

COURT TV

Open Court 5-24-05

DG=Darren Gelber

DG: This case does not present a very sympathetic picture for the jury. There's no extenuating circumstance here, there's no passion provocation involved, there's no battered spouse type of syndrome. Any of the traditional things you would think about as at least mitigating a criminal charge. This is a very cut and dry sort of case and I don't think that the jurors are going to be listening to the case with a great deal of sympathy for the defendants.

SOUNDS LIKE CD SKIPPED

DG: That may be the reason they're going to trial Fred. If they're gonna get pretty much the same sentence whether they take a pretrial plea offer or if they get convicted after trial. Some defendants might say well I have nothing to lose by giving it a shot in front of the jury. That may be what's happening.

MAN: Okay, I want to bounce that off Jane -- there

DG: Well, Fred, as I understand it a Federal District Court Judge enjoined, issued an injunction saying that state can't prosecute this case because federal law really preempts anything having to do with airline --

MAN: All these FAA regulations.

DG: The prosecutor then appealed that decision to a Federal Appeals Court and my reading of the Federal Appeals Court decision was that this is an issue that we can't decide now.

MAN: Yeah.

DG: The lower court was wrong to decide it at all in that if these pilots are convicted after trial they can raise it later on their appeal. So as I read --

MAN: Yeah.

DG: -- that decision, the issue of whether this prosecution is even permissible is still an open one and can be appealed in the event of a conviction.

MAN: Yeah, a lot of states have very strict DUI laws. I've represented clients who thought they were okay because they were gonna just sit in their car and sleep it off in the parking lot of a bar, but once they turn the car on to keep the heat running, a local police officer would arrest them.