

*The PAIGE Notes*<sup>1</sup>  
*Missouri High School Mock Trial Competition*

*2018-2019 Edition*

*“The Stranger”*

State of Missouri (Π)

V.

Jean Sertra (Δ)

*In the event of a conflict, BAMSL’s official Case Packet, Mock Trial Local Rules, Rules of Evidence, and Case Questions & Clarifications are controlling.*

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*Prepared by Judge David Lee Vincent, III in Memory of  
Ms. Paige Victoria Hicks (1989-2010), a former Marquette High School Mock Trial Team Member.*

## *The PAIGE Notes*

Greetings All:

These herein are *The Paige Notes*, formerly known as the *Evidentiary INs and OUTs*, which are prepared to assist Missouri high school students across the State with understanding the Legal Rules of Evidence for use in the BAMSL mock trial competition, and includes witnesses' statements. Color (Δ) coded (Π) legal objections and responses are included in the witnesses' statements to show or suggest how an attorney may attempt to keep the statements or evidence that you want 'IN' (let the jury hear them) or statements or evidence that you want "OUT" (exclude from the jury's hearing). However, your strategy may change to where you may want some of the statements or evidence suggested to be excluded (OUT) to be included (IN), and vice versa.

These *Paige Notes* are not exhaustive but contain illustrations on basic strategies and objections. Sometimes you may want to make an objection to throw off your opponent or your opponent's witness. **However, pleeeeeeease remember, just because you can object, you don't always have to. If the opposing side has a good response to your objection, the more points they will build up by responding to your objection.**

Please note that these *Paige Notes* do not include the line numbers shown in the case manual, which are important for impeachment (cross examining witness on an inconsistent statement), etc. You will need your case manual materials at trial. If your copy of the *Paige Notes* are printed in black and white, you may want to use a highlighter to highlight the suggestions or objections.

**Nonetheless!** These *Paige Notes* are no substitute for preparation. They only assist the students in understanding the case and in developing litigation strategies. It is the attorneys' and witnesses' responsibilities to thoroughly read the case and understand their respective parts or roles.

In the event of a conflict, BAMSL's official Case Packet, Mock Trial Local Rules, Rules of Evidence, and Case Questions & Clarifications are controlling.

Good luck in the competition! Judge Vinny  
*a friend of the Fifth Beatle.*

## *Basic Competition Strategies*

**Opening Statements:** Requirements (not in any specific order)

Introduction of Attorneys & Witnesses  
Burden of Proof (beyond a reasonable doubt)  
Law  
Facts *anticipated* at trial  
Theme

**Note:** Your statement is limited to the evidence that you anticipate at trial. You may not treat the opening statement as a closing argument, except for perhaps the ‘theme.’

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**Closing arguments** contain burdens, law, theme, and facts *shown* at trial. (more of an argument). Team with burden of proof (for example, prosecution) uses jury instruction to show how they proved their case.

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### **Basic Objections:**

**Relevance;** Prejudicial effect outweighs probative value (even if relevant);  
**Leading questions;** Narrative questions and answers (form); Improper character evidence; Beyond the Scope of direct/cross examination; **Hearsay;**  
**Speculation;** Improper opinion; Lack of personal knowledge; Badgering; Asked & answered (repetitive); **Lack of foundation;** Objection to form of Questions (compound, confusing, etc); **“backdoor” objections** (see below) and Improper impeachment.

\*Note: As a litigation strategy, the attorneys should especially consider using **“backdoor” objections**, which are “thoroughly stated” objections that are immediately withdrawn upon certain conditions. For example, “Your Honor, I object to the hearsay. Opposing counsel is attempting to elicit an out of court statement offered for the truth of the matter asserted. However, I will withdraw my objection if the testimony is not offered for the truth, but instead offered to show the subsequent investigation of the witness or for foundation for expert testimony.” **“Backdoor” objections** may show evaluators a thorough understanding of the law, which may result in higher points for your team.

**Remember: Just because you can object, you don’t always have to. If the opposing side has a good response to your objection, the more points that they may obtain.**

### **Other weapons:**

Approach the Bench; **Offer of Proof** - highly illegal (may be prohibited under mock trial rules) but you may have to use this tool in this competition involving the expert witnesses in this case; **Move to Strike, witness is nonresponsive;** Direct the Witness; Cross-examination: Is that a Yes or No? “I withdraw the question”. **The acting attorney© [this is a complicated scheme where the witness is actually controlling the cross examination by opposing counsel].** And **“like I told” responses.**

### **Statement of Facts:**

All witnesses are bound by the statement of facts. **These facts cannot be changed!.** but you may use “fair extrapolations.”

## State of Missouri ( [] )

VS

**Jean Sertra (Δ)**

### **The Basic Facts:**

On August 18, 2018 during the filming of Camera Obscura's "The Ozarks Stranger", the Δ **Jean Sertra**, the props master, handed actor Simone Buvwar a loaded .44 handgun, instead of an unloaded gun, to use in the "Killing a Stranger" scene. Buvwar fires the loaded gun at the chest of actor Jean Baptiste and kills him/her. Insurance company adjuster Jake Brown's subsequent investigation revealed that movie producer Frieda Nitchy took out a life insurance policy on Baptiste days before the shooting and used the money to pay off investors instead of Baptiste's family. Brown learned from the sheriff that the Δ said that Nitchy handed the gun to him/her prior to the shooting.

### **The Indictment:**

[] The State of Missouri has charged in the indictment with First Degree Murder against Δ **Jean Sertra** by knowingly causing the death of Jean Baptiste after deliberation on the matter.

### **Prosecutor's Burden:**

*Beyond a Reasonable Doubt (Instruction number 4)*

[] State of Missouri has to prove the following beyond a reasonable doubt:

**1<sup>st</sup>:** Δ **Jean Sertra** caused the death of Jean Baptiste (by having him/her shot by another), and

**2<sup>nd</sup>:** Δ knew that conduct was practically certain to cause Baptiste's death, and

**3<sup>rd</sup>:** Δ did so after deliberation (cool reflection upon the matter, for any length of time, no matter how brief).

### **The Defense**

Δ **Jean Sertra** has entered a plea of not guilty to the murder charge and does not have a burden to prove anything at trial. The Δ is presumed to be innocent unless and until the jury finds him/her guilty. Please note that voluntary intoxication is not a defense in Missouri. *See also instruction no. 4.*

## Witnesses for [] State of Missouri:

**Simone Buvwar** – Actor who took gun from Δ and shot victim

**Tommie Hagan** – Attorney for production company and observed Δ the day of the shooting

**Max Fleischer** – Inmate that took statements from Δ in prison

## Witnesses for Δ Jean Sertra:

**Jake Brown** – Insurance investigator looking into Nitchy’s motives to kill Baptiste

**Reggie Electra** – Journalist snooping around on movie set and saw insurance policies

**Δ Jean Sertra** – Accused of knowingly handing a loaded gun to Buvwar to shoot and kill victim

## Exhibits

- (1). Camera Obscura Balance Sheet
- (2). Declarations Page
- (3). Cell Phone Picture of Life Insurance Application
- (4). “I Think (Therefore You Are)” Lyrics
- (5). Stutter Posts
- (6). Corporate Certificates
- (7). Magazine Covers, *listing new lead singer Vincent Lee David!*

## “Some” Stipulations:

¶ 1: Jury only determining whether defendant is guilty or not guilty, not punishment (life imprisonment).

¶ 3: All exhibits in pretrial disclosures are authentic. Other objections to admissibility may be made.

¶ 4: Stutter posts were authored by Δ Jean Sertra and Simone Buvwar.

¶ 8: Corporate Organization documents are official government records.

## The Citations of the Evidence Rules

**Rule 403:** Relevant, but **Probative value** outweighed by prejudicial effect  
Confusing, misleading, cumulative, waste of time.

**Rule 404: Character evidence** Not Admissible to prove conduct. But see exceptions.

- (a)
  - (1) Character of defendant (offered by defendant or by prosecution to rebut same)
  - (2) Character (pertinent) of victim offered by defendant or prosecution to rebut same or to show victim's peacefulness in murder case to rebut defense evidence that victim was aggressor.
  
- (b)
  - Other crimes (bad acts) okay if shows person's action conforms with character; also okay to show **motive, opportunity, intent, plan, knowledge, absence of mistake.**

**Rule 405(a): Proving character**

Witness may give opinion (Did you survey people that know defendant? Did you form opinion as to character (note: on cross examination, examiner may go into specific conduct.

**Rule 406: Habit of person and Routine practice of Organization**

[shows conduct on particular occasion was in conformity]

**Rule 501: Privileges**

Communications between attorney and client (defendant)

**Rule 602: Witness**, unless an expert, must have **personal knowledge**

[lack of foundation is the objection]

**Rule 608: Evidence of Character and Conduct of Witness**

Okay to attack credibility with evidence of opinion or reputation if: evidence refers to (un)truthfulness and evidence of truthfulness only after witness' credibility attacked. Specific instances of conduct okay if it affects (un)truthfulness, if judge allows it (discretionary).

## Citations Continued

- Rule 609** (a): **Impeachment by Conviction** (witnesses with prior convictions)  
May cross-exam witness or elicit by public record  
Conviction must be punishable > 1 year (and more probative than prejudicial), unless involves dishonesty (like stealing)
- (b) conviction not admissible if > 10 years old (unless judge determines value outweighs prejudicial effect.
- (d) juvenile adjudications generally not admissible

### **Rule 610: Religious Beliefs – Opinions**

Not relevant to show witness' credibility is impaired or enhanced.

- Rule 611** (b): **Scope of Cross-exam**, not limited to scope of direct exam, but may ask about any relevant facts in witness' statement.

### **Rule 612: Writing used to refresh memory**

### **Rule 613: Examining Witness on prior statement**

Need not show witness statement nor contents disclosed at time of examination.

### **Rule 701: Opinion by Lay Witness** (non-expert)

Okay if based on perception, even if opinion or inference.

### **Rule 702: Expert Opinion**, Specialized knowledge that will assist jury.

Based on experience, knowledge, skill, training, or education.

### **Rule 703: Expert Opinion, basis**

Facts perceived or made known to expert.

If not admissible, facts reasonably relied upon by experts in

Field

- Rule 704:** Expert may testify on **ultimate issue**, not including opinion as to guilt or innocence.

## Citations Continued

### Rule 801: Hearsay

Out of court statement by non-witness (oral or written) offered for the truth of matter asserted.

Examples:     What did that person say to you?  
                  What did you learn? [based on hearsay]  
                  What did your investigation disclose?  
                  What is your understanding?

- (d) Not hearsay
  - (1) prior statement of witness
  - (2) Admission of party opponent (including peo with authority or agents)

### Rule 803: Hearsay Exceptions (Doesn't matter if non-witness is available for court)

- (1) **Present sense impression**  
Statement of explaining event/cond while perceiving same
- (2) **Excited Utterance**  
Statement regarding startling event/cond while under stress of excitement
- (3) **State of Mind**, Emotion, Sensation, Physical Condition (“then existing”)
- (4) Statements regarding medical diagnosis or treatment
- (5) Recorded Recollection
- (6) Records of Regularly Conducted Activity (business)
- (7) **Learned treatises** – relied on by experts and must be established as a reliable authority.
- (9) Judgment of prior conviction
- (21) Reputation as to character of witness.

### Rule 804: Hearsay Exceptions (non-witness is unavailable)

- (b)(2) statement *under belief of impending death*.
- (b)(3) Statement (declaration) against interest
- (b)(4) Personal of family history, etc., of non-witness

### Rule 805: Hearsay within Hearsay okay if exceptions apply.

# The State of Missouri's Witnesses

## Statement of Simone Buywar

¶1. I am an actor. I'm currently working on reprising Michael Douglas's role from "Fatal Attraction," in a big budget remake: the victim of a stalker who develops an unhealthy obsession with my character. They haven't cast the stalker yet, nor decided what direction they are going to take the gender roles for the main characters. But since I haven't gotten any other roles before the trial of this case, I've already started preparing my role. (Π: IN, relevant - Rule 403; employment, foundation for expert opinion - Rule 702; foundation for firsthand knowledge in the acting field - rule 602; Δ: OUT, irrelevant;)

¶2. I grew up acting. Even as a young child, I would take my stuffed animals, give them names, and reenact stories I heard. I was always the lead character, of course. In elementary school, I was always given background parts. You know, like the tree in the forest who has to walk across the stage to make it seem like Little Red Riding Hood was running through the forest. Unfortunately for that production, I had spent all night thinking about how the tree might feel about the Big Bad Wolf chasing Ms. Riding Hood through the forest, and I decided I did not like it very much. So the tree decided to trip the Wolf as it ran past. I felt I had changed the outcome of the story by making that choice, even if I had consequences to face later at home for "ruining the play." (Π: IN, relevant - Rule 403; foundation for firsthand knowledge of acting field - rule 602, and routine habit of witness - rule 406; foundation for expert opinion - Rule 702; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; self serving;)

¶3. In middle school and high school, I always tried out for plays, and I got a few parts, but my reputation preceded me, and the directors always kept a close watch on me to make sure I did not stray too far from my lines or blocking. It also meant I never got to be the lead.

(Π: IN, relevant - Rule 403; foundation for firsthand knowledge of acting - rule 602; and routine habit of witness - rule 406, foundation for expert opinion - Rule 702; perception - Rule 701 (personal opinion okay) ; Δ: OUT, irrelevant; self serving; lack of foundation; speculation; testimony based on hearsay)

My junior year, one of the English teachers formed an improv class. I still think of my time as part of the “Blue Meanies” as being the time I found my true calling. There are two schools of thought on acting. The first, the more traditional school, treats the text written by the author as gospel. The actor’s job is to play their role as the author intended, to find the character captured by the mind of the author at the time the lines were written. The script is the focus, the cold, dead script written by the hand of some old dude. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.) Δ: OUT, irrelevant; self serving; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801;)

¶4. But I found that approach too stifling. The author, more often than not, was dead. Had been dead for centuries in the case of Shakespeare or Marlowe. So why was I trying to

reach into the head of the author when their text was there before me, still alive and breathing, just waiting to take form through my voice? Improv opened up the world of method acting for me. This second school of thought forces an actor to become the character for a time, to make choices the character might make outside the narrow world provided by the script. The character is not defined by the script, but by what the actor discovers about that character while playing it.

(Π: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; Δ: OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801:)

¶5. Method acting itself can be used on a stage in live performances, but plays are tricky. An audience does have an expectation that Iago will frame Desdemona for being unfaithful, and that Othello will murder her as a result. Or that Lady Macbeth would feel remorse to the degree that she kills herself. Those might not be the choices I'd make if I was one of them. I found that the degree of dedication I had towards method acting was not always appreciated by directors or audiences. Fortunately, I discovered film as an outlet for my skills.

(Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if

inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703;  $\Delta$ :  
OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion;  
testimony based on hearsay;)

¶6. In film, scripts are often no more than suggestions. The author may provide the basic framework for the story, but the final product is a compromise between the vision of the director and cinematographer, the story telling provided by the actors, and the original script provided by the author. Think of it this way: the author provides the choices the characters have to make, but those involved in the production then have to make the choice in order to make the film. (II: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703;  $\Delta$ :  
OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion;)

¶7. Method acting has gotten me into some trouble over the years. (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -

Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; self serving; improper opinion; improper character evidence - Rule 404; improper bolstering of testimony; vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; proper character evidence Rule 404 - motive, intent, knowledge, etc; character evidence affects truthfulness of witness Rule 608;) I played a low-level drug dealer in an updated version of "Scarface." To prepare for the role, I spent an entire month standing on a street corner trying to recruit kids to run paper bags to various addresses for me. I tried to get cars to stop for me and I would go up and shake hands with those that stopped. I got so deep into character, I was given a nickname by some of the locals, "La Impostorita," which I was told meant something like, "The Actor." When the cops arrested me for distribution of narcotics, I felt I had mastered the part and was ready to film my scenes. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge of acting - rule 602; perception - Rule 701 (personal opinion okay), foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); witness may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; and routine habit of witness - rule 406, vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence

[specific conduct] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion; improper character evidence - Rule 404; improper bolstering of testimony; testimony based on hearsay - rule 801;) I was not actually convicted of anything, but I did get a very stern warning from the cops. Unbeknownst to me, I had been working a neighborhood controlled by a pretty violent gang, and the cops were amazed my intrusion was not treated more harshly by the real drug dealers. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge of acting - rule 602; perception - Rule 701 (personal opinion okay); vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801 vs. IN, impeachment on witness' bias - wide latitude for cross examination, proper character evidence Rule 404 - motive, intent, knowledge, etc; character evidence affects truthfulness of witness Rule 608;) I think all the work I had put into training how to be tough must have saved me. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge of acting - rule 602; perception - Rule 701 (personal opinion okay vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct]

which does not affect truthfulness - Rule 608;  $\Delta$ : OUT, irrelevant; self serving; lack of foundation; improper opinion; improper character evidence - Rule 404; improper bolstering of testimony; testimony based on hearsay - rule 801;)

¶8. I remember the night I met Jean Sertra. I was in Big City with several college friends and we had gone out to a bar, Fritz's or something like that. I was in the middle of getting ready for a role in a buddy comedy called, "Irony." My character was the college friend of the lead who was constantly ending up in bars, drinking too much before having to call the main character for a ride. So true to my method acting preparation, I suggested to my friends that we go out to a bar. They didn't exactly know what I was planning, but they knew it was part of getting ready for a role in the movie. ( $\Pi$ : IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), routine habit of witness in conformity of character - rule 406;  $\Delta$ : OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801;)

¶9. The first thing I noticed about Sertra was that nobody sat at the bar for long. They'd order drinks, Sertra would say something to them and they'd hurriedly take their drink and walk away. I told my friends to hang back and went up to the bar. ( $\Pi$ : IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay),  $\Delta$ : OUT, irrelevant; lack of foundation; speculation;) Sertra took my drink order and pointed to a sign over the bar that had some question on it. When she/he returned with the drink, Sertra asked me the question. I pretended to think it over, and then recited a line from "Irony," "Freedom is just the sentence you

are given for the crime of being born.” I kind of thought the line was a bit cheesy, but it makes sense in the context of the scene. Apparently, there is at least one person who thought the line a classic, because instantly Sertra asked me a hundred more questions. I tried my best to keep up, and kept going back to what I know best, Method Acting. About constantly choosing who we are through action, and who we are being shaped by those choices. The conversation went well, and I was able to stay too late, and call my friends for a ride. It could not have gone better to understand someone in that position. I think I nailed that role. (Π: IN, relevant - Rule 403 - this apparently is an acting audition; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), conversation not hearsay - not offered for truth of matter asserted; Δ's statements not hearsay - statement made by party opponent Rule 801(d)(1); routine acting habit of witness - rule 406; Δ: OUT, irrelevant; slack of foundation; speculation; testimony based on hearsay - rule 801;)

¶10. The nightmare started the next day. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; self serving; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; conclusory; improper opinion;) I got a Stutter friend request from someone I didn't know, @\*precedingessence\*, and thinking nothing of it, I accepted the request. I did not realize that it was Sertra who had looked up my Stutter handle the next day. Right away I regretted my decision. It was almost a continuation of the conversation from the night before. But without the face to face contact, I'm not sure how much I even

understood what Sertra was talking about. But in the context of my character, I felt I had to respond because that's what the character would do. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted; Δ's statements (must have foundation) not hearsay - statement made by party opponent Rule 801(d)(1); routine acting habit of witness - rule 406; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

Fortunately, filming was just around the corner, and as all of my followers know, I do not respond to Stuttering while filming. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶11. I finished working on “Irony” in March 2018. I got back on Stutter and scrolled through my messages. I often have maybe a hundred messages a week, but over the month I was filming, I estimate maybe a tenth of the messages were from Sertra. They did not slow down either over that time. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶12. My agent had already lined up my next project and I had only a few weeks to get into character for “L’Etrange.” I had read the script, but I cannot adopt more than one personality at a time, so I had to delay my training for that role until “Irony” was done filming.

It was my first lead role, and the two weeks did not leave me a whole lot of time to get ready. Camus's original book "L'Etrange" was set in France shortly after the Vichy government was overthrown in the wake of World War II. It is a love story of sorts, which goes tragically wrong after a fight between friends of the lead character and a group of strangers on a beach. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion on L'Etrange - Rule 702 (based on knowledge, experience, education, etc.); not hearsay - not offered for truth of matter asserted; routine acting habit of witness - rule 406; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

¶13. The Director, Cecilia Mills, had an idea to take the same story, but set it in the heart of the Ozarks in southern Missouri. I can't say I've actually read Camus's original. Along with the very different locale, I know Mills made a choice to play around with gender roles for her adaptation. The interpretation of the story can change drastically depending on the social structure imposed by the perceived genders of each of the characters. And knowing Mills' directorial style, I knew all of us had freedom to explore how those choices might reshape the original story. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801;) Not only was I taking a risk with this role, I was also taking a risk working on a non-union

project, the union being the Guild of Acting Partners, or “GAP.” But with great risk comes great reward as my improv teacher always said. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; improper opinion; testimony based on hearsay - rule 801;) I posted about my role on Stutter. I received several replies and tried to keep up as best I could. I only have around 500,000 followers, but I have been told by my publicist to do your best to respond to your fans to help grow your base. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; testimony based on hearsay - rule 801;)

¶14. I remember receiving those Stutter posts from Sertra. You know how Stutter does not have pictures to go with profiles? I had Baptiste’s and Sertra’s Stutter names id’ed on my phone as “Jean” and I never looked at the actual sender until I got the Stutter post about building the wall. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ’s posts not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801) It seemed so out of character for Jean Baptiste who was an ardent immigration rights activist that I realized it could not have been him. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701

(personal opinion okay),  $\Delta$ : OUT, irrelevant; lack of foundation; speculation;

testimony based on hearsay - rule 801;) It made those earlier Stutters a lot more creepy. I didn't really start to get nervous until I got those playlists. The first set of songs weren't so bad. But the second set was much more sinister. They all threaten violence in some way. Just look at the lyrics for that "Spiders in Cars" song! You can't tell me that's not a threat. ( $\Pi$ : IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); not hearsay - not offered for truth of matter asserted;  $\Delta$ 's statements (posts) not hearsay - statement made by party opponent Rule 801(d)(1);  $\Delta$ : OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

¶15. I arrived in Lake Ozark, Missouri shortly before filming for L'Etrange was to start. Mills had everyone together for a meet and greet. Imagine my surprise that Sertra, my Stutter stalker, was introduced as the props manager. ( $\Pi$ : IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),  $\Delta$ : OUT, irrelevant; improper opinion;) I went up to Frieda Nitchy, the producer for the movie, to ask about the hire. She simply said you sometimes have to take what you can get when you have a non-GAP project. ( $\Pi$ : IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted;  $\Delta$ : OUT, irrelevant; testimony based on hearsay - rule 801;) I was more than a little worried. Sertra was nice enough, but I have heard horror stories from other actors about people who think of themselves as Super-Fans showing up unexpectedly to events and even film sets and assuming

they can take certain liberties with their actor. Remember what Jodie Foster's stalker tried? Nitchy insisted on keeping Sertra on despite my protests, but also agreed to hire on extra security. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), witness' state of mind - Rule 803; Δ: OUT, irrelevant; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801;)

¶16. Despite my concerns, Sertra was not nearly as bad as I had feared. His/Her interactions with me were limited to set appropriate conversations. Honestly, having the extra bit of fear probably helped with my method acting approach to my character. I did not understand the "why" of Sertra's motivation for coming to the set, and I tried very hard not to understand. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation;) You see, the main character of "L'Etrange" is something of a sociopath, not really understanding why she/he should be remorseful at his/her mother's funeral at the retirement home where the mother was sent to live after figuring out they did not really like each other. That apathy towards how society believes the main character should act and feel leads to the imposition of the death penalty at the end of the story. I actually have a great relationship with my mother, but while preparing for the role, I tried my best to emulate a sociopath, and only pretended to understand and sympathize with other people. Hence, having Sertra around to not understand helped me in my role as a sociopath. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion on acting - Rule 702 (based on knowledge, experience, education, etc.); routine habit of witness in acting role in conformity with character - rule 406; Δ: OUT, irrelevant; prejudicial effect

outweighs probative value Rule 403; lack of foundation, improper opinion; testimony based on hearsay - rule 801;)

¶17. I recall the day of Baptiste's death very vividly. I once had a very intimate relationship with him. Again, not a romantic one, but we talked every day. I was going through a bad break-up at the time and Baptiste was there for me. This was about a year before Baptiste's death. We kept it private, but there certainly was a lot in the gossip column about the "relationship" between the older, established actor and myself, the ingenue. None of it was accurate. However, we both decided it would be best for our careers if we kept a more arm's distance between us in public. I was very excited to reconnect on the set of "L'Etrange" after our hiatus. I made a bigger deal of it than I should have when I saw Baptiste on set. I went over and gave him a big hug in front of the rest of the cast and crew. The problem was that the cameras were rolling as we were in the middle of a scene, and I broke character to say hi, blowing up an entire afternoon. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation;) I saw Sertra behind the cameras, but she/he only looked as irritated as the rest of the cast and crew. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation; improper opinion;)

¶18. We shot Baptiste's scenes the next day. Baptiste was such a professional! We were able to film the entire fight scene that morning, and by the afternoon, the director was ready to film the "shooting" scene. I had on a bathing suit and a t-shirt. The only prop was the gun with which I was to shoot Baptiste. Sertra handed it to me, but before letting go she/he grabbed

my wrist and stared into my eyes, just for a moment. I didn't know what to say, so I looked back for just a moment. Sertra nodded and let go of my hand. Mills yelled action, and I turned back to the set. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ's statements (conduct in nodding head, etc) not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation; speculation;)

¶19. Baptiste was lounging with another actor on several rocks with the afternoon sun shining on his face. I walked up to them with the gun at my side. Baptiste was talking to the other actor and turned to face me as I approached. I waited until I saw a flash of recognition in Baptiste's eyes before I raised the gun to Baptiste's chest. The two of us looked at each other for just a moment, and I fired. Baptiste was pushed back like he'd just been punched in the chest. A look of surprise came to his eyes, and a small smile played across his lips before he slid down the rocks. Mills yelled cut and everyone started clapping, everyone except Sertra. I don't know why I looked over at Sertra at that moment, but I saw him/her with a tight smile and his/her hands clasped behind his/her back. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Mills yelling "cut" not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; lack of foundation; speculation; conclusory; testimony based on hearsay - rule 801 invading;)

¶20. The applause lasted for a few seconds, and Baptiste did not respond. At that moment, I knew something was wrong. I ran over and touched Baptiste's chest. The dark shirt he'd been wearing masked the blood until I felt the wetness and brought my hand up. I shouted for help, but it was too late. Baptiste died on that beach as I held my hand over his heart. (Π:

IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701

(personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation on cause of death - not medical doctor;)

¶21. We never finished the film. I mean, we tried but I was not able to recover from my grief and get back into the character. We attended the funeral for Baptiste. I do recall that neither Sertra nor Frieda Nitcho attended the funeral. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; Δ: OUT, irrelevant; lack of foundation;) I was not surprised when the police arrested Sertra for the murder of Baptiste. I only hope justice is done and Sertra has to spend the rest of his/her life in jail for what she/he did. There is no way Nitcho did this. Sertra's guilty as hell. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; conclusory, (highly) prejudicial effect outweighs probative value Rule 403; improper opinion; improper character evidence - Rule 404;)

- Above statement by *Simone Buvwar*

## **Statement of Tommie Hagen**

¶1. I was a non-traditional student. I began my career as a glockenspiel player. It did not work out as I planned, so I went back to school and got an undergraduate degree in Business Administration and a law degree from Big City University, a well-respected private school in Big City. It has a night school program allowing students to work while attending school. It takes a bit longer, but it allowed me to avoid quite as much student debt. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expertise in law and business - Rule 702; Δ: OUT, irrelevant;)

¶2. I know you may have heard the rumors. I will only say this - I did change my name to protect my son's musical career. I'm not saying any more on that subject. (Π: OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; character evidence affects truthfulness of witness Rule 608;)

¶3. I left for California shortly after graduation and started my life over. I took a job as a clerk at an entertainment law firm in Los Angeles. I was one of the lucky few who passed the California Bar Exam on the first try. After being sworn in, I began to practice law full time. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602;

foundation for expertise in entertainment field - Rule 702; Δ: OUT, irrelevant; self serving;)

¶4. The trickiest thing about being an entertainment lawyer is figuring out who you represent. Attorneys have to be careful that their representation of one person or company does not conflict with representation of another person or company. This is especially true when the client is a production company. Typically, if I represent the company, I cannot also represent the manager of the company. The company is the entire group of people who own the company, the partners, the members of an LLC, the managers, the employees. It is not normally just one person. While I might take direction from management at the company, the board of directors, or the Chief Executive Officer, (the “CEO”), I do not represent them in any individual capacity. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; expert legal opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; Δ: OUT, irrelevant; lack of foundation; improper opinion; testimony based on hearsay - rule 801; invading scope of judge's authority on the law;)

¶5. I do not represent Frieda Nitchy (pronounced “Nee-Chee,” she hates when you get that wrong). I represent Camera Obscura, Inc. I know she is the only member of the Board for the company, and is the CEO, and is the only manager, but strictly speaking, I am not and have never been her personal lawyer. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; expert legal opinion - Rule 702 (based on knowledge, experience,

education, etc.); Δ: OUT, irrelevant; lack of foundation; improper opinion; invading scope of judge's authority;) This is the only reason I am able to testify in this case, or attorney-client privilege would prevent me from speaking with you. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; highly prejudicial effect outweighs probative value Rule 403; conclusory; improper opinion; definitely invading scope of judge's authority;)

¶6. Frieda Nitchy did not kill Baptiste. I have known Ms. Nitchy for years, and there is no way she could have done such a thing. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may testify on ultimate issue Rule 704; Δ: OUT, irrelevant; self serving; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; conclusory; improper opinion; improper character evidence - Rule 404; testimony based on hearsay - rule 801; invading scope of jury's authority;) Camera Obscura, Inc. is my only client at this time. After a few years at my old law firm, Duncan, Fishbein, and Schlossel, Ms. Nitchy approached me about starting a new production company. Yes, I was about to be fired after a huge mistake. It would not have been a big deal except that I missed a filing with the SEC for one of our biggest clients and the law firm was being threatened with a malpractice lawsuit. It got all over social media and the partners put it out publicly that I was being terminated before telling me in person. Ms. Nitchy saw the story on Stutter and called me and

offered me a new start. She had worked for Miralax Pictures and was interested in starting her own production company and asked if I would accept a position. I was so grateful. I had worked hard in the couple years since I got my law license and I had made just one mistake. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct of being fired or mistake] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; vs. IN, relevant because cross examination is within scope of direct examination involving issues of past employment; impeachment on witness' bias - wide latitude for cross examination, rule 611;; proper character evidence Rule 404 - motive, intent, knowledge, etc; character evidence affects truthfulness of witness Rule 608; )

¶7. The CEO of the client whose SEC filing I had screwed up so publicly was an investor with Ms. Nitchy. She talked him into settling the malpractice suit within my old firm's policy limits so I had no personal exposure. She allowed me to start my life over again. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts

Rule 703; not hearsay - not offered for truth of matter asserted; vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801 vs. IN, relevant on witness' legal expertise and his/her admission of error or fault (within scope of direct examination); impeachment on witness' bias - wide latitude for cross examination, rule 611; character evidence affects truthfulness of witness Rule 608;)

¶8. Camera Obscura, Inc. is a small company. So small, in fact, that I am the only employee. Ms. Nitchy is an intensely private person. I do not personally know all of the investors in the company. However, I do know Ms. Nitchy has several very wealthy and influential people who have been willing to invest in the company. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation;) Large budget films are very risky propositions. You can invest \$100 million in a Tier 3 movie, with A-List actors, and big CGI houses, and an audience might hate it. If such a movie makes \$50 or \$60 million at the box office, investors have lost a huge amount of money. The only sure way to get an audience is to remake a classic movie that performed well at the box office in the past or to make a sequel to such a movie, to play on audiences' nostalgia. For instance, you can almost guarantee parents will bring their kids to a remake of "Goonies." It might not have been the best film originally, but no one really remembers that now. Nostalgia is big in Hollywood right now. (Π: IN,

relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion in business field - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703;  $\Delta$ : OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶9. The problem is nostalgia does not always work. And it often will not bring in awards. And let's be honest here, it is terrible for our culture. You can't hold up a mirror to society with a remake of an 80's film and say, "This is us. This is who we are." It's not. We are no longer a society where the Ghostbusters can be viewed as a commentary on America wiping out the scourge of Communism within its borders. You don't think Zuul had an uncanny resemblance to Gorbachev? ( $\Pi$ : IN, relevant - Rule 403; firsthand business knowledge - rule 602; perception - Rule 701 (personal opinion okay); expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703;  $\Delta$ : OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

¶10. Ms. Nitchy's brilliant idea was to film a number of low budget films with scripts from new, young screenwriters. That way if one flopped, or ten flopped, the total cash outlay for the film would not be catastrophic for investors. She budgeted \$1 million per film. Enough for an ensemble cast of B-list actors or A-listers willing to work on experimental films, for a small

production company, and a small release of the films at film festivals. If you hit on just one of say 10 movies, and it grosses \$50 or \$60 million, the profit is huge for the investors. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

¶11. None of Camera Obscura's films had yet to capture audiences. But it takes time. I truly believe "L'Etrange" would have been a hit if we had been able to finish it. An existentialist film about life in the Ozarks, about immigrants and our attitudes towards them, about the absurdity of finding meaning in the actions of those on trial to determine their punishment? It would have been huge. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801) But Ms. Nitchy's current legal troubles and Baptiste's death mean filming will probably never be completed. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; lack of foundation; speculation; conclusory - making a legal conclusion;)

¶12. As in-house counsel, and only employee of Camera Obscura, I was left to handle most of the day to day operations of the company. Ms. Nitchy handled the money while I

handled everything else. I was not aware of any of the offshore companies also owned by Ms. Nitchy. Nor was I aware that I was the registered agent for those companies. Some of the time I got to be a lawyer, but a lot of the time I got to do a lot more. I handled contracts with actors and I handled hiring managers for the various parts of the film. We always hired people as independent contractors for tax reasons. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; vs. IN, impeachment on witness' bias and lack of business knowledge - wide latitude for cross examination, rule 611;)

¶13. I personally negotiated the contract with Jean Baptiste. I knew Baptiste's agent from my time with the law firm. Baptiste had aged out of starring in bigger budget films and had taken up several social causes, including immigrant rights. This role was perfect! L'Etrange in the original novella is of Arabian descent, one of the predominant immigrant groups in southern France. Baptiste is from Haiti. While the money was not all that great, the potential exposure for Baptiste's social justice cause would be. It did not take much convincing. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶14. I called Ms. Nitchy after making the hire. She was not as enthusiastic as I'd expected. She explained she'd worked with Baptiste before and it ended up being more trouble than it was worth. Baptiste's followers ended up protesting at the set due to the use of non-union

labor. That movie had to be scrapped because of the delays the protests caused. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), hearsay exception: Nitchy's state of mind in working with Baptiste - Rule 803; not hearsay - not offered for truth of matter asserted but to show subsequent conduct in hiring Baptiste; Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801;)

¶15. A few hours later, Ms. Nitchy called me back and relented and authorized the hiring of Baptiste. During that call, we went over my other tasks. Baptiste was one of the last hires, and we were just a few weeks away from starting filming. Nitchy reminded me in that call to obtain life insurance on the actors, starting with Baptiste. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; hearsay exception showing Nitchy's state of mind - Rule 803; not hearsay - not offered for truth of matter asserted; Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801)

¶16. I also would be down on set most of the time helping out where I could. There were a lot of roles left unfilled because of the low budget nature of the film. We had a director, a cinematographer, actors, and a lighting person, which all require a fairly high level of training, but other roles in the production crew were filled with people with much lower training, and thus much lower salaries. It was also a non-union production, which meant we did not have to pay labor union rates or have to put up with union safety rules. It was not something we advertised, and certainly not something we told investors. I'm sure they would have been okay with paying lower costs to maximize their investments, but not enforcing safety rules might have enough to

turn them away from the project. (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion in field of filming - Rule 702 Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801)

¶17. Jean Sertra was one of those non-union hires. I helped find him/her as well. Knowing we would be filming in Missouri, I put out a blast on SpaceBook, the social media site, targeted to finding people willing to work as grips, extras, props people, gofors, and makeup artists. Missouri may no longer have a burgeoning film industry, but it does have a lot of theater performers working in small non-union houses. Even with the small pay, I was hoping to attract enough people who might be attracted to working on a Hollywood movie with a semi-famous actor, Simone Buvwar. I recognize that post from SpaceBook as the casting call I put out. I certainly never had dinner with Sertra before hiring her/him. I also know Nitchy's calendar and there is simply no way she came to Big City to make hires in person. (II: IN, relevant - Rule 403; firsthand knowledge on hiring Sertra and movie industry - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶18. I got a pretty good response to the ad, though not all of the roles were filled. For instance, I ended up having to work as a gofor on set. (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; Δ: OUT, irrelevant;) One of Nitchy's demands for hiring Baptiste was that we had to take out a life insurance policy naming Camera Obscura as a beneficiary for the short time Baptiste would be on set. Nitchy explained investors would not

feel comfortable using Baptiste without some assurance that their investment was protected should some counter-protester make trouble for us. I asked if that meant I should get life insurance on the other actors, too. I remember Ms. Nitchy paused for a long while before agreeing that it was probably a good idea. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; hearsay exception for Nitchy's state of mind - Rule 803; Nitchy's statements not hearsay - not offered for truth of matter asserted but to show why insurance was taken out; Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801)

¶19. Much of the filming had already occurred at a soundstage we rented back in California for all of the interior scenes. The actors, director and film crew were moved out to Lake Ozark for filming of the outdoor scenes after the location people had gotten everything else ready. We wanted to minimize the amount of time actors are on set because they tend to be the most expensive elements within the production. Baptiste was scheduled to arrive the 3rd day after we began shooting at the Lake, film his scenes over a two days window, and then leave again. I picked up Baptiste from the airport and immediately drove Baptiste to an insurance agent's office to purchase the life insurance policy. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801) Baptiste must have already known, because he did not put up a fuss when I explained where we were going. I had already spoken to the insurance agent who had filled out the policy application, including the beneficiary. Baptiste signed the application without reading it over. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception -

Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation as to what Baptiste knew; testimony based on hearsay - rule 801)

¶20. We arrived on set in the afternoon. I remember it so vividly because Buvwar stopped in the middle of filming a scene and rushed over to give Baptiste a huge hug. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602;; Δ: OUT, irrelevant;) That's just one of the reasons Buvwar will never be an A-list actor. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; lack of foundation; speculation; improper opinion;) I remember seeing Sertra just behind the cameras watching the two of them hugging with a shocked look on his/her face. As the embrace went on, Sertra's expression turned cold, and he/she quickly walked off. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation on Sertra's expressions;)

¶21. The director decided she had enough takes of the scene our appearance had interrupted and called it a night. She scheduled the marking rehearsal for the first of Baptiste's scenes at first light the next morning. I remember Sertra getting very belligerent that night. It is a wonder he/she remembers it at all. It culminated with Sertra getting in Buvwar's face and shouting, "I knew who I was until I met you!" and storming off to his/her tent. (Π: IN, relevant to show Sertra's conduct towards Buvwar - Rule 403; firsthand knowledge

- rule 602; perception - Rule 701 (personal opinion okay), Δ's statements not hearsay - statement made by party opponent Rule 801(d)(1); hearsay exception - excited utterance Rule 803(2); shows Δ's state of mind - Rule 803(3); Δ: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801) We couldn't afford trailers for anyone but the actors. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; Δ: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation as to the impact of Sertra not having a trailer or what the conversation with the Buvar was about; vs. IN, relevant to show the absurdity of thinking that Sertra would kill the victim for not having a trailer.)

¶22. Frieda Nitchy was not there that night nor the next night. In fact, I don't remember Ms. Nitchy arriving on set until I saw her after the shooting. She had been at the Lake of the Ozarks speaking at a conference the week of the filming so she could write off her travel on her taxes. I did call Nitchy to let her know how filming was going and I mentioned the argument, but she just told me to take care of it. There is no way she came down to the set to handle Sertra directly. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation;) I admit, I didn't handle Sertra either and assumed it would work itself out after he/she sobered up. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); Δ: OUT, irrelevant; lack of foundation; speculation regarding Sertra's sobriety;)

¶23. I do recall talking to the makeup artist, what's-her/his-face, about union rules. Ms. Nitchy wasn't there though. If Ms. Nitchy was there, how come her voice isn't on the audio tape the makeup person recorded without my consent? (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation;) We did not have a problem using non-union labor for Camera Obscura Production. The union does have a contract with Monkey Business Films, Inc., the other company Ms. Nitchy owns and used for her big budget films back when she still made them. (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); No best evidence rule violation regarding contract - not trying to prove terms of the contract with Monkey Business; Δ: OUT, irrelevant; lack of foundation; contract evidence in violation of best evidence rule.)

¶24. The next day went smoothly as I had hoped. Sertra was able to put the night before behind him/her and get his/her work done. The actors were able to get through their scenes. We wrapped after dark and got ready for the final day of filming. (II: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation;)

¶25. I took part in the marking rehearsal for the scene when Baptiste was shot. The director had the actors run through their lines and blocking, where they would stand and move during the scene. I ran around after them with grip tape and put down marks on the ground so they could return to the exact same spots while filming. Otherwise the cameras would have a

hard time following them throughout the scene. Once the marking was completed, the director cleared the set, and the second team came through and made sure all of the scenery was in place, all of the water bottles were cleared off, and that everything was in order. The actors went back to their trailers and put on final makeup for the shoot. (Π: IN, relevant - Rule 403;

firsthand knowledge - rule 602; Δ: OUT, irrelevant; lack of foundation;)

¶26. That was when I saw Sertra go over to the props area and take out the gun from the gun locker. He/she walked over to Buvwar's trailer and went in. I didn't think anything of it at the time despite what happened the night before last. Sertra came out moments later, and stood on the trailer steps. Baptiste was already back on set, and Sertra's eyes found Baptiste. Sertra did not look away until Baptiste returned the gaze. (Π: IN, relevant - Rule 403;

firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation on Sertra and Baptiste looking at each other;)

¶27. The director invited the actors to the set and filming got started. I took my usual place behind the cameras and the director yelled for action. I watched as Buvwar strode across the beach and shot Baptiste in the chest. I will never forget the look of horror on Buvwar's face as she/he realized what had just happened. (Π: IN, relevant - Rule 403; firsthand

knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation;)

¶28. After I got over my initial shock, I followed Sertra back to his/her tent. I tried to engage Sertra but Sertra refused to talk. (Π: IN, relevant - Rule 403; firsthand

knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ's refusal to talk may be tacit admission - depending on what was asked; not a violation of the 5<sup>th</sup> amendment because not police interrogation; Δ: OUT, irrelevant; lack of foundation; speculation as to why Sertra refused to talk; violates Δ's 5<sup>th</sup> amendment right not to incriminate him/herself and prejudicial effect outweighs probative value.) I don't like confrontation so I did not do anything to stop Sertra as she/he picked up her/his clothing and walked off to her/his car. Sertra left behind all of her/his trash. I went through it and found the tabloid you see there. I wouldn't have thought anything about it except for the large crosses drawn over Baptiste's eyes and the word "Mine!" scrawled across Baptiste's face. I figured out what must have happened and called the police the next day. I understand they arrested Sertra after they received my call. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ's markings on the tabloids not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation on who "scrawled" on the tabloids and whether they belonged to Δ; speculation on understanding why police arrested Sertra; testimony based on hearsay - rule 801)

- Above statement by *Tommie Hagen*

## **Statement of Max Fleischer**

¶1. Even without my legal troubles, I wondered if I would ever find work again. I am, well, I was, an illustrator. While the other students went out to play at recess, I would prefer to stay inside with my pencils and paper and create whole worlds on the page. Fortunately, or maybe unfortunately, I had an English teacher in 9th grade who realized the three r's weren't my future, and she encouraged me to take as many art classes as possible. I did end up graduating from high school, but just barely, and went out to the West Coast to find work making cartoons.

(Π: IN, relevant - Rule 403; foundation for first hand knowledge - rule 602;

foundation for expertise - Rule 702; Δ: OUT, irrelevant;)

¶2. At first it was a dream come true. The work is repetitive, but that's partly why I enjoyed it. Drawing is meditative. Even as a kid, I could draw characters and have them tell my stories for me. I found work in an independent studio which still had a need for someone to hand-draw stills for cartoons. I had a lot of natural skill with that style of cartooning, but I knew it may be short-lived. This was the early 90's and everyone knew computers were the wave of the future. But without a college education, I did not have the skill set needed to learn how to use computer animation. Over the next several years, I kept my nose to the grindstone and worked as hard as I could. Even though I might not be able to afford to go back to school, I thought I could work my way up in the company into management and develop a niche for my talent. (Π: IN, relevant - Rule 403; foundation for first hand knowledge - rule 602;

perception - Rule 701 (personal opinion okay), foundation for expertise - Rule 702;

Δ: OUT, irrelevant; speculation on what everyone knew;)

¶3. But I did not climb the ladder fast enough. Near the end of the decade, animation studios began to merge. Ours was no exception and in 2000, we were bought by a larger company that promptly sent the hand drawing work overseas to a studio on another continent for half the price. I was out of a job. I was in my mid-20's, with no college education and one marketable skill that I could no longer use. I lived off my savings for a time, but living in California is expensive, especially when you don't have a job. I returned home to Lake Ozark and moved back in with my mother. Big mistake. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion on animation field of work - Rule 702 (based on knowledge, experience, education, etc.); Δ: OUT, irrelevant; lack of foundation; speculation;)

¶4. Those friends of mine who had not left home after high school had not exactly grown up themselves. Yeah, they had jobs working in the tourist industry, in restaurants and hotels, or the outlet mall, but none of them had what you might consider a career. I got depressed because I had to take a string of seasonal jobs doing the same kind of work to help with rent. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), hearsay exception shows witness' state of mind in working menial jobs - Rule 803; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; shows witness' "arrogance" in not wanting to work in ordinary jobs.)

¶5. I'm not a bad person, I don't know. Maybe it was the depression. My AA sponsor says it's certainly in part due to the company that I kept. My high school friends and I started making a bunch of bad decisions. It started small with shoplifting from stores and breaking windows late at night on abandoned storefronts. But the small bit of excitement that brought quickly went away. It quickly grew from checking cars to see if they were locked and taking loose change to learning to hotwire cars and taking them to drag race on country roads.

(Π: OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; not a criminal conviction - Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; proper character evidence affects truthfulness of witness Rule 608;)

¶6. It was all petty stuff. I never meant to cause any harm to anyone. I figured they had insurance which could pay for any damage I might cause. (Π: OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: IN, impeachment on witness' bias - wide latitude for cross examination, rule 611;) Amazingly, the cops only arrested me a couple times and I received SIS'es, which are Suspended Impositions of Sentences. My public defender explained I wasn't technically pleading guilty to anything and it would not count as a conviction so long as I completed my probation. The two times I got caught the charges were for shoplifting and tampering with a motor vehicle. (Π: IN, relevant - Rule 403; public defender's

statements not hearsay - not offered for truth but to show why plead guilty; vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial - Rule 403; not a criminal conviction - Rule 609 - federal court; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; Δ: OUT, irrelevant; part of testimony based on hearsay - rule 801 vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; relevant if direct examination discusses witness' character; suspended imposition of sentences are relevant in criminal case in state court for purposes of impeachment.)

¶7. I really did not learn my lesson. In 2007, my luck ran out. My friend Dana Lee borrowed money from someone in organized crime. Lee came to me very upset because she had used the money betting against Mizzou football. Lee lost the money and had no way to pay back the crime boss. Lee asked if I'd be willing to help her steal a few cars and deliver them to Big City for a small fee. I was still an adrenaline junky and agreed immediately. Unfortunately, I was pulled over on I-70 in one of the cars going 90 miles per hour and with no headlights at 3 am. The trooper quickly figured out the car did not belong to me, and I was taken in. I still qualified for a public defender and I made them go to trial. I was of course convicted of Grand Theft Auto and sentenced to 15 years in prison. (Π: IN, relevant - Rule 403; criminal conviction impeachable; vs. OUT, irrelevant; improper impeachment; highly prejudicial -Rule 403; Criminal conviction greater than 10 years old - Rule 609 (b) unless value outweighs prejudicial effect; Δ: OUT, facts or reasons mitigating

conviction irrelevant; vs. IN, criminal conviction of witness affecting truthfulness of witness Rule 609;)

¶8. I tried my best to clean up while I was in the pen. I joined an AA class, even though I don't drink, thinking it would look good to the parole board. I was eventually allowed to start a drawing class with the other inmates. I sold it as a form of meditation. It actually worked! Other prisoners were able to use drawing almost as a kind of therapy to help work through many of the issues that had landed them in prison in the first place. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), foundation for artistic expertise- Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); vs. OUT, prison information is irrelevant; improper impeachment; highly prejudicial -Rule 403; Δ: OUT, conduct in prison irrelevant; self serving; improper bolstering of testimony;)

¶9. One of the studio executives from my old job in California apparently read about my class and came out to the prison to see me. The executive had stayed with the merged company for a while after I was let go, until their position was terminated in another round of mergers. They had started a non-profit to retrain animators and others in the industry who lost jobs to overseas companies by providing computer training. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted but offered to show executive's conduct in contacting witness; Δ: OUT, irrelevant; speculation; testimony based on hearsay - rule 801;) I sure wish I'd heard about it before I returned to

Missouri. But the executive was interested in supporting the class I'd started and wondered if I'd be willing to develop a more formal program for other prisons across the country. I agreed immediately and began to work on it. (Π: IN, relevant - Rule 403; first hand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted but to show how witness accepted work (subsequent conduct); Δ: OUT, irrelevant; speculation; testimony based on hearsay - rule 801)

¶10. The work I was doing also came to the attention of the parole board. Even though I was scheduled for release in 2022, the work I had done had lowered violence in the prison in a way the warden said she had never seen with any other program. I was released in August of 2017. (Π: IN, relevant - Rule 403 first hand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted but to show why witness was released early from prison; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801;)

¶11. Unfortunately, the organized crime syndicate in which Lee had been involved had not forgotten that I had lost one of their cars. I had moved back in with my mom after my release from prison. A few days later, a large man in a too tight suit showed up at our door and asked to come in. My mother refused and brought out a gun and threatened to shoot him if he did not leave. He left, but the next night, we were awoken to the sounds of sirens and loud banging on the front door. Someone had left a Mercedes in our driveway that did not belong to us. (Π: IN, relevant - Rule 403; foundation for first hand knowledge on why ended up in jail with the Δ - rule 602; perception - Rule 701 (personal opinion okay),

mother's threats not hearsay - not offered for truth of matter asserted but to show her conduct and her state of mind Rule 803; Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; self serving; vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611, e.g., "your mother threatened to shoot a mobster?";) The cops got a call from an anonymous person who accused me of getting back to my thieving ways. I was arrested and taken down to the police department for holding. (Π: IN, relevant - Rule 403; first hand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; speculation; testimony based on hearsay - rule 801 why police arrested witness;)

¶12. That's why I'm here now. It just so happens I ended up in a holding cell right next to Jean Sertra where s/he was being held after the shooting. I was vaguely aware some studio was filming a movie at the Lake. Sertra was sobbing uncontrollably and yelling at the guards that s/he was innocent. I was upset myself, but I knew yelling at the guards is not the best way to explain your innocence. I tried my best to calm Serta down and after a few minutes, the tears slowed and I was able to get something of a story from Sertra. (Π: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; vs. IN, impeachment on witness' bias in trying to get "story" - wide latitude for cross examination, rule 611;)

¶13. It turns out Sertra had been working as a bartender despite having a college degree. S/he too felt empty and devoid of meaning with his/her career. But despite being quite a talented philosopher, there was little chance of a career with that education. Sertra had met an

actor Simone Buvwar at his/her bartending gig and had felt an immediate connection. Sertra got quiet all of a sudden and started to tear up. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), statements based on Δ's statements not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801) I quickly explained about my animating career and the loss of my own career to corporate mergers. (Π: IN, relevant - Rule 403; statements made by witness not hearsay - not offered for truth of matter asserted but to show why the Δ made more statements to witness; Δ: OUT, irrelevant; testimony of what witness said is hearsay - rule 801;) Sertra was able to hold it together and explained that she/he learned Buvwar was an actor shortly after their first meeting. Sertra recognized how unlikely it was that even a moderately famous actor like Buvwar would take notice in him/her and resolved to leave it at that. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), statements based on Δ's statements not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶14. But then the messages started. I must confess I don't really know how social media works as I was in prison at a time when MyFace was the only social media platform, so if I misunderstood something about how it works that's probably why. Buvwar sent messages to Sertra complimenting him/her on her work, on his/her appearance, asked how s/he was doing. That sounded a little strange to me, as Sertra also said Buvwar had returned to Hollywood the

day after they met. Sertra responded in kind, but having a philosopher's sense of humor, the responses made all sorts of cultural references, like song titles, or movie references.

¶15. This had kept up for several months. I don't think it was romantic love. Sertra did not give me the impression s/he was looking for a physical relationship with Buvwar, but Sertra explained s/he could not get Buvwar out of his/her head. Every waking moment was occupied with Buvwar and if they could just be together, the friendship would grow into something that would give Sertra meaning. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ's statements not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; testimony based on hearsay - rule 801;) Like I said, it seemed very unlikely to me. But I kept listening. (Π: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; improper opinion;)

¶16. Buvwar then invited Sertra to come work on a movie set at the Lake. Sertra took Buvwar up on the offer and left the bartending job that night, driving over to Lake Ozark a few days before the movie crew was to arrive. Buvwar arranged to get Sertra a job on set and s/he became some kind of gofor, getting coffee for the crew and carrying things around set. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), statement based on what Δ said to witness (?) - not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation for testimony; speculation; testimony based on hearsay - rule 801)

¶17. Sertra was shocked when Buvwar arrived that s/he did not seem to recognize him/her. Sertra tried to give Buvwar some space, but figured out what had happened when another movie actor Jean Baptiste arrived on set. Buvwar could not keep his/her hands off of Baptiste. Sertra was furious. S/he had quit the bartending gig and left Big City to be around Buvwar, but all of Buvwar's attention was on someone else. Sertra snapped. S/he told me s/he purchased a gun and brought it to the set intending to confront Baptiste. But there was never an opportunity. Three days Sertra walked around with the gun waiting. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), statement based on what Δ said to witness (?) - not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation for testimony; speculation; testimony based on hearsay - rule 801)

¶18. On the day of the shooting, Sertra was asked by the props manager to give a gun to Buvwar for a scene. Sertra put it in the front of his/her hoodie and went to find Buvwar. Sertra claims s/he got the guns "confused" when s/he handed the gun to Buvwar with live ammunition. Buvwar used the gun in the scene and killed Jean Baptiste. Sertra realized what had happened and immediately took the other gun and threw it into the water. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), statement based on what Δ said to witness (?) - not hearsay - statement made by party opponent Rule 801(d)(1); Δ: OUT, irrelevant; lack of foundation for testimony; speculation; testimony based on hearsay - rule 801)

¶19. Sertra and I were separated shortly after we met. I realized what I had right away and told the public defender. The attorney was familiar with the Sertra case, but the public defender had not yet been assigned to the case. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation on assignment; testimony partly based on hearsay - rule 801) I asked the lawyer to tell the prosecutor I had useful information on the Sertra case. I think I could have beaten the stolen car charge, but why take a chance? I already had one conviction on my record and a second could have meant another 15 years in prison. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), vs. OUT, irrelevant; improper impeachment; highly prejudicial -Rule 403; Δ: IN, impeachment on witness' bias - wide latitude for cross examination, rule 611;)

¶20. The prosecutor agreed to a misdemeanor charge of attempted larceny and I received additional probation to run concurrently with the probation I had following my parole. In exchange, I had to agree to testify truthfully against Sertra. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), vs. OUT, irrelevant; improper impeachment; highly prejudicial -Rule 403; Δ: IN, impeachment on witness' interest, motive, bias affecting testimony - wide latitude for cross examination, rule 611;) Apparently, the threat of my testimony was all it took to get Sertra to confess to the murder. Or something. I don't really know. (Π: IN, relevant -

Rule 403; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801)

¶21. The studio executive has been scared off by the second charge against me, and I do not have that job lined up anymore. (Π: IN, relevant - Rule 403; firsthand knowledge; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801) I am back to working at a restaurant and I cannot get hired on at a hotel. (Π: IN, relevant - Rule 403; firsthand knowledge; perception - Rule 701 (personal opinion okay), Δ: OUT, irrelevant) That's okay as I got connected with a publisher with a company called Monkey Business Books and I am currently writing the real story of what happened to Jean Baptiste. I did not have to be subpoenaed to testify. (Π: IN, relevant - Rule 403; firsthand knowledge - rule 602; vs. OUT, irrelevant; Δ: OUT, irrelevant; testimony based on hearsay - rule 801 vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611;) My publisher explained my testimony could create buzz for the book when it is finally published. (Π: IN, relevant - Rule 403; vs. OUT, hearsay of what publisher said; Δ: OUT, irrelevant; testimony based on hearsay - rule 801 vs. IN, impeachment on witness' bias and how that may affect testimony - wide latitude for cross examination, rule 611;)

- Above statement by *Max Fleischer*

# The Defense Witnesses

## Statement of Jake Brown

¶1. I am employed by Big City Mutual Insurance Company as a claims adjuster. That's not at all how I saw my life going back in high school, but c'est la vie. I graduated from high school in the bottom 50% of my class. I did not get the point of having to turn in homework if I knew all the answers already. But I muddled through and was able to get into Big City Community College where I obtained an Associate's Degree in Criminal Justice. I then went to the Big City Police Academy for 6 months with an eye towards joining one of the smaller municipal departments in the suburbs. While at the academy, I received training in crime scene investigation, processing of evidence and the basics of computer forensics. (Π:OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expert opinion in insurance/law enforcement - Rule 702 (based on knowledge, experience, education, etc.))

¶2. However, the smaller municipal departments weren't hiring someone without experience so I joined the Big City police department instead. I got married and we had a couple of kids. The hours weren't great, but the pay was decent, especially for someone without a bachelor's degree. After five years on the force, I realized I was unlikely to move up as fast as I wanted and I looked for other law enforcement positions elsewhere. (Π:OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expert opinion - Rule 702)

¶3. I applied for a patrol officer position with the Missouri State Highway Patrol and to my surprise I got the job. The pay was slightly better, but I expected that after a few years on the road I would be able to take the detective's test and move back to that job in the suburbs.

(Π:OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expert opinion - Rule 702)

¶4. I joined Troop W, located near the Lake of the Ozarks, as a patrol officer. I had to move my family out to mid-Missouri and basically start over. The geographical stretch I was required to patrol was huge, and because the population density was so much lower, the variety of crimes I had to investigate was much narrower. I had the usual traffic stops for speeding and I had to investigate accidents, but the local sheriff's departments generally got to investigate the more interesting crimes. Meth busts, domestic assault, anything that required even a little bit of detective work was assigned to the sheriff's jurisdictions. (Π:OUT, irrelevant; lack of

foundation; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702;)

¶5. I got bored working for the Highway Patrol, to tell you the truth. Late nights in a squad car picking up DUI's and clearing traffic accidents did not have the glamor I had hoped for. I lasted only six months with Highway Patrol before I saw an ad for an opening at Big City Mutual Insurance Company for a Claims Representative. I applied immediately. Once I got the job, I moved back to Big City. I have been a Claims Rep now for the past three years. (Π:OUT,

irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule

602; foundation for expert opinion law enforcement (investigations) and insurance - Rule 702:)

¶6. I received additional training after joining the Claims department. The training mostly had to do with internal procedures of Big City Mutual, insurance regulations, and file documentation practices. Most of the other training I have had for the actual investigations is on the job with oversight from my team manager. (Π:OUT, irrelevant; lack of foundation; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expert opinion - Rule 702 (based on knowledge, experience, education, etc.))

¶7. The work we do is very important. With an insurance company as large as Big City Mutual, we are targets of fraud constantly. (Π:OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; conclusory; vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702; expert opinion regarding investigation of insurance fraud.) Being a Mutual Company, our policyholders actually are our shareholders, and receive the benefit of paying out fewer fraudulent claims. We of course want to pay what we owe, that is, we want to pay what our policies cover, but premiums ultimately go up to cover losses if we end up having to pay out fraudulent claims. (Π:OUT, irrelevant; prejudicial effect outweighs probative value in a criminal case Rule 403; improper opinion; testimony based on hearsay - rule 801, lack of foundation; vs. IN, impeachment on witness' bias - wide latitude for cross

examination, rule 611; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.) and may rely on hearsay - facts perceived or made known to expert or, if inadmissible such as hearsay, facts reasonably relied upon by experts Rule 703;)

¶8. My salary does not depend on how many times I actually do find fraud. Nor do I get bonuses based on how many claims I turn down. That would just be silly. I am judged on efficiency and accuracy, that is, how quickly I close an investigation, but also whether I am correct in my assessment of the investigation. My salary does not depend on those factors, though I hope for a promotion if I continue to do well on those standards. I recently underwent a performance evaluation after my second year. I found fraud in 26% of the referrals I received in 2017, which is 10% higher than any other investigator in my unit. I guess I must be doing something right. And I got my investigations done at a rate 35% faster than the next most efficient investigator! I'm faster at finding fraud than any of my colleagues. I do not know how accurate I was in those investigations but I can tell you I'm confident in my findings or I would not make the recommendations I do. (Π: IN, impeachment on witness' interest, motive, bias - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial - Rule 403;)

¶9. I was assigned the Jean Baptiste claim by my Team Manager, Mr. Jones, one of the best at Big City. Mr. Jones originally assigned me to handle the potential liability claims

against Camera Obscura for the wrongful death of Jean Baptiste. (Π:OUT, irrelevant; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602;) Big City Mutual had issued a \$1,000,000 liability policy for the company in case someone was injured on set. (Π:OUT, irrelevant; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; insurance declaration is authentic, see stipulations;) The claim was originally reported by the producer of the film, Frieda Nitchy, who told Mr. Jones the shooting was caused when the props manager had accidentally brought live ammunition onto the set which somehow got into the gun that shot Jean Basptiste. (Π:OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.) expert may rely on hearsay; facts perceived or made known to expert or, if inadmissible, facts reasonably relied upon by experts in field - Rule 703;- not offered for truth of matter asserted but to show witness' subsequent conduct in investigation;) Since the props manager was an employee of Camera Obscura, Frieda Nitchy was concerned the Baptiste Family might sue. But rather than pay the claim to the family, Frieda Nitchy insisted the money be paid out right away to investors in the production who might also have a claim. There is only one policy limit for the one occurrence, so if it is paid to those investors there is nothing left to pay for any liability to the family of Jean Baptiste. (Π:OUT, irrelevant; prejudicial effect

outweighs probative value Rule 403; lack of foundation; testimony based on hearsay  
- rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule  
602; hearsay exception - Nitchy's state of mind - Rule 803 (weak); foundation for  
expert opinion - Rule 702 in investigating case and may rely on facts perceived or  
made known to expert or, if inadmissible, facts reasonably relied upon by experts  
in the field of expertise - Rule 703;- not offered for truth of matter asserted:)

¶10. Mr. Jones took a recorded statement from Frieda Nitchy, on Monday, August 20,  
2018, but it was taken for the purpose of defending Frieda Nitchy in any civil litigation so I  
cannot produce it to you or discuss it further on advice of our attorneys. Something about  
insurer-insured privilege. However, I can tell you what I did next. (Π:OUT, irrelevant;  
recorded statement protected from disclosure under insurer-insured privilege; Δ:  
IN, relevant - Rule 403; Insurer-insured privilege not recognize under Rule 501;  
*Arguendo*: Nitchy is not the insured therefore no privilege, Witness Brown  
mentioned Nitchy's statements during direct exam and therefore opened the door  
to cross examination of all statements by Nitchy, insurer-insured privilege is not  
absolute and may be qualified work product privilege that allows disclosure of  
recorded statement upon showing of substantial need and hardship; privilege  
waived by witness disclosing Nitchy's statements below; impeachment on witness'  
bias (refusal to divulge information) - wide latitude for cross examination, rule  
611:)

¶11. While Big City Mutual would normally do what the insured asked, something did not sit right with Mr. Jones and his next phone call was to me to see if I could investigate the claim. I sent out an email to the insured, to Camera Obscura, to let them know of my involvement. I did mention in the letter that I was not investigating on behalf of the insured, but was instead investigating on behalf of Big City Mutual. Nothing I gathered during my investigation was done in defense of the insured, but to see instead if there was fraud involved in the claim. (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702; statements made to witness not offered as hearsay for truth of matter asserted but to show subsequent investigation;)

¶12. I was assigned the file Tuesday, August 21 and after reading the facts of loss from the claim file, I got in my car (no company car until you make team manager!) and headed down to the Lake. I got a phone call on my drive down. Of course I took it. I was not able to take notes, but I did get the gist of the call. The caller refused to identify themselves, but asked if I was investigating the Jean Baptiste claim. I confirmed that I was and the caller asked me if I had heard of a company known as “Monkey Business II, LLC,” and then said, and I will never forget this, “They are your insured, too.” The caller then hung up. (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702; statements made to

witness not offered as hearsay for truth of matter asserted but to show/explain subsequent investigation;)

¶13. I called Mr. Jones and asked him to look up the name “Monkey Business II, LLC” and discovered the caller was correct. Monkey Business II, LLC was an insured of Big City Mutual, but it had taken out a life insurance policy with the company, not a liability policy. Mr. Jones then asked me, “And do you want to know who the policy was taken out on?” I replied, “Let me guess....Jean Baptiste.” “It is what it is, Brown.” (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702; statements made to witness not offered as hearsay for truth of matter asserted but to show subsequent investigation; Insurance declaration information in evidence as authentic per stipulation.)

¶14. I asked Mr. Jones to email me the two declarations pages, the liability policy for Camera Obscura and the life insurance policy on Jean Baptiste naming Monkey Business II, LLC as the beneficiary. The first thing I noticed was that the address for the two companies were almost identical. Both went to P.O. Boxes in Burbank, CA and were only one number off from one another. I made a call to the underwriting department at Big City Mutual to find out something about the application for the life insurance policy. (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; foundation for expert opinion - Rule 702 as expert

may rely on hearsay where facts perceived or made known to expert or, if inadmissible, facts reasonably relied upon by experts in field Rule 703; documents are authentic per stipulations;)

¶15. I know from my training to become an adjuster that Big City Mutual would not write a life insurance policy on someone who is not a family member, unless it is a business which might sustain a financial loss in the event of that person's death. The concern is that by allowing someone to insure a stranger, the Insurance Company might be providing a financial motive to murder that stranger. Missouri actually allows someone injured in such a scheme to sue the insurance company for negligently issuing a life insurance policy. So there has to be some type of confirmable insurable interest in the person's life for our company to write the policy. But because these type of policies tend to be for fairly short periods, we do not require the same type of health screening you might have to undergo for a personal life insurance policy. (Π:OUT, irrelevant; lack of foundation; conclusory (concluding statements about law); improper opinion; testimony based on hearsay - rule 801; invading scope of judge's authority; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay); expert opinion regarding insurance - Rule 702 (based on knowledge, experience, education, etc.) testimony based on routine practice of organization Rule 406;)

¶16. Underwriting sent me a copy of the Application. The application had been filled out at an Agent's office in Lake Ozark, and is dated August 15, 2018, just a few days before Baptiste's death. The application has a section to explain the business relationship. It was filled out by Tommie Hagen, "Attorney/Agent for Monkey Business II, LLC" and there is a notarized

signature of both Hagen as well as Jean Baptiste. The Notary for both is Hagen. (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for expert opinion regarding insurance - Rule 702 (based on knowledge, experience, education, etc.) testimony based on routine practice of organization Rule 406; documents are authentic per stipulations;)

Neither the agent nor the underwriting folks must have had a problem with that because the policy was written without any follow up questions. (Π:OUT, irrelevant; lack of foundation; speculation; improper opinion; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay); expert opinion - Rule 702 (based on knowledge, experience, education, etc.))

¶17. I arrived mid-afternoon at the set. The crew had taken the rest of the weekend off, but were planning to begin filming again on Wednesday. I met with Frieda Nitchy at her trailer and explained that I was with Big City Mutual. She asked me to wait for the company attorney to arrive before giving me a statement. Mr./Ms. Hagen got there a few minutes later. I asked to record the interview, but Mr./Ms. Hagen refused and said if I wanted to interview Ms. Nitchy, I would simply have to take notes. I figured it was more important to get the information rather than a recording of the statement for the time being so I agreed. Unfortunately, Hagen spent most of the interview interrupting, refusing to allow Frieda Nitchy to answer certain questions, or actually answering questions him/herself. It was a frustrating process, but I got what I needed to continue my investigation. I did not ask about the life insurance policy in the initial interview. (Π:OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; vs.

IN, Nitchy's interest, motive, bias in obtaining an attorney - wide latitude for cross examination, rule 611; shows Nitchy's state of mind - Rule 803 <hearsay exception>; allow defense to open the door on the evidence as to what Nitchy said so prosecution may cross examine witness on bad things Nitchy said about the defendant; Δ: IN, relevant - Rule 403; foundation for expert opinion or investigation - Rule 702; expert may rely on facts perceived or made known to expert or, if inadmissible, facts reasonably relied upon by experts in field Rule 703;- not offered for truth of matter asserted but to show investigation;)

¶18. Frieda Nitchy did tell me a few things directly. Jean Baptiste had been shot with a gun provided by the props manager to Simone Buvwar while filming a scene in the movie. Ms. Nitchy explained Buvwar would not have done this him/herself. Buvwar and Baptiste were generally known in the film industry to be great friends, and Buvwar had seemed genuinely horrified at what happened in the moments after the shooting. (II: OUT, irrelevant; self serving; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; vs. IN, Nitchy's bias - wide latitude for cross examination, rule 611; shows Nitchy's state of mind - Rule 803 <hearsay exception>; allow defense to open the door on the evidence as to what Nitchy said so prosecution may cross examine witness on bad things Nitchy said about the defendant; Δ: IN, relevant - Rule 403; perception of Buvwar's reaction to shooting; foundation for expert opinion - Rule 702; expert may base opinion on facts perceived or made known to

expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts in field - Rule 703; not hearsay - not offered for truth of matter asserted but to show subsequent investigation; hearsay within hearsay okay if exceptions apply - rule 805)

¶19. Frieda Nitchy told me it was more likely Sertra, the props manager, had done it. Sertra had applied for a props manager job without disclosing he/she had no experience in film. After Ms. Nitchy had arrived on set, she had heard from Buvwar that Sertra was “creepastic” and a “stalker,” but had not gone into any further detail after Frieda Nitchy made it clear the company was not going to do anything about it so as to not throw the filming any more off schedule than it already was. Frieda Nitchy explained she really regretted her decision not to fire Sertra. (II: IN, Nitchy's bias - wide latitude for cross examination, rule 611; shows Nitchy's state of mind - Rule 803 <hearsay exception>; allow defense to open the door on the evidence as to what Nitchy said so prosecution may cross examine witness on bad things Nitchy said about the defendant; vs. OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; invading scope of jury's authority in determining guilt; Δ: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts

reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted but to show investigation; hearsay within hearsay okay if admissible - Rule 805; vs. OUT, irrelevant; improper impeachment; highly prejudicial -Rule 403; irrelevant; Hearsay rule 801;)

¶20. After I spoke with Frieda Nitchy, I spoke with several members of the crew. I learned a few things that disturbed me. First of all, the movie was apparently several weeks behind schedule and had been for some time. This was causing a big financial hardship. The crew was getting paid on a weekly basis until the week before Baptiste's death. When Camera Obscura missed a paycheck August 10, Frieda Nitchy flew in personally and apologized and promised to be able to pay them shortly. However, by the time I had arrived, the crew still had not received their checks from August 3, nor had they received their checks for August 10 either.

(Π: OUT, irrelevant; lack of foundation and firsthand knowledge; speculation; prejudicial effect outweighs probative value; testimony based on hearsay of what crew members said - rule 801; Δ: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted;)

¶21. I attempted to speak with Buvwar but he/she would not come out of his/her tent. I did catch up with Sertra, but as soon as I explained who I was, Sertra screamed at me to leave him/her alone and walked away muttering to him/herself. I think Sertra was pretty drunk at that

point. (Π: OUT, irrelevant; speculation; improper character evidence - Rule 404; vs. IN, firsthand knowledge, perception, wide latitude for cross examination, rule 611; refusal by Δ to answer questions shows Δ's state of mind/consciousness of guilt - not protected by 5<sup>th</sup> amendment right to remain silent <no police interrogation>; Δ: vs. OUT, Δ has constitutional 5<sup>th</sup> amendment right to remain silent; highly prejudicial -Rule 403; irrelevant; lack of foundation and speculation on drunk condition; improper character evidence.)

¶22. I went back to Frieda Nitchy's trailer only to find Frieda Nitchy was gone. But Hagen was still there. Ms. Nitchy had already left to catch a plane back to Los Angeles and had left Hagen to answer any questions I might have. I decided to finish my investigation from my office rather than talk with the attorney. (Π: OUT, irrelevant; lack of foundation; speculation; testimony partly based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge of investigation - rule 602;)

¶23. I started by researching the name "Monkey Business II, LLC" from the Life Insurance Application. I sent a Freedom of Information Act request to the Secretary of State for California to obtain the organizing documents for both Camera Obscura and Monkey Business II, LLC. I received the attached corporate documents. Monkey Business II, LLC had just been created in the year before shooting began for "L'Etrange." The managing member of Monkey Business II, LLC was another company, Mollusk Corp. I then ordered corporate documents for Mollusk Corp. and discovered that it was a wholly owned subsidiary of a corporation organized in the Cayman Islands known as Mussels, Inc. which had a d/b/a in California. And the

registered agent for all 4 companies was listed as Tommie Hagen. (Π: OUT, irrelevant; lack of foundation; based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted but to show investigation; documents are admissible per stipulations as to authenticity.)

¶24. The next day I sent out a request for documents to Hagen as the attorney for Camera Obscura. I did have to threaten to turn down their claim unless they complied with the request for documents. A few days later, Hagen emailed me balance sheets for Camera Obscura. This contained a list of investors. (Π: OUT, irrelevant; lack of foundation; based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted but to show investigation; documents are admissible per stipulations as to authenticity.) Most appeared to be code names of some sort. (Π: OUT, speculation; improper opinion; lack of foundation; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), expert

opinion - Rule 702 (based on knowledge, experience <police/insurance>, education, etc.);)

¶25. The balance sheets also confirmed Camera Obscura was very underfunded for the project. Part of my law enforcement training included taking two college level courses in G.A.A.P., or Generally Accepted Accounting Practices. I know how a bookkeeper is supposed to account for money coming in, accounts receivable (that is money earned but not yet collected), money paid out by a business, and documenting the source of that money. There are rules put in place both within the accounting industry, as well as by the IRS, that govern what information must be kept. (Π: OUT, irrelevant; lack of foundation; speculation; improper opinion; Δ: IN, relevant - Rule 403; expert opinion - Rule 702 (based on knowledge, experience, education, etc.);)

¶26. That includes the correct amount of money as well as the source. The balance sheets kept by Camera Obscura violate a number of those rules. The source of the money is not identified except by code names that seem to be grouped into categories, like animal names. They also show no accounts receivable, but only large amounts of cash coming into the business in round numbers, like investors putting in thousands of dollars into the business. But they also show that money going right back out to other investors, in amounts higher than the original investment, rather than paying payroll, or renting movie making equipment. (Π: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; conclusory as to alleged violation; improper opinion; invades

scope of judge's authority to determine laws violations;  $\Delta$ : IN, relevant - Rule 403;  
expert opinion - Rule 702 (based on knowledge, experience, education, etc.);)

¶27. I called Frieda Nitchy directly and asked about the money issues. I understood Hagen was not Frieda Nitchy's personal attorney but an attorney for the company so I had no problem speaking with Nitchy without Hagen on the call. ( $\Pi$ : OUT, irrelevant; vs. IN, potential unethical contact by Brown with Nitchy without attorney - wide latitude for cross examination, rule 611;  $\Delta$ : IN, relevant - Rule 403; foundation for expert opinion - Rule 702 based on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703;)

Nitchy explained money had been tight. She had worked on a prior film, "Beyond Good and Evil," using money from investors. Have you heard of that movie? Me neither. It did so poorly that distributors wouldn't even release it straight to video. To pay off the investors on "Beyond Good and Evil," Nitchy had to start a new film with new investors, "So Says Zarathrustra," a science fiction movie about a prophet that is ignored by people until the world is taken over by aliens who already lived among us or something, but instead of using all of the money for the second film, she used some of the money to pay off the investors from "Beyond Good and Evil." "So Says Zarathrustra" also did not do all that well, so Nitchy formed Camera Obscura to film "L'Etrange." But the money she received to start Camera Obscura from investors had to be used to pay off investors from "So Says Zarathrustra." ( $\Pi$ : IN, Nitchy's bias - wide latitude for cross examination, rule 611; shows Nitchy's state of mind - Rule 803 <hearsay exception>; allow defense to open the door on the evidence as to what Nitchy said

so prosecution may cross examine witness on bad things Nitchy said about the defendant; vs. OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for expert opinion - Rule 702; expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted but to show investigation; hearsay within hearsay okay if admissible - Rule 805;)

¶28. I knew right away Frieda Nitchy was describing a pyramid scheme where new investors are brought on board to pay off prior investors. I think I asked her directly if this was a “pyramid scheme” and the other side of the call went quiet. Her next words were, “You’ll need to talk to my attorney about that,” and she promptly hung up. (Π: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; improper character evidence - Rule 404; testimony based on hearsay - rule 801; vs. IN, impeachment on witness’ bias in talking with a person without attorney - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; shows Nitchy’s state of mind and motive - Rule 803 <hearsay exception>; foundation for expert opinion - Rule 702 which may be based on facts

perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; Expert opinion.)

¶29. While I had my suspicions, Mr. Jones and I agreed we did not have enough to deny coverage for the life insurance claim. We had a motive for Camera Obscura, and in turn Frieda Nitchy, to have Baptiste killed, but we could not put the gun in her hand at any point in time. Without her having an opportunity to kill Baptiste, we did not have enough to turn the claim down. I called Hagen and informed him/her we would be sending a wire transfer for the life insurance policy in the next 24 hours. (II: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; conclusory; improper opinions outside of scope of expertise; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge; expert opinion - Rule 702 (based on knowledge, experience, education, etc.);)

¶30. Fortunately, I received a phone call from the chief of police in Lake Ozark, MO before we sent payment. Apparently Sertra had been arrested and confessed to giving the gun to Buvwar, but insisted he/she did not know it was a real gun. Sertra claimed the gun had been given to him/her by Frieda Nitchy and directed to give the gun to Buvwar. It all clicked and I explained to the police chief what I had learned about the financial shenanigans and the life insurance policy. He seemed unimpressed, so I called the FBI back in Big City and shared what I had learned. They explained while they did not have jurisdiction to investigate the murder, they could certainly look into the Ponzi scheme I had uncovered. I met with an agent and turned over copies of my statement of Nitchy and the financial records I'd gathered and asked them to keep me informed. I immediately put a halt to the life insurance payment and the payment under

the liability policy for Nitchy's fraudulent statements to Big City Mutual in my investigation.

(Π: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; perception of chief of police and FBI, expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not used as hearsay - not offered for truth of matter asserted but to show why insurance claim was denied; hearsay within hearsay okay if exceptions apply - rule 805)

¶31. I learned later Frieda Nitchy been indicted on wire fraud and securities fraud charges stemming from the Ponzi scheme. However, she is somewhere in the Caribbean holed up and trying to avoid extradition to the U.S. I suspect she is trying to avoid both the Federal charges as well as having to answer questions about Baptiste's death. Big City Mutual Company has now denied both the life insurance claim and the liability claim with which Nitchy apparently intended to pay off the unhappy investors. (Π: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; perception of chief of police and FBI, expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts

reasonably relied upon by experts Rule 703; not used as hearsay - not offered for truth of matter asserted but to show why insurance claim was denied; hearsay within hearsay okay if exceptions apply - rule 805) I am looking forward to a company vehicle and a promotion. Maybe one day I can be as great as Mr. Jones. (Π: IN, impeachment on witness' interest, motive, or bias - wide latitude for cross examination, rule 611; Δ: OUT, irrelevant; improper impeachment; highly prejudicial -Rule 403;)

- *Above statement by **Jake Brown***

## **Statement of Reggie Electra**

¶1. “Always the Bridesmaid/Groomsman, never the Bride/Groom,” says my mother just about every time we get together. That is part of the reason we don’t see each other, I mean other, all that much. I moved away at my first chance. Were it not for my sister, I probably wouldn’t come back home at all. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602;)

¶2. I know what she means, it’s just that I don’t want to believe it. It started in 5th grade. My best friend Carl Young and I were selected to read the announcements for an entire semester. However, after just one turn, the principal suggested Carl read the announcements instead, and I should help write them for him. I don’t really remember what the principal said, but I do remember she had the good grace not to point out my inability to speak in front of large groups. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602;)

¶3. Carl and I worked well together. I put together the announcements while he read them flawlessly every time. We went to high school together and the same pattern emerged. We worked on the high school newspaper where we wrote an opinion column together. I would do all the legwork, interview school officials, take informal student polls, and Carl would write the story. Our column was so popular, it was picked up by other school newspapers and ran in a sort of informal syndication through our Senior year. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602;)

¶4. However, the byline only ever showed Carl's name, so guess who got the college scholarship? Looking back, I am glad he took the scholarship at Big City's prestigious Jefferson University. I had moved out on my own, and decided not to attend college. I actually took a few cosmetology classes at Calvin Palmer, Jr. Cosmetology School. I had the grades for college, I just couldn't afford it. Especially as I had decided not to let my mother pay for college. Carl didn't forget me. Almost as soon as he moved onto campus, Carl called me and asked if I would help as a researcher for his College radio show. Even though I wasn't getting paid, I agreed immediately. (Π: OUT, irrelevant; testimony includes hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602; Carl's comment not hearsay - not offered for truth of matter asserted but shows how witness obtained job;)

¶5. The show was called "Dream Works." The premise was a bit silly, but we had fun. Callers would call in and explain dreams to Carl. I would hurriedly research the dreams on the fly and give Carl Wikipedia entries I found on the internet. It wasn't real scientific, I know, but as Carl explained to callers, dream interpretation is something of an art. (Π: OUT, irrelevant; testimony includes hearsay - rule 801 Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602;)

¶6. We were fortunate to come of age right at the same time as the boom in podcasts was just beginning. We both loved the format. For Carl, it meant freedom to explore topics in more depth than a call-in radio show would allow. For me, it meant a job, especially as I had no college degree. Carl and I would come up with a topic, then figure out who to interview to best

tell that story. We, or should I say, I found an agent for the show who figured out how to get it distributed on Public Radio - National, or PRN, and actually make a little money doing it. (Π: OUT, irrelevant; lack of foundation; speculation on how Carl felt; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay))

¶7. The first few seasons weren't very serious. We called the show, "That American Way of Life." We would take a topic and explore it with two or three vignettes showing how that theme played out in America. We did not have a big budget as the money we brought in from advertisers and PRN was pretty nominal. But Carl was good with his narratives, and I found good stories for him with the people I found for him to interview. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay),)

¶8. In 2015, we noticed how polarized America had become. Not just on a political level, but in almost every facet of life. Identification with social groups began to define how people saw themselves more than we had seen before. To a large degree, the people I would interview had stopped giving me their personal opinion on topics, and instead would start by saying, "Well, you know, I'm a liberal, and we think..." We came up with a new show concept to explore these divisions and how people allowed themselves to be identified by the groups to which they belonged rather than identify with a group because of how they felt. We called it "Revelations." (Π: OUT, irrelevant; hearsay, speculation; Δ: IN, relevant - Rule 403;

foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay))

¶9. It took off. It helped that it was the beginning of the golden age of podcasts, and advertisers were actively looking for a way to reach millennials who had turned off their radios. But I think we got really good stories together, and stayed politically center enough while exploring the far right and far left view of subjects so that our audience wasn't limited to one side of the political spectrum. (Π: OUT, irrelevant; lack of foundation Δ: IN, relevant - Rule 403; foundation for firsthand knowledge/employment and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay))

¶10. I had seen Jean Baptiste in movies as a kid, and I remember when he fell off the map. He had portrayed Othello in a Hollywood remake in the early 2000's and came to some prominence. However, his agent gave him bad advice and got him into several slapstick comedies. They didn't work. Baptiste turned into that guy, you know the guy in that one movie. (Π: OUT, irrelevant; improper opinion; improper character evidence - Rule 404; speculation; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.);)

¶11. However, the Haitian earthquake changed everything for him. Being from Haiti, Baptiste was approached by media outlets asking for his opinion on how the U.S. should be involved. Haiti was already very poor due to its colonial origins. The earthquake left people without shelter, food, water for a very long time. To his credit, Baptiste not only told the reporters the U.S. should provide aid, he also started an organization to help those most affected

by the earthquake to find refuge in the U.S. (Π: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay))

¶12. Baptiste ended up becoming a much more vociferous advocate for immigrants' rights after that experience. His acting career was largely over, but he had enough of a following that his new immigrant's rights NGO, or Non-Governmental Organization, became a second career. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge of Baptiste - rule 602; perception - Rule 701 (personal opinion okay))

¶13. Enter Donald Trump and the politics of the 2016 political season. The flashpoint between those advocating for expanded legal immigration as well as rights for the undocumented and those concerned about border security expanded dramatically. That debate did not cool down after the election and instead intensified in both the U.S. and Europe. Carl and I decided to devote several episodes of "Revelations" on exploring how group identification informed the opinions held by people in the U.S. (Π: OUT, irrelevant; prejudicial effect outweighs probative value Rule 403; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge and knowing about Baptiste - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc))

¶14. Baptiste came to our attention because of a Stutter feud between him and Frieda Nitchy. Baptiste had called out Nitchy for not donating to his NGO. Nitchy, despite being one of the Hollywood elite, was not having it, and instead of declining politely, recognized the chance to make a splash and attacked Baptiste's views in a pretty personal way. That would not have been all that unusual for a Stutter beef, but after a couple months, Nitchy offered Baptiste a role in a movie. That is not how the story of these kinds of social media storms usually end. That is why "Revelations" wanted to get the rest of the story. (Π: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge and contact with Baptiste - rule 602; perception - Rule 701 (personal opinion okay); not using hearsay for truth of matter asserted but for reasons why they ended up on the set of the movie;)

¶15. Rather than sit down for a formal interview, Carl and I decided I should go undercover to talk to the two of them on set. Part of what we do on "Revelations" is get the real story out of people rather than what people say when they know they are being interviewed. However, wiretap laws in a quite a few states make it illegal to tape people over the phone without telling them they're being taped. Plus, who picks up the phone anymore? I traveled down to Lake Ozark and took a job as a hair and makeup artist for the movie. (Π: OUT, irrelevant; improper legal opinions; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); routine habit or employment practice of witness - rule 406;)

¶16. It is amazing how much you can fade into the background doing hair and makeup. Especially with actors. I simply strapped a tape recorder under my shirt, brought up a topic, and taped their responses. It's not illegal so long as it's done in person and not over the phone. That's how I realized something weird was happening on the set of "L'Etrange." (Π: OUT, irrelevant; improper opinion; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); routine practice of organization or person - Rule 406;)

¶17. I did quite a lot of research on Frieda Nitchy and Jean Baptiste before coming down to Lake Ozark. I researched their backgrounds to get a sense of why they had taken the positions they did on the immigration issue. That's how I learned about Baptiste's NGO work, as well as Nitchy's own past growing up in middle America in a blue-collar family. Her father went back and forth between union and non-union positions at a time when immigration was viewed as a source of unemployment for American workers. (Π: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); foundation for expert opinion - Rule 702 (based on knowledge, experience, education, etc.); expert may base opinion on facts perceived or made known to expert or, if inadmissible (like hearsay), facts reasonably relied upon by experts Rule 703; not hearsay - not offered for truth of matter asserted but to show why and how they ended up on the set of a movie;)

¶18. I did not actually expect Nitchy to be on set once filming started. She is a producer, meaning she gets the financing together and makes the hires for the various departments. But that means she has to be in Hollywood where the money is, and not walking around a movie set outside a major population center. Imagine my surprise when Nitchy showed up on the set the same day Baptiste arrived to shoot his scenes. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay))

¶19. I had already been working on the set for several weeks surreptitiously taping my conversations with others on set. That's the first strange thing about the set for "L'Etrange." The crew was not just small, it was ridiculously tiny for a film from someone with a brand name like Frieda Nitchy. I was the makeup crew. By myself. And I was asked to help with props while actual filming was going on. So I got to do hair and makeup for all of the actors. (Π: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.); I have to admit, I am not a big fan of Simone D. Buvwar. Ridiculously attractive, with the emphasis on ridiculous. Kind of a poor person's Keanu Reeves, but maybe a few Ronins short of forty seven. A Ted short of an Excellent Adventure. A red pill short of...look, Buvwar is dumb. There I said it. I think I can say that objectively as a journalist. (Π: OUT, irrelevant; lack of foundation; improper opinions; improper character evidence - Rule 404; vs. IN,

impeachment on witness' bias against Buvwar - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert journalist opinion.)

¶20. Buvwar is into method acting. I would call it method over-acting. Rather than portray subtle clues about his/her character, every scene is imbued with the far extreme of emotion needed for the part. And because he/she is a method actor, IT NEVER TURNS OFF. She/he could be in the bathroom and remain in character. And never in the time I worked with him/her did I ever get any impression about what Buvwar him/herself thought about anything. Only what her/his character thought. (Π: OUT, irrelevant; lack of foundation; improper opinions; improper character evidence - Rule 404; vs. IN, impeachment on witness' bias against Buvwar - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), expert journalist opinion.) It makes it really hard to quote someone. For instance, I asked about Baptiste, and the response I got was “You mean the stranger? There’s something mysterious about him.” What is so strange is the two had actually worked together on more than one movie, and were known to be close friends. Actors, you know? (Π: OUT, irrelevant; lack of foundation; speculation; improper opinion; improper character evidence - Rule 404; testimony based on hearsay - rule 801; vs. IN, impeachment on witness' bias - wide latitude for cross examination, rule 611; perception; expert journalist opinion based on experience, etc.; Δ: IN, relevant - Rule 403; firsthand knowledge -

rule 602; perception - Rule 701 (personal opinion okay), expert opinion - Rule 702 (based on knowledge, experience, education, etc.);)

¶21. I was there when Baptiste arrived on set. Buvwar simply walked up to Baptiste and put his/her hands on his/her hips and said, “Huh,” then turned on his/her heels and walked off to his/her trailer. Baptiste looked mystified but just shrugged and turned to talk with his entourage. (Π: OUT, irrelevant; lack of foundation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶22. Tommie Hagen came up to Baptiste almost as soon as he arrived and took him off to one side. They had a pretty heated exchange off to one side. I didn’t hear much of what was said, except for Baptiste asking, “Why?” Hagen’s back was to me and I could not hear his/her response. Baptiste finally shook his head and said, “Fine. Let’s get this over with,” and the two walked off. I followed them to the parking area and they got into Hagen’s BMW and drove off. I got on my motorcycle and followed their dust trail off the set. (Π: OUT, irrelevant; lack of foundation; speculation, hearsay; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - Hagen’s conversation not offered for truth of matter asserted;)

¶23. Hagen stopped in front of a Big City Mutual Insurance Agent’s office back in town. I parked close by and waited until they had left. I then went in and asked about purchasing life insurance. The guy at the front desk exclaimed, “Wow! That’s so weird. The folks who just walked out wanted the same thing.” (Π: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403;

foundation for firsthand knowledge of application (which is authentic per stipulations) - rule 602; perception - Rule 701 (personal opinion okay), guy's statements not hearsay - not offered for truth of matter asserted but to show why witness took picture of application; guy's statement is excited utterance - exception to hearsay <weak>) He walked off to get an application, but left his paperwork sitting out. I quickly took a photo the application with my phone and left without filling out my own paperwork. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602;)

¶24. The first application ended up being a million-dollar life insurance policy taken out on Jean Baptiste's life. The beneficiary was a company named "Monkey Business II, LLC" and it was signed by both Baptiste and Hagen. As if that wasn't strange enough, the second application was a liability policy also signed by Hagen several week earlier insuring Camera Obscura, Inc., the production company I was working for. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge of documents <which are authenticated per stipulations> - rule 602; perception - Rule 701 (personal opinion okay), see also stipulations;) I guess the agent's office had put the two applications in the same hard file which is why they were both sitting out. (Π: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal

opinion okay),) I filed away the info for later use. (Π: OUT, irrelevant; Δ: IN, relevant to show chain of custody for evidence - Rule 403;)

¶25. I got back to the set that night. I did not witness any of the drama involving Sertra. I only heard about it later the next morning from other people on set. (Π: OUT, irrelevant; hearsay; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; not hearsay - not offering any statement for truth of matter asserted;)

¶26. Baptiste was to begin filming that next morning. The director wanted him to look more disheveled than he normally does. It actually takes a lot of work to make a clean-cut guy look as beaten up as the director wanted. (Π: OUT, irrelevant; lack of foundation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),) I had my chance to ask Baptiste about his relationship with Nitchy and the back and forth Stutters while I cut his hair. Turns out the whole reason he took the role in the first place was to expose Frieda Nitchy. He had learned her production company had an agreement with the Actors Guild and the other trade unions to use exclusively union labor on its movies. But, “L’Etrange” and the other low budget films Nitchy had released recently did not use union labor. He planned to work on the movie, and use what he learned to file a lawsuit against the company on behalf of the unions for breaching their contract and put Nitchy’s company out of business. (Π: OUT, irrelevant; lack of foundation; speculation; testimony; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), Baptiste's statements show his/her state of mind - Rule 803 <hearsay exception>; also,

statements not used as hearsay for truth of the matter asserted but to show subsequent conduct in talking with Nitchy.)

¶27. Baptiste left for the set, and I left shortly thereafter to find Nitchy and ask her about the labor question. Ms. Nitchy was still there that morning, and I found her outside the director's trailer standing with her attorney, Tommie Hagen. I knew Nitchy wouldn't talk to me directly, but Hagen dealt with the day to day stuff all the time. I asked if I could have a word with Hagen and she/he agreed. (II: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),) I asked if I could be in any trouble for being non-union and that Baptiste had warned me that working on the movie could mean all kind of legal trouble for me personally. I made sure to say it loudly enough that Ms. Nitchy could hear me. I know she did, because her face turned beet red and she mumbled, "If you would please excuse me..." It was too quiet to be picked up on my recording. I've checked. (II: OUT, irrelevant; lack of foundation; speculation on what Nitchy heard; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Nitchy's statements are hearsay exception showing his/her state of mind - Rule 803 and/or excited utterance; not hearsay - not offered for truth of matter asserted but to show Nitchy's reaction; )

¶28. Hagen hurriedly explained that he/she didn't think there was a problem and started to explain how the union contract was with a different company Nitchy owned, but I stopped listening and I followed Nitchy with my eyes as she stormed off. I saw her get up to the

set and stand behind the camera with her eyes fastened to Baptiste. She took out one hand, made a gun shape with it and pointed it at Baptiste who was in the middle of a run through of the fight scene which precedes the shooting scene. I believed at the time she was asking the director something about the shooting scene because she was standing right next to the director, Cecilia B.D. Mills and that scene was to be filmed on the same beach. But now I'm not so sure.

Because that next morning was the morning Baptiste was shot. (Π: OUT, irrelevant;

prejudicial effect outweighs probative value Rule 403; lack of foundation;

speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403;

firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); not

hearsay - not offered for truth of matter asserted;)

¶29. The rest of the day went by without any more drama. I talked to several more cast members and crew about the use of non-union labor and most were pretty nonchalant about it.

Even those crew members that I knew to be union. (Π: OUT, irrelevant; lack of foundation;

speculation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception

- Rule 701 (personal opinion okay);)

¶30. The next morning, Sertra was in the makeup trailer talking to me about props for that day. I was to help him/her on the Second Team to make sure the set was ready for filming

once the marks had been set. Baptiste came in for his makeup, and ignored Sertra. (Π: OUT,

irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand

knowledge - rule 602; perception - Rule 701 (personal opinion okay)) Before Sertra

could leave, Baptiste asked me something that will haunt me for the rest of my life, "If you knew

today was to be your last day on earth, how would you spend it?” (Π: OUT, irrelevant; hearsay - rule 801; vs. IN, Baptiste's statements made in front of Δ explains Δ's subsequent response <rule of completeness>; Δ: IN, relevant - Rule 403; foundation to explain Δ's subsequent response <rule of completeness>; shows Baptiste's state of mind - Rule 803;) Sertra reached for the door to let us get started on the makeup as Baptiste posed the question. Just as Sertra left, she/he mumbled something under his/her breath, like “Guess I’ll let myself out.” Though it might have been, “Guess we’ll find out.” I wasn’t recording, and it was said pretty quietly. (Π: IN, Δ's comment is statement by party opponent -Rule 801(d)(2); shows Δ's state of mind - Rule 803; Δ: IN, OUT, irrelevant; speculation, highly prejudicial outweighing probative value, hearsay:)

¶31. I did not see the actual shooting as I was back in my trailer reviewing my recordings for the “Revelations” podcast, hoping I had gotten enough material to make an entire show. I’d been able to get quite a bit from Baptiste about his background and reasons for largely retiring from Hollywood. But I did not have as much from Nitchy like I’d hoped. (Π: OUT, irrelevant; vs. IN, impeachment on witness' interest, motive, bias in writing article - wide latitude for cross examination, rule 611; shows that witness did not anticipate problems or shooting despite previous perceptions; Δ: IN, relevant - Rule 403;)

¶32. Because of Baptiste’s death, we ended up running the “Revelations” podcast as a retrospective on the life of Jean Baptiste rather than truly having it be an episode on immigration like we’d hoped. However, I plan to release my own true crime podcast about the outcome of

this trial. If the jury convicts Sertra of this murder, I will be able to clean up on sponsors, even without Carl's help. You see, I know what really happened. I was there. (Π: IN, impeachment on witness' interest, motive, bias - wide latitude for cross examination, rule 611; Δ: OUT, irrelevant; speculation on what happened, improper impeachment; comment on murder conviction highly prejudicial - Rule 403.)

- Above statement by **Reggie Electra**

## **Statement of Δ Jean Sertra**

¶1. I've never known exactly what I wanted to be. That's how I ended up as a props manager for a failing movie studio in the first place. I guess I should start at the beginning. I was born and raised in south Detroit. I graduated from high school and ended up waiting tables. One night, I decided I needed a change. I went to the Amtrak station at midnight after my shift was over and asked for a ticket going anywhere. Just my luck I ended up on the train to Big City. (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602;)

¶2. I started over and moved in with my aunt who had left Detroit years before. I saved up enough money to attend Missouri University of Science and Technology in Rolla. My plan was to get an engineering degree, but I quickly discovered that science was not my thing and I ended up majoring in philosophy. (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602;)

¶3. Philosophy allowed me to explore that fundamental question of being: Who am I? The only problem was that, after four years of college, and a philosophy degree from a Science and Technical University, whoever I was did not include the description, "Someone who is employed." I simply did not have many options. And like most philosophers, I wasn't as close to the answer to my question as I'd hoped. (Π: OUT, (boringly) irrelevant; self serving; improper character evidence; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; shows

*Δ's state of mind and character Rule 404(a)(1); criminal defendant should be granted latitude in testifying because liberty at stake.)*

¶4. I had a number of friends who made small black and white films in college, things about heroes playing chess with death, or one called “Julie Andrews of the Spirits” about, well, actually I’m still not sure what it was about. I learned quite a bit about small budget films. However, I knew I would not be able to take the people in Hollywood. How do you lie to the world about who you are without also lying to yourself? At least with the small films, actors and directors can be themselves. What we were filming was life itself being lived, not works of fiction. (Π: OUT, irrelevant; self serving; improper character evidence; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; shows Δ's state of mind and character Rule 404(a)(1);)

¶5. Rather than go out West, I found part time work as a bartender back in Big City. I had to move back in with my Aunt to make it work. The hours were late, and I was not able to form any strong relationships. To pass the time, I’d pretend to be a latter-day Socrates and engage patrons with philosophical questions, “How do you know you really exist?” or another favorite, “What are you anyway?” Depending on the level of sobriety, I’d occasionally get answers better than anything I’d heard in school. But you have to be careful. Ask the wrong person the wrong question and you end up poisoned rather than enlightened. Socrates, of course, missed that bit. (Π: OUT, irrelevant; self serving; testimony includes hearsay - rule 801; improper character evidence;

Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), shows Δ's state of mind and character Rule 404(a)(1); not hearsay - not offered for truth of matter asserted; Buvwar's statements not hearsay - witness in prosecution's case and is subject to cross examination)

¶6. I love questions. Rene Descartes, the father of Western philosophy, recognized a fundamental problem with identity. We've all heard, "I think, therefore, I am." All Western philosophy starts with that assumption. If there is thought, then someone or something must be doing the thinking. Ah, but what is that person or thing doing the thinking? Descartes, and every other Western philosopher since, has tried to answer that question. Unfortunately, when the only thing you know for sure is "I think" you are never quite sure if anyone else exists that might also be thinking. Maybe I am the only one who thinks its rational to believe I might be the only thinking thing in the world. But is it really paranoia if people really are out to get you? (Π: OUT, irrelevant; self serving; improper character evidence - Rule 404; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge - rule 602; shows Δ's state of mind and character Rule 404(a)(1);)

¶7. I remember the night I met Simone D. Buvwar. A smoky room. She/He came into the bar and ordered a glass of wine. Memory is a funny thing. I can not only remember the smell of the wine, but the cheap perfume of the lady on the next barstool down. Buvwar and I totally hit it off. My question of the night was, "Is freedom just

another word for nothing left to lose?" Simone thought carefully as I poured the wine before answering, "Freedom is just the sentence you are given for the crime of being born." My soul mate. (Π: OUT, irrelevant; self serving; improper character evidence - Rule 404; testimony includes hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge showing relationship with Buvwar - rule 602; perception - Rule 701 (personal opinion okay), Buvwar's comments shows his/her state of mind - Rule 803; shows Δ's state of mind and character Rule 404(a)(1); not hearsay - not offered for truth of matter asserted; Buvwar's statements not hearsay - witness in prosecution's case and is subject to cross examination)

¶8. We spent the rest of the evening at the bar, posing question after question. His/her friends kept trying to get Simone to come back to their table, but then one of us would ask another question and our discussion would continue. Before Simone left, we had exchanged Stutter handles and promised to write each other. (Π: OUT, irrelevant; self serving; improper character evidence - Rule 404; testimony includes hearsay - rule 801; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge showing relationship with Buvwar - rule 602; perception - Rule 701 (personal opinion okay), Buvwar's comments shows his/her state of mind - Rule 803; shows Δ's state of mind and character Rule 404(a)(1); not hearsay

- not offered for truth of matter asserted; Buvwar's statements not hearsay - witness in prosecution's case and is subject to cross examination)

¶9. It turns out Simone was only in Big City for a short time. I had no idea she/he was a movie actor. I don't watch movies because of their inauthenticity. What's the point of watching others make choices which are then trapped in amber by the film, never changing, never becoming something else? Film is by definition a dead art because it can only describe the past and never the future. (Π: OUT, irrelevant; self serving; improper character evidence - Rule 404; Δ: IN, relevant - Rule 403; foundation for firsthand knowledge showing relationship with Buvwar - rule 602; perception - Rule 701 (personal opinion okay), shows Δ's state of mind and character Rule 404(a)(1);)

¶10. Imagine my surprise the next morning when I sent a Stutter follow request to Simone only to discover Buvwar was so popular, she/he already had something like 500,000 other people already following him/her. I'm not famous, and I certainly don't know any famous people. I went ahead and sent the request anyway. My Stutter name is @\*precedingessence\*. Amazingly, Simone accepted right away. We continued our private chat all through the next day. It wasn't at all a romantic thing. At least that's not the way I understood our relationship. It was something more fundamental, almost like a twin from whom I'd been separated at birth. Any topic at all and we'd be debating the fundamental assumptions either of us would make in forming our position. That went on for weeks. That small part of me that always assumed I was the only person in the universe quieted. I knew I had met another I, another being that thought, and it made me

whole in return. (Π: OUT, irrelevant; self serving; lack of foundation; speculation; improper character evidence - Rule 404; Δ: IN, relevant - Rule 403; firsthand knowledge of relationship with Buvwar - rule 602; perception - Rule 701 (personal opinion okay), Buvwar's state of mind - Rule 803; shows Δ's state of mind and character Rule 404(a)(1))

¶11. Simone told me she/he was returning to Missouri to shoot a movie with a small production company called Camera Obscura and asked if I wanted to be a part of the production. (Π: OUT, irrelevant; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; not hearsay - not offered for truth of matter asserted but to show how Δ ended up working on the movie - subsequent conduct; Buvwar's statements not hearsay - witness in prosecution's case and is subject to cross examination;) I don't know why those Stutters aren't in my account anymore. Simone must have deleted them to get back at me! (Π: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶12. I have read back through my Stutters with Simone. I don't have any regrets. Except maybe the song choices for my playlists. They really weren't intended to send any kind of message. These were all songs I had saved to my Panorama account. I like a wide variety of music, from Country to Rap to 80's rock to Soul. I was just trying

to give Simone a sprinkling of my music. (Π: OUT, irrelevant; self serving; improper opinion; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602;) Honestly, I don't even really pay attention to the lyrics, but I can see now how the Spiders in Cars song might have given someone the wrong impression. (Π: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶13. The company was shooting a modern-day version of Camus's "L'Etranger" or "L'Etrange" at the Lake of the Ozarks. Simone remembered how much I enjoyed Existential philosophy and thought I would enjoy being a part of the production. She/he understood there was a need for a props manager and had convinced the producer, Frieda Nitchy, to hire me. (Π: OUT, irrelevant; lack of foundation; speculation; testimony includes hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), not hearsay - not offered for truth of matter asserted but to show how Δ became props manager; Buvwar's statements not hearsay - witness in prosecution's case and is subject to cross examination;)

¶14. Despite my distaste for movies in general, I decided to become a props manager. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602;) Nitchy flew in to Big City for a production meeting about a month before

the filming was to get started. The film was a non-union job and we were asked to stay quiet about our involvement. Nitchy told us the union which organizes for the technical side of films would have been very vocal and would have sent organizers to disrupt the filming. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; shows Nitchy's state of mind about nonunion jobs - Rule 803; not hearsay - not offered for truth of matter asserted but shows reasons why quiet about jobs - subsequent conduct; prosecution opened door to evidence of Nitchy's statements in its case (other witnesses testified to Nitchy's statements))

¶15. After the large meeting with Frieda Nitchy and the Director, Cecilia B. D. Mills, Nitchy asked me to meet with her over dinner to discuss the project. I accepted, of course. I don't know what I was thinking the meeting was for, exactly. I did think it was a little odd that Nitchy would ask me to a private meeting at a fancy restaurant to interview for props manager. It turned out that Nitchy was very close with Simone, and Simone had asked Nitchy for a favor in order to hire me for the job. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Nitchy's state of mind - Rule 803; not hearsay - not offered for truth of matter asserted; prosecution opened

door to evidence of Nitchy's statements in its case (other witnesses testified to Nitchy's statements);)

¶16. Nitchy was skeptical, but agreed anyway. Nitchy asked how much experience I had in handling guns, and I explained I had virtually no experience at all. I had worked as a props master on small movies before, but never as an armorer. I had hunted a bit with my father when I was little, but stopped once he passed. Nitchy explained there was a scene in the movie where the lead character, played by Simone Buvwar, has to shoot a stranger on the beach. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), Nitchy's state of mind - Rule 803; not hearsay - not offered for truth of matter asserted; prosecution opened door to evidence of Nitchy's statements in its case (other witnesses testified to Nitchy's statements);) Union rules are very strict over the use of firearms, even when using blanks, because of the death of Brandon Lee. Lee died while filming "The Crow" back in 1993. (Π: OUT, irrelevant; lack of foundation; speculation; improper opinion; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; firsthand knowledge of being props manager; shows Nitchy's and Δ's states of mind being concerned about gun safety <hearsay exception> - Rule 803;) Nitchy was very concerned that if anything should go wrong with the gun, especially while using

non-union technical staff, Camera Obscura would be forced to close its doors. I explained that I understood how serious it was and that I would do anything she needed to make sure the props were as safe as possible. (Π: OUT, irrelevant; lack of foundation; speculation; testimony based on hearsay - rule 801; Δ: IN, relevant - Rule 403; perception - Rule 701 (personal opinion okay), Nitchy's state of mind - Rule 803; Δ's state of mind; prosecution opened door to evidence of Nitchy's statements in its case (other witnesses testified to Nitchy's statements);)

¶17. Being a props manager and armorer on this size of a production was a lot more complicated than I thought. The props manager is responsible not only for having all props available on set when needed, but also to make sure that multiple copies of those props are available. If something is broken during a scene, it has to remain broken the next time it shows up on screen. It required a lot of time and effort to ensure that I could find enough copies of each object all in the same condition and to make sure I did not hold up filming because something was not where it was supposed to be. And I had to make sure the gun was locked up every day even if it was not going to be used that day. (Π: OUT, irrelevant; lack of foundation; speculation; Δ: IN, relevant - Rule 403; firsthand knowledge of responsibilities of being props manager - rule 602;)

¶18. I got to be on set every day, though, and being able to hang out with Simone made it all worth it. At least until that last day. The day Baptiste died. (Π:

OUT, irrelevant; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay); shows Δ's state of mind;)

¶19. Baptiste had a fairly small role in the movie and had come to our location for only a few days. I was in the middle of a conversation with Simone when Baptiste showed up, suave and beautiful. Simone broke off in the middle of a sentence and immediately went to talk with Baptiste. Rather than introduce me, they walked off together leaving me there alone. (Π: OUT, irrelevant; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶20. I don't think I handled it all that well, honestly. During the time I worked in the bar, I had developed a fairly significant drinking problem. However, I had joined AA around the same time I had met Simone and was well on the path to sobriety. While out at the Lake, I stopped attending AA meetings, and I stopped checking in with my sponsor. I would have the occasional drink with the crew after the day was over. I had it under control. At least until that day. (Π: IN, impeachment on witness' ability to recall events - wide latitude for cross examination, rule 611; proper rebuttal character evidence Rule 404; voluntary intoxication not a viable defense; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; not a criminal conviction

- Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608;)

¶21. I found a bottle of hooch I had picked up as a prop and had a small drink. Then another. And maybe one, or two more. I only vaguely remember asking Simone how she/he knew Baptiste. I do not recall threatening Simone or Baptiste at all. Though I know I did because Nitchy showed me the incident the next day. She captured the whole thing on her cell phone. While I don't know what was said first, I saw myself stick a finger in Simone's face and say, "You're nothing without me!" before proceeding to throw up and fall over on the beach. (II: IN, impeachment on witness' ability to recall events - wide latitude for cross examination, rule 611; proper rebuttal character evidence Rule 404; voluntary intoxication not a viable defense; cell phone video not hearsay but statement (conduct) by party opponent used to refresh recollection; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), vs. OUT, personal information is irrelevant; improper impeachment; highly prejudicial -Rule 403; not a criminal conviction - Rule 609; improper character evidence [specific conduct] which does not affect truthfulness - Rule 608; cell phone video is hearsay.)

¶22. Nitchy came to me the next morning and showed me the video. It was a very odd conversation. I knew I had probably done and said some things I should not have, and I expected to get chewed out by Nitchy, maybe even fired. My head was

pounding and I still felt nauseous. After asking if she could come in, Nitchy sat on the couch and showed me the video. I wasn't exactly shocked, but it's never fun for sober-you to watch drunk-you make a fool of yourself. After a moment of silence, Nitchy pulled out the gun from her pocket and held it out to me. She asked if I understood why she was handing me the gun at that moment. I stayed quiet, and Nitchy calmly explained that she could not tolerate drunkenness on set, especially for that day's shoot. She had already loaded the gun to make sure the right ammunition was in the gun so no one would get hurt. She let herself out without another word. (II: OUT, irrelevant; self serving; prejudicial effect outweighs probative value Rule 403; lack of foundation; testimony based on hearsay - rule 801; voluntary intoxication not a defense; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay), shows Δ's state of mind in believing gun was unloaded; not hearsay - not offered for truth of matter asserted but to show the belief that the gun was not loaded with live ammo; prosecution opened door to evidence of Nitchy's statements in its case (other witnesses testified to Nitchy's statements);)

¶23. I swear I did not know that gun was loaded with real ammunition! I had no idea what a blank was supposed to look like. I trusted Nitchy and clearly that was my biggest mistake. (II: OUT, irrelevant; self serving; prejudicial effect outweighs probative value Rule 403; testimony based on hearsay - rule 801; voluntary

intoxication not a defense; Δ: IN, relevant - Rule 403; perception - Rule 701  
(personal opinion okay), Δ's state of mind)

¶24. I brought the gun with me to the set that day. I had trouble looking anyone in the eyes, especially Simone. The look of hurt on his/her face as I handed over the gun almost made me walk away and leave. I wish I had. (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶25. The killing of the stranger scene took place on a beach. Simone's character's love interest had just had a fight with Baptiste's character. Simone was to walk down the beach towards Baptiste, point the gun and shoot as Baptiste stared him/her down. Cecilia yelled action, and Simone walked down the beach a few steps with the gun at his/her side. Simone was brilliant. I've never seen someone who could act that well. The two stared at each other for what felt like an eternity before you could see Simone decide Baptiste's life had to end. In a blink, she/he raised the gun and fired. Baptiste was hit in the chest, and looked down at the wound, then back at Simone with a confused look and toppled over backwards, dead. (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶26. Cecilia yelled, "Cut!" and the entire crew began to clap, except for me...and Nitchy. I was still a little hacked off at Baptiste. I have to assume Nitchy didn't clap because she knew what she'd done. The clapping died off, and Simone walked over to Baptiste to help him up. Baptiste did not respond, of course, and fell down limply as

Simone let go. Simone must have realized something was wrong, because she/he immediately went down on his/her knees and started CPR. Others came over to help, but it was too late. (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),) Buvwar had killed Baptiste. (Π: OUT, irrelevant; lack of foundation for medical opinion; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

¶27. I did the only thing I could think of: I went back to my trailer and finished off the bottle of hooch. The police came knocking a few hours later to interview me despite my inebriated state. I don't know what I said to them. They arrested me and took me to Lake County jail where I spent the night in a cell next to some crazy person, Max something or other. I probably answered his/her question of what I was in for, but I did not share any more information. (Π: OUT, irrelevant; lack of foundation; speculation; vs. IN, impeachment on witness' recollection of making statements to others - wide latitude for cross examination, rule 611; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),) I had called my lawyer, a former record executive turned criminal defense lawyer, Pat Smith, who put me in touch with a local defense attorney. I was told I could not talk to the police and not to talk to anyone in the jail. Apparently, the cops in Lake Ozark have a thing for having prisoners interview other prisoners, and then use that information against them later on. Once I got that advice, I wasn't going to

talk to Max anymore. Max kept asking, “But what about the eyes? How did you capture the eyes?” What a weirdo. (Π: IN, relevant; Δ: OUT, irrelevant; highly prejudicial -Rule 403; invades Δ's 6<sup>th</sup> amendment right to counsel and 5<sup>th</sup> amendment right to remain silent - these issues involve constitutional rights and are prohibited to be used as evidence against the Δ)

¶28. I certainly never told Max I was jealous of Baptiste! What kind of lame loser would be jealous of a small-time actor, even if they had taken away their best friend? (Π: OUT, irrelevant; self serving; Δ: IN, relevant - Rule 403; firsthand knowledge - rule 602; perception - Rule 701 (personal opinion okay),)

- Above statement by *Δ Jean Sertra*