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CR Practice Examination - Practice - 2 minutes

2 **Q.** Now, Mrs. Jones, by whom are you employed?

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

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

5 **A.** Twelve years.

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

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

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

9 **A.** I do.

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

12 **A.** I did.

13 **Q.** Now, will you tell us when you first started that Investigation?

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

15 **Mr. Hilton:** I object to that. She should exhaust her recollection, at least. If she
16 cannot remember, then she can use her notations.

17 **The Court:** I agree. Please continue.

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

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

21 **Q.** Daily.

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

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

24 **A.** Until October 29th.

25 **Mr. Hilton:** There was no case existing at that time.

26 **Mr. Davis:** It was a case so far as she was concerned.

27 **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. Hilton:** I object to her referring to these notes until she has exhausted her
9 recollection.

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

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

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

13 **Mr. Hilton:** 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
16 was around 3:30, when he was getting out of his car at the Central Square Shopping
17 Center.

18 **Mr. Hilton:** I request that be stricken from the record, the statement that "we saw
19 him." Who accompanied the witness there?

20 **The Court:** Yes, and how were they able to identify Mr. Burns?

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

22 **A.** Yes, I do.

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

24 **A.** Yes, he is.

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

26 **A.** He is, yes.

27

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CR Practice Examination - Opening Statement - 3 minutes

1
2 MR. HILTON: Good morning. As we begin this trial, I want to thank you in advance for your
3 attention. As you know from voir dire, I represent the defendant in this case. I am required by law
4 to tell you what our proof is going to be. This is called the liability portion of the case.

5
6 We will prove by a preponderance of the evidence that on the day of the incident, there was a
7 police chase going on through the streets. My client was driving westbound, approaching a traffic
8 signal, when he was struck from behind.

9
10 There will be testimony that he pulled over, unbuckled his seat belt, unlocked the doors of his car
11 and exited his vehicle in an effort to exchange information with the driver who hit him. The
12 motorist approached his car. The two began to speak and suddenly my client noticed a late model
13 dark blue minivan moving at an excessive rate of speed. Then, out of nowhere, a police car
14 skidded into the rear of the stopped vehicle and hit it with such force that both cars wound up on
15 the sidewalk. Both people and the driver of the police vehicle were injured and wound up in the
16 hospital.

17
18 In this phase of the trial, you will be determining who was at fault. We will not be presenting any
19 evidence of doctors regarding specific injuries my client sustained. We will present evidence of
20 the weather conditions at the time of the crash. The witnesses will testify it was a cold evening,
21 the temperature was below freezing, which is 32 degrees. The streets were wet because there
22 had been a light rain falling during the day. As night approached, the precipitation stopped but
23 there was a residue of water on the road surface.

24
25 We will show that the police officer operated his vehicle in a reckless manner while chasing this
26 van at high rates of speed through the streets of this residential community. When he attempted
27 to slow down, he lost control and his vehicle began to move from side to side.

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1 He gave testimony at a prior examination that he was in pursuit of the van but did not look at his
2 speedometer and could not estimate how fast he was traveling. He indicated the vehicle he was
3 chasing made a sharp left turn and that he attempted to make a turn also.

4
5 Our expert, who examined the accident scene, will testify based upon the skid marks he
6 measured, the police officer had to be going at least 50 miles an hour. He will also testify that the
7 police officer's patrol car began to skid 25 feet behind where my client and the other driver were
8 exchanging their information.

9
10 There were other independent witnesses to this chase, and they will testify as to their
11 observations. They saw the chase and they are going tell you about it.

12
13 I will return to you in summation and review the evidence we presented. I am confident we will
14 prove to your satisfaction that my client was not negligent and did not contribute to the happening
15 of this accident in any way.

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

2 Q Mrs. Jones, my name is Francis Davis and I will be asking you questions pertaining to your
3 complaint against your husband, Mr. Robert Jones. When I ask you these
4 questions, please respond verbally and do not shake your head. Do you (accept “**You**”)
5 understand?

6 A Yes.

7 Q Mrs. Jones, on Friday, March 10th, 2006, did a certain incident occur which caused you to
8 seek an order of protection from this Court?

9 A Yes.

10 Q Where did the event occur?

11 A 24 Hudson Street.

12 Q Whose residence is that?

13 A My husband's.

14 Q Did you ever reside there?

15 A Yes.

16 Q Who else resided there?

17 A My husband, Bob, and our two children, **Diane (accept “Diana”)** and Stephanie.

18 Q How old are your children?

19 A They are sixteen and seventeen, respectively.

20 Q What is your marital status with Mr. Jones?

21 A We are legally separated.

22 Q How long have you been separated from Mr. Jones?

23 A Over one year now.

24 Q How did you come to be at the address 24 Hudson Street on Friday, March 10th?

25 A I was invited there.

26 Q Why were you there?

27 A Why did I go there? I went there supposedly to discuss visitation plans with my husband.

1 Q At approximately what time on Friday did you go there?

2 A About 7:30 p.m.

3 Q Was anyone else at the premises when you arrived?

4 A Yes, my two children were there along with Bob.

5 Q Were the children witnesses to these events?

6 MR. HILTON: Objection, your Honor. She can't testify as to what the children
7 witnessed.

8 THE COURT: The objection is sustained.

9 Q Did anyone go with you to 24 Hudson Street?

10 A Yes, Scott Burns.

11 Q Who's he?

12 A A friend.

13 Q Why did you feel it was necessary to go over there to Hudson Street to discuss the
14 visitation plans?

15 MR. HILTON: Objection as to why she went over, your Honor.

16 THE COURT: I will allow that.

17 A My husband was threatening to stop their visitation.

18 MR. HILTON: Objection, your Honor, not responsive.

19 THE COURT: Overruled. I am going to hear this now.

20 Q How did he threaten you?

21 A He just said that I am not allowed to do this. I cannot bring my children to my boyfriend's
22 house. And he stole the license plates off my car and cancelled our insurance.

23 THE COURT: How long ago was that?

24 A That was about a month ago.

25 MR. HILTON: Objection, your Honor. I don't understand the scope of the hearing. This
26 hearing is very specific. The complaint is for an order of protection. There's nothing
27 about license plates or car insurance.

1 THE COURT: Well, what she is describing I am not taking for its truth but rather as to
2 what prompted her to go over there. There was some discussion as to when you can
3 take the children.

4 A Yes. He was threatening me that I could not.

5 Q What did you do when you first arrived at these premises?

6 A I just knocked on the door.

7 Q Who answered the door?

8 A Who answered the door?

9 Q Yes.

10 A My husband answered the door.

11 Q What was his reaction when he saw you?

12 A He yelled and told me to leave.

13 MR. HILTON: Objection as to his reaction.

14 THE COURT: Sustained.

15 Q What did he do?

16 A He was very angry.

17 MR. HILTON: Objection, your Honor; that's a conclusion on her part.

18 MR. DAVIS: No, it's not, Judge. He was angry.

19 THE COURT: The objection is sustained.

20 Q What did he do or say?

21 A He told me and Scott that he did not want to discuss it. He wanted us to leave. He came
22 out of the house and he passed me and pushed Scott.

23 Q Did you attempt to enter the home at any time at all? Did you attempt to force your way in?

24 A No, not at all.

25 Q Did you threaten Mr. Jones with bodily harm?

26 A No.

27 Q Did you see Mr. Burns threaten him?

1 A Not at all.

2 Q Did you see Mr. Burns strike Mr. Jones?

3 A No.

4 Q Did Mr. Jones strike Mr. Burns?

5 A Yes, he did.

6 MR. HILTON: Objection.

7 THE COURT: I will allow it.

8 Q What has Mr. Jones said to you regarding his feelings about your association with Mr.

9 Burns?

10 A He said that he wants to stop the relationship; that he feels it is a bad scenario; that there

11 can never be any strangers living with his children.

12 Q Does Mr. Jones use any form of illegal drugs to your knowledge?

13 MR. HILTON: Objection, Judge.

14 MR. DAVIS: It was alleged in the petition, your Honor.

15 THE COURT: How is it relevant?

16 MR. HILTON: It's not relevant.

17 THE COURT: How is it germane to this application?

18 MR. DAVIS: To be honest, it goes to her fear of Mr. Jones.

19 THE COURT: Is he dangerous if he allegedly uses drugs?

20 MR. DAVIS: He's very unstable, your Honor.

21 THE COURT: Was he under the influence, do you believe, on this March 10th date?

22 A Inasmuch as there is always a possibility, I can't say that. I do not know.

23 THE COURT: You do not know?

24 A No, I do not know.

25 THE COURT: You have exhausted this area of inquiry. His conduct on this violation is

26 what concerns me. Continue.

27 MR. DAVIS: Yes, your Honor.

1 Q Did you try communicating with Mr. Jones through notes or e-mails of any kind?

2 A I have tried that in the past, yes.

3 MR. HILTON: Objection, your Honor.

4 THE COURT: What is the relevance as to why she had to speak to him if she is able to
5 write him a note?

6 MR. HILTON: Judge, I do not think notes to one another has anything to do with this
7 issue.

8 THE COURT: If that becomes an issue you can come back on rebuttal.

9 MR. HILTON: Thank you, your Honor.

10 THE COURT: You're welcome.

11 Q Okay. Are you afraid of Mr. Jones?

12 A Yes.

13 MR. HILTON: Objection, your Honor.

14 THE COURT: Overruled.

15 Q How old are you, Mrs. Jones?

16 A Thirty-eight.

17 Q How old is Mr. Scott Burns?

18 A He is thirty-eight also.

19 Q How long have you known Mr. Burns?

20 A About six months.

21 Q Do you live with Mr. Burns?

22 A No, I do not.

23 Q Why did you bring Mr. Burns to Mr. Jones premises?

24 A Since my license plates were stolen and my car insurance was cancelled, I could not use
25 my vehicle, so I asked Scott to drive me there. It was pretty dark outside.

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1 **CR Practice Examination - Judge's Charge - 3 minutes**

2 THE COURT: Ladies and gentlemen, we have reached that portion of the trial in which I
3 am going to instruct you on the law, and you will then retire to deliberate. First, I am going to
4 review some of the fundamental principles of law that I previously mentioned to you, both during
5 the jury selection process and in my preliminary instructions.

6 It is a fundamental principle of law that a person accused of a crime is presumed to be
7 innocent. The presumption of innocence remains with the defendant throughout the trial
8 unless and until the entire jury finds, in its final evaluation, that the presumption of innocence has
9 been overcome by proof of guilt, beyond a reasonable doubt.

10 Our law requires that before this jury may convict a defendant, each of you must be
11 satisfied that the credible evidence is sufficient to convince you that a defendant is, in fact, guilty.
12 The evidence must satisfy you, beyond a reasonable doubt, that the defendant is the person who
13 committed the crimes charged.

14 A reasonable doubt is an actual doubt, one of which you are conscious of having in your
15 mind after you have considered all the evidence in the case.

16 It is the duty of each and every one of you to evaluate and consider all the evidence in this
17 case and if, after doing so, you find that the People have not proved their case, beyond a
18 reasonable doubt, then you must find the defendant not guilty. If you are satisfied that the People
19 have proved the defendant's guilt, beyond a reasonable doubt, as I have defined that term to you,
20 you may then find the defendant guilty.

21 You must determine the credibility of any witness and the weight to be given by you to his
22 or her testimony. You may consider the interest of the witness in the outcome of the trial. A
23 witness is an interested witness when, by reason of relationship, friendship, antagonism or
24 prejudice in favor of or against one party or the other, his or her testimony, in your judgment, is in
25 fact biased or likely to be biased to the side he or she favors.

26 A disinterested witness, on the other hand, is one who has no interest in the outcome of
27 the trial. You should not reject the testimony of an interested witness merely because of such

1 interest nor should you accept the testimony of a disinterested witness merely because of such
2 disinterest.

3 Now, with every witness, credibility is in question. There is no magic formula by which a
4 jury can evaluate the credibility or believability of a witness. I will suggest to you a few tests which
5 you might use in doing your job. Is the testimony of the witness plausible? Does it make sense?
6 This test is based on experience and common sense.

7 Should you, in the course of your deliberations, conclude that any witness has intentionally
8 testified falsely as to a material fact during the trial, you are at liberty to disregard all of his
9 testimony on the premise that one who testifies falsely as to one material fact may also testify
10 falsely as to other facts. You are not required, however, in all circumstances, to consider such
11 witness as totally unworthy of belief.

12 Members of the jury, it is now time for you to retire to begin your deliberations.

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