

**THE WALL: Chronicle of a
Scuba Trial**

You are the jury.

THE WALL: Chronicle of a Scuba Trial

Characters - Cast of 15 total (in order of appearance; possible double roles are color-coded)

Off-stage Narrator

Max Scowcroft, BBC Announcer

Grand Cayman Constable Jeff Ebanks

Judge Mabel Whittaker

Judge Whittaker's Bailiff [a middle-aged male]

Chester Pearson, Plaintiff Attorney

Giles Morgan, Expert for the Plaintiffs

Unnamed man fully dressed in scuba gear

Lane Kirkland, Defense Attorney

Dr. Rudolph Bergofsky, Expert for the Plaintiffs

Professor Brian Dehavily, Witness for the Plaintiffs

Dr. Jason Roberts, Expert for the Defense

Mr. Stanley Knowlton, father of the deceased diver

Mrs. Stanley Knowlton, mother of the deceased diver

Scott Harrison, Expert for the Defense

Charlene Marvich, dive master on the fatal dive

Debbie Schwartz, Witness for the Defense

Jonathan Archer, Boyfriend of the deceased diver

Jennie Knowlton, the deceased diver

Off-stage Narrator can also play one of the male characters, e.g., Dr. Bergofsky

BBC Announcer and Defense Expert Harrison can be played by the same actor

Constable Ebanks and Professor Dehavily can be played by the same actor

Man in scuba gear and Jonathan Archer can be played by same actor

- The Jury will be comprised of 10 people, drawn from the audience during the opening courtroom scene.
- If the play is produced, visuals noted throughout the script (coral reef wall, head shots of characters as noted, etc.,) can be displayed on screen before the audience. For the staged reading, reference can be made to the visuals.

[Opening scene. A young woman has disappeared while diving with a guided group down a coral wall. Visually showing this dive is not feasible, so the opening scene is structured to recount the event via a television news broadcast.

BBC Announcer at his desk in television studio, George Town, Grand Cayman Island. Behind him is projected a picture of a Grand Cayman Island Scuba Shop, with sign stating "Ocean Realm Scuba - Dive Your Dreams." **VISUAL OF SCUBA SIGN]**

ACT I

OFF-STAGE NARRATOR

The BBC Evening News, with our own Max Scowcroft. Today is July 15, 2014.

MAX SCOWCROFT

Max Scowcroft here, broadcasting from George Town, Grand Cayman Island, with Breaking News. A recreational scuba diver has gone missing on what was supposed to be routine guided dive. It happened this morning off one of our ocean coral walls. Jennie Knowlton, a 20-year-old woman from the United States, did not surface from that dive. The dive was conducted by Ocean Realm Scuba, starting around 9 am. Ocean Realm's dive master and 8 scuba divers began the dive **[VISUAL OF CORAL WALL]**. When they all surfaced and got back on the dive boat, Miss Knowlton was not among the group. We have Constable Jeff Ebanks standing by, to give us more information. Constable Ebanks.

[Stage lights shine on the constable, who is speaking from his office in George Town, Grand Cayman.]

CONSTABLE EBANKS

Max, According to the dive master, an American named Charlene Marvich, the young diver swam away from the group when they were down about 75 feet on the coral wall. They were looking at a

moray eel, when the young woman apparently left the group and descended much further down the wall.

She was not spotted until way below the group, far deeper than one is allowed to go on these recreational wall dives. Ocean Realm's dive master has told authorities that Miss Knowlton, the missing diver, continued to descend, and that going after her was not possible without running out of air. When the dive master got back on the boat and explained what had transpired, two more Ocean Realm divers were sent down to search the wall, but found no trace of the missing diver.

This wall of coral, very popular with local divers, goes down some 3000 feet, but recreational scuba divers are limited to only 130 feet maximum depth, or they risk running out of air and getting the bends. The missing diver is now presumed dead, and the investigation is ongoing.

MAX SCOWCROFT

Do we know anything about Ms. Knowlton? We do have her passport photo, shown here. [VISUAL OF MISS KNOWLTON, THE ACTRESS WHO WILL PLAY HER ROLE]

CONSTABLE EBANKS

Not much. She was twenty years old, from Cleveland, Ohio, here vacationing with her boyfriend. We do know they dove together as buddies on that fateful dive this morning. He is of course devastated. At this point we have no explanation of just what happened, but we expect to know more after a thorough investigation.

MAX SCOWCROFT

And what do we know about the dive master, Miss Marvich? We have her passport photo as well. [VISUAL OF MISS MARVICH, THE ACTRESS WHO WILL PLAY HER ROLE]

CONSTABLE EBANKS

Yes, the dive master leading the dive was Miss Charlene Marvich, from Miami, Florida. She has been employed with Ocean Realm for the past two months. According to the authorities, Ms. Knowlton's death is being investigated as a tragic diving accident. It is important to point out that, despite the popularity of our island for scuba diving, fatalities in the sport are rare, the last one occurring here over two years ago. That case was a middle-aged man who apparently suffered a heart attack under water.

The cause of today's accident will of course be thoroughly investigated. Hopefully we'll have some answers soon.

MAX SCOWCROFT

Thank you Constable Ebanks

[Stage lights off Mr. Ebanks]

MAX SCOWCROFT

Now more news from George Town.

[Fade out...]

* * *

INTERIOR OF COURTROOM IN CLEVELAND, OHIO. DAY
ONE OF CIVIL TRIAL, 14 MONTHS LATER

[Judge Mabel Whittaker sits at her elevated bench and looks over the courtroom, which for visual purposes is the theater audience. Roles in the court room include Stanley and Emily Knowlton, parents of the deceased diver Jennie Knowlton; Lane Kirkland, attorney for Ocean Realm International; Chester Pearson, attorney for the Knowltons; and various witnesses and experts who will be called to testify.]

JUDGE WHITTAKER

The trial today is Knowlton vs. Ocean Realm International. This is a civil case, for monetary compensation only. The plaintiffs are Mr. and Mrs. Stanley Knowlton. The complaint is wrongful death of their twenty-year-old daughter Jennie Knowlton, due to "reckless negligence" in a scuba diving incident 14 months ago, on Grand

Cayman Island. Specifically, on July 15, 2014 Ms. Knowlton did a scuba dive with this company and did not surface. Her body was never recovered, and a death certificate was issued by the Cayman authorities.

The parents seek a monetary award from Ocean Realm International, owner of Ocean Realm Scuba located on Seven Mile Beach, Grand Cayman, British West Indies.

[VISUAL OF PORTION OF SEVEN MILE BEACH, GRAND CAYMAN ISLAND]

We have heard arguments against holding the trial in the United States, since the accident occurred in Grand Cayman, a British Overseas Territory. However, since the deceased was an American Citizen, and the owner of Ocean Realm Scuba is an American-chartered company, the court affirms proper jurisdiction is here in the U.S., specifically in Cleveland where the deceased parents reside.

The jury may be seated.

JUDGE WHITTAKER'S BAILIFF

Your Honor, all assembled here are qualified [bailiff's hand sweeps to show the entire theater audience]. We will need ten jurors, drawn from this large jury pool. [He turns to speak to the audience] Please raise your hand if you feel you can be fair and objective in judging this case. Also note, as much as we'd like to, no jury fee can be paid for your service today. Consider it your civic duty. Do I have any volunteers?

[Many hands are expected among audience members.]

[PREFERRED OPTION FOR THIS PLAY: MOVE THE 10 CHOSEN JURORS TO A JURY BOX ON ONE SIDE OF THE STAGE. In this option, the Bailiff selects 5 men and 5 women, and instructs them to sit in the jury box, which is to one side of the stage. On each chair in the jury box is a single sheet of paper and a pencil. The sheet has check boxes, one for "FIND FOR THE PLAINTIFFS" and one for

"FIND FOR THE DEFENSE". Under the FIND FOR THE PLAINTIFFS is a space to write in the monetary award that specific juror recommends. Toward the end of the play each juror will hand in the verdict sheet to the Bailiff. The judge will choose the appropriate monetary award if the jury finds for the plaintiff.]

[SECOND OPTION FOR THIS PLAY: CHOSEN JURORS REMAIN SEATED IN THE AUDIENCE: The Bailiff selects 5 men and 5 women, puts a sign around each of their necks stating "JUROR," but they remain seated in the audience. He hands each a single sheet of paper and a pencil, same as the one above. Toward the end of the play each juror will hand in the verdict sheet to the Bailiff.]

BALIFF

Your Honor, the Jury is seated. We have ten jurors, 5 men and 5 women. They have all been vetted and have attested to their objectivity. They have their ballots by which to vote on a verdict at the end of the trial.

JUDGE WHITTAKER

Good. These honorable men and women will decide this case. Do I hear any objections from counsel? [A pause]. Hearing none, this trial will begin. We will start with Mr. Pearson, representing the family of Jennie Knowlton. You may call your first witness Mr. Pearson.

[Pearson walks to the front of the courtroom.]

CHESTER PEARSON

The court calls Mr. Giles Morgan.

[Mr. Morgan enters the stage, walks to the witness box and is sworn in.]

CHESTER PEARSON

Please state your name, address, age, and occupation.

GILES MORGAN

Giles Girard Morgan, Miami, Florida, 38 years old, master scuba instructor.

CHESTER PEARSON

Will you please tell the jury what that means, master scuba instructor?

GILES MORGAN

I am qualified to teach scuba diving at the entry level, which is for people who have never dived before. And I am also qualified to teach advanced diving courses, to people who want to become professionals in the field.

CHESTER PEARSON

Does that mean you teach the teachers?

GILES MORGAN

Yes.

CHESTER PEARSON

Mr. Morgan, how long have you been a scuba diving instructor?

GILES MORGAN

Fifteen years.

CHESTER PEARSON

And how many dives have you yourself made?

GILES MORGAN

I estimate about 4,000.

CHESTER PEARSON

Well tell me, for the typical recreational diver, someone who just goes on vacation to dive, how many dives do they do, per year?

GILES MORGAN

I would say the typical recreational scuba diver does maybe ten to twenty dives a year, that is, when they are active divers. Many divers, after becoming certified, drop out and don't do any diving at all.

CHESTER PEARSON

Mr. Morgan, most of our jury has never been

scuba diving. Could you please explain, briefly, what it means to scuba dive?

Yes, I have one of my employees fully dressed in scuba gear.

[Morgan waves his hand and a young man enters from the rear, fully regaled in scuba gear, including an air tank on his back, mask over his face, and fins on his feet. To draw attention, he makes a noticeable 'flip-flop' sound with his fins as he walks down the aisle to take his place next to Morgan.]

GILES MORGAN

There's a lot of equipment in scuba diving. A mask and snorkel, some fins, a wet suit. You need a way to get the air to your lungs, so we carry an air tank and have a hose coming from it connected to a mouthpiece.

CHESTER PEARSON

Excuse me, is that a tank of oxygen?

GILES MORGAN

No, just regular air, what we're breathing now, but highly compressed, so it can last underwater.

CHESTER PEARSON

OK, pure air. Go on.

GILES MORGAN

To swim under water you need fins on your feet. [The raises his feet one at a time, to show the fins.] To help regulate buoyancy under water you wear an inflatable vest, one that can be inflated or deflated with two simple buttons that the diver controls. One lets air in from the tank and the other lets air out. We call this vest a buoyancy compensator or BC for short.

[As Morgan speaks, he points to these items. The scuba diver turns as needed, so all audience members get a view of the equipment.]

GILES MORGAN

To keep warm in the water you may need a wet suit that covers most of the body. Finally, to be able to see underwater you need a face mask that covers your eyes and nose, as you see here.

[Diver takes his mask off, then puts it back on.]

GILES MORGAN

With this equipment, anyone with healthy heart and lungs can go under water and breathe comfortably for a half hour to an hour, depending on how deep you go.

CHESTER PEARSON

[Points to air tank carried by diver]. The air tank looks heavy. [He lifts the bottom with two hands.] It is heavy!

GILES MORGAN

Yes, it's heavy on land, but weightless under water. It allows the diver to float.

[OPTION; TO SHOW A SHORT VIDEO OF A SCUBA DIVER UNDER WATER - LESS THAN A MINUTE.]

CHESTER PEARSON

Mr. Morgan, what keeps the diver from sinking once she gets into the water?

GILES MORGAN

Actually you want to sink. In fact, I neglected to mention the lead weights that every diver wears on a belt. You see four weights on this diver's dive belt, two on each side. [Points to dive belt as diver turns to show the jury.] They could be one to four pounds each, though most divers in warm water would probably use no more than twelve pounds total. The weights allow her to sink below the surface. Without these weights, you would actually be stuck on the surface; it would be almost impossible to go down and stay down wearing all this equipment.

CHESTER PEARSON

Really? Why is that?

GILES MORGAN

Because the wet suit and BC vest make you float; they have a lot of buoyancy. So by using lead weights, when you first jump in the water, if there is no air in your vest, you can easily control your buoyancy, and if you want to dive all you have to do is empty your lungs and you'll sink. Then, if you sink too much, you can simply kick yourself up or, in some circumstances, put some air in your vest - that will make you rise up a little.

[Talking to diver]. Inflate your vest, please.

[Diver inflates BC.]

GILES MORGAN

Good. Now, deflate it.

[Diver deflates BC.]

GILES MORGAN

So, by inflating and deflating, the diver can control her buoyancy.

CHESTER PEARSON

Just so the jury understands, buoyancy means what?

GILES MORGAN

Let me show this picture. [Morgan waves away the scuba diver, who exits stage. He goes to easel and shows schematic of buoyancy] It just means you tend to rise or fall in the water. If you stay at a certain depth without going up or down, we say you are neutrally buoyant.

[Visual of buoyancy diagram that is also shown on the easel.]

CHESTER PEARSON

Well, then, what could make a diver fall much lower than she is supposed to go?

GILES MORGAN

Lots of things. It's difficult to know how deep you really are at any one time because there is no visual frame of reference; you can't tell by

looking up at the surface or at anything around you. For this reason all divers carry a depth gauge to tell them how deep they are at any instant. If you ignore the gauge it is easy to go deeper than you intended.

Also, if you could have an accident, like a heart attack, and simply lose control of yourself. In that circumstance you are likely to sink and drown.

CHESTER PEARSON

Mr. Morgan, would you expect a heart attack in a twenty-year-old woman?

LANE KIRKLAND

Objection! The witness is not a medical doctor. The question is out of line.

CHESTER PEARSON

Your Honor, Mr. Morgan has interacted with thousands of divers in his career, and if there were medical issues he would likely hear about them. I'm just asking for his opinion.

LANE KIRKLAND

His opinion on this medical question has no validity. I ask the question be withdrawn.

JUDGE WHITTAKER

Sustained. Strike the question.

CHESTER PEARSON

Mr. Morgan, assuming a young adult is healthy when entering the water, what could cause the diver to have a significant problem at depth, to the extent that they sink and die?

LANE KIRKLAND

Objection. Same as before. The witness is not a medical doctor.

CHESTER PEARSON

Your Honor, Mr. Morgan is not a medical doctor, but he teaches diving, and all diving courses include information about potential underwater problems, such as the bends or running out of

air. One does not need a medical degree to know about these conditions. I believe my question is entirely appropriate.

JUDGE WHITTAKER

Overruled. Mr. Morgan, you may answer the question.

GILES MORGAN

Well, one possibility is they could get an air embolus.

CHESTER PEARSON

What's that?

GILES MORGAN

It's like a clot in the blood system, but it's really a giant air bubble. It can go to your brain and cause a stroke or make you lose control.

CHESTER PEARSON

Is that common?

GILES MORGAN

No, it is uncommon, but it's one of the things that can happen.

CHESTER PEARSON

What else?

GILES MORGAN

Well, they could simply become confused from nitrogen narcosis.

CHESTER PEARSON

I'm sorry, Mr. Morgan, could you spell that for us? Maybe you should write it on the poster and then explain it.

[Morgan writes 'NITROGEN NARCOSIS' in big letters on the easel.]

CHESTER PEARSON

I feel like I'm in science class. In layman's terms, what is this 'nitrogen narcosis.'

GILES MORGAN

It comes from too much nitrogen in the blood when you dive. The compressed air has lots of nitrogen, and when it gets in your blood, it can make you drunk.

CHESTER PEARSON

Drunk? Like an alcoholic?

GILES MORGAN

Yes, exactly. This extra nitrogen can affect the body's central nervous system, the brain and spinal cord. Divers often liken it to being inebriated, and actually call it the "Martini effect." Sort of like having two or three Martinis and then acting foolishly because you're not in control.

CHESTER PEARSON

So it really is like being drunk.

GILES MORGAN

Yes, that's really the best analogy. One diver suffering the Martini effect might take his mouthpiece out and do a somersault, and next thing you know he drowns.

CHESTER PEARSON

But doesn't everyone who dives have a high nitrogen level?

GILES MORGAN

Yes, it comes from breathing in air at greater than normal pressures. But getting drunk from the extra nitrogen only occurs after certain depths are reached, and not everyone is affected the same.

CHESTER PEARSON

Well, how common is this nitrogen narcosis?

GILES MORGAN

It's quite common actually. Lots of people report getting a little confused at depth, but when they ascend the feeling goes away completely. That's the nice thing about nitrogen

narcosis; it is cured by ascending.

CHESTER PEARSON

So would you say it happens half the time, or a quarter of the time?

GILES MORGAN

Well, nitrogen narcosis is uncommon to non-existent on shallow dives. Probably never occurs at a depth of fifty feet or less. You begin to see it in some people at seventy-eighty feet, and it becomes really noticeable beyond one hundred feet of depth.

CHESTER PEARSON

If someone was diving to eighty feet, then, and all of a sudden that person kept going deeper, could that be a nitrogen narcosis effect?

GILES MORGAN

Well, yes. That certainly could be an explanation.

CHESTER PEARSON

Would that be the most likely explanation why someone might go deeper than they were supposed to?

GILES MORGAN

Well, it depends on the circumstances.

CHESTER PEARSON

Mr. Morgan. You have been called as an expert witness in this case, and as an expert, have you had a chance to review the records on Ms. Knowlton, specifically the records relating to her diving death on July 15, 2014?

GILES MORGAN

Yes, I have.

CHESTER PEARSON

You have reviewed the newspaper accounts, the Cayman Island Coroner's report with the death certificate, deposition transcripts of all the witnesses?

GILES MORGAN

Yes.

CHESTER PEARSON

Having reviewed all this material, do you have an opinion with reasonable certainty, as to the likely, to the most probable cause of her death? If so, please state it.

GILES MORGAN

I have reviewed it all and-

[Attorney Kirkland stands.]

LANE KIRKLAND

Objection, Your Honor. Witness is not qualified to opine on the cause of death in this case. He was not on the scene, he was never asked to formally investigate, he has filed no medical report and, I might add, we already have a formal coroner's report. I move that last question be stricken.

CHESTER PEARSON

Your Honor, my witness has every right to an opinion. That's all I am asking him for. I am not asking him to file a formal report for the Cayman authorities, to alter the death certificate, or to create events that didn't occur. I am only asking him for his opinion. We are all entitled to our opinions. Mr. Morgan is an acknowledged expert in the field of scuba diving, and this court is legally entitled to hear his opinion of how Ms. Knowlton died.

JUDGE WHITTAKER

Overruled.

CHESTER PEARSON

Thank you. Now Mr. Morgan, what is your expert opinion as to just how Ms. Knowlton died on July 15, 2014?

GILES MORGAN

In my opinion she developed nitrogen narcosis at depth, and so became slightly confused, at least

to the point that she did not check her depth gauge. If I can show another poster.

[He goes to the easel to show another poster.
VISUAL ON SCREEN OF 45-FOOT DEPTH]

GILES MORGAN

I think as she went deeper the Martini effect grew worse and she continued to fall away. As you go deeper in the water you tend to develop less buoyancy, which means the deeper you go the more quickly you will sink, unless you kick yourself up or put air in your vest. Here at forty-five feet, where the sea floor drops off to this cliff, there is no danger of narcosis. Even at sixty or seventy feet there is likely little danger. But at eighty feet you could expect to see some narcosis develop. I understand the divers went to eighty feet, and that was the last time, actually, anyone saw Miss Knowlton with the group.

CHESTER PEARSON

So, in your opinion, she kept falling due to nitrogen narcosis?

GILES MORGAN

I think so. With nitrogen narcosis you are likely to take no action as you lose your depth control. I believe this is what happened to her. She had the narcosis set in at eighty feet or so, could do nothing to bring herself up, and fell away.

CHESTER PEARSON

And so the deeper she goes, the quicker she will run out of air?

GILES MORGAN

Yes, you use a lot of air at depth. And she felt no danger, so made no effort to rescue herself. I don't think she would have made it to the bottom of the ocean. When she ran out of air and lost consciousness she would likely have hit the wall and stopped right there. If her body was retrieved, I think they would find it within a

few hundred feet of the drop off.

CHESTER PEARSON

Mr. Morgan, is her body retrievable?

GILES MORGAN

Well, you would need some awfully sophisticated equipment to get it. I don't mean to be crass, but if this was a nuclear missile, the Navy would send down a human powered submarine and retrieve it. From a practical standpoint the body is not retrievable. Actually, over a year later, there is no longer a body to retrieve. The sea decomposes flesh quickly. You would only find a skeleton. And her scuba equipment.

CHESTER PEARSON

So to summarize, in your own mind you are satisfied that she died somewhere along this wall?

[Pearson points to a schematic of the coral wall.]

GILES MORGAN

Yes, definitely.

CHESTER PEARSON

In your opinion, was this accident preventable?

GILES MORGAN

Oh yes, definitely.

CHESTER PEARSON

How so?

GILES MORGAN

Easy, I'm sorry to say. The condition of nitrogen narcosis is cured by ascent. All someone had to do was grab on to her and bring her up. In fact, you don't have to come all the way to the surface; sometimes just twenty or thirty feet higher will do the trick. The nitrogen dissipates and the victim is himself again. Or herself. With ascent you're cured. It's that simple, really.

CHESTER PEARSON

And who should have done that? Who should have brought her up?

GILES MORGAN

Well, whoever was deemed responsible for the dive, for watching after the divers.

CHESTER PEARSON

What about her dive buddy? Shouldn't he have pulled her up?

GILES MORGAN

Well, obviously if he saw her sinking he should pull her up, but not if doing so would endanger his own life.

CHESTER PEARSON

But isn't the buddy responsible for his partner's welfare?

GILES MORGAN

Well, we teach the buddy system, everyone does. But it's not that the buddy functions as a lifeguard. As a professional in the field, I don't assume there is any legal responsibility attached when we buddy people up. It's just a safety mechanism, in case one of the pair runs out of air, or needs help, there is supposed to be someone nearby to lend a hand. So yes, the buddy should help, but we don't think of the dive buddy as a baby sitter or a lifeguard type of function.

CHESTER PEARSON

Well, what about the dive master? Should she have pulled her up?

GILES MORGAN

Well, yes, of course.

CHESTER PEARSON

What if the dive master didn't see Miss Knowlton sinking? Is she then responsible?

GILES MORGAN

If she's the dive master then she's responsible,

so obviously she should have kept this from happening.

CHESTER PEARSON
How so?

GILES MORGAN
It takes time to sink. So a dive master with eight divers should always know where his or her divers are, and be able to act quickly if one goes astray. She shouldn't be showing them eels on a wall.

CHESTER PEARSON
In your opinion, then, if such did happen - a diver went astray - then the dive master would be responsible?

GILES MORGAN
Well, yes, unless it was completely out of the dive master's control.

CHESTER PEARSON
How so?

GILES MORGAN
Well, I suppose if a great white shark came from behind and grabbed one of the divers, there is really very little the dive master could do about it. But otherwise, things like nitrogen narcosis, or someone getting the bends, the dive master has to be aware of and be prepared to act. And act quickly.

CHESTER PEARSON
How would you have handled this dive?

GILES MORGAN
I wouldn't take eight divers down by myself on that wall.

CHESTER PEARSON
Why not?

GILES MORGAN
Too many. Anything over six and you need a second dive master to go along. I'm afraid this

lone dive master was overworked and the end result was terrible.

CHESTER PEARSON

Is that a rule, at least one dive master per six divers?

GILES MORGAN

No, it's not a rule. On a shallow dive you can take a bunch. But at depths of around 100 feet, where you have to watch every diver closely, you need two dive masters or two professionals if you're going to have more than six divers. It's more like common sense.

CHESTER PEARSON

Mr. Morgan, you teach dive masters?

GILES MORGAN

Yes, I do.

CHESTER PEARSON

So you are familiar with the standards for being a dive master?

GILES MORGAN

Yes, in fact I helped to write some of them.

CHESTER PEARSON

In your opinion did the dive master on this trip stray from those standards.

GILES MORGAN

Yes, unfortunately I believe she did, but she is not completely to blame.

CHESTER PEARSON

How do you mean?

GILES MORGAN

Well, as I said, the dive company sent her down with too many divers. This accident wouldn't have happened if there had been a second dive master behind the group, looking out for all the divers. The absence of the second dive master is unlikely to be her fault, and is surely the responsibility of the company she worked for.

However, the fact that she was alone meant she should have stayed *behind* the group of divers, not in front of them against the wall. It's a matter of body positioning on deep dives, and when you're the only guide you always put the divers between you and the wall, unless there are two dive masters.

CHESTER PEARSON

In your opinion did the lone dive master's actions or inactions constitute negligence on this dive, in regards to the deceased Jennie Knowlton?

GILES MORGAN

Yes, I believe there was negligence in this instance, for reasons I've just explained.

CHESTER PEARSON

Thank you. No further questions.

JUDGE WHITTAKER

Your witness, Mr. Kirkland.

[Mr. Pearson sits and Mr. Kirkland approaches the witness.]

LANE KIRKLAND

Mr. Morgan, I'm Lane Kirkland, and I represent the defense in this case. We've met before?

GILES MORGAN

Yes. At my deposition.

LANE KIRKLAND

OK. Mr. Morgan, you said you instructed scuba for fifteen years, correct?

GILES MORGAN

That's right.

LANE KIRKLAND

And during that time you have seen the scuba industry grow?

GILES MORGAN

Yes, it has grown quite a bit. It's still a

small part of the overall recreation and vacation business, but it's expanded nicely in that time.

LANE KIRKLAND

Could you explain to the jury why someone can't just go into a store, buy or rent some equipment and go scuba diving?

CHESTER PEARSON

Objection! Your Honor, it is immaterial to this case who can or cannot rent scuba equipment. I object to this tangential line of reasoning.

LANE KIRKLAND

On the contrary, Your Honor. I believe it is vitally important to inform the jury just what is required for someone to get on a plane, fly to the Cayman Islands, board a dive boat, and then jump into an ocean that doesn't reach bottom for 3000 feet! And by requirement I don't mean a plane ticket. I mean the unique requirements to safely go scuba diving.

JUDGE WHITTAKER

Overruled.

LANE KIRKLAND

Thank you. Now, Mr. Morgan, could you please inform the jury why not just anyone can go to Cayman's Ocean Realm Resort, rent scuba equipment and go diving?

GILES MORGAN

Well, actually anyone can go to a resort and scuba dive, as long as they are certified.

LANE KIRKLAND

You mean certified for scuba diving?

GILES MORGAN

Yes. To go diving at any reputable resort, or get on a dive boat for that purpose, you first need to be certified in scuba, pass a course that leads to certification. That lets you dive without an instructor and dive from a dive boat.

LANE KIRKLAND

The dive that Miss Knowlton did with her boyfriend, they would both have to have been certified first?

GILES MORGAN

Oh, yes.

LANE KIRKLAND

Everyone who dove on that Ocean Realm resort boat had to be certified first?

GILES MORGAN

Yes. A resort in the Cayman Islands is not going to let divers on the boat unless they see their certification card first. Too much liability. They just wouldn't rent the equipment without proof of certification.

LANE KIRKLAND

Couldn't someone just fake a certification card and go diving?

GILES MORGAN

I suppose someone could get a phony card, rent an air tank from the resort and go diving, but as a practical matter that would be stupid, and it is almost unheard of. Any American crazy enough to do that would probably try it in the states, not fly a thousand miles to the Caribbean. So I think I can safely assume that everyone on that boat was legitimately certified. You certainly wouldn't want to dive without being certified. As I said, that would just be just plain stupid.

LANE KIRKLAND

Why is that?

GILES MORGAN

Well, scuba diving is potentially dangerous if you don't learn some basic rules and laws about pressures and gases and such. You can blow out your lungs and die.

LANE KIRKLAND

That is taught in the certification course? That

you can blow out your lungs and die?

GILES MORGAN

Oh yes. Ordinarily, of course, diving is actually pretty safe if you follow the rules.

LANE KIRKLAND

These rules, as you call them, they are in the certification instruction book? In print?

GILES MORGAN

Well, yes and no. There are some basic rules in diving, like don't hold your breath, always stay close to your buddy, don't go deeper than 130 feet, and so forth. Those are in black and white, printed by various certification organizations. But each dive is different, and how deep you can go and how long you can stay, that depends on some specifics, such as how much diving you've already done that day. So overall, there are rules, yes, and divers also chart how much diving they've done to make sure they don't do too much on any given day.

LANE KIRKLAND

How long is the basic certification course? How long does it take to complete?

GILES MORGAN

It's about thirty hours total, including classroom instruction and pool dives. Then there are what we call open water dives with the instructor, usually four of those. After passing a written test and performing certain skills in the pool and in open water, you become certified.

LANE KIRKLAND

And that instruction and certification allows you to go anywhere, rent equipment, air tanks, whatever, and go diving?

GILES MORGAN

Yes, that's correct.

LANE KIRKLAND

Mr. Morgan, earlier you mentioned to Mr. Pearson

that all divers carry lead weights, is that correct?

GILES MORGAN

Well, yes.

LANE KIRKLAND

To us non-divers that seems rather burdensome. Why do divers need lead weights?

GILES MORGAN

They allow the diver to sink below the surface and stay down. Without wearing some lead weights, with all the equipment and the wet suit, you would just float on the surface.

LANE KIRKLAND

That seems paradoxical. Wouldn't a heavy tank and equipment make you sink?

GILES MORGAN

Well, yes, if the equipment was all solid. But the vest you wear, the wet suit you wear, they actually contain air pockets, so they keep you buoyant, make you float. In warm water where you usually don't wear a thick wet suit, you get by with wearing only a few pounds.

LANE KIRKLAND

A few pounds of lead weight? How many is a few?

GILES MORGAN

Actually, each diver sort of determines his need by trial and error over several dives.

LANE KIRKLAND

In warm waters like this dive at Grand Cayman, how much lead weight would you say the average diver needs?

GILES MORGAN

As I said before, anywhere from four to twelve pounds. More experienced divers generally need less because they know how to control their buoyancy with proper breathing and body movements.

[Mr. Kirkland turns to the jury.]

LANE KIRKLAND

So anywhere from four to twelve pounds of lead weight for a warm water dive? Not more?

GILES MORGAN

That's correct. In my experience in warm water, more than twelve pounds would be unusual.

[Kirkland hands Morgan a lead weight, rectangular, about three inches square.]

LANE KIRKLAND

Tell the jury, please, what I just handed you.

GILES MORGAN

A four-pound lead weight. The slots you see are so it can go on a weight belt. [He shows the weight to the jury.]

LANE KIRKLAND

Now I'm handing you a weight belt with four those lead weights on it. [He hands the belt to Morgan.]

LANE KIRKLAND

Would you please show how this belt is worn?

[Morgan straps the belt on his hip.]

LANE KIRKLAND

Now, please demonstrate how to release the belt.

[Morgan stands up and releases the belt with one hand and it falls sharply to the floor.]

LANE KIRKLAND

That quick release you just showed, that's so the diver can shed the weight belt and move quickly to the surface, is that right?

GILES MORGAN

That's correct. In an emergency you've got to be able to get rid of your weights and ascend quickly.

[Kirkland picks up the belt and hands it to the first juror, who then passes it around. The belt is heavier than they expect and their expressions show surprise.]

LANE KIRKLAND

How else could a diver carry these weights?

GILES MORGAN

Well some diving vests have specially-designed pockets and you can carry weights in them. Basically a quick release pocket to dump the weights fast.

LANE KIRKLAND

But you could put extra weights into an ordinary vest pocket. I mean, they will fit, won't they?

GILES MORGAN

Yes, I suppose.

CHESTER PEARSON

Objection! Mr. Kirkland is leading the witness and misleading the jury. If he has some pertinent questions about this case he should ask them, but not questions full of innuendo.

LANE KIRKLAND

Your Honor, this testimony has direct bearing on Miss Knowlton's disappearance. It is vital to establish other plausible reasons why she may have quickly sunk off that wall. Absent any autopsy, indeed absent any physical evidence of her demise, I believe defense is entitled to explore any plausible explanation other than what we have so far heard from this witness. If I may continue?

JUDGE WHITTAKER

Overruled.

LANE KIRKLAND

Mr. Morgan, I am handing you a duplicate of the scuba vest Miss Knowlton wore the day she disappeared. The court will please mark this vest as Defense Exhibit 1. Along with it is a receipt from Central Scuba Stores for the vest

she actually bought two years before her last dive - please mark Exhibit 2. Would you be so kind as to authenticate that this is the same type and model of vest she had purchased?

GILES MORGAN

Yes, this appears to be a Sherwood BCD, Model Luna 400. Excuse me, BCD stands for buoyancy control device. We call it BC for short. By pumping a air in or out as I showed earlier, you can help control your buoyancy in the water.

LANE KIRKLAND

And there are pockets in this vest? Would you show them to the jury please?

[Giles shows the vest and pockets to the jury.]

LANE KIRKLAND

Are these the specialized pockets you mentioned earlier? The ones that allow immediate release of the weights if the diver is in trouble?

GILES MORGAN

No, no. These are ordinary pockets. You wouldn't want to put weights in these pockets. You'd have a hard time getting them out if you got into trouble.

LANE KIRKLAND

But the lead weights will fit into them?

GILES MORGAN

Yes, of course.

LANE KIRKLAND

Mr. Morgan, here are two of the four pound weights. Would be so kind as to put them in the two vest pockets?]

[Morgan does so, then closes the Velcro flaps.]

LANE KIRKLAND

So that vest is now eight pounds heavier, is that correct?

GILES MORGAN

Yes.

LANE KIRKLAND

And a diver wearing it would be eight pounds heavier, and therefore more likely to sink than without those added pocket weights, is that correct?

GILES MORGAN

Yes, that is correct.

[Kirkland takes the vest from Morgan and lets it fall to the floor, where it makes a heavy sound.]

LANE KIRKLAND

Mr. Morgan, I am handing you what is labeled Defense Exhibit 3, a plastic card. Could you identify that card to the jury, please?

GILES MORGAN

This is Miss Knowlton's scuba certification card. She was certified by PADI on November 4, 2012. PADI is the Professional Association of Diving Instructors. It is the largest organization in the world that certifies scuba divers.

LANE KIRKLAND

So she was certified almost two years before her disappearance on that reef?

GILES MORGAN

Yes.

LANE KIRKLAND

Do you know how many dives she did before her last boat dive?

GILES MORGAN

Not really. I read that her boyfriend testified to about thirty dives.

LANE KIRKLAND

Is that a lot, a little?

GILES MORGAN

In two years, that's about average for the typical recreational diver, fifteen or so a year. Some people dive more, of course, but this seems to be pretty typical.

LANE KIRKLAND

Mr. Morgan, you have told the jury that you teach diving, in fact that you teach dive masters. What is the role of a dive master?

GILES MORGAN

Well, they are a level below the instructor, which is the highest level in scuba. Instructor is sort of like a full professor in college. Dive master is like the junior professor. The dive master position is to assist instructors in teaching scuba and also to lead dives such as the one Ms. Knowlton was on. Most dive masters are actually in training to become instructors.

LANE KIRKLAND

But they're considered professionals in scuba?

GILES MORGAN

Yes, that's correct, sort of like entry level professionals.

LANE KIRKLAND

And you teach the dive master course?

GILES MORGAN

Well, I don't do it now, but I have in the past.

LANE KIRKLAND

You've even made a video for students taking the dive master course?

GILES MORGAN

Yes, that was a few years ago.

LANE KIRKLAND

Mr. Morgan, I am now handing you Defendant's Exhibit 4, which is a training video. Could you please read the title on the DVD cover?
He hands the video to Giles.

GILES MORGAN

Dive master Training - Introduction
Prepared by Giles Morgan, Master Scuba
Instructor
Produced by Divers Unlimited International

[Pearson sits up straight, suddenly alarmed.]

LANE KIRKLAND

And the date this video was made?

GILES MORGAN

2004.

LANE KIRKLAND

Has the instruction changed much since then?

GILES MORGAN

No, not the basics, it's pretty much the same.

LANE KIRKLAND

Your Honor, with your permission I would like to
show part of this video to the jury.

CHESTER PEARSON

Your Honor, we have not had a chance to view
this video, and I have no knowledge of its
contents. Since this has not been introduced
before, I do object to showing it without a
prior viewing.

LANE KIRKLAND

Your Honor, the author of this video is here,
giving testimony. This is not a work of hearsay
or of a third party. The nature of this DVD is
germane to the lawsuit against my client. If
there is a problem with the tape, or it works
against my client, that will come out also.
Furthermore I will stipulate that the video is
original, was bought in a store, and has not
been altered in any way, shape or manner.

JUDGE WHITTAKER

Will the attorneys please approach the bench.

[There is some gesticulating, and the voices are
low. The lawyers return to their desks. The

judge ponders for a moment.]

JUDGE WHITTAKER
You may show the video.

[The judge's bailiff wheels a large flat screen TV into position for the jury and Morgan to view, then inserts a DVD into a player connected to the TV. Kirkland has the remote control.]

LANE KIRKLAND
Mr. Morgan, I will be stopping the disk once or twice and asking you questions.

[Because the video as described in the novel cannot be reproduced in the play, we will use the OFF-STAGE NARRATOR to describe what is on the screen.]

OFF-STAGE NARRATOR
An Introduction to Dive master Training
Prepared by Giles Morgan, Master Scuba
Instructor

LANE KIRKLAND
I will fast forward. [He presses the fast forward button.] Here we see divers on a boat, putting on their equipment, jumping in the water, getting their dive briefing. Now we'll play it from here. [He presses the button to resume regular speed.]

OFF-STAGE NARRATOR
. . .Ask each diver for the OK sign. When all is OK, begin your descent. Make sure you have enough visibility to see each diver. . .As you lead the dive, it will be important to look for interesting sea life that novices might miss. While safety is always the most important part of any dive, as dive master you also want to help each diver appreciate the beauty of scuba and the wonderful discoveries to be made every time they take the plunge. This is where your own knowledge of the sea can come in handy. . .

[KIRKLAND PRESSES ANOTEHR BUTTON TO STOP THE VIDEO]

LANE KIRKLAND

Let me stop it right there. Is this a dive with a dive master leading it?

GILES MORGAN

Yes, the woman you see there is the dive master [he points to a spot on the screen.]. She's leading some of our company employees who helped make this training video. So these people are not on a recreational dive, they're just helping to make the video.

LANE KIRKLAND

But you used this video, that you edited, in your dive master course?

GILES MORGAN

Yes.

[Lane continues the DVD but takes out a stop watch and presses the timer when the video re-starts.]

OFF-STAGE NARRATOR

You must always strive to preserve sea life and not harm any creatures you find. While it is permissible for you to handle crustaceans and other large sea animals, always take care to be gentle and not harm them.

...Here the dive master sees something hiding in the coral wall. It is a giant crab. She signals her divers to stop and look at what she has discovered. Now she slowly pulls out the large crustacean and shows it to the divers.

[Kirkland stops the video and with a flourish clicks his stopwatch.]

LANE KIRKLAND

Mr. Morgan, the scene that we just viewed, do you remember showing it in class?

GILES MORGAN

Yes.

LANE KIRKLAND

Mr. Morgan, I timed that last scene with my stopwatch. Would you please look at my stopwatch and tell us how much time passed in that scene.

GILES MORGAN

Looks like two minutes, ten seconds.

LANE KIRKLAND

Mr. Morgan, in that two minute, ten second scene, from your training DVD, did we see the dive master turn around to look at the other divers?

[There is a long pause and Morgan looks at Pearson. Pearson's face is expressionless.]

LANE KIRKLAND

Please, Mr. Morgan, answer the question.

GILES MORGAN

No.

LANE KIRKLAND

Mr. Morgan, the dive master spent her time pointing our marine life. How many times did the dive master count the divers in her charge?

GILES MORGAN

None.

LANE KIRKLAND

Mr. Morgan, in those 130 seconds, could one of the divers have fallen away from the group?

GILES MORGAN

I suppose so, but—

LANE KIRKLAND

Why doesn't your video mention that the dive master should never take her eyes off the other divers, if that is the rule? If that is the standard, why doesn't your video point it out? Or is it just the standard for cases you testify

against?

CHESTER PEARSON

Objection! Mr. Kirkland is badgering the witness.

JUDGE WHITTAKER

Sustained. Mr. Kirkland, please ask one question at a time, and wait for an answer.

LANE KIRKLAND

Yes, Your Honor. Mr. Morgan, please tell us, just what is the standard for dive masters who are leading a group of buddied up divers on a wall dive?

GILES MORGAN

Well the standard is clear. The dive master should always be aware of the divers in his or her charge. In this training video, if one of the divers had drifted away, I feel certain the dive master would have become aware of it and taken action. In fact, I believe we actually had a second dive master posted out of camera range in just such event. If we didn't, we sure would have on a regular dive. We just didn't make a point of it in that particular scene. So that scene is taken out of context, really.

LANE KIRKLAND

Excuse me, I'm confused. Was the purpose of this training video to teach about sea life or about the duties of a dive master?

[Morgan waits a few seconds before answering.]

GILES MORGAN

The duties of a dive master.

LANE KIRKLAND

Well, then, why didn't you mention that the dive master should only show sea life if there is a backup dive master overseeing the whole group? I missed any mention of that.

GILES MORGAN

This is just an edited tape to make a point,

and-

LANE KIRKLAND

What point, Mr. Morgan?

GILES MORGAN

That when you come upon some interesting sea life you can point it out to the group, that's all. That this segment doesn't mention a second dive master doesn't mean there shouldn't be one on a guided wall dive. You're taking this all out of context, Mr. Kirkland.

LANE KIRKLAND

But if there is no second dive master, it is surely not expected that the solo dive master be in constant eye contact with her charges every second, is it?

GILES MORGAN

No, that's not necessary.

LANE KIRKLAND

So it is possible for a diver with some acute illness to fall away from the group, assuming that the diver's buddy wasn't watching, and get lost during some finite period while the solo dive master isn't counting heads, and for this to happen within the standards you have demonstrated on this tape, is it not, Mr. Morgan?

GILES MORGAN

Yes, I suppose that's possible, given the constraints of how you're phrasing it.

LANE KIRKLAND

And if a diver wanted to hide, or fall away, or leave the group, and that diver's buddy wasn't watching, it is also possible for that determined diver to do so, is it not?

GILES MORGAN

Yes, I suppose, if the diver really wanted to get away.

LANE KIRKLAND
Thank you. No further questions.

JUDGE WHITTAKER
Mr. Pearson. Any re-direct?

[Mr. Pearson stands, approaches the witness.]

CHESTER PEARSON
Yes, Your Honor. Mr. Morgan, the purpose of that scene we just viewed was to emphasize a certain point about observing and displaying sea life, was it not?

GILES MORGAN
Yes, that's correct.

CHESTER PEARSON
Would you clarify for the jury your position on dive master observation of divers in her charge?

GILES MORGAN
Yes. It is not necessary to physically watch every diver every second. It is necessary to be aware of your divers, of where they are, so that if one gets away you can act upon it. We teach this in the course, but the scene you viewed wasn't to make that particular point. We make that point in other scenes. Furthermore, on a deep wall dive with over eight divers, we would never send down a solo dive master.

CHESTER PEARSON
Mr. Morgan, what is the title of the video we just watched?

GILES MORGAN
Dive master Training - Introduction

CHESTER PEARSON
Introduction! Was there a series of follow up videos with more detailed instruction?

GILES MORGAN
Yes. Absolutely! And they did emphasize the dive master positioning.

CHESTER PEARSON
Thank you. No further questions.

JUDGE WHITTAKER
OK. We'll recess for lunch and resume at 1 p.m.
sharp.

IN THE COURTROOM - AFTERNOON
[Everyone is seated.]

JUDGE WHITTAKER
Your next witness, Mr. Pearson.

CHESTER PEARSON
I call up Dr. Rudolph Bergofsky.

[Dr. Bergofsky enters courtroom, is sworn in by
the bailiff]

CHESTER PEARSON
Please state your name and current position.

DR. BERGOFSKY
I am Dr. Rudolph Bergofsky, director of
Hyperbaric Services at Tampa General Hospital in
Tampa, Florida.

CHESTER PEARSON
Dr. Bergofsky, would you please tell the jury
your background, training, how you got to your
current position and what you do?

DR. BERGOFSKY
Yes, I graduated from the University of Florida
College of Medicine in 1990, then did my
residency training in internal medicine for
three years at Tulane, in New Orleans. Following
that program I joined the Navy and was assigned
to the Navy Seals program, where I remained for
four years. In the Navy I learned about the
special medical needs of the Seals, and studied
diving medicine.

CHESTER PEARSON
Doctor, I believe most of us have heard of the

Navy Seals, but would you just explain who they are in a little more detail?

DR. BERGOFISKY

Yes. Seals stands for Sea, Air, and Land. Specially selected naval recruits are trained to perform clandestine operations anywhere at any time, literally on land, in the sea, in the air. Skills include parachute jumping, scuba diving, underwater demolition work, living off the land, hunting and, if necessary, killing. Anyway, diving is a big part of the Seals' training.

CHESTER PEARSON

And as physician you helped take care of diving-related problems?

DR. BERGOFISKY

Well, yes, as a general physician for the Seals I had specialized training in scuba and diving medicine.

CHESTER PEARSON

And that included hyperbaric chamber treatments?

DR. BERGOFISKY

Yes.

CHESTER PEARSON

And what is a hyperbaric chamber, if you would so kindly explain it?

DR. BERGOFISKY

It's a rigid chamber the size of a small room, that a patient can be placed in, and the air pressures can be increased to above atmospheric levels, two, three or more times normal. The increased air pressures are used to shrink bubbles in the blood that can form during diving and cause pain, what we commonly call the bends.

CHESTER PEARSON

And you learned to operate this chamber and treat patients in it?

DR. BERGOFISKY

Yes, I took an intensive course in hyperbaric

and underwater medicine, and we lived on a specially-equipped ship for six months. The ship has two hyperbaric chambers, and if a Navy Seal or any other military personnel got into a diving accident, I was the physician in charge. It was valuable experience.

CHESTER PEARSON

And how long were you in the Navy?

DR. BERGOFSKY

Four years.

CHESTER PEARSON

When you got out of the Navy what did you do?

DR. BERGOFSKY

I did a fellowship in hyperbaric medicine at UCLA, then came to Tampa in 1998 to run their hyperbaric program. I do that and work in emergency medicine also. The hyperbaric chamber is located next to the emergency room.

CHESTER PEARSON

So you have specialized certification in hyperbaric medicine?

DR. BERGOFSKY

Yes, I do.

CHESTER PEARSON

And do you scuba dive yourself?

DR. BERGOFSKY

Oh, yes. Whenever I get a chance.

CHESTER PEARSON

Are you a member of the Undersea and Hyperbaric Medical Society?

DR. BERGOFSKY

Yes, I am.

CHESTER PEARSON

And what is that organization?

DR. BERGOFSKY

UHMS is an organization of physicians interested in these topics, scuba diving medicine, hyperbaric chamber medicine, and so forth. It is a scientific group that meets formally once a year to review any scientific findings. They also publish a scientific journal.

CHESTER PEARSON

Dr. Bergofsky, have you had a chance to review the case before us today, of Knowlton vs. Ocean Realm Enterprises?

DR. BERGOFSKY

Yes, I actually reviewed it twice, on two separate occasions. First, I was consulted by the Cayman authorities shortly after the accident, and at their expense I was flown to Grand Cayman and met with the coroner.

CHESTER PEARSON

Why were you called?

DR. BERGOFSKY

Well, I asked the same question. I was told that they wanted an independent physician to look the case over, to see if there should be any other avenues of inquiry, and I was highly recommended by Dr. Sanjit, who runs the George Town Hospital hyperbaric chamber on Grand Cayman Island. We had met at various meetings, and he knew I lived in Florida. Grand Cayman's only an hour and a half away by air. Anyway, they called and I was happy to oblige.

CHESTER PEARSON

What exactly did they ask you to do?

DR. BERGOFSKY

To review their report before it was released, to talk with whomever I wanted, and to determine if they should do anything more than close out the case and declare it an accident.

CHESTER PEARSON

And this only took you two days?

DR. BERGOFISKY

Yes, that's all. Everyone was most cooperative. The authorities had really done all their investigation by the time I got there. I talked with a few people, including the boat captain, the dive master, and Miss Knowlton's boyfriend, and I went diving at the site myself with one of the Cayman authorities.

CHESTER PEARSON

I take it you saw nothing new at the site, at least nothing not already reported?

DR. BERGOFISKY

That's right. It's a vertical wall as you know, and we stayed above 100 feet depth. But I saw how she must have disappeared, down that wall, and can see why the body was never recovered. It's really bottomless. You look down and it's just an empty blue.

CHESTER PEARSON

And your conclusion from this investigation?

DR. BERGOFISKY

I concluded, as had the authorities, that there was no foul play, and that Ms. Knowlton had probably succumbed from a medical condition which caused her to become separated from the group and sink. She probably died from either suffocation - running out of air - or drowning. We'll never know of course.

CHESTER PEARSON

Doctor, the issue of negligence was not addressed by the Cayman authorities, is that correct?

DR. BERGOFISKY

Not really. They just wanted to determine if it was a diving accident, which of course can happen, or if there was any evidence of foul play, if there was anything that might have been illegal or criminal. In the end there was no blame assigned, if that is what you mean.

CHESTER PEARSON

Dr. Bergofsky, to sum up, you agreed with the authorities' conclusions?

DR. BERGOFSKY

Yes, in so far as there was no intention to cause any harm, that it was simply a tragic diving accident.

CHESTER PEARSON

And please tell us about the second time you reviewed the case.

DR. BERGOFSKY

The second time was after you called me. You apparently had learned of my involvement on Grand Cayman, and called me to go over the case.

CHESTER PEARSON

And were there any additional materials that I provided to you?

DR. BERGOFSKY

Yes, the depositions you had obtained at the time, I believe of the dive master and one or two other witnesses, and an expert's letter from Mr. Giles Morgan. I had already seen the coroner's report and the news articles, of course.

CHESTER PEARSON

Dr. Bergofsky, based on your extensive reviews of this case - including your on-site visit - what, in your opinion, was most likely the problem or condition that caused Ms. Knowlton to drift away from the group?

DR. BERGOFSKY

Well, we had two Navy seals who died from nitrogen narcosis and I think that's what happened to Ms. Knowlton. It can happen to anyone, a recreational diver or a Navy Seal with far more diving experience. Unfortunately, nitrogen narcosis does not show up in an autopsy, which we did on the Seals.

CHESTER PEARSON

Doctor, based on all of your experience, and on your double review of this case, do you have an opinion of whether or not Ms. Knowlton could have been saved at any point of her last dive?

DR. BERGOFISKY

Yes, she certainly could have been saved if someone had caught her descent and simply grabbed hold of her and kept her from falling. Then, bringing her up just twenty or thirty feet from where she was, it is my opinion that she would have snapped out of nitrogen narcosis and been able to safely navigate her way to the surface. She'd be living a normal life right now.

CHESTER PEARSON

Thank you. No further questions.

[Mr. Pearson returns to his seat.]

JUDGE WHITTAKER

Your witness Mr. Kirkland.

[Lane Kirkland rises and approaches the witness.]

LANE KIRKLAND

Dr. Bergofsky, I am the attorney for Ocean Realm International. I believe your testimony today is also pretty much outlined in a detailed report you sent to Attorney Pearson several months ago which I now would like to enter into evidence.

[He hands the report to the stenographer.]

LANE KIRKLAND

The two Seal deaths you referred to, where did they occur?

DR. BERGOFISKY

One was in the Persian Gulf and the other was off the coast of Alaska.

LANE KIRKLAND

Doctor, are you familiar with the bends?

DR. BERGOFSKY

Of course.

LANE KIRKLAND

Is that the same thing as nitrogen narcosis?

DR. BERGOFSKY

No. They are completely different.

LANE KIRKLAND

How so? Aren't both from too much nitrogen in the blood?

DR. BERGOFSKY

Well, the bends is another name for decompression sickness. When you dive the nitrogen accumulates in your body and if you ascend too fast, nitrogen bubbles form and they can block the circulation or the nervous system. It can be fatal. So it's a blockage from bubbles, and it only occurs when you start to ascend. It can be treated with a hyperbaric chamber.

LANE KIRKLAND

And nitrogen narcosis?

DR. BERGOFSKY

Nitrogen narcosis occurs when you descend. It is not a blockage, only an effect of too much nitrogen pressure on nerve conduction, and it gets better when you go back up.

LANE KIRKLAND

Well, I agree with Mr. Pearson on one point. This is like a high school science class. And the subject matter is a little confusing, at least to me, and maybe to the jurors also. Both of these conditions - nitrogen narcosis and the bends -- can cause neurologic impairment, but the mechanisms are different?

DR. BERGOFSKY

Yes. Think of the bends as bubbles in the blood

vessels. If the bubbles get to the brain, that's really a type of stroke. Nitrogen narcosis is not a stroke, it's more like being drunk, and is fully reversible.

LANE KIRKLAND

Yes, we've heard that testimony earlier. Nitrogen narcosis is like drinking too many Martinis, the Martini effect.

DR. BERGOFSKY

That's right! It's treated just by going up. Whereas the bends is treated in a hyperbaric chamber.

LANE KIRKLAND

And in an autopsy? How would they show up?

DR. BERGOFSKY

Nitrogen narcosis would not show up at all. The bends would show definite areas of blockage in the organs, the blood vessels, maybe even a heart attack and cell death. There could be bubbles in the brain causing a stroke and you might see damaged brain tissue.

[Kirkland walks over to the easel and writes in big letters:]

Nitrogen bubbles on ascent --> can cause severe pains, organ damage (the "bends") --> treat in hyperbaric chamber

Narcosis (mental confusion) - from too much nitrogen pressure at depth --> ascend and narcosis clears

LANE KIRKLAND

Is this correct Dr. Bergofsky?

DR. BERGOFSKY

Basically, yes.

LANE KIRKLAND

I imagine a stroke from the bends could lead to

drowning?

DR. BERGOFSKY
Yes, definitely.

LANE KIRKLAND
So how do you know that the two navy recruits didn't have the bends, how do you know it was nitrogen narcosis?

DR. BERGOFSKY
I believe I said we assumed that's what it was, based on the circumstances and the autopsy findings.

LANE KIRKLAND
Dr. Bergofsky, I have in my hand the autopsy report of one of those recruits. I respectfully ask that you read it and affirm to the court that it is indeed the report of one of the two Navy Seals he referred to.

[He hands Dr. Bergofsky the report.]

DR. BERGOFSKY
It is the right report.

LANE KIRKLAND
Can you read for me the section on the brain findings? What was found in the brain of this deceased Seal on the autopsy?

DR. BERGOFSKY
There is no section on the brain.

LANE KIRKLAND
No section on the brain? Why not?

DR. BERGOFSKY
The brain was not autopsied.

LANE KIRKLAND
Not autopsied? How so?

DR. BERGOFSKY
There was no neuropathologist at the Seattle Naval Hospital at the time the recruit was flown

there, and for unclear reasons the body was not sent to San Diego where a more complete autopsy could have been done.

LANE KIRKLAND

But you testified that there was an autopsy, and that's why you were certain this Navy Seal didn't die of the bends. If I may quote that part of your written testimony, you said:

"Heart, every other organ was OK, except the lungs, which were water logged. So we assumed it was probably nitrogen narcosis. And I think that's what happened to Miss Knowlton." So when you said "every other organ was OK except the lungs," you really didn't mean every other organ, is that correct?

DR. BERGOFISKY

Well, I meant that my conclusions were from the autopsy that was done.

LANE KIRKLAND

Then how can you sit here today and tell the court that this Seal had nitrogen narcosis? And not the bends?

DR. BERGOFISKY

I can only repeat what I said before, that the autopsy that was done did not reveal anything to suggest decompression sickness or the bends.

LANE KIRKLAND

Dr. Bergofisky, would you please read the final conclusions of this autopsy report. I believe it is on the very first page.

DR. BERGOFISKY

Final Cause of Death: Drowning.

LANE KIRKLAND

I'm sorry Doctor, but is that the complete list? Is there anything more?

DR. BERGOFISKY

No, not under the Final Cause of Death.

LANE KIRKLAND

Does it state anything about nitrogen narcosis?

DR. BERGOFSKY

No, it doesn't.

LANE KIRKLAND

So how does the autopsy of this Navy Seal support your conclusion?

DR. BERGOFSKY

As I said, the autopsy is negative in cases of nitrogen narcosis. It doesn't show anything. It's the absence of findings that supports that diagnosis.

LANE KIRKLAND

But you also said, did you not, that the autopsy was incomplete. How do we know he didn't have a stroke? Isn't that one way the bends can show up?

DR. BERGOFSKY

If that was the case, if he had a stroke from nitrogen bubbles, I would expect to find bubbles in his spinal cord, his heart and other organs. But there was no damage in any of those places.

LANE KIRKLAND

But he could have had a small enough stroke that caused him to drown, could he not?

DR. BERGOFSKY

I suppose so.

LANE KIRKLAND

And it could have been caused by bubbles going through his lungs and into his brain, is that not possible?

DR. BERGOFSKY

Yes, that's possible, but again unlikely.

LANE KIRKLAND

So in fact there is no official conclusion by the Navy that he died from nitrogen narcosis, is

there?

DR. BERGOFSKY

No, there isn't. It's just my opinion.

LANE KIRKLAND

No further questions.

JUDGE WHITTAKER

We'll take a twenty-minute recess.

[Later, in the courtroom]

BAILIFF

All rise. Court is now in session.

[Judge Whittaker comes in and takes her seat.
All is quiet, so she doesn't bang her gavel.]

JUDGE WHITTAKER

Please call you next witness, Mr. Pearson.

CHESTER PEARSON

Thank you, Your Honor. I call Brian Dehavily.

[Witness sits in chair and is sworn in.]

CHESTER PEARSON

Please state your name and position.

BRIAN DEHAVILY

Brian Dehavily. I am Dean of Theater Studies at
Columbia University, in New York.

CHESTER PEARSON

Mr. Dehavily, did you know the deceased student,
Ms. Jennie Knowlton?

BRIAN DEHAVILY

Yes, I did.

CHESTER PEARSON

In what capacity?

BRIAN DEHAVILY

She was enrolled in our theater management program at the University. As Dean, I was her advisor.

CHESTER PEARSON

What did that job entail, as regards Ms. Knowlton?

BRIAN DEHAVILY

She was between her junior and senior years when she passed away. In her junior year she had declared her major, and I spoke with her on several occasions, both before and afterwards. On our last visit together, we planned her final year of course work for her B.A. Degree in theater management. That's where you learn all about the production of plays and concerts, particularly the economics of managing an artistic company.

CHESTER PEARSON

Please describe Ms. Knowlton as you knew her, to the jurors. Did she seem level headed, have common sense?

BRIAN DEHAVILY

She was bright, hard-working, seemed intent on her career choice. I don't think she drank or used drugs; she was all around a solid student. Very pleasant. I would have gotten to know her better her senior year.

CHESTER PEARSON

Was she ever arrested, to your knowledge?

BRIAN DEHAVILY

No.

CHESTER PEARSON

Was she reckless in any way, to your knowledge?

BRIAN DEHAVILY

No.

CHESTER PEARSON

Was she ever, to your knowledge, in any kind of

trouble, academic or otherwise?

BRIAN DEHAVILY
No, not at all.

CHESTER PEARSON
And overall, how would describe her career prospects?

BRIAN DEHAVILY
As a graduate of Columbia University, outstanding. She would have a wide open job market, and no doubt a very successful career in theater management.

CHESTER PEARSON
Thank you. No further questions.

[Mr. Kirkland approaches the witness stand.]

LANE KIRKLAND
How many students are in your program at Columbia at the junior level?

BRIAN DEHAVILY
At any one time, about thirty-five to forty.

LANE KIRKLAND
And you meet with all of them?

BRIAN DEHAVILY
Oh, yes, if they have an interest in majoring in some aspect of theater.

LANE KIRKLAND
The total amount of time? Are we talking about an hour one-on-one with each student, or ten hours, or 100 hours?

BRIAN DEHAVILY
Overall, I would say one to two hours.

LANE KIRKLAND
So you don't really get to know them very well, do you?

CHESTER PEARSON
Objection!

JUDGE WHITTAKER
Sustained.

LANE KIRKLAND
Mr. Dehavily, did you know that she was dating a Mr. Jonathan Archer at the time she declared her major in theater management?

BRIAN DEHAVILY
No, I did not. Obviously we don't get into their personal lives, that's not our policy.

LANE KIRKLAND
Mr. Dehavily, did you know that on September 22, 2013 Ms. Knowlton was admitted to the Columbia infirmary and observed overnight following a Tylenol overdose?

CHESTER PEARSON
OBJECTION! Your Honor, this line of questioning is getting out of hand. Mr. Dehavily is not a psychiatrist or a minister. Mr. Kirkland is asking purposely rhetorical questions to mislead the jury.

LANE KIRKLAND
Your Honor, I am not at all asking purposely rhetorical questions. I would love for Mr. Dehavily to answer that question. He is evidently brought into this courtroom to tell us what a wonderful person Miss Knowlton was academically and personally, and what a bright future she had before her. That may or may not be true, I don't know, but I do know that someone who has spent less than two hours counseling a student on purely academic matters cannot possibly know anything about her psyche, her fears, her problems, or what she might or might not do under water. He is Mr. Pearson's witness, not mine, Your Honor, and the questions are relevant.

JUDGE WHITTAKER
Overruled.

LANE KIRKLAND
Please answer the question Mr. Dehavily.

BRIAN DEHAVILY
No, I didn't know about the overdose or the hospital.

LANE KIRKLAND
Thank you. No further questions.

JUDGE WHITTAKER
I believe that was your last witness, Mr. Pearson?

He nods affirmatively.

JUDGE WHITTAKER
We will reconvene tomorrow at 9 a. m. to start the defense side of the trial.

COURTROOM - NEXT DAY
[Everyone is seated, including the judge, and Lane Kirkland is looking over some papers. He rises.]

LANE KIRKLAND
I call on Dr. Jason Roberts, as my first witness.

[Dr. Roberts enters courtroom, is seated and sworn in.]

LANE KIRKLAND
Please state your name and position.

DR. ROBERTS
Dr. Jason Roberts. I am Clinical Professor of Medicine at Case Western Reserve University School of Medicine and Chief of the Pulmonary Division at Mt. Sinai Hospital, both in Cleveland, Ohio.

LANE KIRKLAND
You are a lung doctor?

DR. ROBERTS
Yes, pulmonary is the medical term for lung.

LANE KIRKLAND
Would you please explain to the jury what a lung doctor does?

DR. ROBERTS
Basically, we take care of adult patients with lung diseases, like asthma, bronchitis, pneumonia, conditions like that. I also work in the intensive care unit where we take care of critically ill patients, on life-support or breathing machines.

LANE KIRKLAND
So you are familiar with the kinds of conditions that can befall divers, such as the bends, air embolism, nitrogen narcosis?

DR. ROBERTS
Oh, yes. Those are very uncommon conditions and rarely seen in routine clinical practice, but I have studied and am familiar with them.

LANE KIRKLAND
Dr. Roberts, you have written a book on scuba diving, is that correct? The one I am holding in my hand titled *All You Need to Know About Scuba Diving*.

DR. ROBERTS
Yes.

LANE KIRKLAND
And who is the intended audience for this book?

DR. ROBERTS
Well, anyone who scuba dives, or plans to, and wants to learn more about the physiology and medical aspects. This is not a medical textbook. I wrote it for the general public, for anyone who has ever taken a basic certification course,

or plans to.

LANE KIRKLAND

What qualifies you to write such a book?

DR. ROBERTS

Well, I am a scuba diver and a pulmonary physician, so I have a lot of experience in the physiology that underlies much of this information. I also took a diving medicine course with Divers Alert Network a few years ago, and became very interested in the medical aspects and all the physiology. There was nothing like it on the market for the layman, so I got interested and wrote the book.

LANE KIRKLAND

Are you board-certified in pulmonary medicine?

DR. ROBERTS

Yes.

LANE KIRKLAND

And do you operate a hyperbaric chamber?

DR. ROBERTS

No, not personally. There's really not much in the way of diving accidents in the Cleveland area. Only a few hospitals even have such chambers, and they're used almost exclusively for surgical patients, with bad wounds that don't heal. The one in our hospital is operated by the vascular surgery department.

LANE KIRKLAND

Doctor Roberts, are you a member of the Undersea and Hyperbaric Medical Society?

DR. ROBERTS

Yes, I am.

[Attorney Pearson stands.]

CHESTER PEARSON

For expedience, we agree that Dr. Roberts is qualified and agrees to discontinuance of

questioning his credentials.

LANE KIRKLAND

Thank you.

[Attorney Pearson sits.]

Dr. Roberts, please state what items you have reviewed in this case.

DR. ROBERTS

I read the coroner's report, newspaper articles, all the depositions, and refreshed my understanding of nitrogen narcosis from various textbooks and medical articles. I have not interviewed any of the people involved.

LANE KIRKLAND

And from all of this, what is your opinion as to the death of Ms. Knowles?

DR. ROBERTS

My opinion is that she consciously wanted to sink to impossible depths and was determined not to survive.

[From the back of the courtroom.]

STANLEY KNOWLTON

Liar! My daughter did not want to kill herself! That's just not true!

[Jennie's mother is sobbing hysterically, while Mr. Knowlton is pointing an accusatory finger at Dr. Roberts.]

STANLEY KNOWLTON

How dare you say such a thing! You're not a doctor! You're a quack, that's what you are!
[Mrs. Knowlton slumps to the floor.]

BAILIFF

Is there a doctor in the courtroom?

[The judge looks toward Dr. Roberts, who appears flustered, indecisive. He gets up, runs to the bench where Mrs. Knowlton has collapsed.]

STANLEY KNOWLTON
Get away from my wife!

DR. ROBERTS
This could be serious. Would you rather I helped
or possibly let her die?

[Mr. Knowlton hesitates briefly, then nods
affirmatively as he bends down to hold his
wife's head. Dr. Roberts checks her pulse and
other vital signs. Soon paramedics arrive and
take over. The paramedics take Mrs. Knowlton out
on a stretcher.]

JUDGE WHITTAKER
This court is adjourned until 1 p.m. May I speak
with the lawyers please?

[The lawyers and judge confer out of earshot of
the jurors.]

End of Act I

ACT II

COURTROOM - LATER IN THE DAY

BAILIFF
All rise.

[Judge Whittaker walks in, sits down and the
jury is led in. Dr. Roberts is back in the
witness chair.]

JUDGE WHITTAKER
[Speaking to the jury.]

Regarding what happened this morning, the
witness has a right, indeed an obligation, to
give his honest opinions. What happened to Mrs.
Knowlton should have no bearing on your
interpretation of those opinions. In any case, I
am happy to report that the courthouse physician
states Mrs. Knowlton should be fine. She has
been sent home but may return to this court at
any time. We are going to continue with the

trial. Dr. Roberts, remember you are still under oath. Mr. Kirkland, you may continue.

LANE KIRKLAND

Dr. Roberts, you stated this morning that you thought Jennie Knowlton wanted to get away from the group and sink deeper, and therefore not survive this dive. Is that your opinion?

DR. ROBERTS
Yes.

LANE KIRKLAND

And is today the first time you've stated that opinion on direct questioning?

DR. ROBERTS
No, I stated it in my deposition several months ago.

LANE KIRKLAND

Who took your deposition?

DR. ROBERTS
Mr. Pearson, plaintiff's counsel. You were there as well.

LANE KIRKLAND

So this opinion has been known to the plaintiff's counsel for almost half a year. On what do you base your opinion, Dr. Roberts?

DR. ROBERTS
Well, her physical behavior on this dive was completely atypical for nitrogen narcosis. Someone who is properly weighted just wouldn't sink straight down at the speed she was reported to be sinking, something like a hundred feet in less than a minute, especially if they became totally unconscious. In fact she might just as well have floated if she was properly weighted.

LANE KIRKLAND

Floated?

DR. ROBERTS
Yes, by that I mean not gone up or down, just

sort of hovered in place, or maybe go down or up only a few feet, but certainly not sink rapidly. So the speed with which she reportedly sank was just not something you would see in a diver who has become slightly confused from nitrogen narcosis.

LANE KIRKLAND

So, you don't think she had nitrogen narcosis?

DR. ROBERTS

That's correct. There is no reason for her to have any significant nitrogen narcosis at a depth of what was reportedly only about seventy to eighty feet. That would be unheard of, unless someone was on drugs before entering the water, and there was no evidence of that. You don't even begin to see effects of nitrogen narcosis until about 100 feet or so in most people, and it's usually really minimal. So the diagnosis of nitrogen narcosis is in doubt right off the bat. And even if it occurred, it would not account for her rapid descent. It simply makes no sense, at least to me.

LANE KIRKLAND

Anything else?

DR. ROBERTS

Well, quite frankly, nothing about this case makes sense, except one explanation: that she consciously wanted to get away from the group, and to descend. In my opinion any certified diver who consciously breaks away from a group at seventy feet and rapidly and purposely descends to 200 feet is trying to kill herself or else is incredibly foolish. So that's how I arrived at my opinion.

LANE KIRKLAND

Doctor, we have heard expert testimony to the effect that Jennie Knowlton did succumb from nitrogen narcosis. How do you reconcile that testimony with your own opinion?

DR. ROBERTS

Well, I have read the deposition testimonies of

Mr. Morgan and Dr. Bergofsky, and I strongly disagree with them. I just don't believe she would have sunk so deep so quickly if she was suffering only from slight nitrogen narcosis. And I certainly don't believe she could have had anything more than the slightest case of nitrogen narcosis at a depth of seventy to eighty feet. In my opinion this whole idea of nitrogen narcosis as an explanation is just not tenable.

LANE KIRKLAND

You said, I quote, "suffering only from slight nitrogen narcosis". Are you implying something else could have caused her situation?

DR. ROBERTS

Possible. Some medications could have a delayed effect and caused problems well into the dive.

LANE KIRKLAND

Do you have any specific drugs in mind?

DR. ROBERTS

Not off hand. I would have to research that and see her medical history. There could be several medications that could come into play.

LANE KIRKLAND

Thank you. I have no further questions.

[Kirkland sits down and Pearson rises for his cross examination.]

CHESTER PEARSON

Now, Dr. Roberts, you stated that you don't treat divers, but you do answer medical questions about diving if called, is that correct?

DR. ROBERTS

Yes. My main interest is asthma and diving, and I get called about that quite frequently.

CHESTER PEARSON

Do you ever get called about nitrogen narcosis?

DR. ROBERTS

Well, no, people who might have had nitrogen narcosis are fine when they get to the surface.

CHESTER PEARSON

So you don't have any personal experience in treating nitrogen narcosis?

DR. ROBERTS

No one has. There is no treatment once you're back on the surface.

CHESTER PEARSON

Have you ever been involved in an autopsy of a diver?

DR. ROBERTS

No, I am not a pathologist.

CHESTER PEARSON

Have you ever been involved in any formal inquiry into the death of a diver?

DR. ROBERTS

We don't have many deaths from diving in Cleveland, but to answer your question, no.

CHESTER PEARSON

Are you aware of the Northeast Ohio Scuba Rescue Team, professionals on call that go out to remove drowned divers out of quarries and lakes in Northeast Ohio?

DR. ROBERTS

Well, I've read about them. I know that there are one or two scuba diving deaths a year in the quarries around Cleveland. Usually divers who are inebriated.

CHESTER PEARSON

Are you a medical member of any of those rescue teams, the Cuyahoga, Lake County or Summit County teams?

DR. ROBERTS

No, I am not. But I'm also not aware that any

practicing physician is a member of those teams.

CHESTER PEARSON

Have you ever been asked to consult with any of those teams?

DR. ROBERTS

No.

CHESTER PEARSON

Have you ever been consulted by any official agency at any time to give an opinion on why a diver drowned or had a fatal accident?

DR. ROBERTS

No, I haven't.

CHESTER PEARSON

And you don't do any work with a hyperbaric chamber?

DR. ROBERTS

That's not correct. I work with a hyperbaric chamber on a limited basis, but I don't run the chamber, I'm not in charge of the program.

CHESTER PEARSON

Who is?

DR. ROBERTS

A vascular surgeon in our hospital.

CHESTER PEARSON

Well, what kind of patients do you work with?

DR. ROBERTS

I am occasionally consulted on patients receiving hyperbaric oxygen therapy for carbon monoxide poisoning, or who have surgical and pulmonary problems and are receiving hyperbaric treatments. And I am occasionally asked to interpret blood oxygen levels in chamber patients. So I am familiar with hyperbaric chambers but it is not my main focus. And as I said, we don't see diving accidents in Cleveland, at least not at our hospital.

CHESTER PEARSON

I understand. But there are experts in this country who do run a hyperbaric facility, who do treat diver injuries, who do have first-hand medical experience in the bends and other diver injuries, are there not?

DR. ROBERTS

Yes, of course there are, but they are few and far between.

CHESTER PEARSON

But you're not one of them, are you?

DR. ROBERTS

No.

CHESTER PEARSON

Then tell me doctor, how in heaven's name can you come before this court today and opine on the death of a beautiful young woman who disappeared while scuba diving off Grand Cayman Island? What experience do you—

LANE KIRKLAND

Objection! Mr. Pearson is badgering the witness.

JUDGE WHITTAKER

Sustained. Mr. Pearson, please ask one question at a time. Let the witness answer.

CHESTER PEARSON

Dr. Roberts, have you ever done any diving except what is called recreational diving?

DR. ROBERTS

You mean am I a professional diver?

CHESTER PEARSON

Yes, do you do any scientific or professional diving?

DR. ROBERTS

No, that's not the kind of job I have.

CHESTER PEARSON

OK. This book of yours displayed by Mr.

Kirkland, it is based on what? What experience?

DR. ROBERTS

Well, my experience as a pulmonary physician, scuba diver, and lecturer on scuba diving. I try to explain diving medicine and physiology to the lay public.

CHESTER PEARSON

And how many copies have you sold?

DR. ROBERTS

I actually have no idea at this point.

CHESTER PEARSON

Doctor, please turn to the first page in your section on nitrogen narcosis and, if you would, read us the second and third paragraphs.

[Dr. Roberts opens his book and reads.]

DR. ROBERTS

"Nitrogen narcosis, also called "rapture of the deep" and "the Martini effect," results from a direct toxic effect of high nitrogen pressure on nerve conduction. It is an alcohol-like effect, a feeling often compared to drinking a Martini on an empty stomach: slightly giddy, woozy, a little off balance.

"Nitrogen narcosis is a highly variable sensation but always depth-related. Some divers experience no narcotic effect at depths up to 130 feet, whereas others feel some effect at around 80 feet. One thing is certain: once begun, the narcotic effect increases with increasing depth. Each additional 50 feet depth is said to feel like having another Martini. The diver may feel and act totally drunk. Underwater, of course, this sensation can be deadly. Divers suffering nitrogen narcosis have been observed taking the regulator out of their mouth and handing it to a fish!"

CHESTER PEARSON

So in your book, in your own writing, you state that there is an alcohol-like effect, that it

can occur at 80 feet, that it increases with increasing depth, that the diver may feel totally drunk, and that "Underwater, of course, this sensation can be deadly."

So, pardon me doctor. I am confused. What I just quoted back to you, if I am not mistaken, is the opposite of your testimony in answer to Mr. Kirkland's questions!

DR. ROBERTS

At great depth, say more than 150 feet, nitrogen narcosis can be deadly, there's no doubt about it. But feeling a little woozy at seventy or eighty feet is not the same thing as becoming totally unresponsive and sinking a hundred feet in less than a minute. Also, there was another aspect to this case that I have neglected to mention that supports my opinion.

CHESTER PEARSON

What is that?

DR. ROBERTS

People on the dive who were interviewed and could give a description of the sinking diver said they saw bubbles coming out of her regulator as she descended. That meant she was breathing on the way down, that she had not drowned, that her lungs were not water logged, and that she was still in control.

CHESTER PEARSON

Regulator?

DR. ROBERTS

Yes, that's the device that connects your mouth to the hose from the scuba tank. Every time you exhale through it, the exhaled air forms bubbles in the water. So you can see a diver exhaling.

CHESTER PEARSON

Doctor Roberts, you stated that nitrogen narcosis can be deadly. That it is like being drunk at depth. So it's your contention that being drunk at depth, she could not have been

breathing through this regulator?

DR. ROBERTS

It's my contention that the manner of her disappearance, breathing all the way down to at least 150 feet, shows that she was in control, under her own volition, and not suffering from fatal nitrogen narcosis.

CHESTER PEARSON

Dr. Roberts, do people in the early stages of being drunk, do they stop breathing?

DR. ROBERTS

No, I don't think so.

CHESTER PEARSON

Then could you please explain to the jury why you're so certain that her breathing down to 150 feet meant she was not drunk from nitrogen narcosis?

DR. ROBERTS

Yes, because the whole scenario of her disappearance began at around 70 or 80 feet, not 150 feet. Being totally out of control at 70-80 feet depth is not going to happen from nitrogen narcosis.

CHESTER PEARSON

You're sure of that, Dr. Roberts?

DR. ROBERTS

That's my professional opinion.

CHESTER PEARSON

Your professional opinion. I see. Dr. Roberts, isn't it true that you have no experience with hyperbaric chambers, or indeed anything to do with actually hands-on treatment of dive accident victims. Is that correct?

DR. ROBERTS

Yes.

CHESTER PEARSON

Doctor, is there anything in your background,

apart from what you have testified to about your interest in physiology and recreational diving, that qualifies you to give any opinion on this case?

DR. ROBERTS

I believe I have stated my qualifications.

CHESTER PEARSON

On the issue of diving accidents, would you defer to someone who is considered a hyperbaric specialist, who routinely does treat divers, who has been in the Navy as a diving physician?

DR. ROBERTS

I'm sorry, do you mean in this case, or in treating a specific injured diver coming for help?

CHESTER PEARSON

Well, let's look at both. The specific injured diver coming for help.

DR. ROBERTS

Yes, I would want that diver treated by someone who has specific expertise in that area.

CHESTER PEARSON

So in that regard you would defer to the hyperbaric specialist?

DR. ROBERTS

Yes. Refer and defer if such a person was readily available.

CHESTER PEARSON

OK. In this particular case?

DR. ROBERTS

Absolutely not.

CHESTER PEARSON

Why not?

DR. ROBERTS

Because both me and the hyperbaric specialist

would be starting on an equal footing in this case.

CHESTER PEARSON?
Equal footing? How so?

DR. ROBERTS
Neither I nor this hypothetical diving specialist you refer to had a chance to treat Ms. Knowlton. We would each have the exact same information, and in this case I believe I can review the available information as well as the specialist you mention.

CHESTER PEARSON
Even though you haven't managed diving injuries in a hyperbaric chamber?

DR. ROBERTS
Yes. This case has nothing to do with treating a patient in a hyperbaric chamber. All one needs is knowledge of diving physiology and the medical literature on scuba diving, and a detailed and objective look at the available information. You need to study the information available. You don't need to operate a chamber to figure this case out.

CHESTER PEARSON
You have read Dr. Bergofsky's report?

DR. ROBERTS
Yes.

CHESTER PEARSON
And you don't agree with his conclusions?

DR. ROBERTS
No, I do not.

CHESTER PEARSON
Thank you. No further questions.

[Kirkland rises.]

LANE KIRKLAND
Dr. Roberts, would you please read the first

sentence in the middle of the next page of your book, where it starts "Every year..."

DR. ROBERTS

"Every year there are diving deaths attributed to nitrogen narcosis, mainly among divers who exceed recreational depth limits."

LANE KIRKLAND

"Exceed recreational depth limits," is that what you wrote?

DR. ROBERTS

Yes, that's correct.

LANE KIRKLAND

And what is the recreational depth limit?

DR. ROBERTS

One hundred and thirty feet.

LANE KIRKLAND

So at depths of seventy-eighty feet, you would not expect effects of nitrogen narcosis?

DR. ROBERTS

Certainly none that would lead to death or rapid sinking.

LANE KIRKLAND

Thank you. No further questions. You may go.

[Dr. Roberts gets up and leaves courtroom.]

LANE KIRKLAND

[Turning to the judge] Your Honor, I'd like to call Scott Harrison to the stand.

JUDGE WHITTAKER

We'll take a twenty-minute break.

[Lights out, lights on. Scott Harrison is now seated in the witness chair.]

LANE KIRKLAND

Please state your name and occupation.

SCOTT HARRISON

Scott Harrison. I am a scuba instructor and part owner of Diving Galore Scuba in Cleveland. We provide scuba instruction year round using our pool. We also take groups on diving trips to the Caribbean, Mexico, and other places.

LANE KIRKLAND

How long have you been in this business?

SCOTT HARRISON

Twelve years.

LANE KIRKLAND

Do you also train divers at the dive master level?

SCOTT HARRISON

Yes, we train about half a dozen dive masters a year. That's in addition to the large number of people who take the basic scuba certification course with us.

LANE KIRKLAND

Now Mr. Harrison, you've had a chance to review the file records on Miss Jennie Knowlton so I'm going to ask you some specific questions that deal with operation of your business.

In your dive master training courses, what exactly do you tell dive masters about continuous observation of divers in their charge?

SCOTT HARRISON

In fact there are no hard and fast rules. Dive masters are considered professionals, and they must use common sense in dealing with each dive. To say to the dive master, 'You must never take your eyes off the divers', or 'You must count heads every fifteen seconds', that would be foolish. We train them to be responsible people in charge of a dive, to look out for hazards, to be able to rescue a diver when necessary. In fact a pre-requisite for dive master training is a course on Stress and Rescue Diving.

LANE KIRKLAND

So in this case, Mr. Harrison, did the dive master deviate from any standard that you have taught, or of which you are aware?

SCOTT HARRISON

Not at all. This was a guided dive, and everyone was appropriately buddied up. She was showing creature life to the divers and could not expect to do that and count heads continuously.

Furthermore, the deceased had a buddy, who should have been aware of where his partner was at any given moment. Finally, the speed with which Miss Knowlton left the group suggests to me it was on purpose.

LANE KIRKLAND

Now we have heard testimony that there were too many divers for one dive master to handle. What would you say about that?

SCOTT HARRISON

Well, there is no set standard. Certainly two dive masters would be better than one, but not for the reasons that have been stated. Having a second dive master available on the boat is always a good idea if one dive master gets sick, then at least there is the other one to lead the dive. Or, if during the actual dive someone feels sick and has to go back to the boat, the second dive master can take them back. So it's like a backup, but not because the dive is too dangerous without it. Having one or two dive masters on a wall dive should not be the deciding factor over whether someone dies or not.

LANE KIRKLAND

In your opinion, is it acceptable to send down eight divers with a single dive master?

SCOTT HARRISON

Yes. In calm conditions as these were, with certified divers, as these were.

LANE KIRKLAND

Mr. Harrison, imagine if this was a dive master

in your employ. What action would you take if a diver with your outfit disappeared under these circumstances, and the dive master responsible worked for you?

SCOTT HARRISON

I don't know. I would be upset, I'm sure. But I think the circumstances would indicate that it was a bit of bad luck for the dive master. Real bad luck. If that person was otherwise competent, I would do nothing. I certainly wouldn't fire her. In my opinion what happened was a rare and bizarre occurrence, and I don't see how I could blame the dive master. In fact it's my understanding that the dive master was not charged with any offense by the Cayman authorities. I don't know if she's still working for Ocean Realm, though.

LANE KIRKLAND

Mr. Harrison, in your review, did you find anything negligent about the way Ocean Realm International conducted this particular dive?

SCOTT HARRISON

No, I did not. I was able to review their dive manifesto that you sent, and all the divers had been properly logged on and all had current certification cards, including Ms. Knowlton, so I didn't find anything amiss.

LANE KIRKLAND

And again, just so we're clear, having only one dive master on that dive did not, in your opinion, constitute an act of negligence?

SCOTT HARRISON

Definitely not.

LANE KIRKLAND

Thank you. No further questions.

[Kirkland sits down. Chester Pearson rises, waving a pencil in the air.]

CHESTER PEARSON

Mr. Harrison, have you been paid for your testimony yesterday and today?

[A few jurors widen their eyes at the question.]

SCOTT HARRISON

I'm sorry, have I been paid for my testimony?

CHESTER PEARSON

Yes, that was my question.

SCOTT HARRISON

Well, no.

CHESTER PEARSON

Will you be paid?

SCOTT HARRISON

Well, yes. There is a fee involved.

CHESTER PEARSON

So no, you haven't been paid, yes, you will be paid? Is that correct?

SCOTT HARRISON

Yes.

CHESTER PEARSON

And what is that fee, please?

LANE KIRKLAND

Objection! Your Honor, all expert witnesses are entitled to submit a bill for their time, including Mr. Pearson's out-of-town witnesses. And that includes Mr. Morgan, I might add. Mr. Pearson is misleading the jury into thinking Mr. Harrison is somehow unique in this regard.

JUDGE WHITTAKER

Overruled. Mr. Harrison, you may answer the question

SCOTT HARRISON

One hundred dollars an hour.

ATTORNEY PEARSON

That includes reviewing materials, coming to this court, travel time?

SCOTT HARRISON
Yes.

ATTORNEY PEARSON
And what do you estimate will be your total bill when you are finished with this case?

SCOTT HARRISON
I'm not exactly sure at this point. I estimate about \$1500.

CHESTER PEARSON
Mr. Harrison. Have you ever worked in Grand Cayman Island? Ever led a wall dive there?

SCOTT HARRISON
No, I've never worked there so naturally never led a wall dive. But I have dived there with members of the tour group. Dives would be led by the outfit we dove with.

CHESTER PEARSON
Then please tell the jury how you feel so certain that one dive master on an eight-person dive is an acceptable standard on that particular wall.

SCOTT HARRISON
I have led many other dives, including places where visibility is a lot worse. In my experience if you have good visibility, good conditions, one dive master is sufficient. It's a matter of experience.

CHESTER PEARSON
But you yourself don't have any experience leading divers on that Cayman wall, is that correct?

SCOTT HARRISON
That's true.

CHESTER PEARSON
Thank you. No further questions.

JUDGE WHITTAKER
We'll take a short break. Court resumes in
thirty minutes

[LIGHTS OUT, LIGHTS ON. INTERIOR COURTOOM]

JUDGE WHITTAKER
Your next witness, Mr. Kirkland,

LANE KIRKLAND
I call Charlene Marvich.

[Charlene enters courtroom, is sworn in, and
sits in the witness chair.]

LANE KIRKLAND
Please state your name and what you do.

CHARLENE MARVICH
Charlene Esther Marvich. I currently work for
Scuba Duba in Miami, Florida.

LANE KIRKLAND
And your job with your former employer, Ocean
Realm?

CHARLENE MARVICH
I was the dive master on the charter where Ms.
Knowlton died.

LANE KIRKLAND
Do you understand the charge in this case?

CHARLENE MARVICH
I think so. That the company I worked for, Ocean
Realm, and myself, their dive master at the
time, were negligent in leading a dive at which
Jennie Knowlton disappeared.

LANE KIRKLAND
Miss Marvich, thinking back to the events of
that day, do you recall anything unusual about
the boat ride out to the dive site?

CHARLENE MARVICH

No, not really. It was pretty routine. I did help one or two divers with their gear, but Ms. Knowlton was not one of them. I remember she was buddied up with her boyfriend, but there didn't seem to be anything unusual about that. We had our usual dive briefing at the site, and it was routine. Actually, conditions that day were pretty good. I've been in some bad diving conditions, but these were excellent.

LANE KIRKLAND

How about after you got in the water?

CHARLENE MARVICH

No. Again, it went smoothly. Visibility was great, our descent down the wall went well. Of course I had been there many times before, I knew what to look for, and I found it. That was my job.

LANE KIRKLAND

So please tell us what happened.

[She starts to cry, takes out a tissue to wipe her eyes.]

LANE KIRKLAND

No problem, Ms. Marvich. We know this is difficult for you. Take your time.

[After wiping her eyes, she resumes testimony.]

CHARLENE MARVICH

Well, I took them down the wall, as I've done many times with other groups. I had eight going down and eight when we reached our maximum depth, which was about 80 feet. I was at all times the deepest diver. Coming up at about 78 feet I spotted Ernie, the name we gave to a giant crab that hangs out there. He's always a crowd pleaser, and I motioned for the others to take a look.

About ten feet higher I came upon Bert. He's a large green moray eel. Sometimes he's hiding but when I find him I always show him off. Divers

love to see moray eels and Bert's a big one. I have to be careful though, because he can bite, so I motion my divers to look but not touch. I have to make sure they don't get too close. So I'm sort of monitoring their interaction with the creature.

LANE KIRKLAND

What happened next?

CHARLENE MARVICH

Well, I'm not exactly sure. Several minutes had passed since I had counted heads and before ascending further I did a quick count. To my astonishment I only counted seven divers. So someone had wandered off, which by itself isn't all that unusual. Most often a stray diver will be above us, because they're low on air or having trouble clearing their ears. But when I looked up I could see the surface and there was no diver in sight. My first thought was that someone had gone all the way up and out to the boat, but then I realized he should still be in view, considering not all that much time had passed. Then I looked down and I was horrified.

LANE KIRKLAND

What did you see?

CHARLENE MARVICH

A good way down - perhaps seventy-five feet away - I saw our lost diver. As I said, visibility was excellent, so there was no mistake. And she was continuing to sink.

LANE KIRKLAND

Did you see bubbles coming out of her regulator?

CHARLENE MARVICH

Absolutely. Bubbles get bigger as they ascend, due to the decrease in pressure, so there was no doubt she was breathing and descending at the same time.

LANE KIRKLAND

Was she kicking herself down?

CHARLENE MARVICH

Mr. Kirkland, I've been asked that a hundred times. I wish I could say for sure. But at that depth I just couldn't tell. I could see her and her air bubbles, but it was impossible to say if she was actively kicking. I'm certain she was breathing though.

LANE KIRKLAND

What did you do next?

CHARLENE MARVICH

I signaled everyone to ascend and get back to the boat. To send any of the other divers down after her would have been pointless. Her boyfriend - her dive buddy - wanted to go down but I insisted he also return to the boat. Fortunately he obeyed. Then I went down as far as I could safely go, but there was no way I could catch up with her. She was gone.

CHARLENE MARVICH

[Crying again.] I'm sorry. There was nothing I could do. Nothing. There was no way I could catch up to her.

LANE KIRKLAND

What did you do next?

[She holds back tears.]

CHARLENE MARVICH

At about 150 feet I checked my air gauge, and figured I had just enough air for a safe ascent and a five minute safety stop. I had to turn back or I would have been a goner, too. So I slowly ascended and got back on the boat about fifteen minutes later.

LANE KIRKLAND

Then what happened?

CHARLENE MARVICH

Well, Tilade, the boat captain, had already radioed ahead when he heard we had missing diver, and got two rescue divers out quickly.

But there was nothing they could do. That wall is 3000 feet straight down. I went back into the water to show them the site of disappearance, but their search was futile, as I knew it would be. After that we all went back to the shop on the boat.

LANE KIRKLAND

Did you talk to her boyfriend Jonathan Archer on the way back?

CHARLENE MARVICH

I asked him what happened, but he was in no mood to talk. He was pretty distraught and I don't think he had a clue himself about what happened. So I let it drop. I figured plenty of people would be asking questions, and I would learn what he knew soon enough.

LANE KIRKLAND

And what did you learn?

CHARLENE MARVICH

Basically, no one had an explanation. Everyone was so busy watching the moray that no one saw her break away, including Mr. Archer, her buddy. So there was really no explanation.

LANE KIRKLAND

And you are no longer with Ocean Realm?

CHARLENE MARVICH

I was asked to resign but was told they would give references. Just bad for business if I stayed on the island. They helped me land a job with Scuba Duba.

LANE KIRKLAND

How have you been affected by all of this?

CHARLENE MARVICH

[Teary-eyed) I still plan on opening my own dive shop some day. But on a personal level this accident has been devastating. Not a day goes by that I don't think about it. Most dive professionals go through life without a single bad accident. Diving's really pretty safe, when

you think about it. But early in my career, one of my divers disappears. That's hard to live with. I know I did nothing wrong. For some ungodly reason that girl was determined to get away from us. But I don't know why. I honestly don't know why.

LANE KIRKLAND

Thank you for coming Miss Marvich. I have no further questions.

[Pearson rises.]

CHESTER PEARSON

Miss Marvich, I think we all agree this was a tragic event. A young woman is dead and another young woman is testifying that this event has traumatized her life. So it's tragic all around, is it not?

CHARLENE MARVICH

Yes, it is.

CHESTER PEARSON

And we are not here today to punish you in any criminal way, is that correct?

[Kirkland stands abruptly.]

LANE KIRKLAND

Objection!

JUDGE WHITTAKER

Sustained. Mr. Pearson, this court and all its participants are well aware this is a civil case. Please confine your questions accordingly.

CHESTER PEARSON

Yes, Your Honor. Miss Marvich, do you understand that you are not personally responsible for any monetary award in this case?

LANE KIRKLAND

Objection! Your Honor, his comment is not relevant to this case.

CHESTER PEARSON

On the contrary, Your Honor, it is quite relevant. Miss Marvich is here to give testimony. The jury must know she is not personally responsible for any award, so they can weigh her testimony against that fact.

LANE KIRKLAND

Once again, I must strongly object. Mr. Pearson is now himself testifying before the jury. I ask that his question and last statement be stricken from the record!

JUDGE WHITTAKER

Sustained. Mr. Pearson, your last comment is *de facto* testimony, and inadmissible. Any further comments or questions in this regard and you risk a court sanction. Do I make myself clear?

CHESTER PEARSON

Yes, Your Honor, I do apologize.

[Judge Whittaker looks toward the jury.]

JUDGE WHITTAKER

Justice demands that you judge this case not on who will pay for any award, but on the merits of the case. You must disregard Attorney Pearson's statement as it is immaterial to the facts of the case and should be immaterial to your decision. You may continue, Mr. Pearson.

CHESTER PEARSON

Thank you. Miss Marvich, how long have you been a scuba dive master?

CHARLENE MARVICH

Three years.

CHESTER PEARSON

And how long had you been with Ocean Realm when the accident occurred?

CHARLENE MARVICH

It was my second summer with them.

CHESTER PEARSON

Have you ever had an accident on any other dive?

CHARLENE MARVICH

Only one. A diver was stung by a stingray at Stingray City, a shallow area where large numbers of rays gather and a major tourist attraction. He was treated with first aid and did fine.

CHESTER PEARSON

On this wall dive, were you the only dive master?

CHARLENE MARVICH

Yes.

CHESTER PEARSON

Were there supposed to be two dive masters? Or were you the only one assigned?

CHARLENE MARVICH

I was the only one. We don't usually have two unless the group is larger, or there are suboptimal conditions.

CHESTER PEARSON

So at Ocean Realm it's usual to go down with eight divers and only one dive master?

CHARLENE MARVICH

Yes, unless you have more. They block it at eight, so it's never more than eight with one dive master. If it's more than eight they would add a second dive master or make it into two groups.

CHESTER PEARSON

What is the correct positioning of you and the divers on a wall dive?

CHARLENE MARVICH

I'm sorry, Mr. Pearson. I don't know if there is a correct position as such.

CHESTER PEARSON

By correct position, Miss Marvich, I mean you,

then the divers, then the wall, so you can watch them. Was that taught to you in your training?

CHARLENE MARVICH

No, not that I can recall. I think they expect us to use our judgment.

CHESTER PEARSON

On this dive where Miss Knowlton disappeared, what did you understand was your responsibility?

CHARLENE MARVICH

To guide the dive.

CHESTER PEARSON

Did that include taking eight divers down the wall...and include bringing eight divers back up?

CHARLENE MARVICH

[With sadness] Yes.

CHESTER PEARSON

Thank you. I have no further questions.

JUDGE WHITTAKER

Mr. Kirkland, I believe that concludes all your witnesses?

LANE KIRKLAND

No, Your Honor. We have one more. I apologize to the court but we have been trying to reach Miss Debbie Schwartz for over a year. She was the only boat diver we were not able to interview as she has been in Nepal since the accident and just returned. I am willing to break court for a day for her immediate deposition by Mr. Pearson.

CHESTER PEARSON

Objection, Your Honor. Miss Schwartz is not on the witness list and rushing a deposition at this time is hasty and detrimental to this trial.

[Judge Whittaker waves the two attorneys to her bench. Arms wave in discussion and frustration. Both lawyers return to their seats.]

JUDGE WHITTAKER

Mr. Pearson has declined the option of having a mid-trial deposition. However, I have granted him the right to call the witness back tomorrow after she testifies today. Mr. Kirkland has agreed to make his witness available at any time tomorrow. Is this acceptable to all parties?

LANE KIRKLAND

Yes.

CHESTER PEARSON

Yes.

JUDGE WHITTAKER

Then we will proceed after lunch. The court will resume in one hour.

[Lights out, lights on. Defense witness Ms. Debbie Schwartz is sitting in the witness chair.]

LANE KIRKLAND

Please state your name and occupation.

DEBBIE SCHWARTZ

My name is Debbie Schwartz and I am a freelance writer out of New York City. I write for travel magazines.

LANE KIRKLAND

You have been in Nepal for over a year?

DEBBIE SCHWARTZ

Yes, that's correct. Climbing Mr. Everest and writing an article about it. From there I traveled in India and China. Communication was terrible in the remote areas I was in, so I only recently got your messages that I was needed for this trial.

LANE KIRKLAND

Did you ever know Miss Knowlton, the deceased?

DEBBIE SCHWARTZ

No. Never saw her before in my life. Until that

fatal boat ride.

LANE KIRKLAND

Ms. Schwartz, do you remember anything out of the ordinary on this dive?

DEBBIE SCHWARTZ

The one thing I remember was the weights.

LANE KIRKLAND

The weights?

DEBBIE SCHWARTZ

Yea, She had a lot of lead weight on her belt. I kinda notice things like that because I'm a little pudgy. This waif of a girl at maybe 120 pounds was carrying so much weight.

LANE KIRKLAND

How do you know this?

DEBBIE SCHWARTZ

Well, I wear ten pounds of lead in warm water, because of my body fat. She had on sixteen pounds. I mean that's a lot.

LANE KIRKLAND

Why? What makes you pay attention to someone's weight?

DEBBIE SCHWARTZ

Women notice these things, especially if you've been heavy all your life like me. She had on four four-pound weights. I always check out what other women are wearing. Could be jewelry or clothes, but her weights caught my attention.

LANE KIRKLAND

Did you say anything to her?

DEBBIE SCHWARTZ

Yes, I did. I kind of joked, and said something like 'that's an awful lot of weight. How come you need so much?' I was just making conversation, it was a friendly question, but she gave me a stare like I had really insulted her. I thought she was just going to ignore me,

but then she said, "I need it. I float." Her tone was, like, 'bug off.' She clearly didn't want to discuss it. So I just clammed up and didn't say anything more.

LANE KIRKLAND

Did you tell anyone about this afterwards?

DEBBIE SCHWARTZ

No, no one asked me. Well, I told my boyfriend, but we didn't make too much of it at the time. I didn't even think about it until I got back and talked to you.

LANE KIRKLAND

Miss Schwartz, to the best of your knowledge, did Miss Knowlton dive with those sixteen pounds of lead weight?

DEBBIE SCHWARTZ

Yes, I mean I never saw her take the weights off her belt.

LANE KIRKLAND

Thank you. No further questions.

[Mr. Pearson rises.]

CHESTER PEARSON

I have no questions at this time. But I will have some tomorrow.

[Kirkland rises.]

LANE KIRKLAND

Your Honor, in view of the delay in cross examining Miss Schwartz, I would like permission to recall Mr. Harrison tomorrow, to specifically ask him his opinion of the significance of this new testimony.

JUDGE WHITTAKER

If Mr. Pearson has no objections?

CHEST PEARSON

No objections.

JUDGE WHITTAKER

Court is adjourned for today. We will reconvene tomorrow at 9 a.m.

COURTROOM - THE NEXT DAY

[Miss Schwartz is in the witness chair and Mr. Pearson is before her.]

CHESTER PEARSON

You are still under oath Miss Schwartz. You were interviewed by the Cayman authorities after the accident. Why didn't you mention the weights to the investigator?

DEBBIE SCHWARTZ

I was never asked and it never came up. It was just girl talk and I had forgotten about it.

CHESTER PEARSON

Then how did it come up with Mr. Kirkland?

DEBBIE SCHWARTZ

Well, he kept asking me was there anything unusual, anything at all, about Jennie Knowlton on that boat trip. He kept asking things like was the regulator working, depth gauge functioning, did she have trouble clearing her ears, weight belt functioning. I guess the last item triggered my memory. You have to understand, for the past year or so my mind has been at altitude and scuba was the furthest thing from it. But as I sit here today that scuba trip is now as vivid as yesterday.

CHESTER PEARSON

Could you recount for us what you remember of the boat trip back to the dock after the accident?

DEBBIE SCHWARTZ

Yes, doom and gloom. It was a death boat, a morgue scene. People with significant others were holding hands, not wanting to let go. It was the longest boat ride of my life. As we departed the boat we were met by a Georgetown

official at the dock. He took everyone's name and hotel registration as we got off the boat, and asked for our island departure dates.

CHESTER PEARSON

And when did the authorities interview you?

DEBBIE SCHWARTZ

The next day at their office.

CHESTER PEARSON

Thank you Miss Schwartz. That's all for now.

[She leaves the stand.]

JUDGE WHITTAKER

Yesterday, I was called in the late afternoon by Attorney Kirkland. He told me Mr. Harrison will testify once more.

[Mr. Harrison enters courtroom, takes the stand.]

LANE KIRKLAND

Mr. Harrison, you understand you are still under oath. [He nods affirmatively.] We have heard testimony to the effect that the deceased wore extra weights. What effect could that have had on her buoyancy?

SCOTT HARRISON

It would make her more negatively buoyant, more apt to sink than to float. With a scuba jacket top and my scuba equipment on, I would never sink. I would be positively buoyant because the clothes and equipment tend to make me float. So I need to put on weights if I want to sink. For me, six pounds is all I need. This will counterbalance the tendency to float, but is not enough to make me sink. I am neutrally buoyant. Then I can sink or float just by controlling my breathing. If I go to twelve pounds I will sink because of the extra weight. After I sink to the bottom I will inflate my BC and rise back up and re-establish neutral buoyancy.

LANE KIRKLAND

So for every diver there is a different amount of weight they wear to become neutrally buoyant?

SCOTT HARRISON

Yes, it depends on how much equipment you carry, what kind of protective clothing you wear, your percentage of body fat, and whether you're in fresh water or salt water, those are the main factors.

LANE KIRKLAND

And what is the average lead weights used when diving in Cayman during the summer, would you say?

CHESTER PEARSON

Objection. That would be hearsay. Mr. Harrison does not operate a scuba shop in Grand Cayman.

JUDGE WHITTAKER

Overruled.

LANE KIRKLAND

In my experience, which is actually considerable in Caribbean diving, it's generally between four and twelve pounds. That would encompass just about everyone.

LANE KIRKLAND

Mr. Harrison is there anywhere else you can put extra weights except on your belt?

SCOTT HARRISON

Yes, the BC has pockets, you could put extra weights in them.

LANE KIRKLAND

One last question. While sinking, could Ms. Knowlton have inflated her BC to rise back up if she wanted to?

SCOTT HARRISON

Yes.

LANE KIRKLAND

Thank you, Mr. Harrison, I have no further

questions.

JUDGE WHITTAKER
Mr. Pearson?

[Pearson rises, approaches the witness.]

CHESTER PEARSON
Thank you. Mr. Harrison, I would to do my cross examination later this afternoon, but do have just one question now. Could nitrogen narcosis have prevented Ms. Knowlton from inflating her BC to rise back up?

SCOTT HARRISON
It's possible, if she was in a narcosis state at that time.

CHESTER PEARSON
Thank you. I'll have more questions for you this afternoon.

JUDGE WHITTAKER
Fine, Mr. Pearson. Mr. Harrison, you will be available this afternoon?

SCOTT HARRISON
Yes, sir.

JUDGE WHITTAKER
Good. You may leave. Mr. Kirkland, call your next witness.

[Harrison exits]

LANE KIRKLAND
I call Jonathan Archer.

[Archer enters the courtroom and takes his seat in the witness stand.]

LANE KIRKLAND
Mr. Archer, please state your name and occupation.

JONATHAN ARCHER
Jonathan Archer. I am a student at Columbia

University in my senior year. Hopefully I graduate this spring. Then law school.

LANE KIRKLAND

And you are here under subpoena?

JONATHAN ARCHER

Correct. I was nearing exams and didn't want to leave school.

LANE KIRKLAND

So you arrived last night?

JONATHAN ARCHER

Yes, very late.

LANE KIRKLAND

And you are the boyfriend of Ms. Knowlton?

JONATHAN ARCHER

Yes I am...or was.

LANE KIRKLAND

Did you scuba certify with Ms. Knowlton?

JONATHAN ARCHER

No, we certified before we knew each other.

LANE KIRKLAND

How did you end up in Grand Cayman?

JONATHAN ARCHER

We looked at where we wanted to dive together and since Grand Cayman has a great diving reputation we went there. It's a quick flight from New York City.

LANE KIRKLAND

How many dives did you dive together on that trip, before the last one?

JONATHAN ARCHER

Three dives prior to that day. Two daytime dives, one night dive, all shallow depths to about forty or fifty feet.

LANE KIRKLAND

Any problems on any of the dives?

JONATHAN ARCHER

No. Everything went fine.

LANE KIRKLAND

So you were used to each other as buddy divers then? You had experience looking out for each other?

JONATHAN ARCHER

Yes.

LANE KIRKLAND

Please tell us what happened on the wall dive.

JONATHAN ARCHER

It was an easy dive. We descended well, looked at plant and marine life, kept an eye on each other. All was great until the accident.

LANE KIRKLAND

Were you aware of Ms. Knowlton when the moray eel came into view?

JONATHAN ARCHER

Yes, I made sure Jennie could see the moray, so she was definitely with me at the beginning, but then I was just as transfixed as anyone. I had never even seen a moray before, and didn't look around again until the dive master first noticed someone was missing.

LANE KIRKLAND

Do you have any idea how or why Jennie drifted away?

JONATHAN ARCHER

No, I do not.

LANE KIRKLAND

Have you spoken to her family since then?

JONATHAN ARCHER

Yes. There was a memorial service a week later, and I went to that. But I haven't talked with

them since then.

LANE KIRKLAND

Were you planning to ask her to marry you in Grand Cayman?

CHESTER PEARSON

Objection!

JUDGE WHITTAKER

Sustained.

LANE KIRKLAND

Were you living with her in New York?

JONATHAN ARCHER

Yes. She had moved into my apartment mid-way through her sophomore year.

LANE KIRKLAND

Did her parents know?

JONATHAN ARCHER

Yes, they knew. They came to visit on parents' weekend. They didn't actually come to the apartment, we met them at their hotel, but they certainly knew. They called her at my place often.

LANE KIRKLAND

Well, were you planning to get married?
There is a noticed pause.

JONATHAN ARCHER

It had been discussed.

LANE KIRKLAND

Did you have a date set?

JONATHAN ARCHER

No, we were not formally engaged if that's what you mean.

LANE KIRKLAND

Were you two dating in September, 2013?

JONATHAN ARCHER

Yes, we had met that summer.

LANE KIRKLAND

Do you know the circumstances by which Ms. Knowlton was admitted to the Columbia infirmary in 2013? And that she was kept overnight following a Tylenol overdose on September 22, 2013?

CHESTER PEARSON

Objection!

JUDGE WHITTAKER

Overruled.

JONATHAN ARCHER

We had an argument and she over-reacted. It was a prank more than anything, but I got scared and took her in. She only took ten tablets and it wasn't serious. But they pumped her stomach and kept her overnight for observation.

LANE KIRKLAND

What was the argument about?

JONATHAN ARCHER

I don't remember.

LANE KIRKLAND

Was she referred to a psychiatrist?

JONATHAN ARCHER

Yes.

LANE KIRKLAND

Do you know that psychiatrist's name?

JONATHAN ARCHER

No, I honestly don't remember.

LANE KIRKLAND

Your Honor, I am introducing infirmary records from Columbia University dated October 22, 2013. They have been subpoenaed with court's permission. They indicate that Miss Jennie Knowlton was admitted following an overdose of

Tylenol tablets, and that it was deemed a suicide gesture, and that she was referred to psychiatrist Dr. David Marcus for an appointment October 23, the next morning. She kept that appointment, but records from Dr. Marcus have not been forthcoming. He has through his attorney formally rejected the subpoena under New York confidentiality statutes, and the issue is at this moment unresolved. I will therefore enter the infirmary records into evidence, and note that additional vital medical records are not now available.

[Kirkland hands the infirmary record to the court reporter who stickers it and hands it back.]

JONATHAN ARCHER

Mr. Archer would you please read the infirmary record?

JONATHAN ARCHER

9/22/95. 1 a.m. - 19...year-old...Columbia sophomore, white female... admitted to infirmary by boyfriend following Tylenol overdose 2 hours ago. Following 'spat' with boyfriend. . One previous suicide attempt in high school, per patient, no records at Columbia. She says earlier attempt 'nothing serious,' just argument with parents. Saw psychiatrist in senior year, none now. Past medical history negative. Patient alert, oriented, in no distress. Appears depressed. Stomach lavaged 250 cc -- several pill fragments removed. Tylenol level sent. Dr. Smith informed. Asks for 2nd level at 4 hours after overdose. Patient...admitted for overnight observation.

3 a.m. Patient sleeping. Stable...vital signs. Blood drawn for 2nd Tylenol level, sent to...Presbyterian.'

5 a.m. Blood level 20 mg. Non-toxic. Acetyl...cysteine not indicated.

9 a.m. Patient stable, agrees to see psychiatrist. Asks that parents not be called. Will defer to psych. Dr. Marcus will see her at 10 a.m. Left with boyfriend Jonathan Archer,

Columbia sophomore, under own recognizance.

LANE KIRKLAND

And you took her to Dr. Marcus's office?

JONATHAN ARCHER

Yes.

LANE KIRKLAND

Did you go in with her?

JONATHAN ARCHER

No, I waited outside.

LANE KIRKLAND

And what happened afterwards?

JONATHAN ARCHER

Nothing, really, she had a few more sessions with him, and everything was fine afterwards.

LANE KIRKLAND

Did she take any medication, any anti-depressants?

JONATHAN ARCHER

No, not to my knowledge?

LANE KIRKLAND

Did she ever tell her parents?

JONATHAN ARCHER

No, I don't think so.

LANE KIRKLAND

What about that earlier suicide attempt, in high school?

JONATHAN ARCHER

I know nothing about it.

LANE KIRKLAND

You never discussed it?

JONATHAN ARCHER

No, this is the first I have learned about it.

LANE KIRKLAND

Mr. Archer, in your own words please tell the court about your relationship with Ms. Knowlton.

JONATHAN ARCHER

We were boyfriend and girlfriend, we lived together, we loved each other. It was that simple.

LANE KIRKLAND

And you have no idea why she killed herself?

CHESTER PEARSON

Objection! Your Honor this is outrageous. He is leading the witness and horribly begging the question. I move that question be stricken and Mr. Kirkland be put in line.

JUDGE WHITTAKER

Sustained. Mr. Kirkland, one more question like that and you will be formally admonished. Please watch the leading nature of your questions.

[Kirkland glances at the jury to see if his question had an impact.]

LANE KIRKLAND

I apologize, Your Honor. Mr. Archer, can you think of any reason why, on July 15, 2014, Ms. Knowlton might have wanted to try to take her own life or bring harm to herself?

JONATHAN ARCHER

No, I cannot.

[There is an edge to his answer. Witness and questioner are stare at each other, seasoned lawyer and pre-law student, waiting for the next surprising question . . . or answer.]

LANE KIRKLAND

Could it be because she wanted to get married and you refused?

JONATHAN ARCHER

That's ridiculous! Jennie had no reason in the world to want to kill herself. And I didn't

refuse to get married. That's equally ridiculous.

LANE KIRKLAND

Could it be because you had a big fight in Grand Cayman, and she wanted to get back at you?

JONATHAN ARCHER

Absolutely not.

LANE KIRKLAND

Could it be that she actually threatened suicide because you were non-committal about marriage?

JONATHAN ARCHER

Absolutely not.

LANE KIRKLAND

Did you know she was pregnant?

[A scream from back of the room]

MRS. KNOWLTON

NO! NO!

[Everyone turns to look at Jennie's mother. She is crying. The bailiff rushes over to her.]

MRS. KNOWLTON.

[She waves him away.]

I'm OK. I'm OK.

[Mr. Knowlton leads her out of the courtroom. The bailiff closes the door behind them, returns to his position next to the bench.]

CHESTER PEARSON

Your Honor, I object to this line of questioning. Mr. Kirkland is badgering the witness, he is leading the witness, and he is prejudicing the jury. I demand that the last series of questions be withdrawn.

LANE KIRKLAND

Your Honor, I have a document that will show my questions are not leading, are not prejudicial, are not badgering. I will introduce this

document to the court but I respectfully ask that the question to the witness be considered and answered. I will remind the witness that he is under oath.

JUDGE WHITTAKER

Approach the bench, both of you.

[She asks for the document and Kirkland hands it over. The judge spends a few seconds examining it, shows it to Pearson, then hands it back.]

JUDGE WHITTAKER

Overruled. Mr. Archer may answer the question.

LANE KIRKLAND

Let me repeat the question. On or during the trip to Grand Cayman, did you know that your girlfriend Jennie Knowlton was pregnant?

[Archer stares at Kirkland, glancing ever so briefly at the piece of paper held in the lawyer's hand. There is silence in the courtroom.]

JONATHAN ARCHER

Yes, I knew.

LANE KIRKLAND

When did you learn?

JONATHAN ARCHER

On the trip. She told me the night before. Right after the night dive.

LANE KIRKLAND

And you were the father, is that a fair assumption?

JONATHAN ARCHER

Yes.

LANE KIRKLAND

And she asked you to marry her?

JONATHAN ARCHER

Look, Mr. Kirkland, we discussed it sure, but we

discussed other things also, and in no way did she try to kill herself - and her baby - because of what we discussed or didn't discuss.

LANE KIRKLAND

Did you and Ms. Knowlton discuss whether or not the dives should be canceled because she was pregnant?

JONATHAN ARCHER

No.

LANE KIRKLAND

Are you personally aware of the potential hazards of scuba diving while pregnant?

JONATHAN ARCHER

No.

LANE KIRKLAND

Did you or Miss Knowlton discuss this with the dive master or anyone before the next day's dives?

JONATHAN ARCHER

No.

LANE KIRKLAND

You just did the dives, not concerned about whether they could harm the fetus.

JONATHAN ARCHER

No, that's-

CHESTER PEARSON

Objection! Your Honor, this is way out of line. He is badgering the witness, intimidating him. Mr. Kirkland is not here to give testimony of his own!

JUDGE WHITTAKER

Sustained. Mr. Kirkland, please be careful.

LANE KIRKLAND

Your Honor, if I may, we have a dead woman and unborn child. She dove while pregnant. If you will allow me to quote from Dr. Roberts's book,

on the subject of diving while pregnant.
[Kirkland picks up the book and opens to the relevant passage. Before his first word the judge interrupts.]

JUDGE WHITTAKER

No, I will not allow you to quote from that book. You had your chance when the author testified. Anything you quote is inadmissible. Furthermore, I must agree with Mr. Pearson that this line of questioning is tantamount to intimidation and badgering. Please close the book.

[Kirkland closes the book, walks over to the table and sets it down. He picks up the Ocean Realm waiver and walks back to the witness stand.]

LANE KIRKLAND

Mr. Archer I have in my hand a two-page trial exhibit introduced earlier in the week. Would you please look at it and tell the jury what it is?

JONATHAN ARCHER

[After a brief review]

It's the Ocean Realm Waiver that Jennie signed.

LANE KIRKLAND

Now please go to the second page. What is the title of that page?

JONATHAN ARCHER

Medical Questionnaire.

LANE KIRKLAND

Now please read the first sentence.

JONATHAN ARCHER

Answer 'yes' if any of the following apply.

LANE KIRKLAND

Okay. Now please go to the bottom of the right hand column, where it says for women, and please read that.

JONATHAN ARCHER

Are you pregnant or do you think you may be pregnant?

LANE KIRKLAND

And please tell us which box is checked, the 'yes' or the 'no' box.

JONATHAN ARCHER

The 'no' box.

LANE KIRKLAND

Why do you suppose she answered that way, Mr. Archer?

JONATHAN ARCHER

I honestly don't know, sir.

LANE KIRKLAND

Let me ask you another question. How much do you weigh and how tall are you?

JONATHAN ARCHER

I'm 5'10" and weigh 170.

LANE KIRKLAND

And when you scuba dive in the Caribbean, how much lead weight do you carry?

JONATHAN ARCHER

Eight pounds.

LANE KIRKLAND

And your girlfriend, how much did she weigh, and her height?

JONATHAN ARCHER

About 125, she was about 5'5" tall. Look, please, what does this have to do with-

LANE KIRKLAND

And how much weight did she carry on her scuba dives?

JONATHAN ARCHER

How should I know? I mean, I didn't track that.

LANE KIRKLAND

You never helped her put on the equipment, hand her the weight belt, that sort of thing?

JONATHAN ARCHER

Yes, I helped her, but—

LANE KIRKLAND

Well, how much weight do you think she wore on her dives? You dove several times with her, didn't you?

JONATHAN ARCHER

I would estimate about the same thing, six or eight pounds.

LANE KIRKLAND

Would you be surprised if I told you sixteen pounds?

JONATHAN ARCHER

Yes.

LANE KIRKLAND

Why? Why would sixteen pounds surprise you Mr. Archer?

JONATHAN ARCHER

That's a lot of weight, I guess.

LANE KIRKLAND

Mr. Archer, if you normally took eight pounds of lead weight, and instead you carried sixteen, what would happen to you?

JONATHAN ARCHER

I would have trouble with my buoyancy, and would have to inflate some air in my BC to keep from sinking.

LANE KIRKLAND

Thank you Mr. Archer. I have no further questions.

[Pearson rises for his cross examination.]

CHESTER PEARSON

Mr. Archer, I am Attorney Pearson, and I represent the Knowlton family. We have met before, is that correct?

JONATHAN ARCHER

Yes, at my deposition several months ago.

CHESTER PEARSON

Did you mention Miss Knowlton's pregnancy during your deposition?

JONATHAN ARCHER

No.

CHESTER PEARSON

Why not?

JONATHAN ARCHER

No one asked.

CHESTER PEARSON

Did you think it was important?

JONATHAN ARCHER

No. Not in terms of what happened, I mean.

CHESTER PEARSON

What impact do you think this information has on the Knowltons, who until a few moments ago were in this courtroom?

JONATHAN ARCHER

I don't know. I'm sure it doesn't make them feel good. I know I feel horrible about it.

CHESTER PEARSON

So the Knowltons have lost not only a beautiful, gifted child, but a future grandchild as well, is that correct?

JONATHAN ARCHER

You could look at it that way.

CHESTER PEARSON

Yours and Jennie's son or daughter, is that correct?

JONATHAN ARCHER

Yes.

CHESTER PEARSON

Your Honor, I have no further questions.

JUDGE WHITTAKER

We will recess for one hour, then reconvene for closing arguments. First from Mr. Pearson for the plaintiff, and then Mr. Kirkland for the defense.

COURTROOM - ONE HOUR LATER

[Everyone assembles after the break and the jury is seated. At just before 2 p.m. Pearson rises, goes over to Jennie's picture and places the easel squarely before the jury box, only five feet from the closest juror.]

CHESTER PEARSON

Ladies and gentlemen of the jury, we have heard some dramatic testimony this week. And we've learned a lot about scuba diving, haven't we?

[Several jurors nod agreement, showing empathy.]

But nothing we learned will ever bring this beautiful young lady back to her family, to be among the living. And nothing we learned will ever give them that grandchild that we now know died with Jennie.

Please consider for a moment this scenario: a dive master less pre-occupied with fish and eels, and more concerned about people. Consider, if this dive master had just floated back a little, kept an eye on her eight innocent charges, placed them between herself and the wall, she would have seen Jennie drifting away because of nitrogen narcosis. If this dive master had tugged on Jennie's arm, pulled her alongside, motioned her to go higher. But the dive master has to be in touch, has to be aware of the people she is guiding. If the dive master

had been observant, if she had been aware, she could have pulled Jennie back from death!

Just a few seconds of attention, really - and we would not be here today looking at only a picture of this beautiful woman. She would be with her parents or her husband, certainly with her child. But that dive ended in tragedy, and so we are here today. It ended in tragedy because the dive master sent down to do a job and perhaps thought she was doing it the best way, even though we see now that she did it horribly wrong. But let's not blame Miss Marvich alone.

Consider her employer: a giant corporation that sends eight divers down this wall with only one junior dive master to guide them. Ocean Realm International last year made over half a billion dollars in profit; not income, profit. They operate over 230 resorts and hotels around the world. They can't spare one more dive master to help on such deep dives? Why not? Is that extra dollar of profit so important as to jeopardize someone's life? Safety vs. profit. It's a sad tale, isn't it?

Ocean Realm cut a corner that has cost this woman her life!

[Pearson's eyes are on the jury while his right arm points to Jennie's picture.]

Now we have listened to Mr. Kirkland's outlandish theory about suicide, and all that extra lead weight. We have listened to his paid experts concoct this absurd theory, while at the same time they have tried to refute truly expert testimony about Jennie's nitrogen narcosis. You have heard the medical experts, you have heard the scuba professionals. When you go back to deliberate this case, please take time to note the respective backgrounds of these professionals, what their real world experience has been, what they do for a living. Yes, compare their qualifications, then compare their testimony. Then compare their testimony to that

of the defense, a chest doctor who happens to dive. No real credentials at all!

And while we are on the subject of testimony, let's consider what the other side did not say, what they did not claim. No one has said that Jennie put on extra weights to kill herself! No one. It's all by implication, isn't it? If they believe it, why don't they come out and say so! Because they know there's not an ounce of evidence to support that.

Just this morning, Mr. Harrison, Attorney Kirkland's expert, stated at the pool that divers in warm water wear between four and twelve pounds of lead weight. Between four and twelve pounds! Do they want you to believe that another four pounds is the difference between life and death? Is it not possible that Jennie simply felt more comfortable with sixteen pounds of lead weight? Is it not possible, indeed is it not more likely, that there is nothing sinister here at all, that sixteen pounds is what she needed to stay buoyant in the water? This emphasis on her weights is just a smokescreen to weasel out of responsibility. To make you think this woman wanted to die, to take her own life? Well...you bet it's a smokescreen! A technical mumbo jumbo to make you forget what this case is really all about, the death of a young woman!

As members of the jury you have to be prepared to hear the preposterous. It goes with the nature of trials. But then you have to ask yourselves, hey, wait a minute. Common sense must count for something here!

Jennie Knowlton was pretty. She was smart. You don't go to Columbia University unless you're smart. She came from a very good family. She had a wonderful career ahead of her. She had a boyfriend. She was pregnant, we've just learned. Yes, there are stresses, yes there are life changes. But using common sense, there is no way, no reason this girl would want to kill herself! She had everything to live for.

Just for the sake of argument, let's assume that Jennie was upset about something and did try to break away from the group, to go deeper. That doesn't mean she tried to kill herself! That doesn't mean she wanted to even harm herself. Maybe it was like taking a few extra Tylenol tablets, that's all. A simple prank, like 'I'll show you. Come get me!'

So let's just assume that was her intention, and the weights made it easier for her to sink away from the group. Well, then what? For god sakes, she's drifting away! If that was her intention, go get her! Stop her!

[With his last two words Pearson races to one edge of the jury box and back, arms swinging over his head to show he is swimming. He abruptly drops his arms and looks up at the jurors.]

For god sakes, bring her back to shallower depths where she will be safer, then out of the water, talk to her on land, say 'Hey, Ms. Knowlton, what are you trying to do?' And get her some help! If this was her attempt to harm herself, it was only that, an attempt, and someone should have responded. And that someone was the only professional in the group, her dive master. But she's too preoccupied with eels, so she doesn't even see this happening.

OK, then let's have the backup dive master go get her! Oops, one problem. There is no backup dive master. No one's looking at the group of divers. Only the fish are being cared for on this dive.

But, for the sake of argument, even if she wanted to harm herself by drifting away, that does not resolve the dive master of responsibility. That does not resolve Ocean Realm of responsibility. For, as has been testified to repeatedly, all one has to do is grab hold of the sinking diver and bring them up to rescue them. Anyway you want to look at it, this was a preventable death.

But let me make it clear. I don't believe for a second that she killed herself or wanted to harm herself. The evidence we've heard indicates she most likely suffered from nitrogen narcosis, and drifted away as a result. It's a recognized condition of deep diving.

Now, the waiver she signed! Ah, yes, a waiver in which she checked the box that she wasn't pregnant. The implication was that this girl was trying to put one over on the scuba outfit, in effect lying about her medical condition. Let's not make any bones about it, this is exactly what Mr. Kirkland wants you to believe, and is no doubt what he will soon stand up and tell you. That Jennie lied, tried to sucker in this company. Well, ladies and gentlemen of the jury, let me deal with this head on!

Imagine you're standing at the dive shop counter filling out forms with your boyfriend for your first dive together. It's a public place, and anything you check 'yes' to on that medical questionnaire - somebody you've never met before, in a foreign country, in this scuba shop, is going to start asking you questions. Let's say you check yes to asthma on that form. Right away some clerk in the dive shop - obviously not a medical person - is going to start asking you, 'Oh, Mrs. Jones, how bad is your asthma?' or 'Mrs. Jones, do you have a doctor's letter to dive?' or, Mrs. Jones, you'll have to talk to our nurse before we let you on the boat' or something like that! In front of your boyfriend and any other people in the store, that's what's going to happen. And why the interrogation? Because they don't want to get sued if you die from an asthma attack! Makes sense to me.

But this isn't asthma, this is an early pregnancy. And there is no evidence that early pregnancy is dangerous for divers. With millions of young women diving, it must be common for some of them to dive with early pregnancy. Women climb mountains when they're pregnant, they go

skiing, they do lots of strenuous athletic activities. So it's no big deal. Maybe all the dive shop will ask her is to make sure she's not suffering from morning sickness when she gets on the boat. Not a big deal.

But wait a minute. She hasn't yet told her boyfriend - the father - about the pregnancy! So she doesn't want to blab it all over this Cayman Island dive shop when she hasn't even told him!

No sir, No ma'am, Jennie did not, repeat did not, fly down to Grand Cayman Island with an intent to deceive any dive operator. She probably didn't even think it was going to show up on the form she had to sign. But whammo! There it is. She and Mr. Archer are filling out these forms in maybe half a minute, quickly checking every 'no' box they come across since they're both healthy kids, and there it is, 'Are you pregnant?' It's just about the last item she comes to, they're both ready to hand the forms back in, so what's she gonna do? Stop right there and say, 'Oh, honey, by the way, something I forgot to tell you'? Or just hide the form so he doesn't see it, and wait for some clerk behind the counter to start asking her questions?

Now ask you, each and every one of you, to put yourself in that position, and think for a moment. You're caught off guard, you haven't even told your boyfriend or your parents, and now you're supposed to reveal your pregnancy to a scuba clerk? And in public? How unfair! So you quickly check 'no' on the form and think no more about it. You're not hurting anybody, there is no attempt to deceive anyone. You just answer 'no' so as not to create a scene, so you can tell your boyfriend in private where it should be told, and you can share your happiness with each other, alone, not with some prying strangers in a dive shop, for God sakes! Yes, her motive was as simple and pure as that.

And her pregnancy had nothing to do with what happened on that dive. NOTHING. It was there,

but it did not in any way cause or contribute to the accident. No one has claimed it did, and there is no indication that it played any role whatsoever.

Jennie's family deserves just compensation for their loss. For their double loss. No amount of money can truly compensate for the loss of human life, of course, but there must be some strong message sent to Ocean Realm and the professional scuba community that they are responsible for their divers, that they can't take a bunch of people a hundred feet down and not be responsible. You go down with eight divers? Then by god you should come up with eight divers! It's that simple. It is up to you to reach the proper verdict and find negligence against Ocean Realm International and its dive master Charlene Marvich.

None of us can put a price on precious human life. But in this case we must come to some monetary number; we are required to by the court. We therefore ask for an award, for the negligence leading to Jennie Knowlton's death, of five million dollars. That may sound like a lot of money, but it is a small price for a giant corporation to pay for negligence, for negligence leading to the loss of precious human life. And even more, if they feel the sting, maybe they will change their dive policy! Ladies and gentlemen of the jury, I thank you for your attention.

[Pearson returns to his seat.]

JUDGE WHITTAKER

Mr. Kirkland, you may address the jury.

[Kirkland rises, walks toward the jury box. He does not remove Jennie's picture from the easel, but does not look at it, either.]

LANE KIRKLAND

Ladies and gentlemen we have heard compelling testimony that Jennie Knowlton had a troubled

past, with two previous suicide attempts, or at the very least, gestures.

But we are not here to harm Miss Knowlton's reputation, or to make the parents feel worse than they already do. We are here because of one reason and one reason only, because her parents have charged my client with negligence, and that is simply untrue. We must consider the issue of negligence in the context of what actually happened, and what actually happened is that Jennie went on that dive with a lot of extra weight, and in the space of less than two minutes disappeared from those around her.

She left the group voluntarily, willfully. Not just left the group, mind you, but she dove down and away, making it impossible for anyone to catch her. Sadly, that's what happened. Her quick departure from the group cannot be blamed on negligence on the part of our dive master or Ocean Realm International.

Let's talk about the testimony. You have heard compelling testimony that it's simply not possible to fall away as quickly as she did without clear intent. You have heard compelling testimony that she was breathing on the way down. Falling away quickly? Breathing on the way down? This is not what you would expect in someone affected by nitrogen narcosis, of someone who inadvertently drifts away from the group. No, this was a willful plunge to unrecoverable depths. A willful plunge. Negligence? What negligence? Ms. Marvich did everything humanly possible to go after her, and only stopped when it was clear that she would herself become a victim if she continued.

"Let me give an analogy to this situation. Imagine you are being guided to the rim of the Grand Canyon. A party of eight, plus a guide. The guide brings you to the edge of a steep cliff and says, "Now everyone be careful. Don't get too close to the edge." That's obvious, of course, but someone in your group has determined she will jump, and when the guide turns away for

a moment, she goes over the edge. She doesn't slip, she jumps. Clearly premeditated. Is the guide negligent in that situation? Of course not.

I could offer a dozen similar scenarios. Guides take people to potentially dangerous spots all the time. Mountain tops. Hot air balloon rides. Jungle safaris. Guides don't lock people up. They guide them, they show them, but they don't shackle them! If someone chooses to jump off a mountain top, or jump out of a hot air balloon, or walk into the path of hungry lions - in other words if someone chooses to harm themselves when in the company of a professional guide - we cannot, we must not call that negligence.

We have heard testimony from Mr. Morgan that our dive master was negligent, but in his own training video he showed a dive master performing just as Miss Marvich did. His own video contradicted his testimony. It is simply impossible to watch every diver every second on every dive. That is not the standard in the diving community. I repeat: that is not the standard.

We have also heard testimony that two dive masters should lead such a dive like this one. But that is also not the standard. Where would it stop? Why not three dive masters and a nurse back on the boat? Yes, you can always add layers of safety, including the safest thing of all - don't go in the water.

If you dive with the U.S. Navy your boat probably has a hyperbaric chamber and a doctor on board. That is the standard for the Navy, but it obviously doesn't apply to recreational diving. This was a moderately deep dive, but it was very calm conditions, very good visibility. There was no need for a second dive master, and that is not the rule when conditions are good. So please don't be fooled. Plaintiff's attorney would like to create a new and higher standard by which to judge this case, but it is not up to the attorney or his paid experts to set any

standard, it is up to people who actually conduct diving in the Cayman Islands. And that dive was handled completely according to the standards of the Cayman diving community. Completely.

And yes, I would like to discuss their physician expert. We heard testimony from Dr. Bergofsky, a physician for the Navy Seals. We then learned that his opinion on the cause of two Navy diver deaths was not confirmed by the Navy itself! Then why did he tell us this information? To support an untenable theory? Why march in here and testify that Miss Knowlton had nitrogen narcosis, when he could not provide a single piece of evidence to support that theory?

Yes, in your deliberations please compare the experts' testimony, what they said, and how it stood up under careful cross examination. I think you will see which has been the more credible testimony.

And don't forget that Miss Knowlton had a buddy on that dive. And while we are not here to criticize her boyfriend, just remember what the buddy is for. The time-honored practice is to have two people dive together, so that if one gets goes astray or has an equipment issue, or runs out of air, the other is there to help. Sadly, the buddy system failed here. But that failure is not the dive master's fault. Don't blame Ms. Marvich. She did her job very well. She cannot be logically blamed if a diver wants to harm herself, has pre-meditated to harm herself, and takes advantage of an opportune time to do so, when her dive buddy is thoroughly distracted.

Everyone except Miss Knowlton was fascinated by the moray eel, but she had a different agenda. To drown. She was a certified diver. She knew that no one could come after her. She surely knew that to go much deeper was suicidal for anyone on that dive. So all she had to do was get away, start her descent, and she would not

be caught. She knew this, and now we know it also.

She wasn't standing on the ledge of a tall building, so people could come and convince her not to jump. No, she was descending into unreturnable depths, an impossible situation for any rescue team. She certainly knew her air would be gone in mere minutes. It was a no-rescue situation, completely set up by Miss Knowlton.

What she did was no gesture! It was a conscious, pre-meditated act, and Miss Marvich was the unfortunate dive master on the scene. It could have been any of the fine dive professionals working on Grand Cayman.

Now one last point, if you will bear with me. Mr. Pearson frets that I'm going to make all sorts of claims about Jennie hiding the fact that she was pregnant. But I'm not going to make any claims at all, for the facts speak for themselves. She got on that dive boat under false pretenses. Unfortunately I was not able to bring out the potential hazards to the mother and fetus of diving while pregnant, but that is not the real issue now. The real issue is simply this: Jennie Knowlton signed on to dive with Ocean Realm International under false pretenses. Having done that, she then decided to harm herself on that last dive, and she did this knowingly, purposely, willfully.

We'll never know why, with any certainty. There was a troubled past, possibly a very troubled relationship with Mr. Archer. We'll probably never know all the nuances of what went on, why she did what she did. But this is real life, not a movie where everything is revealed at the end. And in real life sometimes you just don't get all the answers.

But there is one thing I am absolutely certain of. There is no negligence here. There is compassion, there is sorrow, there is pity. But the evidence is overwhelming - there is no

negligence. I trust you will come to the same conclusion.

Thank you for your attention and deliberation. I trust you will come to the proper decision.

[Kirkland sits down. The judge waits until the courtroom settles, then turns to address the jury.]

JUDGE WHITTAKER

Jurors, it is time to vote. The issue before you is one of negligence against Ocean Realm International.

I will explain the definition of negligence to be used in deliberating this case. It is an action or inaction that lead to the death of Jennifer Knowlton and, given the specific circumstances in this case, such action or inaction fell below the accepted standard. Let me repeat that. An action or inaction that led to her death and, given the specific circumstances, such action or inaction fell below the accepted standard.

In deciding on the accepted standard, you have heard the relevant testimony, and that is what you must base your decision upon. Please do not let any feelings you may have toward either attorney sway your deliberations. Also, you have witnessed a lot of emotion in this trial, both in some of the witnesses and visitors. In your deliberations please focus only on the evidence presented in this court.

If you have been on a jury before, or are familiar with courtroom proceedings, let me apprise you of some changes. First, you have no doubt formed an opinion, so we ask that you vote now. We will skip the customary jury deliberations. Second, the verdict will be based on the majority vote, so we do not need a unanimous decision. Finally, in the event of a tie, I will cast the deciding vote.

[Bailiff approaches the jurors and takes their ballots. The Verdict presented will depend on the way the audience members vote.]

OFF-STAGE NARRATOR

While the votes are being tabulated, you may stand and stretch for a minute or two. This is not a formal intermission, so please remain at your seats. The verdict will be announced shortly.

ALTERNATE VERDICT ONE -- GUILTY

[Everyone is seated in the courtroom and the judge brings the court to order.]

JUDGE WHITTAKER

Bailiff, you have collected the jury's votes on this case?

BAILIFF

I have Your Honor.

JUDGE WHITTAKER

Please render the verdict.

Bailiff

"We, the jury, find for the plaintiff and establish negligence on the part of Ocean Realm International and their dive master Charlene Marvich, in the death of Jennifer Knowlton. However, we also find that the deceased contributed to her own death because of evident over-weighting and apparent intent to harm herself. On the issue of negligence we award monetary damages to the plaintiffs of \$1,000,000. Per instructions of the court we award no punitive damages."

JUDGE WHITTAKER

You have discharged your duty. We thank you for your patience and attention. This jury is dismissed. The decision is entered into the court record. There is a thirty-day period

during which either side may appeal this decision.”

[Pearson stands.]

CHESTER PEARSON

Your Honor, I respect the jury's decision and thank them for their deliberations. Given the double loss of life and the establishment of negligence in this case, there may be grounds for appeal on the issue of the monetary award. I will be conferring with my clients and inform the court within the 30-day period if we intend to appeal.

[Kirkland rises to speak.]

LANE KIRKLAND

Your Honor, we believe there are several issues placed before this court that deserve a higher hearing. Clearly, some of the statements made in this courtroom were inadmissible and are valid grounds for appeal. I will be conferring with my client, and let the court know if we intend to appeal the decision.

JUDGE WHITTAKER

Fine, gentlemen. We thank the jurors for your patience and attention. You are now dismissed. Your decision is entered into the court record. This court is adjourned.

ALTERNATE VERDICT TWO - NOT GUILTY

[Everyone is seated in the courtroom and the judge brings the court to order.]

JUDGE WHITTAKER

Bailiff, you have collected the jury's votes on this case?

BAILIFF

I have Your Honor.

JUDGE WHITTAKER

Please render the verdict.

BAILIFF

We, the jury, find no evidence of negligence on the part of Ocean Realm International, or dive master Charlene Marvich, in the death of Jennifer Knowlton. We believe the evidence presented indicates that this was a suicide and that the deceased made a conscious decision to leave the diving group and not be retrieved. In our assessment, the situation that presented itself to dive master Marvich was one beyond her control, and that she acted properly in all respects.

JUDGE WHITTAKER

You have discharged your duty. We thank you for your patience and attention. This jury is dismissed. Plaintiff has thirty days in which to file an appeal of this decision.

[Pearson rises to speak.]

CHESTER PEARSON

Your Honor, we wish to serve notice that we will appeal this decision. We believe that some of the evidence presented was inadmissible, and serve notice we will appeal on those points.

JUDGE WHITTAKER

Notice accepted, Mr. Pearson. Any comment, Mr. Kirkland?

KIRKLAND

None, Your Honor, except to thank the jury for their careful review of the evidence.

JUDGE WHITTAKER

[The judge bangs her gavel.]

This court is adjourned.

[LIGHTS OUT. LIGHTS ON. NEW SCENE. HOTEL ROOM IN GRAND CAYMAN THE NIGHT BEFORE JENNIE'S FATEFUL

DIVE. JENNIE AND JONATHAN ARE IN BED, AFTER HAVING SEX.]

JENNIE KNOWLTON
That was nice.

JONATHAN ARCHER
It always is. I'd like to do it underwater sometime.

JENNIE KNOWLTON
Hoses would get in the way. Unless you want to hold your breath.

[Jennie laughs.]

JONATHAN ARCHER
Having a nice vacation? That was a great night dive, wasn't it?

JENNIE KNOWLTON
Yes it was. Jon, Tomorrow sounds exciting. We're doing that wall dive, you know, the one that goes down forever.

JONATHAN ARCHER
If you're a fish, maybe. We're limited to 130 feet max. We probably won't even go that deep.

JENNIE KNOWLTON
I have something to tell you.

JONATHAN ARCHER
What?

JENNIE KNOWLTON
Jon, before we left New York, I went to the see the doctor.

JONATHAN ARCHER
The psychiatrist, Dr. Marcus?

JENNIE KNOWLTON
No, a gynecologist. I'm pregnant, honey.

[Jonathan is startled. He gets up and turns on the light, looks at her.]

JONATHAN ARCHER

I thought you were using the pill?

JENNIE KNOWLTON

I was. I am. I may have skipped a day, I don't know. But it's confirmed.

JONATHAN ARCHER

You skipped? What are you going to do?

JENNIE KNOWLTON

Jon, he's our child.

JONATHAN ARCHER

He?

JENNIE KNOWLTON

No, I didn't mean he. Could be a she. Too early to tell.

JONATHAN ARCHER

You're not planning on having it, are you?

JENNIE KNOWLTON

What do you mean? It's my child, our child, of course I'm going to have it.

JONATHAN ARCHER

No, of course, of course, it's just that-

JENNIE KNOWLTON

We should get married.

[Neither speaks for a few seconds. Jonathan puts on a robe and goes to the window, then turns to speak.]

JONATHAN ARCHER

Look, Jennie, this is wonderful. But I, I-

JENNIE KNOWLTON

I can't believe you're not happy about this. I didn't plan it, but don't you see it was meant to be? Oh, tell me once more you love me.

JONATHAN ARCHER

Do your parents know?

JENNIE KNOWLTON

No. I haven't told anyone but you.

JONATHAN ARCHER

Not even your sister?

JENNIE KNOWLTON

No one.

JONATHAN ARCHER

When are you due?

JENNIE KNOWLTON

I'm only six weeks along.

JONATHAN ARCHER

And school?

JENNIE KNOWLTON

I'm going back. We can stay in your apartment or move into a larger one. I'm sure my parents will help out. I don't plan to quit Columbia. Jon, I want to get married. We can do it this September. I've got it all figured-

JONATHAN ARCHER

Wait a minute! Just wait a minute, please..
Let's talk about this.

[She gets up and puts on her robe, then walks to where he is standing. She puts her arms around him but he gently pushes her away.]

JENNIE KNOWLTON

What's the matter? What is it?

JONATHAN ARCHER

Jennie, I'm not ready to get married. *That's* what's the matter.

JENNIE KNOWLTON

Why? You still love me, don't you?

JONATHAN ARCHER

Of course I love you!

JENNIE KNOWLTON
Then what?

JONATHAN ARCHER I'm just not ready right now,
that's all.

JENNIE KNOWLTON
I don't mean right now, silly. In September.

JONATHAN ARCHER
Can't we wait?

JENNIE KNOWLTON
Jon, I'm not having this baby out of wedlock. Is
that what you're suggesting?

JONATHAN ARCHER
No, no. Of course not.

JENNIE KNOWLTON
What do you want me to do?

JONATHAN ARCHER
I don't know. I'm just not ready to get married
now. Or in September, either. Let's think about
this.

JENNIE KNOWLTON
Think about what? What's to think about? You
don't want me to have this baby! Fine. Then I
won't!

JONATHAN ARCHER
What do you mean? You'll get an abortion?

JENNIE KNOWLTON
Sure. No problem. I'll arrange it when we get
back to New York. They're still doing them, you
know. It's legal, don't worry. I'm early, so it
should be a simple procedure. I'll talk to my
doctor.

JONATHAN ARCHER
Good. I think that's the best idea.

JENNIE KNOWLTON

You bastard! You goddamn bastard! You would let me get an abortion instead of marrying me, wouldn't you?

[He is stunned by her outburst, does not respond. Just stares at her.]

JENNIE KNOWLTON

What kind of bastard are you? You fuck me and then tell me to get an abortion? He's YOUR child! Goddamn you! You think I'm sleeping with someone else? Is that what you think?

JONATHAN ARCHER

Jennie, I'm sorry, I didn't mean—

JENNIE KNOWLTON

Get out of my way.

[Naked except for her half-open robe, she lunges for the door. Before she can release the dead bolt, he has her by the waist and pulls her back to bed. He has to throw her on the bed to keep her in the room. She is now sobbing uncontrollably.]

JONATHAN ARCHER

Jennie, please listen to me. I love you, I'm just not ready to get married! Can't you understand? You can love someone without wanting to get married right away. I'm going to law school, I didn't plan on having a wife and child at this point in my life. Can't you understand?

[She is not listening. Her crying prevents communication.]

JONATHAN ARCHER

Oh my god, Jennie, what is wrong with you? Just a few minutes ago we were making love and everything was wonderful. Jennie, please...

[He strokes her hair as her sobbing becomes less intense, then stops. With an impossibly rational tone she responds.]

JENNIE KNOWLTON

I'm sorry, Jon, I got too emotional. You're right.

I shouldn't expect you to just stop everything and get married.

JONATHAN ARCHER
Jennie, please don't--

JENNIE KNOWLTON
No, I mean it. I shouldn't have sprung this on you, on our vacation. I was going to just tell you about the baby and not even mention marriage, but it's what I wanted and I couldn't hold back. I thought you'd suggest it first but I didn't even give you a chance. I'm sorry to be so pushy. It was stupid of me.

JONATHAN ARCHER
Jennie, please don't act--

JENNIE KNOWLTON
Forgive me.

JONATHAN ARCHER
No, Jennie, forgive me. I was being an asshole. Look, let's do the wall dive tomorrow, finish the vacation, and talk about it when we get home. We're both very tired. We're not going to decide anything right now. You're pregnant and that's wonderful.

JENNIE KNOWLTON
Okay.

JONATHAN ARCHER
This is too important to make a lifetime decision in twenty minutes. When we get back to New York, away from this distraction, we can decide what's best to do. How's that, honey? Doesn't that make sense?

JENNIE KNOWLTON
Yea, that's a good idea. Gee, I've been such a jerk, haven't I?

JONATHAN ARCHER
Not at all.

[He brings her to him and they kiss

passionately. It is the forced kiss of two people who see something neither has seen before, and who no longer trust each other.]

[VISUAL OF GRAND CAYMAN - THE NORTH CORAL WALL]

OFF-STAGE NARRATOR

At the bottom of one section of the North Wall, off Grand Cayman Island, lies the skeleton of a once young and beautiful woman. The pressure on her bones is 1.5 tons per square inch, compressing them to maximum density. Surrounding her rib cage and waist are non-biodegradable artifacts of scuba diving: buoyancy control vest, scuba tank, bathing suit, wet suit top and dive belt. The fish of the sea have no interest in these synthetic objects.

Attached to the dive belt are four four-pound lead weights. And inside the pockets of the skeleton's BC vest are two more weights, two pounds each, just where she put them.

Jennie Knowlton suffers no more.

THE END