

Practice averaging 190 wpm - 2 minutes

1 **Q.** Now, Ms. James, by whom are you employed?

2 **A.** The International Life Insurance Company.

3 **Q.** How long have you been employed by them?

4 **A.** Twelve years.

5 **Q.** What is your work?

6 **A.** I am a private detective.

7 **Q.** In that work, do you investigate and take moving pictures at times?

8 **A.** I do.

9 **Q.** At the request of the defendant, in the line of your work, did you carry out an
10 investigation in Binghamton, New York, in the summer and fall of 1998?

11 **A.** I did.

12 **Q.** Now, will you tell us when you first started that investigation?

13 **A.** May I refer to my notes, please?

14 **MR. SMITH:** I object to that. She should exhaust her recollection, at least. If she
15 cannot remember, then she should use her notations.

16 **THE COURT:** I agree. Please continue.

17 **Q.** Now, Ms. James, have you a recollection, independent of any notes that you took, of
18 all these incidents that occurred during your investigation?

19 **A.** You mean daily, the number of days?

20 **Q.** Daily.

21 **A.** I started the case on June 21st.

22 **Q.** How long did it continue?

23 **A.** Until October 29th.

24 **MR. SMITH:** There was no case existing at that time.

25 **MR. JONES:** It was a case so far as she was concerned.

26 **THE COURT:** I will let it stand.

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 **MR. SMITH:** 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 **MS. JAMES/THE WITNESS:** If the court please, there is a lot of detail here.

12 **THE COURT:** She may refer to the notes.

13 **MR. SMITH:** Allow me an exception.

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

15 **A.** We started surveillance on the subject on June 21, 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 **MR. SMITH:** I request that be stricken from the record, the statement that "we saw
18 him." Who accompanied the witness there?

19 **THE COURT:** Yes, and how were they able to identify Mr. King?

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.

Opening Statement averaging 175 wpm - 3 Minutes

1 **MR. JONES:** Thank you, your Honor. May it please the Court and counsel. Good
2 afternoon. I want to start off by first thanking all of you for listening to us during the jury
3 selection process. It was lengthy, there were a lot of questions and I want to tell you how
4 much we appreciate your service.

5 There are two components to this particular lawsuit. One is going to be damages
6 and the other one is liability.

7 Now, I commented to you during jury selection that I was not going to stand
8 before you and tell you Mr. Burke was not injured. He was definitely injured as a result
9 of this particular incident. I never indicated to you that I was going to say that he was not
10 involved in an accident. But I think you will find, based on the testimony, that the
11 evidence will show you that he made a very good recovery and he is able to work and
12 able to function. I will leave that to the witness to explain.

13 The key to this case is the liability issue and I believe there are various elements
14 to that particular part of this lawsuit, as well.

15 Also, there are several things that may be established during the course of this
16 trial.

17 There are two things that I submit you will have to think over after you listen to
18 the testimony. I note that there are two different theories that are operating here. I think
19 that the proof will show that based on both theories and all the testimony that will be
20 presented, in the end you are going to have no alternative but to deliver a verdict in favor
21 of the defendant.

22 One point you are going to have to analyze based on the testimony you hear is
23 whether or not Mr. Burke was actually an employee of the defendant.

24 I submit you will have to listen to the testimony and make your own decision. I
25 am confident that at the conclusion, no matter how the evidence is presented to you, you

1 are going to find that Mr. Burke is either one of our employees or an employee at Acme.

2 That company is not part of this litigation. It may be another company over which
3 Acme did not have any control that is responsible for modifying or altering that piece of
4 equipment, causing Mr. Burke to be injured.

5 Either way you view this matter, I believe at the close of this trial you will find that
6 the defendant, Acme Industries, did not alter or modify anything with respect to this
7 machine. They are not responsible for the injuries that plaintiff, Mr. Burke suffered as a
8 result of performing his duties on this project.

9 I know that you will listen to the testimony very carefully. Please bear in mind the
10 damages versus the liability of this defendant. If you do, then at the conclusion of this
11 trial, the evidence will show there is only one determination you can reach and that is for
12 you to render a just and fair verdict for my client.

13 I thank you for your attention now and throughout the course of this trial.

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Q & A averaging 190 wpm - 5 Minutes
DIRECT EXAMINATION BY MR. JONES:

1 **Q.** Good afternoon, Officer James.

2 **A.** Good afternoon.

3 **Q.** By whom are you currently employed?

4 **A.** The New York State Police Department.

5 **Q.** How long have you been a police officer?

6 **A.** Twelve years.

7 **Q.** I am going to direct your attention to the date of this incident, October 4th, 2000.

8 Were you on duty with your partner that evening in a marked police car?

9 **A.** Yes, I was.

10 **Q.** And where were you in the car?

11 **A.** I was in the passenger's seat.

12 **Q.** Where, physically, were you and Officer Kent located around 10 o'clock at night on
13 October 4th?

14 **A.** We were facing southbound in our marked police vehicle on the corner of Oak and
15 Main.

16 **Q.** Were you driving or stationary?

17 **A.** Stationary.

18 **Q.** The vicinity of Oak and Main where you were, can you tell the members of the jury
19 what is located there, what types of buildings?

20 **A.** It's a business section. There are stores. It's a main intersection of the city.

21 **Q.** Can you turn around a little and tell me if you recognize the area shown in this
22 diagram?

23 **A.** Yes.

1 **Q.** You said you were on Main Street. In which direction were you facing?

2 **A.** Facing southbound.

3 **THE COURT:** What exhibit number is that?

4 **MR. JONES:** I think it's number 5.

5 **THE COURT:** I want the record to be clear.

6 **MR. SMITH:** It is number 5.

7 **Q.** Can you show the Court and jury exactly where your car was parked?

8 **A.** Approximately right in front of the sidewalk.

9 **Q.** You've indicated an area on the map in the vicinity of where it says Oak. This

10 would be the southbound lanes?

11 **A.** Yes.

12 **Q.** Were you in the main road or the service road?

13 **A.** Service road.

14 **Q.** Were you actually against the curb?

15 **A.** Yes, that's against the curb. This plaza area here on the map, bounded by Lincoln

16 Avenue, is the train station, Main Street train station.

17 **Q.** Were you doing something in relation to the train while you were there?

18 **MR. SMITH:** Objection. That's irrelevant.

19 **MR. JONES:** I think it is relevant.

20 **THE COURT:** Overruled.

21 **MR. JONES:** Thank you.

22 **THE COURT:** Proceed.

23 **A.** We were on routine patrol answering radio runs and responding to pedestrians who

24 approached us.

25 **Q.** How long would you say that you had been there or how long a period of time

26 were you at the location until something happened?

1 **A.** Approximately fifteen to twenty minutes.

2 **Q.** The intersection that we are talking about that you have referred to, you're familiar

3 with that location?

4 **A.** Yes, I am.

5 **Q.** Are there any kind of traffic control devices controlling traffic at that location?

6 **A.** Yes.

7 **Q.** What kind?

8 **A.** You have traffic lights, crosswalks and stop and walk signals.

9 **Q.** That particular evening, was there anything unusual about the operation of traffic

10 lights at that intersection?

11 **MR. SMITH:** I object, your Honor.

12 **THE COURT:** Overruled.

13 **A.** Was there anything out of the ordinary?

14 **Q.** Anything unusual.

15 **A.** No, not at all.

16 **Q.** Tell the Court and jury what happened.

17 **A.** There was a loud explosion. My partner and I knew that there was a car accident.

18 **MR. SMITH:** I have to object to what her partner knew.

19 **THE COURT:** I understand, counsel. Your objection is overruled.

20 **MR. JONES:** I will ask what she knew.

21 **Q.** When you heard the noise that you just described, what did you do?

22 **A.** We looked around to see where the sound was coming from. We looked straight

23 ahead and I saw a white Ford come to a rolling stop.

24 **Q.** Was there anything else that caught your attention with respect to the Ford?

25 **A.** Yes. When the Ford came to a complete stop, I personally saw that it was up

26 against a pillar, a pole.

1 Q. Did you then approach the driver?

2 A. Yes, I did.

3 Q. For what reason?

4 A. To check the physical condition of the driver to determine whether or not he
5 needed medical assistance and to try to determine if the accident was caused
6 because the driver was intoxicated.

7 Q. You would do this by taking the driver's breath sample, correct?

8 A. That's correct.

9 Q. You would use a Breathalyzer machine, is that right?

10 A. That's the machine we use.

11 Q. Then you complete the Breathalyzer check list, is that accurate?

12 MR. SMITH: I object to the leading nature of that question.

13 THE COURT: Objection overruled.

14 A. Yes.

15 Q. Is that your responsibility as the police officer that was authorized to administer the
16 test to the defendant on October 4th of 2000?

17 A. Yes.

18 Q. And is that done in the regular course of your responsibilities as a police officer?

19 A. I don't understand the question.

20 Q. That is part of your duties as a police officer?

21 A. Yes, it is.

22 Q. Can you tell us how the machine works?

23 A. There is a device that allows a breath sample to be taken into the unit and allows
24 the machine to give a reading based on that sample.

25 Q. What is the effect of alcohol on the human body?

26 MR. SMITH: Objection.

1 **THE COURT:** On what basis?

2 **MR. SMITH:** This witness is not qualified to answer that.

3 **THE COURT:** Overruled.

4 **A.** Alcohol is known as a depressant, meaning that it tends to slow down the reaction
5 time of the individual.

6 **Q.** Is there anything else?

7 **A.** It affects a person's vision. It affects an individual's balance and the ability to
8 perform complex movements.

9 **Q.** How would you define a drink?

10 **A.** As a rule of thumb, drinks are usually classified by the amount that you would
11 consume as one serving; a beer, a glass of wine, one mixed drink, one shot of alcohol.

12 **Q.** Would one drink normally raise a particular individual's blood alcohol level?

13 **A.** Yes, normally.

14 **Q.** What impact does alcohol have on an individual's reaction time?

15 **A.** It actually slows the individual's reaction time.

16 **Q.** How about the person's judgment?

17 **A.** It impairs the judgment of the individual.

18 **Q.** After performing this test, did you have any further contact with the defendant?

19 **A.** No, I did not.

20 **Q.** Did you have occasion at some point to observe the front of the vehicle?

21 **A.** Yes.

22 **Q.** Did you see any damage to it?

23 **A.** Yes.

24 **Q.** How would you describe the damage that you saw?

25 **A.** The vehicle was inoperable. It was badly damaged.

26 **MR. JONES:** No further questions. Thank you.

Judge's Charge averaging 185 wpm - 3 Minutes

1 **THE COURT:** Members of the jury, it is now my duty to instruct you on the law.
2 I will now relate to you the fundamental principles of law that apply in all criminal trials;
3 the presumption of innocence, the burden of proof and the requirement of proof beyond
4 a reasonable doubt.

5 Throughout these proceedings, the defendant is presumed to be innocent. As a
6 result, you must find the defendant not guilty unless on the evidence presented at this
7 trial, you conclude that the People have proven that the defendant is guilty beyond a
8 reasonable doubt. The defendant is not required to prove that he is not guilty. In fact,
9 the defendant is not required to prove or disprove anything. To the contrary, the People
10 have the burden of proving the defendant guilty beyond a reasonable doubt.

11 That means before you can find the defendant guilty of a crime, the People must
12 prove, beyond a reasonable doubt, every element of the crime, including that the
13 defendant is the person who committed that crime. The burden of proof never shifts
14 from the People to the defendant.

15 A reasonable doubt is an honest doubt of the defendant's guilt, for which a
16 reason exists based upon the nature and the quality of the evidence. It is an actual
17 doubt, not an imaginary doubt. It is a doubt that a reasonable person acting in a matter
18 of this importance would be likely to entertain because of the evidence that was
19 presented or because of the lack of convincing evidence.

20 Whatever your verdict may be, it must not rest upon baseless speculations nor
21 may it be influenced in any way by bias, prejudice, sympathy or by a desire to bring an
22 end to your deliberations or to avoid an unpleasant duty.

23 If you are not convinced beyond a reasonable doubt that the defendant is guilty
24 of a charged crime, you must find the defendant not guilty of that crime. If you are
25 convinced beyond a reasonable doubt that the defendant is guilty of a charged crime,

1 you must find the defendant guilty of that crime.

2 Therefore, the first duty of each juror is to consider and weigh all of the evidence
3 in the case and decide that which you believe is credible and worthy of your
4 consideration. You must take the law as I give it to you whether you agree with it or not
5 or whether your understanding of the law is otherwise.

6 You must decide whether a witness told the truth and was accurate or instead
7 testified falsely or was mistaken. You must also decide what importance to give to the
8 testimony you accept as truthful and accurate.

9 If you find that any witness has intentionally testified falsely as to any material
10 fact, you may disregard that entire testimony or you may disregard so much of it as you
11 find was untruthful and accept so much of it as you find to have been truthfully and
12 accurately given.

13 There is no particular formula for evaluating the truthfulness and accuracy of
14 another person's statement or testimony. You bring to this process all of your varied
15 experiences in life. You frequently decide the truthfulness and accuracy of statements
16 made to you by other people. The same factors you use to make those decisions must
17 be used in this case when you are evaluating the testimony.

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