

1-1-1994

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Gerald F. Uelman

Stephen H. Sutro

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Recommended Citation

Gerald F. Uelman and Stephen H. Sutro, *Leslie H. Abramson - A Career Retrospective*, 34 SANTA CLARA L. REV. 1105 (1994).
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol34/iss4/1>

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ARTICLES

LESLIE H. ABRAMSON— A CAREER RETROSPECTIVE*

Gerald F. Uelmen**

Stephen H. Sutro***

INTRODUCTION

Under the auspices of our Edwin A. Heafey, Jr. Center for Trial and Appellate Advocacy, each year Santa Clara invites an outstanding trial or appellate litigator to visit the Law School as our "Distinguished Advocate in Residence." The busy round of lectures and class visits includes a session we call a "Career Retrospective," an opportunity to reminisce about lessons learned from a lifetime of achievement.

Our 1994 Distinguished Advocate in Residence was Leslie H. Abramson, who visited Santa Clara in the wake of her participation in one of the most highly publicized trials of our times, the trial of the Menendez brothers for the murder of their parents in Beverly Hills. The handling of the high-profile case is not a new experience for Ms. Abramson. Ever since she left the Los Angeles County Public Defender's office in 1976, she has handled a succession of California cases in which the death penalty was sought. Only one of the eighteen clients she has represented in cases where the death penalty was sought ultimately landed on death row.

I have known Leslie Abramson for eighteen years, and frequently utilized her as a guest lecturer for classes in legal ethics when I taught at Loyola Law School in Los Angeles. We have served together on the Board of Governors of California Attorneys for Criminal Justice, the statewide organiza-

* This interview was conducted at Santa Clara University. Questions from the audience are included.

** Dean, Santa Clara University School of Law.

*** Third-year student, Santa Clara University School of Law.

tion of criminal defense attorneys, of which Ms. Abramson was president in 1989. I have always regarded her as an excellent role model. For Leslie Abramson, zealous advocacy is not a matter of style—it's a matter of ethical obligation.

Gerald F. Uelman

UELMEN: I wanted to lead off by taking Leslie back to her own law school days and asking her what led her to law school. Why did you decide to go to law school, and how do you think that law school prepared you for the career that you have since undertaken?

ABRAMSON: My earliest ambition was to be a ballet dancer, but I grew up in New York City and George Balanchine was the king of ballet, and Balanchine dancers had five feet of legs, and I was all of five feet total, [so I] didn't think I was going to have a brilliant future in ballet, although I did it for a long time and was pretty good at it. It was definitely the love of my life, but in my family, education was stressed above all other things as the key to a meaningful life—not so much success, and never financial success, but a meaningful life. By about fifteen, I realized ballet wasn't going to do it, so I debated medical school or law school. We're talking now in the 1950's, and the notion of careers, there were [very few]—doctor, lawyer, or Indian chief, and Indian chief wasn't going to make it. It was a really very rigid notion of what were careers. [But] I had this fascination, for reasons I later cannot comprehend, with being an FBI agent. . . . And to be an FBI agent, you had to be a lawyer as well. Now I didn't realize, of course, there were probably no female FBI agents in 1950's, but we're talking in the realm of fantasy futures anyway.

Somewhere around fifteen I started to express to my family my desire to go to medical school, and my mother vetoed that with the most compelling argument you could make to a girl in the 1950's, which was, "You'll never get married. You'll be studying so long, you'll be too old to get married." Moreover, I wasn't a whiz at math, so I then just shifted slightly over and decided, therefore, I would go to law school. Part of the reason, I think, was I was raised in a family that was extremely suspicious of government for a number of reasons, not the least of which is that my grandmother was a

card-carrying Communist. That sort of made us suspicious of government, and I had a sense that being a lawyer would let me see when oppression was about to hit. I would sort of be prepared for the worst that government could do to people like us.

We definitely grew up in an environment, our family, where we felt like we were the outsiders. We were Jewish, [and] it was right after all the information about the Holocaust had sifted deep into our consciousness. So law seemed to be the appropriate place for someone who feared oppression. It was that sort of decision. Given the emphasis that was given in my family to education and career, it seemed like the appropriate place to go. So that was why I decided, at fifteen, to be a lawyer.

Now, law school was a whole other thing. Law school happened after I was married, after I had a baby. And it was a fabulous experience; it was one of the highlights of my life, those three years at UCLA. . . . In law school, if you're going to do a decent job, you're forced to interact with your fellow students, and form study groups, and get very intensely involved. I found I had fabulous, brilliant friends, people who had been to Berkeley, who had been involved in the student movement there. I was a complete political moron, so it was a very exciting environment. My professors were truly brilliant, and the school was quite nurturing towards us, even though the curriculum was remarkably limited, compared to what you're exposed to. We had no clinical program whatsoever. The only thing close to what we might actually be doing later in life was [the] moot court competition.

UEL MEN: Did you get turned on to criminal law while you were in law school?

ABRAMSON: Criminal law was always what I was going to do even before I went to law school. That was the only way I could picture myself. I loved criminal law, but I liked a lot of other things, too. I liked corporations. I liked tax. I liked intellectual property a lot, a lot, a lot. I had a lot of fun with that. But there was never any doubt in my mind that I was going to be a criminal lawyer. There was never any doubt in my mind that I was going to be a public defender, which is what I did immediately thereafter.

UELMEN: You never thought about being a prosecutor, even though you had thought about being an FBI agent?

ABRAMSON: Well, I got over the FBI agent stuff. I saw that as sort of fantasy. Maybe it was just rebellion against my grandmother, who had very negative feelings towards the FBI and J. Edgar [Hoover] in particular. I wish she could have lived to see the unveiling, shall we say the disrobing, of J. Edgar Hoover. [It] would have just thrilled her to bits.

I always knew I could never be a prosecutor. I never wanted to be a prosecutor. I am Rumpole of the Bailey; I never prosecute, only defend.

UELMEN: Tell us about the Public Defender's office in L.A. in the early '70's when you started there.

ABRAMSON: I actually started in September of 1969, two weeks after I took the bar examination. By then I had somewhat recovered my stomach, and at that time I was a junior law clerk. Junior law clerks were people who hadn't passed the bar yet. And it was a phenomenal place to work. The Los Angeles County Public Defender's office is the oldest public defender's office in the United States, and it had Richard Buckley at that time, a leader with a real commitment to the defense of the poor and oppressed. We had tremendous training, which consisted of being thrown into court and told, "Go do it! And then when you fall on your face, come back and we'll explain what you did wrong, or what you did right if you were successful." The administrators of that office felt their goal was to make their lawyers independent, capable of making their own judgments, and extremely zealous in defense of the clients. So it was a fabulous place to work. . . .

UELMEN: You started your own practice [after leaving the public defender's office]?

ABRAMSON: Yes, I started my practice in 1976. You could do that at that time in Los Angeles with some expectation of economic security, because there was a vast court appointment system. . . . A judge could select who he wanted to appoint in conflicts cases. Even though it was a very large public defender's office, it was a much larger case load, and there were a lot of conflicts appointments. I had done well enough in my

six-and-a-half, seven years there that there were judges who immediately put me on their appointment list, and my income was pretty much guaranteed. That's not the case anymore.

UELMEN: Do you want to comment on that: why that changed and what impact you think that has on the practice of criminal law?

ABRAMSON: I think that the practice of private criminal law in Los Angeles is pretty much dead. What's happened now is a long, sad story [that] is driven ostensibly by economics, but I see that it's also driven by politics. The claim is made that it's far too expensive to have private lawyers doing court appointments, even though the rates of those appointments haven't changed in fifteen years. . . .

Basically, the old system was a dual-track system in a sense. The lawyers who really were good and the judges who cared about the quality of representation was one track. These judges would appoint the best private lawyers in town to do the serious court appointment work. That was one track. The other track was the crony track. There were some judges who didn't care, in my opinion, about quality, but who did care about their former law partners and friends and cronies, and those sort of people got appointed. Some of them were not very good, so you had two tracks.

When the threat which started about ten years ago of having everybody work for the government who was representing the poor, the county bar formulated this panel system [that] was open basically to all comers with certain qualifications. So the appointments got spread over a much larger group of people, some of whom were good, some of whom were not so good. But the lawyers like myself who had basically made a living and specialized in appointed death penalty work, which I did, starting in 1977, were no longer dominating the field. On the death penalty cases, there was no guarantee that the best people in town were going to get those cases anymore. And now, they've started a second public defender's office, so everybody representing the poor very soon is going to work for the government. And I think that's a very bad thing. I think the best representation, apart from the county public defender's office in the death penalty cases in

Los Angeles, has been the experienced private lawyers. [Now] we're out of the loop.

UELMEN: The Death Penalty bar is a very small, highly specialized group of lawyers. For one thing, it takes a lot of stamina to just do death penalty cases, one after the other. How did you happen to end up making that your specialty?

ABRAMSON: Well, it was the next logical step in my career. As a public defender, I found the murder cases the most interesting. Unlike some of my colleagues, who have a sort of "I work for the county" approach to being public defenders, I happened to work for the county, but my interest was in being the best trial lawyer I could be. So I would volunteer for murder cases when Stuart Rappaport was my boss, and he was a wonderful boss. He was very supportive. I'd go in to him and say, "I only have a couple of murders. What else have you got?" He was endlessly surprised, because most people would run away from those cases. [But] I was constantly volunteering, even though I was only a grade three deputy and not a grade four, which is the most senior. I found those cases more interesting and more challenging, but I never made grade four of the public defender's office (we'll talk about that in some gender bias class). But the then public defender did give me a *Roe v. Wade* T-shirt, so that was supposed to suffice.

In any event, part of the reason I left the office was because I didn't make grade four, and so I couldn't do death penalty cases in the office. As soon as I left, there was a judge that I had tried numerous cases in front of. He was one of the judges in the Torrance court house, and he called me and said, "I think it's time for you to do a death penalty case." I had no confidence in my ability to do them at that time, and so we went out to lunch and discussed why he thought I was qualified to do death penalty cases. He was someone I admired and he was a mentor. On his advice, I took the case that he wanted to give me, and that's how I started.

I was hooked because they are the most fascinating—they're the scariest—but they're the most fascinating cases of all. As far as the death penalty bar being small, that was true eight or nine years ago, but now there's a very large number of lawyers doing the death penalty cases, many of whom, in my opinion, shouldn't be. The death penalty semi-

nar is being held in Long Beach this weekend. There will easily be a thousand people there; 700 of them are lawyers; most of them have death penalty cases.

UELMEN: Who should be doing those cases? What do you think it takes?

ABRAMSON: It takes a great deal of experience [and] it takes a good amount of talent. There are some lawyers in the state who have done many of them, and most of their clients are on death row. I think we should look at the score card before we decide who to give the cases to. It takes a lot of experience, it takes stamina, and it takes a tremendous commitment. That's who should be doing them, not [anyone] who's retired from the public defender's office or the district attorney's office who wants to make a few bucks.

SUTRO: It was well publicized during the Menendez case that you had a close relationship with Eric and perhaps Lyle as well. Is that true with some of your past cases?

ABRAMSON: Well, we train people in death penalty defense to form a different kind of relationship with death penalty clients. The reason is [that] when you're responsible for someone's life, you have to be able to communicate to a jury the human, the real human qualities, the character of your client. You can't do that unless you know them that well, and, by and large, most criminal defendants who are involved in those kinds of cases have had the kind of previous life where they don't trust anybody. They've never really bonded—most of them—to other people. There's never really been anyone in a position of authority who ever showed any caring or concern for them, and so you have to forge a very unusual relationship with those clients. You don't have to like them like friends. You don't get close to them like you would family, but it's a very special type of attorney-client relationship. You have to be willing to really allow yourself to feel something for those people, because there's no way you're going to get a jury to feel what they have to feel in a penalty trial, which is mercy, sympathy, or that the person is worth sparing, if you don't feel it. That's a very difficult thing for a lot of lawyers. We're like doctors in the sense that we protect ourselves from the emotional pain of losing, and you can lose.

And when you lose in those cases, your client's going to die You have to be willing to take those risks by forging those kinds of relationships.

You can't always do it—sometimes the clients can never open up to you, can never let you inside. But I form those relationships with most of my death penalty clients. The one that I lost, who's on death row; we are very close. He calls me, he writes. . . . We have remained close for thirteen years. I'm the only friend he has in the world. That was clear then, and it's been clear now. It's something at Christmas that he always reminds me of. His appeal isn't finished, but it's going to be a bad day the day he dies, and I'm quite confident that he will [die] in the gas chamber.

SUTRO: How important is it that you know your client is telling the truth? Does it ever come out that maybe he's not as innocent as you might be presenting at trial?

ABRAMSON: It isn't necessary for my clients to be innocent for me to defend them. . . . Most of my clients are guilty of something or another. The question is whether they deserve to die in the capital case context. I think with only one exception, all my death penalty clients have told me the truth. Some of them truly were innocent, they were acquitted or the case was dismissed, and the ones who were guilty have told me that. You know, that's part of forging that relationship; it's in those cases where you're dealing with someone where you can't forge that relationship, that they're not honest with you. I only have one such client that I can recall in a capital case. I had tremendous conflicts with that client. He was someone I truly disliked, and we did not work well together. It was a very uncomfortable situation. But that's where having second counsel, which I had in that case, came in very handy, because he was able to forge a better relationship with the client than I was, and he was the person who argued the penalty phase in that case. I felt that I had some inherent personal conflict, and I didn't think I would be perceived by the jury as sincerely as one would hope. So my second counsel argued that case and we got life without parole for the guy.

SUTRO: In a capital case, obviously, every part of the trial is important. But would you say that there's one part of the

trial, above and beyond everything else, that's critical to the case?

ABRAMSON: There's one part of every trial that above and beyond everything else is critical to the case, and that's jury selection. We've really been hamstrung by Proposition 115 because there's no attorney-conducted *voir dire*, by and large, even in capital cases. I've always believed that cases are won and lost at the point when you pick your jury. That, in my opinion, is why the Menendez jury is hung, because we couldn't question those jurors, we couldn't question the other jurors we were concerned about, and we were put in the position where we had to use peremptory challenges to do what we ordinarily do with challenges for cause. Obviously some cases, particularly the guilt phase, are going to be lost no matter what you do. But penalty phase is always up for grabs, assuming that you have an open-minded jury. If you can't get that, then you've lost before you begin.

SUTRO: Have you had a common experience of developing a strong rapport with the jurors? For example, you invited the six jurors who voted for voluntary manslaughter in the Menendez trial over for dinner. Is that unusual?

ABRAMSON: Not in my experience. I always debrief jurors afterwards. Usually we just go out somewhere for dinner, or we go out for lunch somewhere. But the difficulty with doing that in this case is that I'm highly visible in Los Angeles. I can't go anywhere without people coming over and talking or noticing. I didn't want to expose the jurors that way. They've been anonymous, and I thought it would be impossible to meet with them in public. I met with them at my house and spent seven hours debriefing them. I debriefed them on the phone, individually, since then. I do that in every case and particularly in this case [because] it hung. I knew we were going to have to try it again; it was more important then ever.

As far as developing a rapport during trial, you haven't the faintest idea what those people are thinking during trial, particularly if you're in a court room that's being run as formally as this one was. It was sort of grim and the jurors were terrified, they told me later, of looking at us or smiling or making any kind of gestures. They're sitting there totally cranked down because they're afraid of the judge and what he

might do if they were interacting in any way. Although I could tell how they were reacting to witnesses, they weren't reacting at all to us. I had no idea what they thought of me. You can't develop a rapport in a one-way conversation. That takes sitting down with a cup of coffee. If you could sit down with a cup of coffee and talk to prospective jurors for five minutes, you would really know how to pick them, but even the best jury selection process isn't that good.

SUTRO: Were you surprised that the Menendez jury split along gender lines with the verdict?

ABRAMSON: No.

SUTRO: Why is that?

ABRAMSON: Well, when I understood who the leaders of the men were, I wasn't surprised. If there had been better male leadership, there wouldn't have been a split along gender lines. But [there were] persons who took the lead among the men, staked out a position that made it a gender issue. "Are you with the boys or with the girls?" It was really ugly. I wasn't surprised when I understood who was in charge, but I think that too much is being made of it.

I'm perfectly willing to take men on the next jury, so long as the mix is right and the leadership issues are clearer. There were certain things about some of those men that I definitely didn't like and in an ordinary jury selection process would have booted them off in a minute. But, I had murderer's row coming up. People who were super pro-death and the judge was not weeding [them] out. In any capital case, even if you think you've got a good guilt-phase defense, and we thought we did in this case, you cannot operate under the assumption that you're going to win in the guilt phase and there isn't going to be a penalty phase. So you always have to be concerned, you always have to keep off super pro-death jurors, because there are some super pro-death jurors who might be okay in the guilt phase, but you can't take that risk.

SUTRO: How would you recommend that a young attorney learn to conduct the jury selection process?

ABRAMSON: Well, if you're going to be a young criminal attorney, for the moment you don't need to learn how to conduct the jury selection process, because you're not going to get a chance to do it. But that may change in the future as there are more and more hung juries. Perhaps even someday the pendulum will swing so that appellate courts in the state really care about notions of criminal justice again.

But I think it's truly unfortunate that young lawyers cannot develop jury selection skills, because it is the hardest skill to develop as a litigator. If you don't have a chance to do it, you aren't going to get good at it. We all start out dreadful at it. We're all bad at it in the beginning, even though there are lots of seminars and workshops and courses. I teach jury selection courses all the time. It can be taught, but it takes a combination of being able to interview in a very artificial environment and a certain knowledge about human nature.

I would tell all law students, not just for jury selection purposes, but for other purposes, particularly if you're going to be litigators, that a good healthy dose of psychology, understanding people, and understanding how people's life experiences impact their attitudes towards various litigation issues is really crucial [to understand] if you're going to be a good lawyer someday. I learned it on the long, hard road of experience and lots of trials and it's harder to learn that way now.

SUTRO: In law school, they teach us not to criticize the judge in front of the jury for fear that it will negatively impact the case and your image. I'm not sure you share that belief.

ABRAMSON: Oh, I do. You don't criticize the judge per se, period. He's the person in power and that's a foolish thing to do. You fight back if he's stomping on you, but you try to do it as respectfully as possible and hopefully he isn't going to stomp you in front of the jury. Once in a while, they get out of control and they do stomp you in front of the jury.

My philosophy has always been to defend your position, but you don't criticize. . . . You stay within the rules unless you feel like going to jail and you have some overwhelming desire to have a body cavity search that night. Otherwise, you don't do that. You try to fight your battles, if there are battles, out of the jury's presence. I don't usually have problems with judges. In [the Menendez] trial, the judge had

a problem with me. [Before trial], I didn't particularly have a problem with him since I picked him. Talk about making mistakes late in your career. There it is. But I have found that if a judge is right, if I've done something wrong, and I'm quite capable of doing something wrong, and he criticizes me, all I do is apologize and move on. But if I think the judge is out of line and has been out of line, usually the jury can see that.

My jury [in the Menendez trial] knew that the judge appeared to be biased and favored the prosecution. They knew it by the way he treated witnesses. The prosecution witnesses, no matter how outrageous, he was very cordial to. The minute the first defense witness hit the box, his whole demeanor changed. They saw it. So when he was picking on me, which he only did once or twice in front of the jury, I either defended myself or I [made] a joke out of it. They thought I was right to do that, [because] he was being a bully. So they were on my side.

Once I tried a case with one of the more notorious cranky judges in Los Angeles. He was a misogynist, a misanthrope, he was a real negative, cranky guy, and I was trying a battered-wife case. A woman killed her husband, and [the judge] was making all these anti-female jokes. In fact, even in jury selection he was making derogatory jokes about being married—this was a guy who never married for obvious reasons—and he was on my case from day one. He was a much older man and I tried that case long enough ago that I could pretend to still be a young woman. So I played Little Miss Muffet. You know, "Judge you're being so mean to me." And I was just a poor, pathetic, little girl-person, and the jury hated him for picking on that poor little girl, so you can turn that around. It's a little hard to pull that off at fifty . . . at thirty-five, with enough makeup, you can fake it.

Usually it doesn't work out very well if judges pick on me, because I'm small, even if I'm loud and feisty. I'm small and they're big There's a whole thing about what you can get away with when you're small, that you can't get away with when you're big. I can be very loud and aggressive in front of juries because I'm not physically intimidating at all. But what I would say to the men in the audience if you're going to be litigators and you're a large, strapping man, you've got to be careful of your body language in front of ju-

ries because you can be physically intimidating. You never, ever want to scare them, ever. You don't even want your client to scare them, and that's harder to deal with. The same is true of judges; I can fight back in ways that a man really can't.

SUTRO: The media had a real effect on making the Menendez trial a high-profile case. Do you think it affected the outcome?

ABRAMSON: Oh, absolutely. I have no question that it affected the outcome. I think there were people who got on both [Erik and Lyle's] jury with the specific intention of convicting our clients. That interest would not have existed if they hadn't been exposed to this incredibly negative pretrial publicity. If you just walked into a court and you never heard of that case before, there are certain people who will always vote for the prosecution. There are certain people who simply carry that bias. Hopefully, in the jury selection process, if [this type of juror is] honest, and they're usually the most dishonest people in the world, you trip them up and you can unmask them.

But when you add to that extensive negative pretrial publicity, you have a larger pool of people who have already made up their minds and who have an agenda. I am convinced that at least two of our male jurors got on with that specific intent. There were things that they were saying over the course of the trial that the women jurors . . . found very disturbing as the trial was unfolding. They thought that these people had their minds made up from day one.

SUTRO: Is there anything that you can do as an attorney, aside from *voir dire*, to combat publicity from the media?

ABRAMSON: Oh, sure, that's easy. You file a paper asking to close a hearing and Gibson, Dunn & Crutcher or O'Melveny & Myers and every other big gun in town sends down their biggest litigator to fight with you. You lose, because the First Amendment, as I've said for a long time, is the strongest amendment we have. That's the gold medal winner among amendments, and the Sixth is a poor stepchild compared to the First. The public's right to know is more important than anybody's right to a fair trial. Now when courts write about these things, they don't say that. They say there are other

means by which a litigant can ensure fair trial, such as *voir dire*. Now there hasn't been a case, and I may make a stink about this just to try to get a case, when being denied any effective *voir dire* [and] extensive pretrial publicity may be depriving you of a fair trial. But [the Menendez] judge was fairly careful. He actually let us do a little bit of questioning about publicity exposure before the first trial.

It would take you days to find out everything that a particular prospective juror has heard or seen about [that particular] case. They're not even going to remember [all of] it. Even the most honest juror by now will not be able to tell you everything they heard or saw. The danger is, as the evidence is unfolding, little bells may go off in their head, and they may have heard things. For example, there's going to be a television movie about the case in two weeks. I've seen the script. It is absolutely fake, fraudulent, false, wrong, down the line, super pro-prosecution, and these are going to be visual images. Now how do you erase [those images] so that when the evidence comes in, for example, in the trial, some of these people don't say, "Wait a minute. That's not what happened. I remember *this* is what happened." Or by the time it's time to deliberate, which image is going to be in their head? The [image] that we're trying to create with words alone, or what they saw in this movie? And with respect to my jury, there was no deliberation with the men. The women sat and talked about the evidence and worked things out. The men never deliberated at all. They had this fixed view in their minds, and that can happen; a fixed view based on what they saw. They would insist, for example, when there was discussion, that certain things had been proven in the case. The women knew they hadn't been Every readback [of testimony] was requested by the women to show the men that what they're talking about was never proven in the case. So where were they getting this information? The media. There was also a suspicion, that I think is well founded, that one of the men on the jury was actually watching Court TV with its commentary. Court TV was not our best friend in the beginning. So it's a terrible problem. I'm overwhelmed by that problem. I don't know what to do about it. I feel totally helpless. That's not my favorite feeling.

SUTRO: People in the media have made the comparison between a daytime talk show and the high-profile jury cases where the defense lawyer plays television host and catalogues the long and often tragic past of the accused. Do you think that's a fair comparison, and at what point does the past history of a defendant become irrelevant?

ABRAMSON: Well, those are two completely different questions. First half, no. I don't think that's a fair comparison. You can't even talk about that, it's such a screwy idea. That's not what we're doing.

It isn't a defendant's past that becomes relevant; [the past is] relevant in the penalty phase of every death penalty case. The social history, the background history of the defendant [are relevant] because the jury's being asked to make a decision as to whether this person deserves to live or die. . . . That's what mercy is all about. So in those trials, a defendant's entire past is relevant. Aspects of the impact of the victim's death on his family is also considered relevant. So that's what happens in every capital case that goes to penalty trial.

But there are some cases, and not that many, where the defendant's entire past is relevant in the guilt phase. Those are cases involving abuse. Whether it's a battered wife or an abused child or an abused husband or an abused lover, it comes up in all of those cases when the person who is killed is someone who is involved in a long-standing violent relationship with the person who killed them. All of that is relevant to explain why the killing happened. In legal terms, [that information is relevant to explain] the mental state of the killer at the time that he killed. In fact, in California, under [section] 1107 of the Evidence Code, it is specifically relevant. That section allows evidence of Battered Wife Syndrome and under equal protection notions, its equivalent for children, men, or gay lovers. I've had these cases as well.

The talk-show host thing has to do with the fact that there is a fascination in America with people, with understanding and knowing about other people, even private people. And in understanding and knowing about people, there's a fascination with psychology. There's a fascination with behavior. There's a fascination with family relationships. And so there's been a lot of talk about child abuse, about abusive

domestic situations, and I think that's good. I think people should know what the problems in our society are, and there's a tremendous amount of both spousal abuse and child abuse going on. We need to change it. So if people are getting educated that this problem exists, maybe they'll take the next step and start offering some meaningful solutions. . . . We have these really significant and horrible social problems and not very much being done about them, so it's okay if the talk shows want to talk about them. They do it in a sleazy sort of way, but whatever gets the message across. That's not what we're doing. I've been defending cases like this since 1978, and there are many cases that are even older than that. Most violence occurs in the home. Now we're just trying to explain why that's true. Most homicides are among people who know each other, and we're trying to explain human behavior.

UELLEN: How do you respond to the Dershowitzes and the Estriches who are writing about the crisis of people offering abuse as an excuse for criminal behavior?

ABRAMSON: They're full of baloney, and they know it. If they think like lawyers, they understand what we're doing. We're not saying abuse is an excuse to strike back, or for revenge, or retribution. We're saying that when people are abused that there are known, psychological effects, and the most common is terror. People live in a state of heightened fear, and therefore that fear can be triggered into survivalist action with very little action on the part of their terrorizer. That is something that research has shown with battered children and battered wives for twenty years. It is not new, and so long as we're going to have a mental element in the definition of crimes . . . you're entitled to show . . . what your actual state of mind was and how it was created.

The fact is that there are some people who will hear the evidence of an abusing spouse or abusing parent and say in their gut, "That swine deserved to die." Well, that's their personal opinion, and everybody in America is entitled to an instant opinion on everything these days. You would hope jurors don't come to a decision based on that kind of emotional reaction—"They deserve to die." It's certainly not an argument that a lawyer would make. Now maybe some jurors feel that way, but for years and years jurors have been sitting on

serious cases and listening to the evidence and saying to themselves, "That defendant deserves to die," or "I'm going to convict him; I don't care what the evidence is." You can't eliminate [that] in a system involving human beings, emotional reactions, and I don't think you want to. If you're going to have a system where human beings judge human beings, you want emotion to have some part in it. I'm not sure that morality is simply an intellectual exercise. I think it is also an emotional exercise. Morality is an important component of the criminal law. You make moral judgments. That's what our laws reflect.

QUESTION: If you have five minutes in a capital case to ask questions of prospective jurors, what questions do you ask?

ABRAMSON: I ask about the death penalty if there is anything in their questionnaire . . . that makes me think this is a pro-death person. I ask a series of questions about the death penalty. I start with, "How do you feel about the death penalty? Why do you think that? What good do you think it accomplishes? If you were sitting on a case where you heard A, B, C, D, E, F, and G, do you think you'd be inclined, just by hearing that, to vote a particular way?" Then you just keep going and going and going. I've been very successful in previous trials in eliminating for cause most of the people who I felt were really automatic death people.

It's a very complicated process—the dual trials of a death penalty case, and most jurors don't understand the process. . . . And then you've got to start in with this education process. "Well, you understand you wouldn't even be in a position to make that decision unless you had first decided that my client was guilty of first-degree murder or the special circumstance of murder in the course of a rape. Do you understand now?" And then a light goes off sometimes if you're coherent enough. It's very complicated, it's very hard to explain to a layman, but that's what you're trying to do. You're trying to force them to understand they will already have found this person to be a first-degree murderer and quite often then they'll say, "Oh, I found him guilty of first-degree murder? Oh, yes, then death." But that's not enough. Then you have to say, "Is there anything that could be presented to you in a penalty phase, you know where the judge told you about this kind of evidence, mitigating evidence—that would keep you

from imposing death on a first-degree murderer?" Now, you can see that there's an ugly aspect to doing that kind of *voir dire*, which is you telling these jurors in this hypothetical way that they've already found your client guilty. That has some subliminal psychological effect, but I don't think that's significant enough to [dissuade] you [from] the questioning. [However, because of Proposition 115], even where the judge finds good cause and you're allowed to do some questioning, you're not allowed to do sequestered *voir dire*. We used to have each juror individually questioned about their death penalty views, so [that] you don't have 400 people sitting in the room hearing over and over again, "If you found my client guilty and death, death, death, death, death." You're worried about predisposing them to doing the awful thing, so that's what you do.

QUESTION: Going back to the guilt phase, how do you teach people about reasonable doubt?

ABRAMSON: You don't teach people about reasonable doubt. Reasonable doubt, the way it actually works—it's an invisible line that people already have coming in. What you want to do is hope that people will rise to the occasion to do their duty and be honorable, and most juries are. They do rise to the occasion. They do their duty. Most jurors think they are applying the rule of reasonable doubt the way they're supposed to. But each individual has a different inherent threshold. . . . I don't know what to call the views that people have towards the criminal justice system; they're not really political views, but they are a set of attitudes, and some people simply have a very high threshold of reasonable doubt and others don't. But you can't quantify it, we can't measure it, it's not something you can force people to abide by. The line is in there, somewhere, and you're trying to get people whose threshold is pretty high, based on a series of speculations, stereotypes, guesses, research, a combination of all of the above. This kind of person is fairly tolerant, isn't super pro-government, and may be willing to accept notions of reasonable doubt. Other people really believe you're guilty if you're accused, and it won't take much to convict. That's the skill in jury selection, but you can't change someone's mind. They come in pretty much the way they're going to go out.

My training was different when I started in the public defender's office. They were operating under the fiction that you could educate jurors. You can educate them about certain things, but not about those inherent, gut things. We used to spend a lot of useless time, in my opinion, asking closed-end questions, such as "You understand now, dadadadada." You get nowhere. I don't think you change anybody whatsoever in that process. So if I'm allowed to conduct *voir dire*, I don't ask questions about the law. I don't try to educate them or brainwash them or anything like that. I start out with, "Tell me about your job." I want to hear who they are. I want them to do all the talking. Now, that's very hard to do when you're doing the death penalty question, because you have to constantly re-explain to them what the procedures are.

QUESTION: I was wondering if you had an opinion about "three strikes and you're out"?

ABRAMSON: I think it's ghastly. I think, you know, it will lead to much injustice. I think it's just as bad as the notion of the federal sentencing guidelines. I think it takes discretion out of the hands of judges, and it should be in their hands. I think most federal judges are very unhappy with the guidelines, because not all people who do the same bad things are the same bad people, and judges should be able to distinguish in sentencing. They should be able to fine-tune it to the person, and I think that we are cutting away one of the most crucial functions of judges. I do respect judges, by and large. I do think they are the proper people to make those decisions, and not Congress or the state legislature or the voters in some initiative they don't even understand. When I talked to our jurors about the jury selection process in Menendez, for example, they asked, "Why didn't you ask us any questions?" I told them that we couldn't because of Proposition 115. They all voted for Proposition 115 and had no idea that that's what would happen. That's what's so horrendous about the initiative process being used to make these kinds of laws.

QUESTION: Was there ever a case where there was a client you wouldn't take or couldn't take?

UEL MEN: You mentioned last evening that rape cases give you a problem.

ABRAMSON: They give me trouble, but they don't tend to come to me too often. There's only one murder case that I actually turned down. I'm sort of ashamed that I did it, but I know why I did it. . . . That was Lawrence Biddaker, and that was a case that involved serial killings of teenage girls that were tortured and murdered. I was the mother of a teenager at that time, and had it not been for the tapes, I probably would have been willing to take it. But they had audio-taped the murders of these girls and the torture. And my thought was, "I'm pretty dedicated, I'm pretty zealous. I don't have a guilty conscience about holding back. But I don't really have to put myself through that to prove anything, do I?" So I didn't want to be haunted by those tapes. So I turned it down—a healthy move. Sometimes you have to do something for your own mental health if you expect to practice beyond that case.

QUESTION: You said earlier that the prosecutor's job is to find the truth, and at the same time you also said you would never be a prosecutor. I wonder if you could say why you would never be a prosecutor.

ABRAMSON: I don't like putting people in prison. That's not a role that I choose to take in society. I don't like inflicting pain. Prison is horrible. We talk about prison sentences. I don't think people really understand what that kind of life is. It's brutal, it's dehumanizing, it's ugly, it's painful, it's frightening. I would not want to be responsible for making anybody live that way.

UEL MEN: You do feel there are some people who belong in prison?

ABRAMSON: Well, there are some people who belong away from other people so they can't cause harm. I think we could treat them better than we do in our prisons. I don't like the way our prisons are run. And I'm not talking about "coddle them," but there is basic humanity in almost the worst person. There is something there that could be developed if you put them in an environment where they can improve as people. Prisons are much more brutal and actually accentuate

the worst in fairly brutal people to begin with. I've represented some people that the prison system considers dreadfully dangerous and brutal, and they're not. They're educatable. They have real human emotions. It isn't so much something could be salvaged from them for society, but something could be salvaged for heaven. God still likes them.

UELLEN: What advice do you have for all of the young lawyers-to-be?

ABRAMSON: Well, want to be the best you can be. I mean that's the beginning of it. Never settle for just doing enough to get by. Whatever field of law you decide to go into, it would be important for you if you're going to enjoy your chosen career and your work. It would be important if you could have that mindset that you want to maximize your abilities to whatever extent you can, and it isn't necessary that everybody be the best. But it really is important that you be the best you can be, because you're only going to be here once. You're only going to stretch yourself once. You're only going to have the excitement of finding out that you are a developing person once. One of the things that I find, which is sort of appalling, is that you give yourself all these tools in law school, and people go out into practice, particularly those who go to work for government in one aspect or another, and they just sort of fit into this cushy little life and get their little paychecks and do what's necessary, and I say to myself, "Well, what gives you the kick in life? What makes it worthwhile?" Unless you're striving to be as good as you can be, what's the point? . . . If you don't have that notion, I guess you're never going to strive to be better than you are at any given time.

I was talking to a young woman last night who's a district attorney, and she was saying, "How can I ever be as good a lawyer as you are?" And I said, "Well part of it is wanting to be." My experience with district attorneys is that because they have a certain amount of power walking into a courtroom, they don't think that they have to develop skills as trial lawyers. [But] they are trial lawyers. They are only district attorneys by particular appointment, and they should be developing. They should be working on themselves.

I force myself to think about, "How can I do this better? What's involved in this skill?" And I practice. I try things out

in every single case. I do things that are new. And in preparing every case, I learn something new. That's what makes it interesting, and that's what makes me proud of myself. You've got to be proud of yourself, or you won't do good work. Obviously, you're here because you're smart. So maximize it.