

COPY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C-19

JAMES R. VON NORMANN, AN INDIVIDUAL,)
)
 PLAINTIFF,)
 VS.) NO. 30-2010-
) 00423312
)
 NEWPORT CHANNEL INN, NEWPORT)
 CHANNEL INN, INC., ET AL,)
)
 DEFENDANTS.)
)

HONORABLE CHARLES MARGINES, JUDGE PRESIDING
 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
 JUNE 29, 2012

PLAINTIFF OPENING STATEMENT

APPEARANCES OF COUNSEL:

FOR PLAINTIFF: CARPENTER, ZUCKERMAN & ROWLEY
 BY: JOHN C. CARPENTER
 ATTORNEY AT LAW
 BY: NICHOLAS C. ROWLEY
 ATTORNEY AT LAW

THE BLANCO LAW FIRM
 BY: ALEJANDRO BLANCO
 ATTORNEY AT LAW

RICHARD P. POORMON
 ATTORNEY AT LAW
 (APPEARING PRO HAC VICE)

FOR DEFENDANT: STAFFORD & ASSOCIATES
 BY: TIMOTHY J. STAFFORD
 ATTORNEY AT LAW
 BY: RANDAL SCOTT OAKLEY
 ATTORNEY AT LAW

STEPHEN B. KLINE, CSR 8164, RPR
 OFFICIAL COURT REPORTER

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1 SANTA ANA, CALIFORNIA - FRIDAY, JUNE 29, 2012

2 MORNING SESSION

3 REPORTER'S TRANSCRIPT OF PROCEEDINGS

4 (PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE
5 OF THE JURY AS FOLLOWS:)

6 * * * * *

7 MR. ROWLEY: WELL, GOOD MORNING EVERYONE. THANK YOU FOR
8 AGREEING TO BE PART OF THIS JURY AND TO LISTEN TO THIS CASE
9 WITH AN OPEN MIND AND TO GIVE ME A CHANCE TO PROVE WHY IT IS
10 THAT WE HAVE A GOOD REASON TO BE HERE. SO THANKS A LOT. I
11 KNOW IT WAS TOUGH FOR, YOU KNOW, A LOT OF PEOPLE AND HAS
12 TAKEN TIME AWAY FROM YOUR LIVES AND THAT'S SOMETHING THAT
13 MEANS A LOT TO ALL OF US.

14 YOU'VE BEEN TOLD THAT, AND YOU'LL HEAR IT TIME AND
15 TIME AGAIN, THAT WHAT THE LAWYERS SAY AND WHAT I SAY ISN'T
16 EVIDENCE, AND THAT'S VERY TRUE. BUT I FEAR THAT IF EVERYONE
17 THINKS, WELL, IT'S NOT EVIDENCE, WELL, MAYBE IT'S NOT
18 IMPORTANT. AND I'D ASK THAT EVERYTHING THAT I SAY IN OPENING
19 STATEMENT OR WHEN, YOU KNOW, I'M ASKING QUESTIONS OR THE
20 CLOSING ARGUMENT, THAT YOU PLEASE LISTEN TO WHAT I HAVE TO
21 SAY, BECAUSE IT'S JUST LIKE WHEN YOU ALL GO BACK THERE IN
22 THAT JURY ROOM TO TALK TO EACH OTHER, NOTHING YOU SAY TO EACH
23 OTHER IS EVIDENCE BUT IT'S THE MOST IMPORTANT THING WE GOT.
24 AT THE END OF THE DAY, THE MOST IMPORTANT THING WE GOT IS
25 YOUR VOICE AND WHAT YOU HAVE TO SAY TO EACH OTHER ABOUT YOUR
26 BELIEFS AND WHAT JUSTICE IS.

1 SO PLEASE BEAR WITH ME AND GIVE ME A CHANCE TO TELL
2 YOU WHY IT IS THAT WE'RE -- WHY IT IS THAT WE DESERVE AND
3 SHOULD BE HERE.

4 WE HAVE A THING IN OUR SOCIETY, IN OUR GREAT
5 COUNTRY, IN OUR COMMUNITIES, CALLED SAFETY ENGINEERING AND
6 SAFETY STANDARDS AND SAFETY RULES. AND THOSE RULES -- THE
7 EVIDENCE WILL SHOW EVERYTHING I'M TELLING YOU IS STUFF THAT
8 YOU'RE GOING TO HEAR ABOUT THROUGH THE EVIDENCE. THESE
9 SAFETY RULES HAVE A PURPOSE, AND THEY'RE TO PROTECT. TO
10 PROTECT PEOPLE THAT ARE YOUNG, PEOPLE THAT ARE OLD, PEOPLE
11 THAT ARE SOBER, AND EVEN PEOPLE THAT ARE UNDER THE INFLUENCE
12 OF MEDICATION OR PEOPLE THAT HAVE, YOU KNOW, ISSUES WITH
13 STABILITY AND EVEN PEOPLE WHO ARE INTOXICATED.

14 AND WHEN IT COMES TO HOTELS, HOTELS -- THE SAFETY
15 RULES THAT APPLY TO THEM ARE DESIGNED TO PROTECT PEOPLE WHO
16 ARE INTOXICATED. BECAUSE WE ALL KNOW, AND THE SAFETY
17 ENGINEERS KNOW AND THE LAW KNOWS, THAT PEOPLE STAY AT HOTELS
18 AND DRINK. AND THAT'S THE PLACE WHERE THEY CAN DRINK A LOT
19 AND NOT VIOLATE THE LAW BY BEING OUT DRUNK IN PUBLIC, BY
20 BEING OUT AND DRIVING. BUT TO PARTY --

21 MR. STAFFORD: YOUR HONOR, I'M GOING TO OBJECT; THIS IS
22 ARGUMENT. THIS IS NOT A STATEMENT OF EVIDENCE.

23 THE COURT: OVERRULED. YOU MAY CONTINUE, BUT --

24 MR. ROWLEY: THANK YOU, YOUR HONOR.

25 THE COURT: -- DON'T SPEND TOO LONG ON THIS TOPIC.

26 MR. STAFFORD: THANK YOU.

1 MR. ROWLEY: THE EVIDENCE WILL TALK ABOUT WHAT THE
2 PURPOSE IS OF THE SAFETY LAWS AND SAFETY ENGINEERING AND THE
3 CODES. AND WHEN IT COMES TO HOTELS, THE PURPOSE IS BECAUSE
4 THEY KNOW THAT PEOPLE DRINK AND PARTY IT UP AND GO BACK TO
5 THEIR HOTEL ROOM AND PASS OUT, AND THAT'S THE WAY IT IS.

6 THERE'S NO DISPUTE AT ALL THAT MR. VON NORMANN,
7 JIM, WAS INTOXICATED. BUT THERE'S ALSO NO DISPUTE THAT HE
8 WASN'T BREAKING THE LAW. HE WASN'T COMMITTING ANY VIOLATION
9 OF THE LAW. HE WAS DRINKING, AND HE WENT OUT. IT WAS A
10 SUNDAY, A LONG SUNDAY, AND THEY WERE CELEBRATING BECAUSE HE
11 WAS THE -- ONE OF THE HEAD GUYS ON THE GROUND IN A MARKETING
12 COMPANY THAT WAS TRYING TO TAKE OFF. AND HE HAD A BUNCH OF
13 PEOPLE THAT WORKED UNDER HIM. SO HE WAS THE LEAD GUY ON THE
14 MARKETING TEAM. AND HE HAD DONE SUCH A GOOD JOB HANDLING THE
15 ORANGE COUNTY AREA THAT HE WAS GOING TO GET, BASICALLY, A
16 PROMOTION AND HANDLE ALL OF SAN DIEGO. AND SO IT WAS A
17 CELEBRATORY WEEKEND WITH THE GUYS THAT WORKED ON HIS CREW AND
18 HIM. AND HE PARTIED IT UP THAT WEEKEND, AND HE PARTIED IT UP
19 ON THE 18 OF NOVEMBER, WHICH WAS A SUNDAY.

20 AND IT WAS -- AND THE WAY -- AND WE'LL TALK MORE
21 ABOUT WHAT GOES ON AT THIS HOTEL AND WHAT WAS GOING ON AT
22 THIS HOTEL. BUT HE HAD A LOT TO DRINK THAT DAY. YOU'LL ALSO
23 HEAR THAT HE DOESN'T REMEMBER IT BECAUSE OF HIS BRAIN INJURY.
24 HE HAS AMNESIA, AND WE'LL TALK ABOUT THAT. AND YOU'LL HEAR
25 FROM A BOARD CERTIFIED NEUROLOGIST WHO WILL TALK ABOUT THE
26 CHANGES TO HIS BRAIN THAT AFFECT HIS MEMORY.

1 SO IT'S UNDISPUTED HE DIDN'T VIOLATE THE LAW IN ANY
2 WAY. BUT IT'S -- BUT ONE OTHER THING, WHEN IT COMES TO THE
3 DEFENSE, THIS CORPORATION THAT OWNED THE HOTEL HAD OVER 40
4 SAFETY VIOLATIONS, CODE VIOLATIONS. AND ONE IMPORTANT
5 VIOLATION WAS UP ON THAT SECOND FLOOR, THAT RAILING WAS NOT
6 UP TO CODE.

7 YOU HEARD DEFENSE COUNSEL, MR. STAFFORD, WHO'S
8 GOING TO DO THE BEST JOB HE CAN TO DEFEND THIS CASE, SAY FOR
9 40 YEARS IT WAS 34 INCHES, 34 INCHES, 34 INCHES, AND THAT'S
10 THAT. WELL, FOR 40 YEARS THEY WERE IN VIOLATION OF THE LAW.
11 BECAUSE FOR 40 YEARS THE CODE SAYS WHEN YOU'RE DEALING WITH A
12 RAILING LIKE THAT, WHERE PEOPLE COULD FALL OVER DOWN TO THE
13 THE CEMENT BELOW, A 12 FOOT DROP, WHICH IS DEEPER THAN MOST
14 SWIMMING POOLS, STRAIGHT DOWN, IS THAT THE CODE, IN ORDER FOR
15 IT TO BE CODE COMPLIANT, IT HAS TO BE 42 INCHES.

16 THIS IS EXACTLY 36 INCHES (INDICATING). OUR EXPERT
17 WILL MEASURE IT, SHOW IT TO YOU. THE BALCONY -- THE BALCONY
18 ALL AROUND THE HOTEL WAS SHORTER THAN THIS. SHORTER THAN
19 THIS 36 INCH PIECE THAT JUST SEPARATES US FROM EACH OTHER.
20 AND THE LAW REQUIRED THAT BALCONY, THE SAFETY LAW IN THIS
21 COMMUNITY, REQUIRED IT TO BE 42, NOT SHORTER THAN THIS.

22 AND 100 PERCENT WE'VE ESTABLISHED IN THIS CASE AND
23 WILL ESTABLISH THAT FOR 40 YEARS THEY'VE BEEN IN VIOLATION OF
24 THE LAW IN ALLOWING PEOPLE TO DRINK AND PARTY UP IN THAT
25 HOTEL AND GO AROUND, WALK ALL AROUND, RUN AROUND, KIDS
26 PLAYING, SMOKING, HAVING A BLAST, DRINKING BEER, AT THIS --

1 AROUND THIS BALCONY THAT'S RIGHT OUTSIDE THEIR DOOR ROOM
2 THAT'S UNDER THE CODE.

3 THE COURT: EXCUSE ME FOR A SECOND.

4 FOLKS, WOULD YOU PLEASE TURN OFF ALL CELL PHONES
5 AND OTHER SIMILAR INSTRUMENTS. THANK YOU.

6 MR. ROWLEY: SO THAT'S 100 PERCENT ESTABLISHED IN THIS
7 CASE THAT IT WAS EVEN LOWER THAN THIS FOR 40 YEARS. AND IT'S
8 STILL THIS WAY TODAY, AND THEY SAY SO WHAT. AND WE'RE HERE
9 SO THAT THEY'LL CHANGE IT.

10 NOW, IN SAFETY ENGINEERING THERE'S SOMETHING --
11 WELL, IT'S A CONCEPT. AND THE WAY IS -- TO PROTECT PEOPLE
12 AGAINST THE ILLUSION OF SAFETY. THE ILLUSION OF SAFETY CAN
13 BE JUST AS DANGEROUS AS SOMETHING THAT'S OPEN AND OBVIOUS AND
14 DANGEROUS; FOR EXAMPLE, IF THIS WERE, RIGHT HERE, THIS WALL
15 WASN'T HERE, THIS 36 INCH WALL, AND THERE WAS A DROP-OFF DOWN
16 12 FEET ON TO THE CEMENT, NOBODY WOULD COME NEAR IT. NOBODY
17 WOULD COME NEAR THAT 12 FOOT DROP-OFF. BECAUSE IN YOUR MIND,
18 YOU SAY THAT'S DANGEROUS. IT'S OPEN, IT'S AN OBVIOUS DANGER.

19 BUT TO CREATE AN ILLUSION OF SAFETY WHEN YOU LOOK
20 AT SOMETHING, AND YOU LOOK AT A WALKWAY, AND IT'S A COUPLE
21 INCHES BELOW THIS, 12 FOOT DROP DOWN BELOW, AND YOU SEE
22 PEOPLE WALKING ALL AROUND, THE MIND RELAXES, THE BRAIN
23 RELAXES, THINKS, WELL, THAT'S NOT DANGEROUS. SO YOU GO UP,
24 AND PEOPLE LEAN AGAINST IT. THEY SMOKE THEIR CIGARETTES.
25 THEY SET THEIR DRINKS DOWN AND HANG OUT ON THESE BALCONIES.
26 THIS IS WHERE THEY'RE SUPPOSED TO HANG OUT BECAUSE IT SAYS NO

1 SMOKING IN THE ROOM. SO TO FOLLOW THE MOTEL'S RULES, THEY
2 HAVE TO BE OUTSIDE.

3 BUT THE ILLUSION OF SAFETY IS THAT NOBODY KNOWS,
4 THE CUSTOMERS, THE GUESTS OF THE HOTEL, DON'T KNOW THAT THIS
5 IS -- THAT THE SAFETY ENGINEERING STANDARDS SAY THIS IS
6 UNSAFE. THIS IS VERY DANGEROUS. AND IT'S BEEN IN VIOLATION
7 OF THE SAFETY LAW FOR 40 YEARS. PEOPLE, GUESTS IN THE HOTEL,
8 DON'T KNOW THAT.

9 JIM VON NORMANN'S LITTLE OVER SIX-TWO, THAT PUTS
10 HIS CENTER OF GRAVITY AT A POINT WHERE -- SIX-TWO, I'M
11 FIVE-NINE AND A HALF, EXCEPT I HAVE COWBOY BOOTS ON, GIVES ME
12 AN EXTRA INCH. THAT PUTS HIM UP TO WHERE THE CENTER OF
13 GRAVITY HITS HIM -- IT'S RIGHT THERE (INDICATING), WHICH CAN
14 TIP A PERSON RIGHT OVER IF THERE'S A LITTLE TRIP, IF THERE'S
15 A STUMBLE, AND THE SAFETY LAW KNOWS THAT AND THAT'S WHY 42
16 INCHES IS THE STANDARD.

17 AS YOU WALK INTO THE COURTHOUSE, WE HAVE THAT NICE
18 GARDEN AREA WITH THE BIG BLACK RAILING, THAT'S 42 INCHES,
19 RIGHT OUTSIDE

20 MR. STAFFORD: YOUR HONOR, THIS IS NOT A PRESENTATION OF
21 EVIDENCE. THIS IS A PRELUDE --

22 THE COURT: SUSTAINED.

23 MR. ROWLEY: YOU'LL SEE THAT THE HOTEL PUT IN SOME
24 GUARDRAILS AFTER THEY BOUGHT IT, WHICH IS 40 SOME YEARS AGO.
25 AFTER THEY BOUGHT IT, THEY PUT THEM IN 42 INCHES PER CODE.
26 AND WE'LL GO OVER THAT. SO WE'RE GOING TO SHOW THAT YOU THEY

1 KNEW OR SHOULD HAVE KNOWN WHAT THE CODE WAS.

2 AND THIS WHOLE -- ANY THOUGHT, ANY THOUGHT, OF
3 WELL, THIS WAS GRANDFATHERED IN, FROM THE TIME THIS WAS
4 BUILT, IT'S NEVER BEEN IN COMPLIANCE WITH THE CODE. THERE IS
5 NO -- THAT'S WHY WE ESTABLISH -- SOMETIMES AS LAWYERS, WE'LL
6 MISSPEAK AND, YOU KNOW, SAY SOMETHING. WE TRY TO FIX IT
7 AMONGST OURSELVES SO THAT WE GET EVERYTHING TO YOU ALL
8 STRAIGHT. BUT IT IS UNDISPUTED, 100 PERCENT UNDISPUTED,
9 THERE'S NO EXCUSE THAT THE DEFENSE HAS TO SAY, OH, THIS IS
10 GRANDFATHERED IN. THAT AIN'T SO. THEY'VE BEEN IN VIOLATION
11 OF THE LAW FOR 40 YEARS, AND THAT'S THE HARD, UNDISPUTED
12 EVIDENCE IN THIS CASE.

13 I TRIED TO SHOW YOU SOME PICTURES YESTERDAY, AND IT
14 JUST WENT HORRIBLE. THEY DIDN'T SHOW UP. AND SO WE'VE
15 SCANNED THEM AND GOT THEM ONTO A COMPUTER.

16 AND IF WE COULD, PLEASE, DIM THE LIGHTS, YOUR
17 HONOR. MAYBE I CAN SHOW THEM TO YOU A LITTLE BETTER.

18 SO WE'RE TALKING ABOUT SUNDAY, NOVEMBER 16. NOW,
19 THIS IS DAYLIGHT SAVINGS TIME. THE TIME CHANGE HAS ALREADY
20 PASSED, SO IT'S GETTING TO THE POINT WHERE IT'S ONE OF THE
21 DARKEST TIMES OF THE YEAR. WE'RE GETTING CLOSE TO THE
22 SOLSTICE, WHICH IS IN DECEMBER, WHICH IS THE DARKEST DAY OF
23 THE YEAR. AND SO 4:58 P.M. IS WHEN THE SUN SETS AND IT GETS
24 DARK. WE HAVE THIS HAPPENING RIGHT AROUND 7:45, IN BETWEEN
25 7:45 P.M. AND 8 O'CLOCK P.M. ON SUNDAY NIGHT AFTER A DAY OF
26 HANGING AT THE BEACH, PARTYING, DOING WHAT ALL THE KIDS DO

1 THERE.

2 NOW, WHAT HAPPENED -- HEARING FROM JIM VON NORMANN
3 WHEN HE TAKES THE STAND, AND YOU'RE GOING TO SEE HIM, AND
4 WHEN YOU COMPARE TO WHEN YOU SEE HIM NOW AND YOU SEE THE
5 PICTURES OF HIM BACK WHEN THIS HAPPENED, HE LOOKED LIKE A
6 BABY, HAD THIS BABY FACE. NOW, HE'S A MAN WHO'S AGED A LOT.
7 HE'LL TAKE THE STAND AND HE'LL TESTIFY, AND HE'S GOING TO DO
8 HIS VERY BEST TO TELL YOU THE TRUTH. JUST LIKE HE'S DONE HIS
9 VERY BEST TO TELL THE TRUTH THROUGHOUT THIS CASE. HE DOES
10 NOT KNOW HOW MUCH HE DRANK. HE DOES NOT -- HE CANNOT
11 REMEMBER, BECAUSE OF HIS BRAIN INJURY, AND YOU'LL HAVE A
12 DOCTOR, A NEUROLOGIST, COME IN AND EXPLAIN THAT BECAUSE OF
13 HIS BRAIN INJURY HE HAS RETROGRADE AND ANTEROGRADE AMNESIA.
14 THAT MEANS THAT WHAT HAPPENED TO HIS BRAIN AND THE BLEEDING
15 IN HIS BRAIN RESULTED IN THE SWELLING IN HIS BRAIN, RESULTED
16 IN MEMORIES BEING WIPED OUT.

17 AND SO FOR THE MANY WEEKS THAT HE'S IN HOSPITAL,
18 AND HE'S EVEN WRITING OUT STATEMENTS TO THE POLICE, HE'S
19 TALKING TO HIS MOM, PEOPLE ARE TELLING HIM THINGS, HE TRIES
20 TO RECONSTRUCT MEMORIES HE DOESN'T REMEMBER. AND YOU'LL HAVE
21 A MEDICAL DOCTOR EXPLAIN TO YOU WHAT HAPPENS TO THE BRAIN AND
22 HOW AMNESIA, WITH THE -- ALSO, PEOPLE TELLING YOU HERE'S WHAT
23 HAPPENED, HERE'S WHAT WENT ON, HOW THE MEMORY TRIES TO
24 RECONSTRUCT ITSELF. AND SO WHERE JIM VON NORMANN WILL SAY,
25 "I ONLY REMEMBER HAVING A HALF A DRINK THAT DAY," IF YOU ASK
26 HIM, "COULD YOU HAVE HAD MORE IF YOU WERE AT ANOTHER PLACE?"

1 "OH, YEAH, IF WE WERE AT THIS OTHER BAR, WE WOULD
2 HAVE BEEN PARTYING IT UP."

3 "DID YOU HAVE -- WHAT DO YOU THINK YOU DRANK?
4 WHERE WERE YOU THAT DAY? WHO WERE YOU WITH? WHAT DID YOU
5 HAVE FOR BREAKFAST? WHAT DID YOU HAVE FOR LUNCH? WHAT DID
6 YOU HAVE FOR DINNER?"

7 "I DON'T REMEMBER."

8 HE REMEMBERS BITS AND PIECES OF THINGS, AND SOME OF
9 THOSE THINGS THAT HE REMEMBERS ARE RECONSTRUCTED MEMORY,
10 WHICH HE'S GOT INFORMATION FROM OTHER PEOPLE AND SO IT'S PUT
11 IN. AND YOU'LL HEAR ABOUT THAT.

12 AND SO HE'S GOING TO GET UP ON THE STAND AND TRY TO
13 DO HIS VERY BEST TO TELL YOU WHAT IT IS THAT HAPPENED AND
14 WHAT HE REMEMBERS. BUT THERE'S A BIG ADVANTAGE THAT THE
15 DEFENSE HAS IN THIS CASE, WHICH IS, HE CAN'T REMEMBER. SO
16 YOU'LL HEAR A BIT ABOUT THAT. AND THEN, IF WE GET TO A
17 SECOND PHASE OF THE TRIAL, YOU'LL HEAR ABOUT THE CHANGE IN
18 HIS LIFE BECAUSE OF THE INJURY TO HIS BRAIN.

19 YOU'RE GOING TO BE ASKED THE QUESTION -- IN FACT,
20 THIS ISN'T A QUESTION YOU EVEN NEED TO BE ASKED: WAS JIM VON
21 NORMANN NEGLIGENT? WE'LL SAY THE EVIDENCE WILL SHOW THAT HE
22 WAS. NEGLIGENT MEANS NOT BEING REASONABLY CAREFUL. SO IF HE
23 HAD THIS BLOOD ALCOHOL LEVEL AND HE WAS STUMBLING AROUND AND
24 HE WAS REALLY INTOXICATED AND DRUNK, THEN THAT MEANS HE
25 WASN'T BEING REASONABLY CAREFUL. BUT HE DID NOT VIOLATE THE
26 LAW IN ANY WAY, AND HE DIDN'T DO ANYTHING THAT WAS PUBLIC

1 INTOXICATION. HE WAS UP AT HIS HOTEL ROOM. AND HE SMOKED
2 CIGARETTES, SO HE HAD -- AND THE PLACE WHERE HE HAD TO SMOKE
3 CIGARETTES WAS RIGHT OUT ON THAT BALCONY. WHERE THE MOTEL
4 HAD PEOPLE KEEP THEIR ASHTRAYS WERE RIGHT ON THAT BALCONY.

5 AND IT'S WHERE ALL THE YOUNG KIDS -- YOU HEARD HIM
6 TALK ABOUT FAMILIES, MR. STAFFORD SAY, THIS IS WHERE FAMILIES
7 HAVE BEEN COMING FOR 40 YEARS. MR. VON NORMANN WILL TELL
8 YOU, AND THE MANAGERS WILL HAVE TO ADMIT, THAT EVEN TODAY
9 THERE ARE YOUNG KIDS THAT SURF COME BACK, DRINK BEER AND
10 PARTY IT UP, HANG OUT ALL AROUND THAT HOTEL. IT'S A FUN
11 PLACE FOR YOUNG KIDS TO STAY.

12 SO WAS HIS NEGLIGENCE, HIM BEING DRUNK, A
13 SUBSTANTIAL FACTOR IN CAUSING HIM HARM? THE EVIDENCE WILL
14 SHOW, YEAH, BECAUSE SUBSTANTIAL FACTOR IN CAUSING HARM OR
15 CONTRIBUTING TO IT IS WHAT'S CALLED MORE THAN A REMOTE OR
16 TRIVIAL FACTOR. AND I'D BE BEING DISHONEST WITH YOU TO SAY
17 THAT IT'S NOT MORE THAN A REMOTE OR TRIVIAL FACTOR THAT HE
18 WAS DRUNK AND ENDED UP FALLING; OF COURSE, IT IS. THAT
19 BRUTAL HONESTY THAT I ASKED YOU ALL FOR, YOU'RE GOING TO GET
20 THAT FROM US THROUGHOUT THIS CASE.

21 NOW, THE EVIDENCE IS GOING TO BE, WELL, WAS THE
22 CORPORATION NEGLIGENT? AND THE ANSWER IS YES. THE EVIDENCE
23 WILL SHOW THEY'RE NEGLIGENT, BECAUSE IF YOU VIOLATE THE LAW,
24 THAT EQUALS NEGLIGENCE. AND SO THEY'RE NEGLIGENCE IS BECAUSE
25 THEY VIOLATED THE LAW.

26 AND YOU'LL HEAR EVIDENCE THROUGHOUT THE CASE WHAT

1 THAT LAW IS, AND THEN YOU'LL GET INSTRUCTED AT THE END OF THE
2 TRIAL. AND EACH QUESTION IS, IS IT MORE LIKELY TRUE THAN NOT
3 TRUE? IS IT MORE LIKELY TRUE THAN NOT TRUE THAT THEY
4 VIOLATED THE LAW? WELL, IT'S A SLAM DUNK, HUNDRED PERCENT,
5 THAT THEY VIOLATED THE LAW. SO THAT QUESTION, AT THE END OF
6 THE TRIAL, SHOULD BE AN EASY ONE TO ANSWER.

7 HERE'S THE OTHER THING WE -- WE'RE GOING TO LOOK AT
8 THE EVIDENCE, AND THE EVIDENCE -- QUESTION IS GOING TO BE IS
9 IT MORE LIKELY TRUE THAN NOT TRUE THAT JIM VON NORMANN FELL
10 OFF THE SECOND STORY BALCONY? DON'T HAVE TO SHOW DID HE FALL
11 OFF BEYOND A REASONABLE DOUBT. IS IT MORE LIKELY TRUE THAN
12 NOT TRUE THAT HE FELL? THE EVIDENCE WILL SHOW THAT IT IS
13 MORE LIKELY TRUE THAN NOT TRUE THAT HE FELL OFF THE BALCONY.
14 WHEN YOU WEIGH ALL THE EVIDENCE, WE'LL TIP THE SCALES. AND
15 AS THE JUDGE TOLD YOU, ANYTHING MORE THAN 50 PERCENT, IF THE
16 EVIDENCE TIPS THE SCALES, THEN WE ESTABLISH THAT HE FELL OFF
17 THE SECOND STORY. THE REASON WHY WE'RE GOING TO TALK ABOUT
18 THAT IS BECAUSE THE DEFENSE HAS AN EXPERT WHO'S GOING TO SAY,
19 OH, NO, HE NEVER FELL FROM THE SECOND STORY. THIS WAS JUST A
20 FIRST FLOOR, GROUND LEVEL FALL. AND YOU'LL HEAR FROM THE
21 EVIDENCE IN THIS CASE THAT THAT'S JUST NOT A RELIABLE OPINION
22 THAT MAKES ANY SENSE.

23 YOU'LL BE ASKED THE QUESTION IS IT MORE LIKELY TRUE
24 THAN NOT TRUE THAT THE CORPORATION'S NEGLIGENCE, THAT MEANS
25 THE VIOLATION OF THE SAFETY CODE, WAS MORE THAN A REMOTE OR
26 TRIVIAL FACTOR, THAT'S SUBSTANTIAL FACTOR, IN CAUSING JIM

1 NORMAN'S FALL? THE EVIDENCE IS GOING TO SHOW THAT IT'S MORE
2 LIKELY TRUE THAN NOT TRUE THAT THAT CODE VIOLATION, THAT
3 VIOLATION OF THE LAW FOR 40 YEARS, WAS MORE THAN A REMOTE OR
4 TRIVIAL FACTOR IN CONTRIBUTING TO JIM VON NORMANN FALLING OFF
5 OF THE SECOND STORY.

6 SO LET'S GO TO THIS -- THIS INN, THIS HOTEL THAT
7 THE CORPORATION OWNS. WE GO, WE HAVE -- I CALL IT PACIFIC
8 COAST HIGHWAY, BUT THE COAST HIGHWAY, WHICH THERE'S BALBOA
9 ISLAND, AND THIS IS RIGHT -- RIGHT HERE, HOTEL (INDICATING).
10 RIGHT ACROSS IS THE BEACH. BEACH HOUSES AND A FEW DIFFERENT
11 STREETS, WHICH YOU GET AN OCEAN BREEZE, AND IT'S A GOOD PLACE
12 TO STAY FOR THE KIDS THAT WANT TO SURF. YOU LOOK AT IT, AND
13 WE'RE GOING TO TALK MORE ABOUT THE ILLUSION OF SAFETY,
14 BECAUSE IT'S LOOKS SAFE, AND TO ANY GUESTS AND ANY NORMAL
15 PEOPLE, IT LOOKS SAFE.

16 I WANT -- WE'RE GOING TO LOOK AT IT THE WAY THAT
17 THE HOTEL AND THE CORPORATION SHOULD LOOK AT IT, UNDER WHAT
18 THE STANDARDS ARE IN THIS COMMUNITY, AND THE WAY THAT THE LAW
19 REQUIRES THEM TO LOOK AT IT. AND WHEN WE LOOK AT -- YOU'LL
20 SEE WHAT'S GOING ON. KIDS GO AND THEY SURF. THEY COME BACK,
21 THEY RINSE OFF THEIR FEET, GET THE SAND OFF. THEY DRY OUT
22 THEIR WETSUITS UP ON TOP, UP ON THIS, THE SECOND STORY.
23 THERE'S A BIG OLD BALCONY. AND THIS IS WHERE THE PARTYING
24 GOES ON. THIS IS WHERE THEY BRING CASES OF BEER AND THEY
25 SMOKE AND THEY DRINK, AND THIS IS WHAT WAS GOING ON BACK IN
26 2008.

1 JIM VON NORMANN WILL TELL YOU THAT THE MOTEL, THERE
2 WERE A NUMBER ROOMS THAT WERE EMPTY. THERE WERE GOOD DEALS,
3 AND THERE WERE KIDS THAT -- A LOT OF YOUNG KIDS STAYING
4 THERE. AND IT WAS A PARTY SCENE BACK AT THIS HOTEL. THE
5 BARS WOULD CLOSE, THEY'D PARTY LATE NIGHT. THEY'D COME BACK
6 AND PEOPLE WOULD BE DOING EVERYTHING FROM DRINKING TO SMOKING
7 MARIJUANA TO HANGING OUT AND JUST HAVING A PARTY AT THIS
8 HOTEL. AND THIS WAS THE SPOT.

9 NOW, THERE'S A LIQUOR STORE JUST ONE BUILDING OVER
10 WHERE KIDS WOULD GO BUY THE ALCOHOL AND BRING IT BACK. AND
11 HERE'S WHERE -- SO THEY'D GET A BLOCK OF ROOMS, THEY'D PARTY
12 IN THE ROOMS, BUT THEY COULD ONLY SMOKE OUTSIDE. AND SO
13 THE INN, THE HOTEL, HAS THESE ASHTRAYS ALL ALONG, AND THEY
14 LEAVE THEM THERE. AND THEY EVEN CLEAN THEM OUT. YOU KNOW,
15 THE CLEANERS CLEAN THEM OUT SO THAT THE KIDS CAN GO OUT AND
16 SMOKE AND SMOKE THEIR CIGARETTES AND THEN GO BACK INTO THEIR
17 ROOM. SMOKE THE CIGARETTES, DRINK THEIR BEER. THE MOTEL
18 NEVER WOULD CARD KIDS OR DO ANYTHING TO SEE WHO'S DOING WHAT.
19 THEY JUST -- AS LONG AS THEY WERE COLLECTING THEIR MONEY FOR
20 THE NIGHT, KIDS WERE STAYING, THEY LET THEM HAVE A BLAST.

21 WHEN YOU LOOK AT IT, THIS RAILING, IF WE START
22 LOOKING CLOSER, AND WE START LOOKING AT IT WITH AN EYE OF
23 SAFETY, WITH EYES OF SAFETY, WHAT WE SEE IS THE --
24 UNDERNEATH, IMAGINE UNDERNEATH THIS, THERE'S A -- THERE'S AN
25 INCH AND A HALF GAP RIGHT WHERE PEOPLE'S FEET WOULD CATCH.
26 SO THERE'S A WALL AND THERE'S THIS GAP. AND THE FLOORING IS

1 ACTUALLY LEVELED TO POINT TOWARDS FROM THE -- WHEN THEY WALK
2 OUT OF THEIR HOTEL ROOM, WHEN A GUEST WALKS OUT OF HIS HOTEL
3 ROOM, IT'S UNLEVEL. SO THERE'S THIS SLANT. AND THAT'S AN
4 AREA WHERE PEOPLE'S FEET CAN GET CAUGHT TO GO OVER THE 34
5 INCH RAILING. AND THAT'S WHAT IT'S LIKE ALL THE WAY AROUND
6 THE HOTEL. IT'S A DANGEROUS CONDITION.

7 WE LOOK CLOSER, THERE'S ACTUALLY -- AND IT'S
8 ONLY -- IT'S A VERY NARROW WALKWAY, A VERY NARROW BALCONY
9 BETWEEN THE DOORS FROM THE HOTEL ROOMS WHERE PEOPLE COME OUT,
10 COME OUT TO GO OUT AND SMOKE AND HANG OUT ON THE BALCONY OR
11 HANG OUT WITH THEIR FRIENDS OR GO OVER TO THAT LEVEL WHERE
12 THE PARTY IS GOING ON. IT'S VERY NARROW. AND THEN THERE'S
13 THIS DOWN STEP ABOUT LIKE SO COMING OUT OF EVERY ROOM
14 (INDICATING), AND THE ROOM THAT JIM VON NORMANN WAS STAYING
15 IN.

16 SO PUT THAT TOGETHER, WE HAVE THESE TRIPPING
17 HAZARDS, AND THEN A BALCONY THAT'S WAY BELOW THE CODE IN
18 VIOLATION OF THE LAW. CLEARLY, YOU'LL HEAR FROM THE
19 EVIDENCE, THAT THESE ARE DANGEROUS CONDITIONS. THIS IS
20 NEGLIGENCE.

21 BUT FOR NORMAL PEOPLE WALKING DOWN THEY DON'T SEE
22 IT. THEY DON'T THINK ABOUT IT. THEY'RE JUST YOUNG KIDS.
23 JIM VON NORMANN WAS A YOUNG KID CELEBRATING. HE'S GOING DOWN
24 TO SAN DIEGO TO START HIS NEW -- HIS LEASE HAD JUST FINISHED
25 IN AN APARTMENT COMPLEX HE WAS STAYING IN. HIS LEASE WAS UP.
26 HE HAD ABOUT A 10 DAY WINDOW BEFORE HE WAS GOING DOWN TO SAN

1 DIEGO. AND HE HAD FRIENDS STAYING AT THE HOTEL.

2 AND YOU'LL HEAR -- YOU'LL HEAR, ACTUALLY, FROM
3 WHAT -- THE MANAGER OF THE HOTEL AT THE TIME, MARIO
4 VALENZUELA, WHAT HIS STATEMENT TO THE POLICE WAS AS THE
5 MANAGER OF THE HOTEL, WAS THAT JIM VON NORMANN HAS BEEN A
6 GUEST OF THE HOTEL FOR ABOUT THE LAST 10 DAYS. VALENZUELA
7 TOLD THE POLICE THAT VON NORMANN DID NOT HAVE HIS OWN ROOM
8 BUT HAD BEEN STAYING WITH ANOTHER MALE AT THE HOTEL. HE WAS
9 ROOMING WITH A BUDDY. SO THEIR OWN MANAGER -- WHEN THEY COME
10 IN AND SAY, OH, WE ONLY KNEW ABOUT THIS GUEST FOR ONE DAY,
11 THIS MARIO VALENZUELA, WHO WAS THE MANAGER OF THE HOTEL AT
12 THE TIME, HE TOLD THE POLICE -- AND THIS STATEMENT IS
13 SOMETHING THAT IS EVIDENCE FOR TO YOU CONSIDER, HE SAID, "I
14 KNOW JIM VON NORMANN. HE'S BEEN STAYING HERE FOR 10 DAYS UP
15 WITH A FRIEND." SO THIS WHOLE STUFF ABOUT JIM, YOU KNOW, WAS
16 ONLY A GUEST THERE FOR ONE DAY, IS JUST BALONEY, ACCORDING TO
17 THEIR OWN MANAGER'S STATEMENT TO THE POLICE.

18 SO WE LOOK AT THE MEASUREMENTS EVERYWHERE, ALL
19 THROUGHOUT, THIS HAS NEVER BEEN IN COMPLIANCE WITH THE SAFETY
20 CODE; 34 INCHES, EVERYWHERE YOU GO. NOW, HERE'S WHAT'S
21 INTERESTING. YOU SEE THE RAILING ON THE LEFT, THAT RAILING
22 ON THE LEFT, THIS BLACK RAILING HERE, ON THE LEFT, RIGHT
23 THERE (INDICATING), FOLKS, THAT IS 42 INCHES. THAT IS 42
24 INCHES. THAT'S THE LAW. AND THIS CORPORATION MADE
25 IMPROVEMENTS. THEY PUT IN -- BECAUSE THEY DIDN'T WANT THE
26 KIDS SITTING ON THE ROOF AND MESSING UP THEIR TILE ROOF. AND

1 THERE'S TILE ROOF IN DIFFERENT AREAS. AND SO THEY WENT IN
2 AND THEY ALSO CHANGED THE FLOORING. AND GUESS WHAT THEY DID
3 BY CHANGING THE FLOORING? THEY RAISED UP THE FLOOR,
4 THEREFORE, DECREASING THE HEIGHT OF THE BALCONY. THEY WENT
5 IN AND DID THAT WORK AND CHANGED THE FLOORING, RAISED IT UP
6 BY PUTTING PLYWOOD ON THERE, WHICH DECREASES THE HEIGHT OF
7 THE RAILING, MAKES IT MORE DANGEROUS. AND THEY PUT IN THESE
8 RAILINGS TO PROTECT THEIR TILE ROOFS, BUT THEY NEVER WENT AND
9 GOT A PERMIT TO DO IT.

10 BECAUSE IF THEY GO TO GET A PERMIT, ALL THE WORK
11 THEY'VE DONE, THEY HAVEN'T TAKEN OUT AS A COMMERCIAL
12 BUSINESS. THIS CORPORATION DIDN'T TAKE OUT ANY PERMITS TO DO
13 ANY OF THE WORK THEY HAD DONE OVER ALL THESE YEARS. AND THEY
14 VIOLATED THE LAW BY DOING THAT. AND THE REASON WHY IS
15 BECAUSE IF THEY GO PULL PERMITS, THEN AN INSPECTOR COMES OUT
16 AND INSPECTS EVERYTHING AND TELLS THEM EVERYTHING THEY HAVE
17 TO DO TO BE IN COMPLIANCE WITH THE CODE.

18 SO THE EVIDENCE IS UNDISPUTED. AND THIS GENTLEMAN,
19 HERE (INDICATING), SITTING IN COURT, WHO'S BOTH THE MANAGER,
20 WHO WILL TESTIFY FOR THE CORPORATION, AND THE GENTLEMAN WHO
21 WILL TESTIFY THAT HE'S THE SAFETY OFFICER, WHO'S RESPONSIBLE
22 FOR MAINTAINING EVERYTHING WITH THE -- UP TO CODE, THIS
23 GENTLEMAN SITTING RIGHT HERE, HE'S THE ONLY MANAGER THAT WILL
24 TESTIFY. AND HE'LL ALSO TESTIFY HE'S HERE TO DEFEND THE
25 CORPORATION. HE'S AN OFFICER AND NOW A SHAREHOLDER IN THIS
26 CORPORATION. AND HE'S GOING TO TESTIFY, BECAUSE WE TOOK HIS

1 DEPOSITION, HE NEVER LOOKED AT THE CODE AND THEY DIDN'T PULL
2 ANY PERMITS. AND THAT'S THE WAY THEY DID BUSINESS AT THIS
3 HOTEL.

4 FORTY-TWO INCHES, THAT'S WHAT IT SHOULD HAVE BEEN.
5 FORTY-TWO INCHES, THAT'S WHAT THE STANDARD IS.

6 NOW, IF YOU LOOK GOING UP THE STAIRS, AND THEY MADE
7 IMPROVEMENTS, YOU LOOK AT WHAT THE -- WHAT THE RAILING IS,
8 WHAT IT'S SUPPOSED TO BE WHEN IT'S 42 INCHES, THAT'S A WHOLE
9 DIFFERENT SCENARIO. SO YOU TAKE IT TO 34 INCHES, YOU ADD IN
10 TRIPPING HAZARDS, AND YOU'RE MAKING -- THIS IS JUST A BAD
11 ACCIDENT WAITING TO HAPPEN WHERE SOMEONE IS SERIOUSLY GOING
12 TO GET HURT.

13 NOW, JIM VON NORMANN, BECAUSE HE WAS DRUNK,
14 PROBABLY SAVED HIS LIFE, BECAUSE HE WAS -- HE FELL OVER AND
15 WASN'T ALL RIGID. HOW DO WE KNOW HE FELL OVER? BECAUSE THE
16 POLICE INVESTIGATION BY THIS LOCAL POLICE DEPARTMENT, YOU'LL
17 HEAR FROM THEM, THEY CONCLUDED THAT THIS WAS A FALL, THAT HE
18 WASN'T PUSHED. THERE'S NO FOUL PLAY, THIS WAS A FALL. HE
19 HAD SCRAPES OF HIS SHINS CONSISTENT WITH GOING OVER THE EDGE
20 AND THE SHINS SCRAPPING. THAT'S ALL THE EVIDENCE. AND GUESS
21 WHO TOOK PICTURES OF THE ALL THE INJURY PHOTOS? THE POLICE
22 DID. THERE WEREN'T LAWYERS INVOLVED. THE POLICE DID THIS
23 INVESTIGATION.

24 AND YOU LOOK, AND WHAT THEY'VE DONE IS, AGAIN,
25 THEY'VE CHANGED THE FLOORING. IS IT MORE LIKELY TRUE THAN
26 NOT TRUE THAT JIM VON NORMANN FELL OFF THE BALCONY? THEY'RE

1 GOING TO HAVE AN EXPERT COME IN HERE WITH A STRAIGHT FACE AND
2 SAY, NOPE. IT WAS A -- WE THINK HE JUST FELL BACKWARDS AND
3 CRACKED HIS HEAD.

4 NOW, THE EVIDENCE WILL SHOW IN THIS CASE, YEAH,
5 IT'S MORE LIKELY THAT THAT'S WHERE HE FELL, THAT THAT'S WHAT
6 HAPPENED TO HIM. AND WE WANT THEM TO FINALLY HAVE TO ADMIT
7 THAT RATHER THAN WE DON'T KNOW WHAT HAPPENED.

8 THE EVIDENCE WILL SHOW THAT IT'S MORE LIKELY THAN
9 NOT -- MORE LIKELY TRUE THAN NOT THESE CODE VIOLATIONS
10 CONTRIBUTED TO HIM FALLING. YOU'RE GOING TO APPLY YOUR
11 COMMON SENSE AND HEAR WHAT HAPPENED HERE. AND YOU'RE GOING
12 TO HEAR FROM EXPERT WITNESSES, ENGINEERS, WHO HAVE LOOKED AT
13 THIS FORENSICALLY. IF YOU'VE EVERY SEEN FORENSIC STUFF ON
14 TV, HOW THEY FORENSICALLY PIECE THINGS TOGETHER, FORENSIC
15 EXPERTS WHO ARE GOING TO EXPLAIN HOW THIS COMES TOGETHER AND
16 HOW WE KNOW HE FELL OFF THAT BALCONY. AND YOUR COMMON SENSE
17 WILL TELL YOU, YES, THAT MADE A DIFFERENCE. YOU KNOW, THIS
18 NEGLIGENCE WAS A SUBSTANTIAL FACTOR ON THE PART OF THE
19 CORPORATION.

20 YESTERDAY DEFENSE COUNSEL SAID THERE WAS NOT A
21 SINGLE EYEWITNESS TO WHAT HAPPENED, NOT A SINGLE EYEWITNESS,
22 AND THAT HE ENDED UP UNDERNEATH THE -- THEY'LL SHOW YOU
23 PICTURES, UNDERNEATH THE AWNING. WELL, FOLKS, THE EVIDENCE
24 WILL BE THAT WHEN HE FELL, HE WASN'T COMPLETELY -- HE LOST
25 CONSCIOUSNESS, THEN HE GOT UP AND WAS HOLDING HIS HEAD, AND
26 THEN ENDED UP GETTING OVER TO THE WALL. WHETHER SOMEBODY

1 HELPED HIM, WHETHER HE GOT THERE HIMSELF, HE'S UP AGAINST THE
2 WALL OUT OF THE PARKING LOT. WHAT'S GOING TO HAPPEN IF
3 SOMEBODY'S HURT? YOU MOVE THEM OUT OF THE PARKING LOT WHERE
4 THEY'RE GOING TO GET RUN OVER BY A CAR.

5 HE GETS HIMSELF -- BY THE TIME THE POLICE COME, HE
6 GETS HIMSELF OVER TO UP AGAINST THE WALL, AND HE'S THERE WITH
7 HIS BRAIN SWELLING INSIDE OF HIS SKULL. AND THE BLOOD WAS
8 DRIPPING OUT OF HIS EARS FROM THE BLEEDING BRAIN. AND THAT
9 WAS THE BLOOD THAT WAS FOUND. BUT JUST BECAUSE THERE'S BLOOD
10 FOUND THERE AND HE'S UP AGAINST A WALL, WE KNOW HE MOVED.
11 AND THERE'S -- THE EVIDENCE WILL SHOW YOU IT'S MORE LIKELY
12 TRUE THAN NOT TRUE HE CAME OFF OF THE SECOND FLOOR.

13 BUT THIS NOT A SINGLE WITNESS STUFF IS UNTRUE.
14 THERE WAS AN EYEWITNESS. THERE WAS AN EYEWITNESS TO WHAT
15 HAPPENED, AND THAT EYEWITNESS TO WHAT HAPPENED WAS THE
16 CORPORATION. NEWPORT CHANNEL INN CORPORATION IS THE
17 EYEWITNESS HERE. MARIO VALENZUELA, THE HOTEL MANAGER, IS THE
18 EYEWITNESS TO WHAT HAPPENED. AND WHEN WE ASKED THE DEFENSE
19 TO PRODUCE HIM, THEY SAY HE'S DISAPPEARED. BUT WE'LL HEAR
20 WHAT HE TOLD THE POLICE.

21 THERE ARE TWO SURVEILLANCE CAMERAS, FIRST AND
22 SECOND FLOOR, THAT WERE CONTROLLED BY MARIO VALENZUELA THAT
23 FACED THE SCENE OF THE FALL AND RECORDED IT ON A HARD DRIVE.
24 THEY'RE ALL HOOKED UP TO THE SAME COMPUTER, AND THERE'S A
25 HARD DRIVE THAT WOULD SET AND RECORD EVERYTHING. MARIO
26 VALENZUELA CONTROLLED THAT.

1 MARIO VALENZUELA, WHEN THE POLICE OFFICERS SHOWED
2 UP TO INVESTIGATE, HAD DISAPPEARED. THERE'S NOBODY ON STAFF
3 FOR THE CORPORATION, FOR THE HOTEL, ONCE THE COPS GET THERE,
4 FIND OUT -- TALK TO PEOPLE ABOUT WHAT HAPPENED. THEY'RE
5 KNOCKING ON THE DOOR. WE WANT TO SEE THESE SURVEILLANCE
6 CAMERAS POINTING TO WHERE THIS HAPPENED, FIRST FLOOR, SECOND
7 FLOOR. WE WANT TO SEE WHAT HAPPENED. NOBODY ANSWERS THE
8 DOOR. NOBODY FROM THE HOTEL IS THERE. MARIO VALENZUELA HAS
9 DISAPPEARED. IT'S NOT UNTIL TWO DAYS LATER THAT THE POLICE
10 GET AHOLD OF MARIO VALENZUELA, AND HE GOES, "OH. WELL, THAT
11 ONE DOESN'T RECORD." AND THEY SAY, "WELL, WE WANT TO SEE IT.
12 HOW DOES IT RECORD?" "WELL, THAT ONE -- ALL THE OTHER
13 CAMERAS RECORD BUT THAT ONE DOESN'T." WE DON'T HAVE A
14 RECORDING, BUT IT SAVES TO THE HARD DRIVE FOR 72 HOURS.

15 AND NOW THE PERSON WHO -- SINCE MARIO VALENZUELA IS
16 GONE, NOW WE'RE GOING TO HAVE THE REPRESENTATIVE OF THE
17 CORPORATION, THE SHAREHOLDER AND OFFICER OF THE CORPORATION,
18 GET UP HERE AND TELL YOU, "OH, WELL, THAT CAMERA DOESN'T
19 RECORD. IT ALL GOES INTO" -- IT'S TO THE SAME HARD DRIVE,
20 FOLKS.

21 THEY HAD VIDEO CAMERAS, AND WE WOULD ALL BE ABLE TO
22 SHOW YOU HOW HE WENT OVER. AND I GUARANTEE YOU, IF THERE WAS
23 A PUSH OR A FIGHT OR ANY CRIMINAL ACTIVITY THAT WOULD HAVE
24 HELPED THEM, THEN THEY WOULD HAVE SHOWN THAT TO THE POLICE.
25 BUT INSTEAD MARIO VALENZUELA DISAPPEARS, AND THE REASON WHY
26 IS BECAUSE MARIO VALENZUELA WAS DEALING DRUGS OUT OF THAT

1 HOTEL.

2 MR. STAFFORD: OBJECTION, YOUR HONOR; THIS IS ARGUMENT;
3 LACKS FOUNDATION.

4 THE COURT: WELL, WE DON'T KNOW.

5 LADIES AND GENTLEMEN, AS YOU'VE BEEN TOLD, WHAT THE
6 ATTORNEYS TELL YOU IN OPENING STATEMENTS AND CLOSING
7 ARGUMENTS IS NOT EVIDENCE. SO KEEP THAT IN MIND, PLEASE.

8 AND YOU MAY CONTINUE.

9 MR. ROWLEY: YES, YOUR HONOR.

10 THE EVIDENCE WILL SHOW THAT MARIO VALENZUELA WAS
11 GIVING CASH DEALS TO KIDS STAYING AT THAT HOTEL. AND THAT
12 WHEN THOSE KIDS NEEDED MARIJUANA, WHEN THOSE KIDS NEEDED
13 SOMETHING, THEY WENT TO MARIO. AND SO WHEN THE POLICE CAME
14 TO THE SCENE AND ALL THIS WAS HAPPENING, MARIO VALENZUELA
15 DISAPPEARED FROM THE SCENE, BECAUSE HE IS THE MANAGER OF THAT
16 HOTEL. DISAPPEARED. THEN, WHEN WE ASKED THEM TO PRODUCE HIM
17 FOR A DEPOSITION, HE'S DISAPPEARED. VIDEO EVIDENCE,
18 DISAPPEARED. AND YOU'LL HEAR EVIDENCE THAT MARIO VALENZUELA,
19 THAT THAT'S WHAT HE WAS DOING AT THE TIME. AND EVERYONE HAD
20 CONNECTIONS WITH HIM AND THAT'S HOW THEY GOT THESE PARTIES
21 GOING ON IN THAT HOTEL.

22 AND THEN, YOU'LL HEAR THAT SHORTLY AFTER, THEY
23 FIRED HIM. THEN WHEN WE ASKED HIM WHY YOU FIRED HIM, THEY
24 SAID, "WELL, WE'RE NOT GOING TO TELL YOU WHY WE FIRED HIM."
25 WE ASKED FOR HIS INFORMATION TO LOCATE HIM. HE'S YOUR PAST
26 EMPLOYEE. YOU GUYS GAVE TAX RECORDS. THEY WOULDN'T GIVE US

1 HIS INFORMATION. THEY SAID, "WE CAN'T FIND MARIO
2 VALENZUELA."

3 SO THAT'S WHY WE'RE HERE. GOING TRY TO SET THIS
4 STRAIGHT AND MAKE SURE THAT CORPORATION PAYS THEIR FAIR SHARE
5 OF WHAT HAPPENED TO JIM VON NORMANN, AND THAT THEY CHANGE
6 THIS BALCONY.

7 BRIAN AMENDT IS THE GENTLEMAN RIGHT THERE, WHO'S
8 THE SHAREHOLDER AND THE REPRESENTATIVE OF THE CORPORATION,
9 WHO'S GOING TO GET UP ON THE STAND, AND HE'S GOING TO SAY,
10 "WE DON'T KNOW WHAT HAPPENED. WE HAVE NO IDEA."

11 THEY DIDN'T EVEN -- WHEN WE ASKED THEM FOR THEIR
12 INCIDENT REPORT -- YOU FILL OUT AN INCIDENT REPORT, SOMEONE
13 ENDS UP WITH A BRAIN INJURY ON YOUR PROPERTY, WHERE IS THAT?
14 "OH, WE DON'T HAVE ONE. WE DIDN'T EVEN KNOW."

15 THIS REPRESENTATIVE OF THE CORPORATION IS GOING TO
16 GET UP AND TESTIFY HE DOESN'T EVEN KNOW. WHERE'S YOUR
17 INCIDENT REPORT? WHERE'S YOUR DOCUMENTATION? DON'T HAVE IT.
18 SO THAT'S WHAT WE'RE DEALING WITH HERE. BUT HE'S GOING TO
19 GET UP HERE SAY, "OH, BOY, THIS IS A NICE FAMILY HOTEL WHERE
20 PEOPLE COME AND STAY AND, YOU KNOW, I JUST DON'T KNOW WHAT
21 HAPPENED ON THIS DAY."

22 AND THE SAFETY OFFICER, "BUT I'VE NEVER READ ANY OF
23 THE BUILDING CODES, AND I" -- YOU'LL HEAR HIM TESTIFY.

24 SO, SINCE WE DON'T HAVE DIRECT EVIDENCE FROM THE
25 VIDEO WHERE MR. VALENZUELA, WHO WAS THERE, THIS IS -- WILL BE
26 A CASE WHERE WE PROVE EVERYTHING THROUGH INDIRECT AND

1 CIRCUMSTANTIAL EVIDENCE. AND EXAMPLE OF THAT IS, IF YOU WAKE
2 UP IN THE MORNING AND THERE'S SNOW ON THE GROUND, YOU KNOW IT
3 SNOWED. YOU DIDN'T SEE IT SNOWING, MAYBE THERE ISN'T A
4 PICTURE OF IT SNOWING, BUT WE KNOW IT SNOWED BECAUSE THERE'S
5 SNOW ON THE GROUND. OR IF THERE'S A JET STREAM FROM AN
6 AIRPLANE, WE KNOW AN AIRPLANE WENT BY EVEN THOUGH WE MAY HAVE
7 MISSED THE AIRPLANE. AND THE JUDGE WILL INSTRUCT YOU ON THE
8 LAW OF INDIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, AND THAT
9 IT CAN BE JUST AS POWERFUL AS DIRECT EVIDENCE.

10 AND THAT'S WHY WE'RE HERE, TO PUT THIS ALL TOGETHER
11 AS MEMBERS OF THE COMMUNITY AND FIGURE THIS OUT AND MAKE IT
12 RIGHT.

13 OFFICER VINSON WILL TESTIFY. HE'S THE OFFICER WHO
14 DETERMINED THERE WAS -- BECAUSE AT ONE POINT, JIM VON
15 NORMANN'S MOM, WHO WILL TESTIFY, SAYS, "SOMEBODY MUST HAVE
16 PUSHED MY SON OVER. I DON'T KNOW WHAT HAPPENED."

17 AND THERE'S A GENTLEMAN WHO -- THERE'S A STATEMENT
18 WHILE JIM VON NORMANN WAS RECOVERING FROM HIS BRAIN INJURY
19 THAT HE WROTE OUT TO THE POLICE SAYING THE LAST THING HE
20 REMEMBERS IS BEING OUTSIDE THE DOOR TALKING TO HIS FRIEND,
21 WHICH WAS ONE OF THE YOUNGER WORKERS IN THE MARKETING GROUP
22 THAT HE WAS MENTORING. HE SAYS, "I REMEMBER STEPPING OUTSIDE
23 AND CLOSING THE DOOR." THERE WERE SOME GIRLS THAT THEY WERE
24 HANGING OUT WITH. THEY'RE YOUNG GUYS. AND HE SAYS, "MAYBE
25 THERE WERE A COUPLE GIRLS IN THE HOTEL ROOM." HE DOESN'T
26 REMEMBER BECAUSE HE'S GOT THE AMNESIA PROBLEMS. HE GOES,

1 "BUT ONE OF THE MEMORIES I HAVE IS STEPPING OUTSIDE AND
2 THAT'S THE LAST MEMORY I HAVE IS JUST STANDING OUTSIDE AND
3 CLOSING THE DOOR." HE DOESN'T REMEMBER ANYTHING.

4 BUT THE OFFICERS CONCLUDED THAT THERE WERE -- THAT
5 THERE WERE NO WOUNDS. THEY DID A FULL INVESTIGATION, TOOK 47
6 INJURY PHOTOS, SAID THIS IS NOT AN CASE WHERE THERE WAS
7 ASSAULT, WHERE THERE WAS A FIGHT, WHERE THERE WAS AN
8 ALTERCATION OR ANYTHING LIKE THAT. THAT'S UNDISPUTED. THE
9 POLICE OFFICERS CONCLUDED AND RULED THAT OUT. AND THAT'S NOT
10 THE CASE. THERE'S ZERO EVIDENCE OF THAT. THERE'S ZERO
11 EVIDENCE THAT HE WAS SITTING ON THE BALCONY OR DANCING ON THE
12 BALCONY. THERE'S ZERO EVIDENCE OF THAT. THAT'S JUST
13 SPECULATION.

14 CHRIS JOHNSON. THE FIRST PERSON THAT CHRIS -- THE
15 LAST PERSON THAT -- AT ONE POINT, WHEN HE'S RECOVERING FROM
16 HIS BRAIN INJURY, JIM VON NORMANN, THE POLICE ARE
17 INVESTIGATING BECAUSE THEY NEED TO FIND OUT DID SOMEONE THROW
18 THIS GUY OFF THE BALCONY? MAYBE THERE WAS MONEY GONE IN HIS
19 POCKET. BUT YOU'LL HEAR THAT, YOU KNOW, THE MONEY THAT HE
20 HAD, BECAUSE HE WAS EARNING CASH DOING THE WORK THAT HE WAS
21 DOING WITH THIS MARKETING GROUP, THAT THEY FOUND -- THEY
22 LATER FOUND \$1,200 IN HIS BELONGINGS, IN HIS CLOTHES, THAT
23 WERE IN THE ROOM, IN ROOM 230. SO NOBODY TOOK ANY MONEY FROM
24 HIM. THERE'S ZERO EVIDENCE OF THAT.

25 BUT THE LAST PERSON HE REMEMBERS TALKING TO IS
26 CHRIS JOHNSON, BEING OUTSIDE, THIS YOUNG GUY, CHRIS JOHNSON.

1 WELL, IT TURNS OUT, FOLKS, AND PEOPLE THOUGHT, WELL, MAYBE
2 SINCE CHRIS JOHNSON WAS THE LAST PERSON HE REMEMBERS, CHRIS
3 JOHNSON HAD SOMETHING TO DO WITH HIM GOING OVER THE BALCONY.
4 CHRIS JOHNSON DIDN'T. CHRIS JOHNSON RODE TO THE HOSPITAL IN
5 THE AMBULANCE WITH HIM. CHRIS JOHNSON RODE TO THE HOSPITAL
6 IN THE AMBULANCE.

7 BUT ALL THESE KIDS WERE INSIDE PARTYING AND HANGING
8 OUT, AND JIM VON NORMANN WAS OUTSIDE, EITHER HAVING A SMOKE
9 OR WHATEVER, AND WENT OVER THAT BALCONY. NOBODY CAN TELL YOU
10 EXACTLY HOW IT HAPPENED. WE'RE GOING TO RECONSTRUCT THAT
11 WITH THE FORENSIC EXPERT. AND NOBODY CAN TELL YOU DIRECTLY,
12 EXACTLY HOW, BECAUSE THOSE VIDEO CAMERAS THAT WERE WATCHING,
13 RECORDINGS FROM THOSE HARD DRIVES DISAPPEARED AS WELL AS THE
14 MANAGER AT THE TIME WHO HAD CONTROL OF THOSE THING.

15 I THINK THE EVIDENCE WILL SHOW, AND YOUR COMMON
16 SENSE WILL SHOW, THAT THE REASON WHY THEY DISAPPEARED WAS
17 BECAUSE THOSE VIDEO CAMERAS WOULD HAVE SHOWN OTHER ACTIVITY
18 AT THAT HOTEL THAT WOULD HAVE GOTTEN MARIO IN TROUBLE.

19 THIS IS WHERE THEY SAY THE BLOOD EVIDENCE WAS FOUND
20 (INDICATING). YEAH, HE PROBABLY -- HE WAS BLEEDING ALL OVER
21 THE PLACE OUT OF HIS EARS WHEN SAT DOWN, AND HE'S THERE UP
22 AGAINST THE WALL, AND HE'S GOT BLOOD DRIPPING DOWN. BUT HE
23 FRACTURED HIS SKULL, BUT IT WASN'T AN OPEN HEAD WOUND.

24 THE BROKEN BONES DO NOT EQUAL BLEEDING SOMETIMES.
25 YOU CAN HAVE A BROKEN BONE, BROKEN ARM, AND IT'S NOT AN OPEN
26 WOUND. IT'S NOT -- THE BONE ISN'T STICKING OUT. YOU CAN

1 HAVE A BAD BREAK, A FRACTURE, BUT NO BLEEDING. AND HIS
2 FRACTURES IN HIS SKULL, THEY HAD BLEEDING, BUT THE BLEEDING,
3 EVERYTHING, WAS INSIDE THE BRAIN, CAME OUT HIS EARS. AND
4 THAT TAKES A WHILE WITH THE PRESSURE. SO IF HE'S ON THE
5 GROUND WHERE HE FELL AND THEN GETS OVER TO -- SOMEONE HELPS
6 AND HE GETS UP AGAINST A WALL, AND THEY FIND BLOOD UNDERNEATH
7 THE AWNING, THAT DOESN'T MEAN ANYTHING. THAT DOESN'T MEAN,
8 OH, THAT'S WHERE HE FELL, THAT'S WHERE IT ALL HAPPENED. SO
9 DON'T BE MISLEAD BY THAT. APPLY YOUR COMMON SENSE TO THAT.

10 WE ALL KNOW THAT, YOU KNOW, SOMEONE GETS HURT, THEY
11 MOVE TO A PLACE WHERE THEY CAN SIT UP AGAINST A WALL BECAUSE
12 HE WAS BLEEDING FROM, YOU KNOW, INSIDE. THAT EVIDENCE SHOWS,
13 SHOWS ANYTHING, THAT HE DID FALL.

14 THERE'S ZERO EVIDENCE THAT HE WAS PUSHED. ZERO
15 EVIDENCE THAT HE JUMPED. THIS GUY DIDN'T HAVE BROKEN LEGS.
16 ZERO EVIDENCE OF ANY ALTERCATION. THIS IS ALL RULED OUT BY
17 THE LOCAL POLICE DEPARTMENT, WHO DID A VERY THOROUGH
18 INVESTIGATION.

19 IT'S 100 PERCENT ESTABLISHED THAT THESE RAILINGS,
20 THIS DANGEROUS CONDITION, VIOLATE YOUR COMMUNITY SAFETY LAWS.
21 AND UNLESS WE GET TO THE SECOND PHASE OF THIS TRIAL, THEY
22 WALK OUT OF HERE WITH ZERO LIABILITY.

23 SO PLEASE LISTEN WITH OPEN MINDS, OPEN HEARTS, AS
24 HUMAN BEINGS. NOT ASKING YOU HERE FOR SYMPATHY. BUT PLEASE
25 DON'T HAVE ANY SYMPATHY FOR THE DEFENSE. LOOK AT THIS CASE
26 WITH YOUR COMMON SENSE AND YOUR HUMANITY AS MEMBERS OF THE

1 COMMUNITY, AND LET'S PIECE THIS ALTOGETHER. AND AT THE END
2 OF THE DAY, I'M GOING TO ASK YOU TO SAY THEY WERE NEGLIGENT,
3 THEY'RE A SUBSTANTIAL FACTOR IN CAUSING THIS FALL, AND
4 THEY'RE PARTIALLY, AT LEAST PARTIALLY, RESPONSIBLE FOR THIS.

5 JIM VON NORMANN ACCEPTS RESPONSIBILITY FOR HIS
6 BEING DRUNK AND HIS NOT BEING REASONABLY CAREFUL. AND HE'LL
7 LIVE WITH THOSE CONSEQUENCES FOR THE REST OF HIS LIFE. WE
8 WANT THEM TO SHARE THE BURDEN OF SOME OF THOSE CONSEQUENCES
9 FOR VIOLATING THE LAW.

10 AND I LOOK FORWARD TO BEING ABLE TO TELL YOU ALL
11 ABOUT JIM'S LIFE AND HOW IT'S CHANGED IN THE SECOND PART OF
12 THE TRIAL.

13 THANK YOU VERY MUCH FOR YOUR TIME.

14 (END OF REPORTER'S TRANSCRIPT.)
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1 REPORTER'S CERTIFICATE

2
3 I, STEPHEN B. KLINE, CSR 8164, OFFICIAL COURT REPORTER,
4 DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING REPORTER'S
5 TRANSCRIPT IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY
6 SHORTHAND NOTES OF THE TESTIMONY AND PROCEEDINGS IN THE CASE
7 ENTITLED JAMES R. VON NORMANN, AN INDIVIDUAL, PLAINTIFF,
8 VERSUS NEWPORT CHANNEL INN, NEWPORT CHANNEL INN, INC., ET AL,
9 DEFENDANTS; CASE NUMBER 30-2010-00423312.

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15  CSR 8164
16 STEPHEN B. KLINE
17 OFFICIAL COURT REPORTER

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23 DATED: JULY 6, 2012
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