the collision?

A Yes.

Q Who is he?

A Mr. Davidson was the operator of a Nissan Maxima, which was the third vehicle involved in the collision.

Q When did you speak with Steed Davidson?

A Approximately twenty minutes after two.

Q Did you see Reverend Davidson's Nissan Maxima?

A Yes, I did. The Maxima was facing northbound, mostly in the right lane of the Meadowbrook Parkway south. His vehicle had been struck at or about the same time that the pickup and the limousine had collided. His vehicle spun and was facing northbound in the southbound, mostly right lane.

Q South of the Babylon overpass?

A South of the overpass, correct.

Q The other vehicles were north of the overpass?

A Correct.

Q Describe any observations you made of Reverend Davidson's Maxima?

A The Maxima had some damage to the left rear quarter panel, left rear door.

Q Was the defendant removed from the pickup truck?

A Yes.

Q Where were you while the defendant was being removed from the pickup truck?

A At the time I was finishing up speaking with Mr. Davidson I believe.

Q Where was the defendant placed after being removed from the pickup truck?

A Placed on a stretcher and loaded into a Nassau County Police ambulance.

Q Did you join him there?

A Yes, I did.

Q Describe any additional observations you made of the defendant after you joined him in the ambulance?

A I got in the ambulance. He was lying on his back, looking up at the ceiling. I observed his eyes to be glassy and blood shot. He had a strong odor of alcohol on

his breath.

Q Did you notice any injury to the defendant while you were with him in the ambulance?

A He had a small laceration under his chin, and he was wearing a neck brace.

Q Did you try to speak with the defendant?

A I had asked him his name.

Q What did he say?

A He did not respond. He did not look at me or make any eye contact.

Q Any further effort to speak with him?

A I leaned in again and I asked him his name a second time, to which he did not respond as well.

Q Anything further?

A No.

Q Did the defendant respond to anything said to him in your presence?

A No.

Q Did the defendant ever look at your direction while you were with him?

A No.

Q Did you ever see the defendant look at anyone's direction while you were with him?

A No.

Q Did the defendant utter an unintelligible sound

while you were with him?

A No.

Q Did you leave the ambulance?

A Yes.

Q Describe the circumstances under which you left the ambulance?

A I left the ambulance, was speaking to Trooper Knapp, and decided that Trooper O'Hare was going to accompany Mr. Heidgen to the hospital with a blood kit for the purposes of securing a blood sample as he was under arrest for DWI.

Q Did Trooper O'Hare join the defendant in the ambulance?

A Yes.

Q Was the ambulance driving away?

A Yes.

Q At approximately what time?

A Two-thirty-three a.m.

Q Did you recover the defendant's wallet that night?

A Yes.

Q When did you recover the defendant's wallet?

A After the ambulance departed for the hospital I still did not know who this person was. I returned to his vehicle, tried to find some kind of document that belonged

to him in order to identify him.

I Went inside towards, to where the pickup was, shined my flashlight inside. I was not able to get around it because the inside of the pickup truck was heavily damaged. I shined my light inside and saw a wallet on the floor of the driver's floorboard, and found a broken piece of a fishing pole.

I retrieved the wallet and opened it up and inside was a photo license, an Arkansas photo license, which appeared to be one in the same of the person who was taken in the ambulance and on his way to the hospital under arrest.

Q How long were you at the scene at the crash that Saturday?

A I was at the scene probably until at least 8 o'clock in the morning. Six hours or so.

Q Were photographs taken at the scene of the crash?

A Yes.

MR. HAYDEN: Your Honor, may I have this group of photographs, which have been marked 1A through 12A shown to the witness, please?

THE COURT: Yes.

Q Please take a look at those.

Do you recognize those photographs?

A Yes.

Q Are those photographs taken at the scene of the crash?

A That's correct.

Q Are those photographs fair and accurate representations of the way that the crash scene appeared while you were there that morning?

A Yes.

MR. HAYDEN: Your Honor, at this time may the witness please step down and take a look at these enlarged photographs marked for identification?

THE COURT: Are they identical to these but enlarged?

MR. HAYDEN: That's correct, your Honor.

THE COURT: Is it your intention to put them in evidence?

MR. HAYDEN: It is, your Honor.

THE COURT: Perhaps we can show these to counsel, and see if there is an objection to them coming into evidence.

MR. HAYDEN: Yes, your Honor.

MR. LaMAGNA: Your Honor, it is my understanding that they want to introduce all of them.

THE COURT: That is what Mr. Hayden just said, yes.

MR. HAYDEN: That's correct, your Honor.

MR. LaMAGNA: Judge, I would object to the cumulative nature of them. One in particular. I don't know if you want to hear the objection now.

THE COURT: Actually we have been at this about an hour now. Why don't I give the jury a five or ten-minute break.

Ladies and gentlemen, I gave you the admonitions right before the opening statements. Please don't talk about the case. See you in a few minutes.

(Whereupon, the jury exited the courtroom.)

MR. LaMAGNA: Do you want the witness present for the discussion?

MR. LaMAGNA: I guess maybe it is better that he is not.

THE COURT: Officer, would you mind stepping down.

(Whereupon, the witness exits the courtroom.)

THE COURT: What is the objection?

MR. LaMAGNA: Judge, there is cumulative nature to some of these photographs showing pretty much the same scene. One photograph in particular, the limousine shows the photograph of the extraction that was either by the fire department or EMS, when they ripped open the limousine.

THE COURT: How is that marked?

MR. LaMAGNA: This is 7A.

THE COURT: So the specific objection is to 7A, and the general objection to the rest is it is cumulative? Can I see them, please?

MR. LaMAGNA: That's correct.

THE COURT: Your argument for the admission of 7A, Mr. Hayden?

MR. HAYDEN: Your Honor, for one thing it shows the location of Katie Flynn's body inside of the vehicle. It is undercover. It is not inflammatory. This shows the location of the body. In addition, it helps establish the extensive nature of the injuries in that police and emergency personnel had to rip away the side of the vehicle just to get to these people, to get them out without causing further damage to them.

THE COURT: The objection is overruled. I'm allowing all of the photographs. Gentlemen, we'll take a five-minute break as well and resume in a few minutes. Mark them.

(Whereupon, the items referred to received and marked People's Exhibits 1A through 12A in evidence.)

THE COURT: Put the witness back on the stand.

THE CLERK: Case on trial, Indictment 1910N of 2005, People versus Martin Heidgen.

People ready?

MR. HAYDEN: Ready, your Honor.

THE CLERK: Defendant ready?

MR. LaMAGNA: Defendant ready.

THE CLERK: Defendant is present at this time, your Honor.

THE COURT: All right. We'll await the jury and we'll continue.

THE CLERK: I remind you you are still under oath. You can take a seat.

COURT OFFICER: Jurors entering.

(Whereupon, the jury entered the courtroom, and upon taking their respective seats, the following occurred:)

THE CLERK: Jurors are present and seated, your Honor.

THE COURT: The objection was overruled. The photographs are in evidence.

MR. HAYDEN: Your Honor, with the Court's permission may Trooper Siegler step down, take a look at these enlarged photographs, and confirm that they are fair and accurate enlargements of 1A through 12A in evidence?

THE COURT: Yes.

Q Please step down, Trooper. Please take a look at those enlargements.

Trooper, are those enlargements 1B through 12B fair and accurate enlargements of the photographs you already identified and that have been placed into evidence, 1A through 12A?

A Yes, they are.

MR. HAYDEN: Your Honor, with the Court's permission I would like to display each of the large enlargements of the photographs and at the same time have Ms. McCormick display the smaller photographs 1A through 12A, for the defense counsel, the defendant and for your Honor.

THE COURT: Any objection?

MR. LaMAGNA: No, Judge.

THE COURT: Yes.

MR. HAYDEN: May I proceed?

THE COURT: Yes.

Q Trooper, please step down in front of the jury. I am now displaying, your Honor, 1B in evidence.

Briefly describe what that is.

A That is the scene Meadowbrook Parkway southbound lanes. Here is the pickup truck. This is the limousine.

Q I am now placing 2B before the jury. What is

that?

A Another photo of the collision scene taken from the Babylon Turnpike overpass, taken in daylight. And you have the limousine and pickup truck southbound lanes of the Meadowbrook Parkway.

Q I am now showing 3B in evidence.

What is that?

A Once again, the collision scene, scene of the accident. Freeport Police personnel and Nassau County Police personnel and State Police members also at the collision scene.

Q I am now displaying 4B. What is that?

A That is the limousine. Front end is completely destroyed. You have the pickup and the front end is completely destroyed. And you can see the radiator.

MR. LaMAGNA: Objection.

THE COURT: Overruled.

Q Can you see Mr. Rabinowitz in that photograph?

A I cannot.

Q Where was Mr. Rabinowitz with relation to that photograph?

A This area here. It would be the driver's seat.

Q I am now showing 5B. What is that?

A Photo of the driver's side of the limousine. The left rear door is open. You can see slightly inside the

passenger cabin.

Q This is 6B. What is that?

A The limousine. You can see part of the engine in this area. You can see one of the shots of the front left tire, and the Freeport fire truck in the background.

Q Can you see Mr. Rabinowitz in that photograph?

A You can see part of his shoulder and elbow.

Q That's toward the middle of the photograph?

A That is toward the middle of the photograph.

Q This is 7B. What is that?

A That is a photograph of the passenger side of the limousine. Passenger cabin area of the stretch limousine was cut away by the ESU officers in order to extricate the injured inside.

Q So the torn metal down the middle of the photograph was done by emergency people?

A Correct.

Q To get to the victims inside?

A Correct.

Q This is 8B. What is that?

A Photograph of the pickup truck on the Meadowbrook Parkway at the collision scene.

Q Where were you with relation to that photograph when you first made your observations of the defendant?

A I was just behind the door, near the wooden guide

rail.

Q This is 9B. What is that?

A Another photograph of the pickup truck. You can see that the frame is bent heavily on the driver's side. The front end of the vehicle is facing mostly south and the rear of the vehicle is bent on an angle, the frame.

Q This is 10B. What is that?

A It is a photograph of the pickup truck. You could see mostly the right front end. And the passenger side is visible. And also a fishing tackle box falling outside of the pickup truck.

Q This is 11B. What is that?

A Photograph of the pickup truck showing mostly the driver's side of the pickup. You can see some of the front end. You can see the battery of the pickup truck. You can also see the air bag.

Q That is toward the middle of the photograph?

A Toward the middle.

Q This is 12B. What is that?

A Photograph of the Nissan Maxima operated by Steed Davidson. The vehicle is facing northbound in the southbound lanes, because it had been spun around after the collision with the limousine. Damage on the left rear quarter panel and driver's side door.

Q Once again, that is south of the Babylon Turnpike

overpass?

A That's correct. This is actually -- this is the exit lane to Babylon Turnpike east. That would be the M7 east lane.

Q Once again, the other vehicles were north of the Babylon Turnpike overpass?

A Yes.

Q Please retake the witness box.

MR. HAYDEN: Nothing further, your Honor. Thank you.

THE COURT: Mr. LaMagna.

MR. LaMAGNA: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. LaMAGNA:

Q Good morning, Trooper.

A Good morning.

Q Trooper, as you know, my name is Stephen LaMagna. I'm going to ask you just a couple of questions here this morning. If you don't understand a question please ask me to repeat it and I certainly will.

Trooper, you received a radio call to respond to an accident scene on the Meadowbrook Parkway; is that correct?

A That's correct.

Q And that was at approximately 2:06?

A Approximately.

Q A.m.

A Yes.

Q That was on July 2nd 2005, correct?

A Correct.

Q And you had testified that as a trooper you have had experience in accident investigations; is that correct?

A Correct.

Q And you said there were hundreds of them; is that correct?

A I don't have an exact number.

Q I understand.

A But several a month times six years.

Q With respect to that experience have any of them been related to head-on collisions as well?

A Yes.

Q And out of those how many would you say were head-on collisions? Numerous?

A No, I would say a small percentage.

Q Were any of them on a parkway?

A Yes.

Q Or was this the first one?

A No. Nothing that I recall on this parkway, no.

Q Not on this parkway. In general, just as your experience.

A Not on a parkway necessarily, but perhaps on an interstate or a state road.

Q Now, you arrived at the scene at what time, approximately?

A Two-ten a.m.

Q And you were with a partner, correct?

A Correct.

Q That was Eric Burns?

A Brunz.

Q Brunz, I'm sorry.

You said it was a warm and humid night; is that correct?

A Yes. It had rained earlier in the evening.

Q You were the first state troopers on scene?

A Correct.

Q And when you arrived at the scene you observed the two vehicles, correct?

A Yes.

Q Did you approach the Silverado first or did you approach the limousine first?

A The limousine.

Q And then you went to the Silverado?

A Yes.

Q At that time the window of the Silverado on the driver's side was open, correct?

A On the driver's side, yes.

Q Did you speak to a Mr. Ierardi, if I'm pronouncing in right?

A Ierardi, I spoke to him prior to going to the vehicles. He was the first person we encountered on the way to the accident scene.

Q Did he tell you that he unrolled the window or did anything with respect to the door of that car?

A I don't recall.

Q At some point other troopers were coming to the scene; is that correct?

A Yes.

Q One of which would be Trooper Knapp; is that correct?

A Yes.

Q Trooper O'Hare, correct?

A Yes.

Q And you said at some point you observed Mr. Heidgen being extracted from his car; is that correct?

A Yes.

Q And you didn't aid in any of that; is that correct?

A No, I did not aid in it.

Q You did, however, help in getting Mr. Heidgen to a stretcher; is that correct?

A No. I don't believe I participated in loading him onto a stretcher.

Q Did you participate in --

A No.

Q -- in anything?

A Of his extraction, no.

Q Nothing? Getting him into the ambulance?

A No. But I was present while he was being loaded into the ambulance.

Q So you observed that; is that correct?

A Yes.

Q And you observed the EMS put a neck brace on Mr. Heidgen; is that correct?

A Yes.

Q And then at some point you said you attempted to get some information from Mr. Heidgen; is that correct?

A Yes.

Q And was that in the ambulance or outside?

A Inside the ambulance.

Q So he was on the stretcher?

A Yes.

Q Neck brace on?

A Yes.

Q So when you say he was staring straight up, he was wearing a neck brace, correct?

A Correct.

Q Now, at some point you testified that -- withdrawn.

At some point you were notified that Trooper O'Hare was going to retrieve a blood kit from his car for the purposes of going with Mr. Heidgen to get --

A I was not notified that as someone telling me what was going to happen, it was discussed between myself and Trooper Knapp. Initially I was going to go to the hospital in the ambulance with the blood kit, but I chose to remain at the scene. Someone was needed to take my place in the ambulance and Troop O'Hare was chosen by myself and Trooper Knapp.

Q You actually were having a conversation with Trooper Knapp concerning who would be going with Mr. Heidgen for the purpose of ascertaining a blood sample, correct?

A Correct.

Q And at some point it was decided that Trooper O'Hare would be doing that, correct?

A Yes.

Q And were you present when Trooper Knapp told Trooper O'Hare to go get the blood kit; that he is the guy who is going?

A I don't recall if Trooper Knapp went to Trooper O'Hare. I don't recall if he was standing right there with

us.

Q You were there when that as decided?

A I was at the ambulance while this was going on.

Q At some point Trooper O'Hare came to the ambulance where you were, correct?

A Yes.

Q And at that point he had a blood kit in his hand, correct?

A Yes.

Q At that point it was discussed that you were going to leave the ambulance, and Trooper O'Hare was going to go get into the ambulance?

A That was already decided, yes.

Q That's exactly what happened, correct?

A Yes.

Q O'Hare went into the ambulance with the blood kit, correct?

A Correct?

Q And he was going to go to the hospital with Mr. Heidgen to get the blood sample, correct?

A Correct.

Q Now, at some point it was decided to place Mr. Heidgen under arrest, correct?

A Yes.

Q And that was around 2:33; is that correct?

A Correct.

Q That was approximately the same time that they left for the hospital, correct?

A Yes.

Q Nobody informed Mr. Heidgen that he was being placed under arrest?

A Nobody verbally communicated to him that he was under arrest, correct.

Q Now, after the ambulance had left to go to the hospital you went back to the car; is that correct?

A To the pickup truck.

Q To the Silverado?

A Correct.

Q And you said at some point that you shined your flashlight in there, and you saw a wallet, correct?

A Correct.

Q And, in fact, there was a broken fishing pole that you used to retrieve that wallet; is that correct?

A Yes.

Q That was around 2:35, 2:40?

A It was a couple minutes after the ambulance had left, yes.

Q So a few minutes from that you were able to retrieve the wallet that was in the car, correct?

A Yes.

Q And you opened the wallet?

A Yes.

Q And the wallet revealed a license, among other things, correct?

A Correct.

Q And the license identified the driver of that Silverado; is that correct?

A That's correct.

Q And you looked at the photograph?

A Yes, I did.

Q And it matched Mr. Heidgen, correct?

A Yes.

Q So, within a few minutes of the ambulance leaving to go to the hospital you, at that point, knew the identity of the driver of that car, correct?

A Yes.

Q Martin Heidgen, correct?

A Yes.

Q Date of birth, correct?

A Yes.

Q Address, correct?

A Uh huh.

Q And did you give that information to Trooper Knapp as well?

A At the point that that information was obtained

by me Trooper O'Hare was already gone to the hospital.

Q I'm not asking you about O'Hare.

A Did I give that to that Trooper Knapp, I don't believe I did. I believe I gave that to Investigator Harris.

Q Was Harris already on the scene?

A Within a few minutes after the ambulance had left.

Q Do you recall what time Investigator Harris arrived?

A No, I do not.

Q When you retrieved this wallet and the identity of the driver, is it your testimony that you held it to yourself until Investigator Harris arrived, or did you disseminate that information among the other troopers you were working with?

A The other troopers that I was working with, either I had relayed to them by telephone the information that I got from the license, as they were at the hospital, and whether or not it was Trooper Knapp, I don't recall.

Q Who did you notify at the hospital of that information?

A I believe it was Trooper Stafford.

Q And what time was that about?

A I don't recall. Probably within a half-hour or

so.

Q Is it fair to say 2:40ish, 2:50ish; is that a fair amount of time?

A Again, I don't recall the exact time. It was within a short time after the ambulance had left.

Q And it was Trooper Stafford?

A He was one of my contact points at the hospital.

Q And you notified him about the identity of the driver of the Silverado, correct?

A Correct.

Q Now, it was shortly after the ambulance had left your presence, correct?

A Yes.

MR. LaMAGNA: One moment, your Honor.

THE COURT: Okay.

(Brief pause in proceedings.)

Q When you were in the ambulance you had testified, I don't know if it was today or previously, that the defendant was moaning. Is that correct?

A That's correct. He was making some light moaning sounds.

Q You noticed an injury to his chin, correct?

A Yes.

Q Did you notice any other injuries, any broken wrist or anything like that?

A No. Just he was wearing a neck brace, and as far as any internal injuries he may have had I did not know at that time.

Q I understand. All you recall him doing was laying on the stretcher with the neck brace and moaning, correct.

A Correct.

MR. LaMAGNA: Your Honor, I have no further questions. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. HAYDEN:

Q Describe the injury to his chin.

A Small laceration underneath his chin.

Q When you say, "small" what are you talking about?

A It was a minor cut. He was not going to bleed to death from it.

Q About what size was it?

A Inch and-a-half.

Q Was he bleeding from that injury?

A Yes. He was bleeding.

MR. HAYDEN: Nothing further, your Honor. Thank you.

MR. LaMAGNA: Nothing further. Thank you.

THE COURT: Mr. Hayden.

MS. McCORMICK: If you don't mind?

THE COURT: Ms. McCormick.

MS. McCORMICK: People call Ms. Jennifer Flynn.

COURT OFFICER: Step up, remain standing, raise your right hand, face the.

THE CLERK:

J E N N I F E R F L Y N N , a witness called on behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please be seated.

State your name, spelling your last name for the record.

THE WITNESS: Jennifer Flynn, F-L-Y-N-N.

THE CLERK: Thank you. Please take a seat. You can put your hand down.

DIRECT EXAMINATION

BY MS. McCORMICK:

Q Good morning, Mrs. Flynn.

A Good morning.

Q Could you tell the jury, please, how old are you, ma'am?

A Thirty-six -- 37.

Q At the time of the crash how old were you then?

A Thirty-six.

Q Are you employed outside of the home Mrs. Flynn?

A No. I am a stay-at-home mother.

Q How many kids do you have?

A Four.

Q Could you tell the jury, please, their names and ages?

A Collin is two; Ammon is four, Grace is six and Kate is seven.

Q Mrs. Flynn, I'm going to ask you to think back to the events of Friday, July 1st 2005.

Do you remember that day?

A Yes.

Q Can you tell the jury what it is that was occurring on July 1st?

A We were at my sister's wedding. At about 1 o'clock we all got in a limousine: My mother and father, myself, my husband, Kate and Grace and my cousin Heather, to drive to the Harrison House, which was a hotel where my sister was staying before the wedding. We got changed there.

And then just the girls and his party went to the Arboretum, Oyster Bay Arboretum, to take pictures. That was about three. At five we went to the Crescent Beach Club in

Bayville, and took pictures on the beach and at the place. And but at that time my parents had met us, my husband, and my brother, and we took family photos of us and then her husband's family was there taking pictures.

About 7-ish was the actual wedding. They got married there. So my girls were the flower girls. I was the Maid of Honor. And they got married outside on the beach.

Q How was the weather that day, Mrs. Flynn?

A It was nice. We were outside. It was nice. I mean, the pictures, it was nice.

Q No rain that you recall?

A No.

Q Warm?

A It was hot, yes.

Q And in all respects how was the afternoon and the evening?

A It was beautiful. I mean, it was a wedding. My entire family was there. All of my cousins were there. It was Fourth of July weekend. At from parts of the place you could see from where we were fireworks that, you know, you can overlook and see. We danced. We ate. We hung out. It was great. I mean, it was a great day.

Q Did there come a time when the reception for the wedding ended?

A Yes.

Q Can you tell the jury about what time the reception ended, if you remember?

A It started winding down toward 12:30. I took the girls to get changed so they would be comfortable to go home in sweats and a tee shirt. We danced a little bit more, and then the girls couldn't stay awake anymore. We put chairs together in the reception room, and they fell asleep at the tables, and then as the adults said their goodbyes, my father carried Kate and Neil, my husband, carried Grace, and we went outside.

There was, like, a place you could sit in this outside. There was, like, a bench, and you watched the cars roll up. And on the bench my dad was sitting with Kate sleeping, my mother. Neil was standing with Grace and I was standing, and we were waiting for our limo.

Q Mrs. Flynn, could I interrupt you for just a moment. Could you tell the jury, please, what is the name of your dad?

A Chris Tangney.

Q And your mom?

A Denise Tangney.

Q And your husband?

A Neil Flynn.

Q You were all together outside of the reception

hall?

A We were all together outside of the reception hall waiting to go home.

Q How were you supposed to leave from that reception hall that night?

A Lisa and David reserved a car for us to go home. It was a limousine. But there were a couple of limousines that they also reserved for themselves, Dave's parents and other people that were going back to the hotel. We didn't want to go back to the hotel; we just wanted to go home. They had a limo reserved for us to take us back to town.

Q Mrs. Flynn, had you been drinking at the wedding that night?

A Yes.

Q You had a limousine reserved to take you and your family?

A Yes.

Q Did there come a time when you actually got into a limousine?

A Yes.

Q Could you describe for the jury how that happened?

A We waited. There was confusion as we were leaving, because they didn't know what limousine was for us, and Mr. Rabinowitz, the driver of the limousine, said he

would take us because it wasn't, they didn't have it all straight how we were getting home. We had to wait a little bit outside before we got in.

Eventually Mr. Rabinowitz said he would take us. He came over, he introduced himself, and I grabbed, like, the table settings to put in the back of the limousine that we were taking with us.

My father, carried Kate and Neil carried Grace into the car. My mother and I were putting the stuff in the trunk of the car, like our bags we brought that day, flowers, settings and then we -- then my mother and I got in.

My husband was seated behind the driver, I was seated next to him, we were both facing the compartment of the limousine, Stanley, Neil, me. Mr. Rabinowitz, Neil, me.

Q Mrs. Flynn, if I could, would you be facing the direction that the limousine is traveling or are you facing backwards?

A We are facing backwards.

Q And your seat is running right behind the driver's compartment?

A Correct.

Q Please continue. I'm sorry.

A Kate is lying on the bench. So it is Neil, then there is this bench; Kate is here, her head toward where my

dad is now sitting here, her legs toward Neil and she is asleep. In front of her on this side of the limousine is the bar. So it is me, Neil, Kate, my dad, my mother, the bar.

Q Mrs. Flynn, if I could try to clarify a couple more points with you on that.

Is there another bench that runs the same direction as your bench in the limousine?

A Yes. It just -- it is facing forward.

Q So the two benches face one another inside of the limousine?

A Correct.

Q Those two?

A Yes.

Q And that bench, the second bench, is at the back of the limousine and it would be between the passenger compartment and the trunk; is that correct?

A Yes. Yes.

Q And your mom and dad were back there?

A My mother, my father, Kate, Neil. And Grace is sleeping on me. I'm holding her this way and her legs are kind of on Neil.

Q The third bench in the limousine, does that bench run alongside of the limousine, so it is actually perpendicular to your bench and the bench that your parents

are on?

A Yes, it is.

Q Is that the bench where Katie was located?

A Yes.

Q And that bench was on the driver's side, inside the limousine; is that correct?

A Yes.

Q Across from Katie's bench, what is across from Katie's bench in the limousine?

A A bar.

Q And it is attached inside the limousine?

A Yes, it is.

Q So all four walls of the passenger compartment have either a bench or the bar against them?

A Yes.

Q And if you would just one last time for the jury please, where is everyone located within that limousine?

A The driver is driving; Neil, my husband, is directly behind him, looking out at the rest of the limousine. So it is the driver, Neil, me. This is the bench. Like the driver is here, driving. Then it is the bench behind it, which is Neil and myself. I'm holding Grace. Then here, is Kate and my dad and my mom. It is my dad, Kate, Neil and me and my mother.

Q Who entered the limousine first, Mrs. Flynn?

A Neil and Grace.

Q Neil was carrying Grace?

A Neil was carrying Grace. Grace was asleep.

Q And then second?

A My father and Kate. And my dad handed Kate, who was sleeping, off to Neil, and Neil put her in and seat belted her in. She was asleep.

Q On that side bench?

A Yes. So she is lying down on the bench.

Q Now, you and your mom get into the limousine?

A Then my mom and I got into the limousine.

Q Door closes?

A Door closes.

Q What happens?

A And we drive toward home.

Q Do you know what time you actually left the reception hall?

A About 1:30.

Q Was there anything eventful about your driving from the reception hall to the point of the parkway?

A It was quiet. The compartment between us and Mr. Rabinowitz was open. He wasn't really talking to us and we weren't talking to him. We were all talking amongst each other now and then. We were tired. We would have our eyes closed and someone would say something and we would open

them and comment, talk a little bit, and then we would close them and someone else would say something, and it was kind of that way as we were driving home.

Q Mrs. Flynn, when you say that the compartment was open, was there a separation between the driver's compartment and the passenger compartment in the limousine?

A Yes.

Q Was that sort of a window or a piece of --

A It was --

Q -- wood?

A It was like a Plexiglas window, and it was open. Had I wanted to ask Mr. Rabinowitz a question I would have been able to do that.

Q Was there anything about the manner in which the car traveled down roadways, were you going fast, were you going slow, was there anything about that that you could tell the jury?

A We were going -- it is like a windy road as you are leaving the Crescent Beach Club. That way was windy. For a little bit it seemed to me like we took a wrong turn. It was windy and we weren't going particularly fast, but it was windy.

Then when you make it to the Northern State Parkway it is just a straight-away, so then we increased speed, and we just went straight until, you know, the

Northern State hits the Meadowbrook.

Q You said that the reception hall is in Bayville. Is that right?

A Yes.

Q And do you know what path, what road, path you were going to travel to go home that night?

A No. I know he eventually hit the Northern State and the Meadowbrook. I did not know the exit off from the Northern State or the name the road that winds up to the Crescent Beach Club.

Q Could you tell the jury, generally, where does your family live? Where is that, your home?

A We live in Long Beach, about an hour away from where we were supposed to be going.

Q So did there come a time that you were aware of the limousine entering the Northern State Parkway?

A Yes. Because it wasn't windy any longer. When it was windy it was a slower ride. And it was winding, and then when you hit the Northern State we increased speed, and it is just a straight road home. So there is no lane changing, there is just a straight path to our house.

Q Mrs. Flynn, you said that you guys were talking among yourselves in the limousine. Is that right?

A Yes.

Q The girls are sleeping?

A The girls were sleeping.

Q What happened next?

A It was quiet. And then the car exploded. It was loud. It was -- it smelled. There was an incredible screeching stop. It threw me forward where I was able to use my foot to brace me against the bar to keep from losing Grace and myself. And my mother, who was sitting in front of me, flew sideways, diagonally to Neil. My father, who was sitting in front of Neil, flew sideways to me.

And when we finally stopped screeching and stopped moving, my father was suspended directly in front of me. He was in the air, wrapped just like where I am sitting. Here he is right here. He is suspended. His legs were mangled in the bar. And he just was up in the air.

And my mother had fallen onto Neil, where Neil was seated, still in, you know, that same spot sort of. My mother was lying on her -- her head was by his lap. Her legs were sideways into that aisle that you need to walk to to get to where my seat should be. There is like an aisle in between the bench and bar. She is kind of lying between him and the bar is kind of under my dad.

And then everything stopped. And then it was kind of sizzling, like a hissing sound, just a loud sound and smoke, and we stopped.

And I got up and I put Grace down. And I leaned

toward my father, and I needed to push up to get out. So I leaned up toward him and stuck my hand where his legs should have been, but his foot had been cut off. And I got up. I moved around, because I had to now climb over my mom and my husband and Grace. I stepped on where Kate had been sleeping. And I said I'm going to get help. We are going to be a okay. I am going to get help.

I opened the door and ran out into traffic. People at that time were not coming right at me. I was not worried that I would be hit, because there was a whole line of cars that had also seen the crash and stopped. So as I got out, I could see all of the oncoming traffic coming, but they were too far away from me, because there was a line of cars with people out staring at us. I screamed for help. I screamed that we were hurt. Call the police, and that they needed to hurry.

Then I got back into the car and when I left I had went out the side that I was sitting on, the passenger side door that went toward where the traffic was, because my car was on the left. When I climbed out, I went out that passenger door side, so then there would be three lanes of traffic. We were on the left lane of the parkway --

Q I'm sorry, the doors are in the back of the limousine?

A Yes.

Q You exited the back passenger side?

A Correct.

Q And started to scream for help?

A To scream for help.

Q Before you left, Mrs. Flynn, was anybody talking in the limousine? Was anybody able to speak, other than you?

A My father was speaking to me. My mother and my husband were moaning. Grace was crying. And I didn't hear Kate.

Q What happens next, Mrs. Flynn?

A We -- I then got back into the car, and I said, "Where's Kate," you know, "Where's Kate." And I looked and she wasn't on the seat, and then I looked and I saw her head on the floor. So I -- it was -- she was sideways, as if her head was also looking out the passenger side and her hair was over her face. So I moved her thinking I would get all of her to pick her up. I thought she was unconscious, but it was just her head that was there. And I never saw her body. And I picked her up and I held her, and I placed my hand under her neck to keep everything together and I held her. And I stated to my father, and to the car, that Kate was dead. More as a statement than as a scream or anything. Kate's dead. And I said it more than once.

My father started saying, "No, not Kate. No, not

Kate." My mother was still moaning and then saying, "This can't be." And Neil was saying, Katie Angel, Katie Angel and Katie Angel. And Grace was crying a murmur. Nothing loud. It was a quite car. And it was just quiet. I asked about the driver, and my father said, "The driver's dead, Jen."

And then I waited and waited and waited, and I held her and no one was coming. I put her down and got out again and I ran out into traffic again, and I started to scream for help, and it was all the same people so, you know, I knew they were calling but no one was coming.

I got back into the car and I picked her up and I held her. My dad and I talked some more and then I lifted the door open. When I came back in on the passenger side, a man and a woman came toward the door to see if we were okay. The man definitely wanted to do something for us. The woman told him to leave us alone we couldn't be moved. We couldn't be touched. And my father told them, I need to be cut out. Don't -- you can't touch us.

The guy was beside himself. He definitely wanted to come in and take people out and the woman was that voice of reason at that time, she said you can't, and my father clearly told them you can't touch us. Just call for help. Call for help.

And then we waited. And then a little bit later

from behind me -- because now I'm watching this open door with those two people, and they walked away a little bit -- from behind me, the other door opens so it would be the back door on the driver's side, and I am holding Kate, and I turned behind me and it was my uncle Michael.

He had been driving home from the wedding and came upon our crash. So he sees me and Kate and my father from where he is, he could see from that door angle just that. And my dad says, you know, Michael we are badly hurt. Michael takes me and Kate, and we walk over on the side off -- now, we are on the left side of the car, not by where all of the other people are, and I sit on the guardrail with Kate and I hold her and I watch, and my uncle goes into the limousine to try to help everybody.

From where I am sitting I could see the limousine. Because from where I am, I could see the door. I could see my father suspended and I could see my mother's legs, and my husband appears. He climbed out. And he is by the door and he is screaming for Kate, like not knowing that she had died. Just screaming that I got to get to Kate. And then he collapses.

So I am watching and then it seems that a couple more people come. A man, not a police officer, comes over to see if I am okay, and then runs away. And after that a couple more police officers could around and come and check

on me and leave. There were not enough people at the site at that time to stay with me. They were attending to what was going on.

Q Mrs. Flynn, where were you physically located now? Were you at the side of the road on grass and by the exit, or in the middle of the road by the guardrail?

A I'm on the guardrail to the -- the limousine is here. I'm right here. And I could see from where I am sitting into the limousine.

Q Did there come a time when people helped?

A Yes. Then more people would come onto the crash, so they put an officer with me, and then another officer, so there were two of us at that time. There became more people. Someone got a blanket and covered us.

My uncle Michael would come back and forth to me every so often just to tell me, you know, we got Grace out, she is with your aunt Darlene. She is going to the hospital. We got Neil. They are going to take him to the hospital. Never like one large report, but every so often when they did something, he would show up and let me know what was going on.

Q About how long were you at the crash scene, Mrs. Flynn, after the crash?

A It seemed like an hour. And I watched -- I watched the car. I watched the lights, I watched the

policemen, I watched the confusion, and then, and then they told me that, you know, they wanted me to leave.

I said I wanted to wait until everybody left, that I knew my family had gotten out okay, and everyone was going to the hospital. They got the truck to cut my father out. And then everybody was out. So that it was time for them to go to the hospital, so they came to me and they said, "It's time. Everybody is out. We got to go."

Q Did you go to the hospital, Mrs. Flynn?

A I started to cry, because I knew that I would never hold her again, and I got up and I went by stretcher to an ambulance to the hospital.

Q Mrs. Flynn, was Grace injured in the crash?

A Grace wasn't examined for a couple of hours when we were at the ER. It wasn't until about seven that they took her in for tests.

They determined that her spleen was torn and bleeding; that they needed to evaluate it and watch her. And we stayed -- I stayed with her in that pediatric Intensive Care Unit at Nassau County Medical Center for about four or five days, and then she was okay to go home. She wasn't allowed to do anything for a month. She couldn't do anything to jar her stomach, no jumping, no going up stairs. We pretty much had to keep her, like, watching TV or playing board games for at least a month.

Q How about you, Mrs. Flynn, were you physically injured in the crash?

A They didn't treat me for it at the crash, but about six weeks later I had to go back and have my foot operated on, because when I braced it I broke it. So I had to go in and have surgery. And I wore a boot for, like, six weeks.

Grace and I went to group therapy for about eight months. I go to an individual person since then, where I was prescribed anti-anxiety and muscle relaxers, and I tried acupuncture.

Q Mrs. Flynn, how old was Grace -- excuse me, how old was Katie --

A Seven.

Q -- at the time of the crash?

A Seven.

Q Thank you.

MS. McCORMICK: I have nothing further.

THE COURT: Mr. LaMagna.

MR. LaMAGNA: No questions.

THE COURT: Thank you. You may step down.

(Whereupon, the witness exits the courtroom.)

THE COURT: Due to the hour, ladies and gentlemen, I think we will break until 2 o'clock.

Do not talk about the case. You know all of

the admonitions I gave you just a short time ago.

Please be promptly back at 2 o'clock. See you at 2 o'clock.

(Whereupon, the jury exited the courtroom.)

THE CLERK: At this time the Court will take its luncheon recess.

(Whereupon, a luncheon recess held.)

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(Continued on following page.)

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A F T E R N O O N S E S S I O N

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THE CLERK: Case on trial continues.

THE COURT: Would you produce the jury, please.

COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom, and upon taking their respective seats, the following occurred:)

THE CLERK: Case on trial continues. Indictment 1910 of 2005 People versus Martin Heidgen,

People ready?

MR. HAYDEN: People ready.

THE CLERK: Defendant ready?

MR. LaMAGNA: Defendant is ready.

THE CLERK: Defendant is present, your Honor, and the jurors are seated.

THE COURT: Thank you. Welcome back, ladies and gentlemen.

Next witness, please.

MR. HAYDEN: Neil Flynn.

COURT OFFICER: Step up. Remain standing, raise your right hand and face the clerk.

N E I L F L Y N N, a witness called on behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: You may put your hand down.

Staple, spell your last name for the record.

THE WITNESS: Neil Flynn, F-L-Y-N-N.

THE CLERK: Thank you. Please take a seat.

DIRECT EXAMINATION

BY MR. HAYDEN:

Q Good afternoon, Mr. Flynn.

A Good afternoon, sir.

Q How old are you?

A Thirty-seven.

Q What is your occupation?

A I'm a lawyer.

Q What type of law do you practice?

A Civil litigation. Personal injury, contract disputes, labor law.

Q Do you know a woman named Jennifer Flynn?

A My wife.

Q Do you know a man named Christopher Tangney?

A Jen's dad, my father-in-law.

Q Do you know a woman named Denise Tangney?

A My mother-in-law.

Q Do you know a young girl named Grace Flynn?

A My daughter.

Q How old was Grace on July 2nd of 2005?

A She just turned five in April.

Q Did you know a young girl named Katherine Flynn?

A Still do.

Q Do you call her Katie?

A My oldest daughter.

Q Is Katie dead?

A She is.

Q How old was Katie when she died?

A Seven and-a-half.

Q I'm directing your attention to around 2 o'clock on the early morning of Saturday, July 2nd of 2005. Were you have riding in a limousine being driven by Stanley Rabinowitz then?

A I was.

Q Describe the limousine.

A It was a black stretch, late model. I think it was a Lincoln. There were two bench seats that ran perpendicular to the length of the car: One back-to-back with the driver's seat; one at the back of the limo facing the one that was back-to-back with the driver's seat. There was a bench seat that ran perpendicular the length of those two seats, and the length of the limo on the driver's side. And on the passenger side, on the side of the limo there was, like, a bar, a dry bar, where you could put ice and drinks, and I guess decanters and things.

Q Where were you coming from then?

A We were coming from up on the north shore. My sister-in-law had gotten married that day and the ceremony and the reception were up, I believe, in Bayville.

Q When had the ceremony taken place?

A Early evening. It was still light out, sunset. It was beautiful. It was really nice. They got married right on the beach at the reception hall. They had the altar built and it was an outdoor ceremony. They set up chairs and everything. Jen was the Matron of Honor, and my little girls were the flower girls.

Q Was there a reception after the ceremony?

A Before and after. We had gone earlier in the day. I had to go out there early with them because my

daughters and wife had to be in pictures and things like that during the day, so we left around lunch time from Long Beach.

We were living with my in-laws at the time because my house was being renovated. We were building new rooms for the girls and my sons. And we all left from my in-laws' house. And we separated. My wife and the girls went to the reception hall to take photos, and things like that, and then I met up with them later. And I was there for the tail end of the photographs. And then there was a ceremony and then the cocktail hour and reception.

Q Where was the reception?

A It was at the same place where the wedding took place. I don't know, I don't know the name of it, to tell you the truth. Boat club or marina, something like that. Right on the water on the north shore. I had been there a year before actually for a friend's wedding, beautiful place. You could look out over the water on the inside, and actually take your food and drinks out on the deck. And there was a little beach where the girls played, where they were picking up shells and things like that during the day.

Q Briefly describe your recollection of the reception?

A It was great. My sister-in-law married into a family that we had known since we are children. I know my

wife, since we are about eight, and we all went to high school together. And Dave, my sister-in-law's husband, is first cousins to a family that lives in town with us, and we have known them for forever. There were dozens, if not more, friends, as well as all of our family there.

The food was great, plenty to eat and drink. Whatever you wanted. The ceremony was beautiful. It was right at sunset on the beach. My girls were gorgeous, dressed in the little versions of the gowns that the wedding party had, and they loved it.

I remember at one point I told them you can have as much as you want to eat and drink. Whatever you want. It is a party. Have fun. And then, you know, we danced with them. I remember holding both of them and dancing around. And they were playing with their older cousins. They were out on the beach at times. It was really nice. It was a great wedding.

Q Did you have anything to drink that day?

A Yeah. It was a wedding.

Q What did you drink?

A Beer.

Q How much?

A I don't know. Quite a bit. It was a long day. I got there at lunch time. I don't know how many.

Q Describe your tolerance for alcohol?

A I like beer. I could have quite a few and not be bothered by it too much. It was a long day so. Plus I was, I was with family, interacting, taking pictures, dancing. It is not like I was sitting at the bar pounding beers throughout the course of the day. I probably had ten or twelve, but it was over nine or ten hours.

Q When did the limousine leave the reception?

A It was -- it wound down about 1 o'clock. My recollection, I don't even think I knew what time it was then, but from what I learned afterwards it was some time between one and one-thirty.

Q Describe the circumstances under which the limousine left the reception?

A Well, Kate and Grace, after we had danced for a while, got real tired. And I put them down on the chairs. We shoved the chairs together at the tables and they fell asleep. And then we decided to go.

And Dave and Lisa had hired cars for us to get back. We have two sons also who didn't attend. They were young then. They are young now. They were one and three, and we wanted to get home to them. So, we decided not to stay over, like a lot of the guests did, and we were going home. So Dave and Lisa had arranged for a limo to take us back to Long Beach.

And we went outside. There was a little area

where they have a valet parking stand, with a little portico over the exit door and we sat there for a few minutes. I don't know if the car wasn't there or none of the drivers had been informed they were going to Long Beach, they all the thought they were going to the hotel. There was a delay when we were sitting out on the bench, and it got to be where other people were leaving, and Jen's uncle Michael drove by at one point and offered us a ride, which we turned down, because it was too crowded. He had his four kids and wife in his truck, and it would have been uncomfortable, so we said no. And we waited.

And then at some point Stanley Rabinowitz, the man I now know to be Stanley Rabinowitz, came up and between him and the other limo drivers, decided he would take us down to Long Beach.

Q Where was the limousine going then?

A We were going back to my in-laws' house. We had been staying there for a little while, and my house still wasn't ready yet. We were under construction. We were living with my in-laws at the time, which were going back to Long Beach, West Walnut Street.

Q Where were you sitting inside of the limousine?

A Directly behind Mr. Rabinowitz. I was back-to-back, facing the rear of the vehicle. I was on the driver's side, next to my wife and my daughter Grace.

Q Who else was in the limousine with you?

A Kate and my in-laws. Kate was on the bench seat, asleep; and my in-laws were facing me and my wife and my daughter. Chris was directly in front of me, and Denise was next to him, to my left, his right.

Q Was your seat belt buckled?

A I don't remember. I thought it was. Jen said it wasn't. I don't know.

Q Describe Katie's position inside of the limousine?

A Chris had handed her in to me. Kate and Grace were both asleep when we got in. I think I put Grace on the same seat I was sitting when we first got in. Chris handed Kate in. Grace was sort of awake. She was sitting up, a little groggy, doing that fake asleep thing kids do. Kate was out cold. I laid her down on the bench. I put seat belts, I think I put both, on. It may have been one. I'm not sure.

Q Describe your state of mind as you were on your way home then?

A We were kind of floating. It was a long, beautiful day. You know, like I said, I had a couple of beers. I had a great time. I saw friends I hadn't seen in a long time. It was a beautiful ceremony.

I really -- I get along with my in-laws. I like

seeing them. Jen's cousin's, aunts and uncles. Like I said, my kids, it was probably the best day of their lives, Katie said to me, this is the best day of my life when I told her she could have all of the soda she wanted. It was great. We were all coming down from, coming down from a big, big celebration, relaxing and looking forward to getting home and getting to bed.

Q What were you doing as you were riding in the limousine at around 2 o'clock that early Saturday morning?

A Reflecting on the day a little bit, talking about a few things that had happened, talking about the ceremony, who we saw, you know, trading anecdotes about who we had spoken to, things like that.

I was probably teasing Grace a little bit. She was still kind of awake, fooling around with her. Then I started to nod off. We got lost.

This area on the north shore is very, like my wife said, the roads are twisty and winding and overhung with trees. It is almost like being in the country.

At some point I think that the driver got lost. It took longer than it should have to get where we were going. I started closing my eyes myself. I was nodding off.

Q What happened as you were riding in the limousine at around 2 o'clock that early Saturday morning?

A My world exploded. Came to an end. I was -- I believe I was asleep, and I believe I was knocked unconscious when the defendant crashed into us. I woke up and the first thing I remember was smelling smoke, and I tasted blood in my mouth. And I heard my wife saying over and over again, "Neil, Katie's dead. Neil, Katie's dead." And I said, "No, she is not dead. She is just hurt real bad. We'll get help." And she said, "No. She is dead."

And then I don't know if I -- well, at that point my in-laws were right on top of me. My father-in-law was suspended in the middle of the limousine. His legs were jammed up against the passenger side of the limousine, and his head was against the roof, and his back was against the driver's side in the middle of the car hanging above the ground.

And my mother-in-law was right on top of me, sort of underneath him. And I thought my wife was still -- I was in the car, I thought they she was next to me when she was speaking to me. I was still with Grace. And I don't know if I passed out again, or if things just merged together, the next substantive thing I remember, besides hearing Jen screaming and smelling the smoke and tasting the blood, was Jen's uncle Michael, Chris' brother, coming into the car. And I saw him, sort of over Chris, and he came in and Chris said, "My legs are broken. Michael, don't move me. My legs

are broken."

And then Michael went away, and like Jen said, it seemed to take a long time. Nobody was coming. Nothing happened. I don't know, again, if I passed out again, or if I was awake the whole time. I couldn't really see a lot. It was dark and what lights I could see seemed really bright. And they were flashing in my eyes. And it was difficult to discern things.

So at -- and I decided I still, I guess I knew Kate was dead, but I didn't want to believe it. And nobody was coming to help us. So I had to get help for her.

So I crawled underneath my in-laws and I couldn't move my legs, so I had to pull myself with my arms to the back of the car, and as I was going Grace said, "Daddy, where are you going?" And, like I said, I thought Jen was still in the car. I said, "Grace, I'm going to get help. Stay there with mommy." But her mother wasn't in the car, with her anymore. She was kind of by herself. And I pulled myself towards the front of the car, and I knew Kate had been on the bench seat, and when I got to the middle of the car the bar was crushed in, it was bent down. I thought maybe she was stuck under it. I tried to push it up but I couldn't move it. So then I reached under it, but I didn't feel her. I have kept crawling. I was dragging myself to the back of the car. And I -- the door was open on the

passenger side of the back, and I hung out and I started yelling, "Somebody please help my Katie. Somebody please help Katie."

And then at some point a cop or a fireman came and they pulled me out, and I kept telling them, "Help Katie. Don't worry about me." But they put me on a stretcher and they put me in the ambulance and they took me to South Nassau Hospital.

Q Was your back injured as a result of this crash?

A Yes. The defendant broke two of my vertebrae when he crashed into us, crushed my lumbar, number one and two vertebrae; broke my nose; he collapsed one of my lungs; he damaged my heart, so they had to put me in the cardiac unit for about two weeks; broke a bunch of my ribs; split in, my eye was torn open; my mouth is ripped open. I still have a scar. Every time I move my tongue I feel a bump in my mouth. I had two compression fractures of the vertebrae. He also ruptured two of my discs, two herniated discs in my spine, and he damaged my -- did something to my liver, I really don't know, lacerated it or bruised it or something like that.

Q How about your lungs?

A One of them was collapsed. They had to give me breathing treatments. I don't think it was punctured by the broken rib, but it was collapsed. I couldn't really breathe

on my own. I to go through breathing therapy the first two weeks I was in the hospital. And I was bedridden because of the broken back. I couldn't walk or anything. But the lung reinflated after a period of time, and I was able to breathe normally.

Q Describe any treatment you received for the injury to your back and discs?

A Well, I was confined to South Nassau Hospital for about two weeks, and I was stuck in the bed. I didn't get to see my wife for about a week. She was in the hospital with Grace, and my in-laws were at the another hospital. So I had friends that came in, and my relatives would shuttle back and forth between the different hospitals.

I could move my legs, but it hurt to do it. I wasn't paralyzed, but it was just real painful. And I had extensive nerve damage because of the herniated discs that prevented me from using my legs normally.

So I was confined there for about two weeks, and they consulted with orthopedic surgeons, and things like that, and they determined that I probably need surgery.

I was released from there to a rehabilitation center in Long Beach, where I spent about a week. The last day I was at South Nassau Hospital I got up and walked around the nurses station on a walker. But when I left they kept me in a wheelchair for a while and I went to an

intensive physical therapy rehabilitation center, where I alternated between the wheelchair and crutches.

They helped me walk on crutches, and they were able to get me up on crutches to go to my daughter's funeral. And after about a week there I went home, well, to my in-laws' house, not home.

And I was in constant pain, intractable. It wasn't any better than the first day it happened. I was on all kinds of drugs when I was at South Nassau. I was on I.V. pain killers. I was doped up the whole time. Then they took me off that when I was in the rehabilitation center, and I got oral pain killers, and a bunch of medicine for my heart, because of the damage he had done to it.

And things -- and a bunch of other drugs, I don't know what they were. My blood pressure sky rocketed after the crash, and I'm on high blood pressure pills.

So then after I was, I was in Long Beach, and I got got released and went home, they sent me to physical therapists a couple times to the house. I couldn't do anything. I was still on the crutches. I had to take a chair into the shower and wash with a brush. I couldn't avenue get dressed, couldn't sleep in a bed. Ultimately I went to see another doctor. I went to see a spine surgeon in the city, and he took one look -- the guy they sent me from South Nassau was a little equivocal, he wasn't sure

what he wanted to do and I got a second opinion, and this guy took one look at the x-rays or the MRI and he said, you could get surgery now or go to physical therapy for a year and then surgery. And I went for a third opinion and the doctor said the same thing.

So I got surgery about the middle of August at Lenox-Hill Hospital. I was in there for another week. I had to wear a brace. They gave me increasingly bigger bulkier braces, a plastic brace that went up to my neck, down to my waist. I had to wear that for six months after the surgery.

They did what is called a discectomy on the herniated disc and they tried to fix the fractured vertebrae, the crushed lumbar vertebrae, by injecting rubber cement into the empty space. It didn't work. They couldn't get it in there. I continued to treat with physical therapy three times a week.

I go to psychotherapy once a week and see my surgeon every few months. The last time was in June. He referred me out for MRIs and more x-rays, and things I haven't had the energy to do.

He have said once he reads the films we will be able to determine if I need more surgery, or if they can treat it with some other method. But I may need another operation.

And now I take -- I'm getting by with the physical therapy. I take Vicodin for the pain, I'm on anti-depressants, and I still take the high blood pressure medication because of the stress, grief and anxiety. It keeps my blood pressure high.

Q Describe any treatment you received for the damage to your heart?

A They just kept me under observation. I was in the Cardiac Care Unit for the entire time I was at South Nassau. And I heard different things. They said I had a heart attack, and then they said it was just arrhythmia. They didn't do anything except give me medication. I took medication while in South Nassau. I was on medication. And then for a period of time after I got released, that was one of the pills when I got out of the hospital, I had maybe half a dozen prescriptions that they gave me. Now I'm down to four. There were probably six or seven when I was on it originally, at least one I know was to treat my heart.

Q Describe any treatment you received for your broken nose?

A They didn't do anything for the nose. I could get surgery I guess down the road. But my physical injuries are the least of my problems. I don't really know what I'll do.

Q How about your broken ribs?

A Again, they heal on their own. There is no treatment for broken ribs. They just hurt.

Q Was Christopher hospitalized as a result of the crash?

A Yes, but not with me, until we were both transferred to Long Beach together.

Q Describe any observations you made of Christopher while you were together in Long Beach Memorial?

A He is ruined. He is a shell of himself. He bursts into tears. The first time I looked at him all he said was, "We did everything right. How did this happen?" He was in a wheelchair for months. He was hurt real bad. Lost a ton of weight. He is emotionally fragile.

He was the go-to guy in his family. Always. And now he is just a different person. He is completely shot.

Q How about Denise?

A She was hurt bad too. She had a bunch of surgeries. She is in a ton of pain. They both limp around. They hobble around. They are young people. They both just retire. They hobble around. They are both crippled. She is like him; she walks like a penguin.

MR. HAYDEN: I have nothing further, your Honor. Thank you.

THE COURT: Mr. Martello.

CROSS-EXAMINATION

BY MR. MARTELLO:

Q Good afternoon, Mr. Flynn. I promise I will be very brief. Just a couple of questions.

Mr. Hayden had said that, had asked you that you practice law. You are an attorney. Do you practice in Nassau County?

A Yes.

Q How long have you practiced in Nassau County as an attorney?

A Five years.

MR. MARTELLO: Nothing further, your Honor.

THE COURT: Redirect?

Mr. HAYDEN: No, your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: You are welcome.

(Whereupon, the witness exits the witness stand.)

THE COURT: Mr. Hayden, your next witness.

MS. McCORMICK: Your Honor, the People call Denise Tangney.

COURT OFFICER: Step up. Remain standing, face the clerk and raise your right hand.

D E N I S E T A N G N E Y, a witness called on behalf of the People,

having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: You can put your hand down. State your name, spelling your last name for the record.

THE WITNESS: Denise Tangney, T-A-N-G-N-E-Y.

THE CLERK: Thank you. Please take a seat.

MS. McCORMICK: May I inquire?

THE COURT: Please.

DIRECT EXAMINATION

BY MS. McCORMICK:

Q Good afternoon, Mrs. Tangney,

A Good afternoon.

Q Mrs. Tangney, can you tell the jury, please, how old are you, ma'am?

A Fifty-seven.

Q Do you have kids?

A Yes. I have three.

Q Can you tell us their names and their ages, please?

A My youngest daughter is Lisa, she is 32; Thomas is 36; and Jennifer is 37.

Q Mrs. Tangney, I'm going to ask you to think back to July 1st of 2005. Could you please tell the jury what