

1 **Q.** Can you give an independent recollection of everything that happened as it actually
2 occurred, without referring to your notes?

3 **A.** No, I cannot do that.

4 **Q.** Did you make notes daily as you went along?

5 **A.** Yes, and I had them typed up every evening.

6 **Q.** Now, will you refer to your notes and testify concerning when you started on this
7 investigation and where it was?

8 **Ms. Rivers:** I object to her referring to these notes until she has exhausted her
9 recollection.

10 **The Court:** How much of it can you recollect?

11 **The Witness:** If the court please, there is a lot of detail here.

12 **The Court:** She may refer to the notes.

13 **Ms. Rivers:** Allow me an exception.

14 **Q.** Go ahead, please.

15 **A.** We started surveillance on the subject on June 21st, 1998. The first time we saw him was
16 around 3:30, when he was getting out of his car at the Central Square Shopping Center.

17 **Ms. Rivers:** I request that be stricken from the record, the statement that "we
18 saw him." Who accompanied the witness there?

19 **The Court:** Yes, and how were they able to identify the witness?

20 **Q.** Do you know who he is?

21 **A.** Yes, I do.

22 **Q.** Is he the plaintiff in this action?

23 **A.** Yes, he is.

24 **Q.** Is he seated in the courtroom?

25 **A.** He is, yes.

26 **Q.** Now at the time that you saw him at the shopping center, was he alone?

27 **A.** He was with a woman.

1 **SCR Practice Examination - Opening Statement - 3 minutes**

2 **MS. RIVERS:** Thank you, your Honor. May it please the Court, ladies and gentlemen of the jury.
3 I am about to give to you my opening statement. I again want to remind you that as the Judge
4 has told you, anything that I may say or the district attorney might say is not evidence in this
5 case. I am going to suggest to you that this particular moment is probably the most difficult in
6 this trial for you as jurors. The reason is because you have just heard what the prosecution
7 expects his witnesses to say in this case. It sounds fairly simple. I want you to keep a couple of
8 things in mind at this point.

9 The district attorney was not at 272 (or two seventy-two) North Street on June 3rd, 2009 (or
10 two thousand nine), and neither was I, for that matter. We don't know exactly what happened.
11 What you just heard from the prosecutor is his interpretation of the facts in this case and what I
12 tell you now is what I consider the facts to show. That will come from the witnesses you will be
13 hearing from shortly. But after listening to his description the easiest thing for you folks to do is
14 to sit back in your chairs and let your minds close down ever so slightly. The hardest thing I
15 submit for you to do is to say, well, I have heard what the prosecution has had to say but I
16 promise(d) to keep an open mind in this case and I want to hear what the defense has to say.

17 In every criminal case the defendant is presumed innocent. You heard the Judge say
18 yesterday that the defendant has pled not guilty to the charges. He is putting in dispute every
19 allegation in the indictment. I am going to suggest to you that in reality, as far as this trial is
20 concerned, the dispute is much more limited. I submit to you that this case is really going to be
21 focused on the first count of the indictment, the count which charges attempted intentional
22 murder in the second degree.

23 You heard Mr. Roberts read from the indictment and if you were paying close attention,
24 you may have thought that the first and second counts sounded almost as if they were repeated
25 word for word, and that's because they are very similar. In order to establish that the defendant
26 is guilty of the first count in the indictment the People must prove something more than a
27 stabbing. They must prove something more than the fact the victim suffered injuries. They must
28 prove that he had (had) intent to kill.

1 You need some guidelines to evaluate the testimony in this case and to look at the
2 evidence. What I am going to ask you to do is to look at the evidence and see how it bears on
3 the defendant's state of mind, because I submit to you that when you have decided on the facts
4 and hear the Judge's instructions on the law, your verdict on the charges in the indictment is
5 going to be determined by what you decide the defendant's intentions were on the date in
6 question. I submit that after you deliberate on both the evidence and the charge of the Court,
7 you will come to a verdict of not guilty.

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1 **SCR Practice Examination - Q&A - Five Minutes**

2 DIRECT EXAMINATION OF DOCTOR BY MR. WELLS:

3 Q Doctor, are you licensed to practice medicine?

4 A Yes, I am.

5 Q Is that in the State of New York?

6 A It is.

7 Q Would you be kind enough to give us your educational background?

8 A Do you mean starting with college?

9 Q Yes, ma'am.

10 A I have a bachelor's degree from Queens College and a degree in general medicine as
11 well.

12 Q Where is it from?

13 A It is from the New York College of Medicine.

14 Q What year did you graduate from that school?

15 A It was in 1990 (or nineteen ninety).

16 Q Doctor, are you board certified in the field of general medicine?

17 A Yes, I am.

18 MS. RIVERS: Your Honor, we will concede her qualifications as board certified, just
19 to speed things up.

20 THE COURT: Counsel, do you wish to accept that or not?

21 MR. WELLS: Yes, I do, your Honor, but I would like to ask a few more questions.

22 THE COURT: Go right ahead.

23 Q Doctor, how many years have you been practicing medicine?

24 A About fifteen years, sir.

25 Q Have you testified previously in the courts of the State of New York?

26 A Yes, sir.

27 Q And have you testified at the request of both plaintiffs and defendants?

28 MS. RIVERS: Objection, if your Honor please.

1 THE COURT: The objection is sustained.

2 Q Doctor, will you tell us, are you being paid for your time away from your practice?

3 A Yes, I am.

4 Q You performed an examination (note: the actor stutters and says "ex" before the word
5 "examination") on the left foot of the plaintiff at the request of my office, is that right?

6 A Yes, sir, I did.

7 Q When was that examination performed?

8 A Back in 2003 (or two thousand three), I would say.

9 Q I would like you to take us through your physical examination back in 2003 (or two
10 thousand three), if you will.

11 MS. RIVERS: Objection. The question is too broad.

12 THE COURT: Narrow it down, counsel, if you do not mind.

13 Q Where did you examine the plaintiff?

14 A In my office.

15 Q Where is your office?

16 A 575 (or five seven five) Broadway, White Plains, New York.

17 Q You took a history, I assume.

18 A Yes, sir.

19 Q What kind of history?

20 A She said she had a previous surgery to her foot.

21 Q Anything else?

22 A No.

23 Q Did you do a neurologic examination?

24 A Yes.

25 Q What did you find as a result of the neurologic examination?

26 A I found that she did have some callus (or callous) under the first joint.

27 Q That joint you are indicating is called what, in layman's terms?

28 A That is called the big toe.

1 Q And you say that she had a thickening of the skin there?

2 MS. RIVERS: Objection to the leading. The attorney is testifying.

3 MR. WELLS: She has already said she found some callus.

4 THE COURT: Do not lead. Let the witness do the testifying. Objection is sustained.

5 Q What is the significance of having that condition?

6 A In this patient she had pain from the pressure.

7 Q What else did your examination consist of?

8 A I took an x-ray of her left foot.

9 Q What was that for?

10 A It was in order to determine what procedures had been done before and what the present
11 condition of her foot was. So, I took an x-ray and suggested to her –

12 THE COURT: Just a minute. Let us try to confine the answer to the question.

13 Q Let me back up and ask: Are x-rays considered to be helpful in judging the condition of a
14 patient?

15 A Yes, sir.

16 Q Would you say an x-ray is a necessary test?

17 MS. RIVERS: Objection.

18 THE COURT: Overruled.

19 A Yes.

20 Q What did you find from the x-ray?

21 A What did I find?

22 Q Yes.

23 A I found that there was a screw on the big toe of her left foot.

24 Q Do you mean that you found that condition from the previous surgery?

25 A Yes.

26 Q What else did you see?

27 A We noted that her toes were bent to the side.

28 Q Briefly, tell us what conclusions you arrived at after the examination of the plaintiff.

1 MS. RIVERS: Objection as to form.

2 THE COURT: Do you mean with reasonable medical certainty?

3 MR. WELLS: Yes, sir.

4 THE COURT: Rephrase the question.

5 Q Tell us what conclusions, if any, you reached with reasonable medical certainty.

6 A She had some pain between the first two bones of the left foot.

7 Q And (do) you have an opinion on that?

8 A Yes. I judged it was coming from the fact that these bones were now operating closer
9 together.

10 Q And Doctor, what was that doing?

11 A That was pinching the nerves. Most of the time when someone has that type of condition –

12 MS. RIVERS: I object and move to strike all of this as speculative, unless she is
13 talking about the patient herself, your Honor.

14 THE WITNESS: That's right. I am talking about the patient.

15 THE COURT: Is everything you are saying related to the patient?

16 THE WITNESS: Yes. That is my opinion of her problem.

17 THE COURT: The objection is overruled. You may answer.

18 A And in the plaintiff's case she had loss of sensation.

19 Q Did she have pain on pressure?

20 A Yes. And it was my feeling that she should follow that up.

21 Q Doctor, you are being paid for your appearance today, is that right?

22 A That is right.

23 Q How much are you charging per hour?

24 A Three hundred and fifty dollars an hour.

25 Q Doctor, have you published any articles or written any books at any time in the past?

26 MS. RIVERS: I object to the question.

27 THE COURT: It is a compound question. Rephrase it.

28 Q Have you ever published any articles during your career?

1 A No, sir, I have not.

2 Q Are you affiliated with any hospitals for the practice of medicine at the present time?

3 A No, not at this time, but I have been in the past.

4 Q Doctor, a bunion, for example, you would not consider that minor surgery, would you?

5 A It all depends on the circumstances.

6 Q Would you agree with me or would you not, Doctor, that any time you are going to cut a
7 bone out of somebody's foot, you would not call it minor surgery?

8 A It depends on the relationship of what you are talking about. If you are discussing the
9 relationship as being minor or major, any surgery would be considered serious.

10 MS. RIVERS: Your Honor, could I ask you to instruct this witness to answer the
11 question yes or no?

12 THE COURT: I think it has been answered. For the record, try to say yes or no if you
13 can.

14 Q Have you reviewed the hospital records in this case?

15 A Yes, I have.

16 Q Then you are aware that Dr. London, the defendant, did two operations on the left foot of
17 the plaintiff?

18 A Yes.

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1 A doubt of the defendant's guilt must be a doubt for which some reason can be given.
2 The doubt to be reasonable must therefore arise because of the nature of the evidence in the
3 case or from the lack of evidence in the case.

4 With respect to your duties, members of the jury, although you must take the law as the
5 Court gives it to you, you are the sole judges of the facts and the Court is the sole judge of the
6 law. You are the sole judges of what the facts are and of which facts you will accept in arriving
7 at your verdict. In your deliberations you will use your own recollection of the testimony, not that
8 of counsel.

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