

COURT TV

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DG=Darren Gelber

- LISA: I need a criminal defense attorney to explain this one to me. Let me bring in Darren Gelber, you know him well, Court TV regular, former prosecutor in the Bronx DA's office and he now practices criminal defense and civil rights litigation in New Jersey and New York. Welcome to the program Darren.
- DG: Thanks Lisa. You know a problem that the defense would have by putting these two defendants on the stand is that they're going to end up confirming at least 95 or 97 percent of the state's case.
- Lisa: That's right.
- DG: The questions to these problems will be that's you? On the video tape, right that you right?
- LISA: Yeah.
- DG: Well yeah, that me.
- LISA: But a jury knows that's them, that's not really in dispute is it?
- DG: No, but having the defense confirm the vast majority of the state's case lends a lot of credence to the other pilots cases.
- LISA: Well, they're going to have to answer the question, how many beers did you drink?
- MAN: How many beers did you drink, you didn't have any sleep that night. What were you thinking? You know the FAA regulations say X, Y and Z and you purposely ignored them.
- LISA: Right.
- MAN: They're going to end up looking pretty awful I think if they get on stand.
- LISA: Well, Michael, one interesting email from our viewers, Darren, let me direct this one to you, Steven of Bethlehem, Pennsylvania wants to know, why can't the state call Hughes to testify against Cloyd or vis-a-versa about how much drinking they did and that case, they're not testifying against themselves, right?
- DG: Well, this would bring out a case called a Bruton problem named after a Supreme Court case which says that, first of all you can't call a defendant to testify against another defendant in the same trial. If they had wanted to the State could of

moved to separate these two trials and try these two men separately, one after the other and then theoretically depending on how the trials turned out, they might be able to call one of the pilots who testify against the other at the other's trial.

LISA: So what's in it for the State to try both of them at once?

DG: Well, to get it over with.

LISA: Efficiency.

DG: Efficiency, they don't have to worry about inconsistent verdicts where one defendant might get convicted and another one might get acquitted. The second trial obviously would have a great advantage over the first trial because they would have an opportunity to see the whole states case before their trial started.