



**Personal Reflection**

**On Being a Juror:  
A Phenomenological Self-Study**

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Abstract

*Phenomenological inquiry offers a vehicle for transcending conventional disciplinary boundaries and investigative settings. Van Manen's protocol writing offers a hermeneutic tool for human scientific phenomenological research that is ideal for the empirical realm of everyday lived experience. Underlying this approach is the tenet that interpretative phenomenological research and theorizing cannot be separated from the textual practice of writing. The entirety of this paper is a protocol, in the form of a phenomenological self-study. It describes one experience in an unfamiliar environment as a criminal trial juror. It represents data capture that can stand alone for purposes of independent interpretation. Since qualitative research in the venue described is limited by protective judicial restrictions, this phenomenological protocol captures unique data in an otherwise inaccessible setting. It suggests that protocol writing offers potential as a research tool in a myriad situations where conventional data collection techniques are impractical or unavailable.*

**Foreword**

I wish to disclose two features of the writing that follows. The experience put into writing concerns an unexpected event that occurred earlier this year when I was drafted for jury service in a criminal court case. For a week I set aside my regular life and became totally absorbed in being part of a jury. The charges were related to distribution of heroin while armed, but my experience could be applicable to other trials. It was the first time I served in a criminal case, although I had sat on two civil case juries years ago while living in the Bay Area. Also, this was the first time I served as juror in the District of Columbia. Although

I had been summoned for the jury pool every two years for 22 years, I was previously excused, either by the judge or by the counsel. I feel that I have finally traversed this democratic right of passage. By writing the experience, I hope to capture and make meaning of its profound effect on me.

The second component of my disclosure involves my writing style. I intentionally present this experience in a phenomenological representation. I wanted to write this in the present tense, as if it were happening now. I felt that would best portray my metamorphosis during the event. But, although I took some notes and outlined the day's occurrences in the evening hours,

the situation did not allow for present-time self-immersion in protocol writing. As the hermeneutic phenomenologist Van Manen points out (1990, p. 66), this would be true of many critical events that warrant written expression but, by their nature, themselves prevent the writing occurring at the immediate moment. In addition, I felt that narrating my experience for an audience during the unfolding of the event would be against the rules: do not communicate with anyone about this case until it is over. Only when it was decided, did I feel free to express the experience.

I initially tried to write it afterwards as though it were happening in real time. But somehow that both felt dishonest and seemed antithetical to the spirit of phenomenological writing: to explore the occurrence as real-time experience. Thus, my integrity compels me to write hermeneutically, backward looking to consider my reflections and notes that began some weeks into the past. In the spirit of honesty, I sometimes confuse my tenses, moving from past to present as I delve into the experience. I regret if I thus confuse my reader.

## On Being a Juror

### Becoming Seated

I remember how it began, my temporary removal from the “world-of-everyday-life” (Malhotra Bentz, 1981, p. 121). There was the heavy feeling of passing through security metal detectors after an irritating, jostled wait in a sweaty queue of fellow-citizens, shouldering a brimming book bag of self-occupying materials. There was the distraction of my discovered friend, an accident of co-ordinated pairing of service days with this cheery woman I knew so well but who was totally out of context navigating with me the juror check-in stations. Once badged, we squeezed into a row with two remaining empty seats and sat chatting, in the enormous hall, the pending cell, catching up on our children and current events, both confident that we would not be empanelled on an actual jury. We two are never empanelled. Both of us are outside the profile of the juror for District of Columbia criminal cases: middle-aged women with light skin and airs of professionalism, minorities in the venue of the District of Columbia.

When the official call for a Panel echoed through the horde, her number is named, and I envision passing the afternoon alone with hundreds of strangers, working on my latest paper, balancing books and notepads on my constricted lap, counting the minutes until I am released for the day, another biennial obligation fulfilled. But then I hear sounded: “Juror 998, are you present?” “Here” responds someone who

sounds like me. I file down the hall behind my friend. Someone jokingly hums softly: “moo, moo...”.

In orderly line we file silently into Courtroom 313. My friend takes a seat in the row before me; I watch her brown curls teased outward by airborne static. The four rows of seats look out in an arch, semi-circling the oversized, wood panelled, elevated Bench of the Court. Legal Counsel arranged to the left. Jury box arranged to the right. Hyperactive court reporter clicking out every sentence to document important proceedings. Bronze name-plated Judge, robed in black, solemnly reports the charges and explains in even, well-enunciated tones the process for juror selection. I have been this far before.

Cautioned to return the court’s pens when finished, I circle all the items that apply to me on the Prospective Juror Questionnaire and raise my hand when the Judge interrogates the group: Yes, I have family/close friends in law enforcement; Yes, I have family/close friends practising criminal law; Yes, I have myself been involved in regulatory matters; Yes, I have myself been a victim of violent/drug related crime; Yes, I know someone in the jury pool. This last one is a first for me, but the other affirmatives usually get me excused from further service. I wait my turn to be called to the Bench, counting down the number of prospects excused after their interview. I wait in this narthex, three rows back from the trial sanctuary, separated by a waist-level wooden barrier of authority. There are already 14 citizens in the jury box. I remain calm; surely I am beyond reach. I read my phenomenology articles, reflecting on how ironic it is that I had just read about juries and here I am, interviewing for a jury. The white noise machine at the bench softly buzzes repeatedly, obliterating the latest panellist’s personal justifications for exit. The Judge calls a lunch break, instructing my row to return to the process in an hour.

My reunited friend and I walk down to the National Gallery and eat salad by the underground waterfall, cascading rivulets from the street-level fountain dazzling the commonsensicality that waterfalls live above the ground. This should have been an omen. Between bites, my friend says that she plans to tell the Judge she cannot be fair: after all, how could the defendant have so much drugs and a loaded gun and not be guilty? I notice a tightening in my chest; I think I misheard her over the cackle of the falls. She explains what she will say to the Judge when she is summoned to the Bench, clothed in the white noise machine, but naked to me. Is she deceiving the Judge, me, herself, or does she really think she is unfair? I have known this woman for a decade, but I do not recognize her today, in this place, as she takes

ownership of unfairness. Back in the courtroom, she is called to the Bench and the white noise machine hums, echoing the buzz running through my body, and as she exits past me with downturned eyes, I feel an ache in my throat where the word catches. Impartial. What does it mean to be impartial, not of one part? I realize that my answer to the question about Knowing-someone-in-jury-pool is now “No”. The Voir Dire continues.

The interviews of the white noise drone on. It is my turn, and I slide my canvas book bag under my seat, certain I will be back to retrieve it momentarily. Judge reads aloud my Questionnaire. Line by line, I explain each answer, mentally dwelling with rapid fire on images of my cousin Peter the Chicago Cop, my personal photograph album of family/friend lawyers, the last unethical conduct license suspension order I signed as a regulatory board member, my choked back tears when I discovered my front door crowbarred to the floor and grandma’s jewellery gone to “drugs for the day” the police said. Then Judge looks directly down into my eyes, asks “Do any of these things prevent you from judging fairly in this case?” I feel the defence lawyer at my left elbow raise his forearm as he writes in his note pad, although he is not really touching me. With a concentrated neutral expression, I sombrely respond, “No, Your Honour”.

I am not dismissed, and my legs begin to twitch. I sit through the lawyer’s peremptory challenges, counting down, is it five, six? Reminds me of musical chairs: from the rows of seats, into newly vacated spots in the jury box. Where is the music? “Juror number 998”. I take the last remaining vacant seat in the jury box. Judge announces, “We have now selected a jury for this case. Ladies and gentlemen in the gallery, you may return to the juror’s lounge to await additional instructions”. I watch for myself to exit, but I am not leaving. I am instead in seat number nine, a member of the Jury.

I feel a great shock flow through me, like when I learn that someone I know has died. My bones ache slightly, and a mild chill passes over me, making my tiny body hairs stand upright. I get a little dizzy. I realize I am witnessing her obituary: that woman I was who never gets empanelled on a jury in the District of Columbia has evaporated.

### **A Member of the Jury**

Judge thanks us in advance for our service, and explains how long we can expect to serve, the hours we will be seated. I find a pen and paper and scratch this down, conscious of my rustling noise-making, although I am certain that my brain is not fully

functioning. This is like theatre, windowless and closed off from the outside world, and somehow I have wandered onto the stage. I feel temporally suspended: there are no clocks. The light in this room is not real. I notice the copper-skinned, Nordstroms-wardrobed woman to my right. As she leans over to pick up her purse, she whispers, possibly to me, “I do so not want to be here”. I decide I will survey the jurors when our work is done. I will ask: How many of you really did not want to be here?

The bailiff leads us to the jury room behind the court. This will be our home while not in the courtroom, with its big conference table, hard chairs, a private rest room. No windows here either, but a clock ticks from the wall. Emotionless, Bailiff shows us how we access the room through the restricted passageway, how to use the buzzer and security camera, how we are to line up in order and enter the jury box silently. I think about protection, and I wonder if I am in danger. “You have entered through the main courtroom door for the last time,” he tells us. He instructs us to line up in reverse numerical order to re-enter the courtroom, and I look for the other woman who does not want to be here to find my correct position.

All polite chatter stops as we file back into the courtroom. One woman cannot find her proper place, and trips over my purse as she intrudes to her assigned seat. I assume my alert posture as I hear Judge explain the rules of engagement. No contact with the principals of the case: I memorize their facial features, fearing I would not recognize them on the subway. No discussion of the case until verdict rendered: I think of what I will tell my family. No researching facts or persons of the case on our own: I wonder if the internet age participants can really comply with this rule. Must be on time: omigod, how will the kids get to school on my carpool days? What to do in case of emergency: does a paper due and several desperate clients constitute an emergency? Instructions on matters of law are for the Judge. Determination of facts is for us. What about the fact of a week’s lost revenue by the self-employed juror in seat number 9? I wonder where I can get coffee, and if it is allowed in the jury room. I think this is not an appropriate question.

I think of Camus’s surreal courtroom scenes, while simultaneously feeling my status elevate. “Jurors all rise and raise your right hand. Do you solemnly swear...”. The moment exhales reverence, and while I resent being here, I am awed by the power of the rituals and even the physical structure of this courtroom to inspire me to believe that I can bracket myself, and all my history, out of the decision I will make.

When I sit down again, I retrieve my pen and pad and take notes. I write down a word or two of the Judge's instructions, but I am most interested in writing down what I am feeling, seeing, thinking at this moment. But the pad I am using now is my official juror's notepad. It was just distributed by the bailiff, with no other instructions or expectations. I am told it will stay in the courtroom until we deliberate, and my notes will afterwards be shredded. I plot how I will conceal my personal phrases, and how they will escape with me.

### The Trial

During the opening remarks, I used my peripheral vision to tally my thirteen fellow jurors, twelve regulars and two alternates. I am the only white woman, but there are two white men. The defendant is black. I am surprised at my embarrassment at my noting of this demographic. I am a bona fide, ACLU subscribing, a-racial liberal, but I have been inherently appreciating my whiteness since first entering this process. I notice we are mostly middle-aged and mostly women. I wonder if I have aged in the past two years, trading in the persona of a young, angular, white professional for the frump of a middle-aged urbanite of neutral standing. I feel my face warming, and appreciate that I am on exhibit. I hope my stomach does not make whoopee cushion noises. I must not eat gas-inducing food or drink too much. I make a mental note to use the bathroom right before filing into this display booth. I vow to stay in the moment, to make the best of this unavoidable situation, and to execute my duty responsibly. I notice the facial expressions of my similarly snared partners, and say a brief prayer of thanks for respectful, serious countenances.

For the next two days, I hear the Prosecutor's version of what happened on the night in question. Three police officers testify with roughly the same story of stopping the defendant for a minor traffic violation: tinted windows. I did not know dark tints on a vehicle were a crime. I wonder if my own Volvo displays smokiness or crystal clarity. Why would anyone want tinted windows: to filter what is outside or keep prying eyes out? And why is this a crime? No-one ever says. The police asked if they could search the SUV for guns and drugs. Why guns and drugs? I have been stopped, although not often, but never asked if I had drugs and guns. They find 40 grams of heroin and a loaded handgun, a Baretta, stashed in a rear compartment. I touch the heroin in its smooth, sealed plastic bag, but I don't get to touch the gun, even with its white plastic pin securing its impotence. I hear how other personal materials were in the car, and here they are: a traffic ticket written to the defendant, a

pawn ticket for jewellery exchanged for \$4300, a report about a personal letter addressed to the defendant. But why not the actual letter? I speculate: this is supposed to make me think that he used this car all the time. I think that his alleged one-year old child did not use this car all the time: no car seat, no empty juice boxes or cracker crumbs, no squishy toys or baby board books. I remember that I am not supposed to speculate; not yet.

From the police witnesses, I hear how he ran from the scene, and they chased him down. I wonder, where did he think he was going? why did he run off? was he drunk from champagne and bad judgment? There is an open champagne bottle in the photograph before me; I see the cork and spindly wire in the open ashtray. I think: someone opened this bottle in this car. But why do I care: drunk driving is not one of the charges. I look at dozens of blown-up glossy coloured photographs of the vehicle, from every angle I can imagine. I take copious notes, and then start to draw diagrams of the scene, with arrows demonstrating who moved which way. I notice that some of my neighbours are not writing at all.

I hear cross-examination for hours about where each officer was standing when he or she observed what. When did they smell alcohol, on the driver's side or the passenger's side? When did they turn to look at the defendant, before or after finding the gun? Why do they think he ran? The police witnesses use commonsense words and phrases, like "I am not a mind-reader", "I came to stand by my partner because the suspect was getting out of the vehicle", "Oh, I know why he ran alright".

The cross-examination hurts my head. The Defence lawyer often uses the wrong word, even calls his client by the wrong name. I wonder if it really is the wrong name, or whether the client has aliases. What kind of sloppy defence lawyer would lead me to think this? I finish some of his sentences for him, correctly. I wonder if I can convict his client for having a stupid attorney, and the thought makes me suppress a giggle. Yet this lawyer wears an expensive-looking dark suit, not too shiny, in contrast to his slightly shabby government counterpart. He is probably not a Public Defender. I notice that the older juror on my far left is gently snoring. The Judge calls a brief break, and we file silently into our chatter cell.

The assembly ritual is repeated on the second day. This time one juror is 20 minutes late. I am irritated by this woman as she breezes in, saying something about needing to attend to a matter regarding her son, that "family duty comes first". I think of my own child, her life rearranged to accommodate my prompt

schedule. At this moment, I do not like this breezy woman. I ask her to knock on the courtroom door, as the bailiff instructed us, and she complies. Bailiff shepherds us into line and we file in and take our places.

The government's expert witness tells us that the heroin was "junk", poor quality at less than 10 percent pure, but could be cut into roughly 6000 hits worth over \$30,000 on the street. This is much more than the Prosecutor stated in his opening statement. I am surprised that he mistold this important fact. The Expert's testimony keeps being interrupted by objections, and the Counsellors approach the Bench. The white noise machine hums into service. I look away from the conversations I am not meant to hear about legal technicalities. This is not my domain, and I respectfully will myself not to think about what is involved. After a few more questions, the Prosecution rests.

A restlessness creeps up my spine as I realize that I will get no more evidence about dealing the drugs. My belly inflates with dissatisfaction; I am trying to inhale some missing information but I feel as if I am just swallowing air. I again will myself not to do the evidence summary in my head, but I sense a void in the story I heard. I resent so much information about who stood where and when and not enough about selling drugs, which is what the main charge is about.

The Defence calls one witness, the defendant's fiancée. The SUV is registered in her name, and also her mother's name. She is young and sturdily built. Where was the defendant going: she says to pick up their young child. Where was she: working an internship for guidance counsellor training at the Children's Hospital at the late night ER. Who else used the car: her extended family with multiple opportunities for vehicle access. She says she does not know how the drugs and gun got there. No, she is no longer engaged to the defendant. She is excused.

I am increasingly irritated. This story is extremely unsatisfying. Defendant will not testify.

After closing arguments, Judge reminds us that the burden of proof is on the government. My daughter is studying civics: "You have the right to remain silent". Judge instructs us on rules to reach our verdict on four different felony counts. An entire white binder is full of these instructions. He excuses the alternate jurors. This is now the beginning of the end.

I am empty with the dissatisfaction of a badly and undertold story. I file into the jury room with the others to begin our work.

## Deliberation

I sit down about midway down the big table, and notice that the young black man is wedged into the corner, away from the table. I scoot my chair over and invite him fully into the circle. We are all twelve here now. Juror number 7 suggests that we first need to elect a foreperson; we name her. I am a Leader-type person, but I don't think I can lead this group because I am a minority here. I offer to be the scribe. I knock on the courtroom door and ask Bailiff for some large paper, like newsprint, and marking pens. He seems surprised but says he will be right back. In several minutes, he returns and tells me that the court has no paper. He says they used to have a large easel, but it disappeared. I wonder if this is a joke. We have only our wired, steno pads for making common notes. I return to the table and tell this to the group. I am not sure what to do now, a scribe with no implements.

We go around the table and introduce ourselves by first name. Then there is a long pause. Foreperson says, "Does anyone suggest how we start?" Mr J sighs, and says "It's pretty clear to me what happened ...". This is followed by titters from some others. I immediately think: I bet that what is clear to him is not so clear to others in this room. Ms B on my left, the one who was late this morning, has many sentences starting with "I think ...", but voices are crisscrossing, one juror's sentence being grafted with another's completing phrases, until the Foreperson calls for "one at a time". We start going around the table, one at a time, to speak. In one long breath, I say I think that he knew the drugs were in the car, and that he could not know about the drugs without knowing about the gun, and that the amount of drugs indicate he was selling the drugs. Ms B on my left says "You seem the kind that would believe everything the police say". Silence. I turn to look at her. "Excuse me?" Silence. I look around the room to see if others believe I am "a kind", if anyone sees that I have an enormous cannon ball that just fell on my chest and wiped out my effectiveness in this group. Mr G says, "I think that assumes a lot". Brief silence, and I feel like everyone is temporally suspended, waiting for me to move, or breathe, or say something, except for Ms B who does not seem to feel the pulsating heat from my carcass as I wonder what I have done to deserve this heinous treatment and if anyone will rescue me. Foreperson starts up the round-table again, but I am departed, at least my voice is gone, and I cannot make myself be present with what the others say. I just want to go home. I cross my legs and drop my chin into the V formed between my right thumb and index finger, crooking my fingers to seal and secure my trembling lips, until the Bailiff knocks and says, "Ladies and Gentlemen,

Judge is excusing you for the evening. Please be back at 9:30 tomorrow morning to resume your deliberations.” I carry home my gag order and get no comfort for my wounded identity.

On Day 2 of deliberation, I bring in a thermos flask of decaffeinated coffee, warm and aromatic. Given that the cafeteria in the building is closed for renovation, I congratulate myself on my forethought. At the courthouse entrance, I walk through the metal detector and the security guards pass my bag through screening. They want to confiscate my thermos; it is not allowed. But I need its fortification, with no food or beverage service in this desolate building, so I negotiate for it. Victory. I also bring in rolled-up newsprint, blue, black, green, red mini-markers, and a diminished roll of scotch tape. I go through the secret passageway to our room. Foreperson thanks me, genuinely I think, when I re-offer to scribe our discussion. She is calm, articulate, says she is determined to move us along. I write the first charge on the large paper: *Possession of heroin while armed with intent to distribute*. This is the lead charge, the lynchpin, the other charges flowing from it. But it is an à la carte charge: we can find guilty of possession with or without gun and with or without intent to distribute. The *Intent to Distribute* part is the big charge. I hear chatter. I rewrite the charge: *Possession of Heroin*. Period. Foreperson suggests we start here and put aside *Gun* and *Distribution* for now. I write down each juror’s main point either for or against guilty of possession.

We are polarized, half and half. Ms C, the juror who was asleep during testimony, says several times, “Police lie”. I write that down on the newsprint, along with the other arguments. Mr J, a guilty vote, suggests we consult the language in our instruction binder. He says we are hung up on what it means to have “power and control” over the heroin. Foreperson says we can ask the Judge, and pens a note asking for legal definition of “power and control”. We wait. We have nothing else to talk about until this is decided. We are released for lunch. We come back. The Judge sends us back a note: “control” involves physical access, not necessarily “authority”. Foreperson calls for a round-table vote on who thinks s/he knew the drugs were in the car. It is unanimous. Everyone agrees s/he knew the drugs were in the vehicle. Mr J then points out that it would be hard to know about the drugs without knowing about the gun, since the loaded gun was on top of the bag of grey powder labelled heroin. Round table we go: everyone agrees s/he knew about the gun too. Foreperson says we have now agreed that defendant is guilty of possession of heroin, an unlawful handgun, and the ammunition, all separate charges. Everyone nods. I write that down on a

separate page of newsprint and tape it up to the wall, my fifth sheet. I ask if anyone else would like to take a turn at writing. Mr P says I am doing a fine job and should continue. I am relieved to have a task, and be complimented. I write *Distribution of Heroin* on a separate sheet, and the argument begins again.

We go round table, in turn stating our main argument, either guilty or not guilty. I write on newsprint each point. We are again polarized, five jurors not sure he was going to sell the heroin, each with their own story. Mid-morning we all spontaneously stop talking. I think we will be a hung jury. I marvel how any group of 12 can ever unanimously agree on anything. Foreperson asks again what we think. I think she is out of steam. She touches my arm, and I feel a plea: say something, please. I take a deep breath, and begin my speech. I ask them what they would think if they were out on the street at night and saw this guy with drugs and a loaded gun in his car. One of the Not-Guilty faction says, “I would think this guy is dealing”. I say I feel we each have a responsibility to use our commonsense to reach a decision. As I talk, I get more excited, emotional, welling up frustration, appealing to the others to use commonsense to exercise justice. My heart pounding, bleeding over images of innocent spillage, babies slaughtered by drive-by crossfire, hands of homeless hustling for cash to trade for powdered grey junk, huddled under my donated worn out blankets, city streets that cry to be swept. I surprise myself, my voice cracking, a traitor to true rationality. It is not an intelligent appeal; I have done no favour to my position. I am disappointed in myself and embarrassed. Mr A crosses his arms over his chest and pushes back from the table, “Enough of this saving the world bullshit!” I am now hopelessly profiled as a pro-law-and-order white activist. We take a break.

I wonder: is the jury meant to judge who is believable, to fill in gaps to complete the story, or to decide what boundaries are laid between the various story versions and the parameters of judgment of what exactly is “reasonable doubt”? Is it for each jury, based on the individuals’ values, histories and experience, to unite to create a peerless body and dynamic, to re-create in each instance the jury process? Do we get to decide what responsibilities to assume and what method to use to exercise our authority? In a nation founded and constructed on diversity, how can this be fair?

After the break, I try again: “I promise not to get emotional, but let me say what I think happened.” I give my story: Defendant used the SUV as his own vehicle based on his personal items found; put the SUV title in his girlfriend’s name because of his illicit

dealings; sometimes took trade for drugs, explaining the pawn ticket; probably had prior convictions that are not admissible evidence, and would do himself damage by taking the stand. How could he have such a large amount of drugs if was not dealing? How can we logically agree that he is guilty of possession and not guilty of distribution? Relieved, I see some nods of agreement – but just then the Bailiff knocks and tells us we are released for the day. “Return tomorrow at 9:30 a.m. to resume deliberations.”

On Day 3 of deliberation, I awake disoriented after a restless night and a bizarre windstorm that trashed felled branches against my old roof. I really don't want to go back to the courthouse. I bundle up against the rain, but leave my coffee thermos behind. I feel an intense caffeine buzz already, although I have not had a drop of coffee this day. I crave fortification, but just the thought of food evokes bitterness in my throat. I am diminished, I am insubstantial, I am disheartened by my inadequate capacity to solve this dilemma or rationalize the outcome. I am convinced that my jury must make a satisfying decision today; I feel as if the fate of my entire world rests on it. I blank out during the trip downtown, not sure if I drove or walked to the subway. Entering through the security doors, I wonder why I never see another person in the restricted corridor. I feel slightly spooked, like I am drawing negative forces from the universe and repelling friendly powers.

In the jury room, Mr J suggests we try another approach. I am so grateful that he still shows determination. He reads from the instruction binder about evidence. He reads that evidence is either “actual” or “circumstantial”, and that both are equally important in reaching a decision; that it is okay, even required, to decide a verdict based on circumstantial evidence. He takes a paper from his pocket and reads the definition of circumstantial. I think he has been doing research, strategizing. I think he could not relax or sleep last night either.

He says that we should try to chart out the evidence, real and circumstantial. He says the story will then be apparent, we will be able to “connect the dots”. I ask if anyone wants to be scribe. Ms B folds her arms over her chest and turns herself away from me. I heard her say “animosity” and choose to ignore her. I pick up my marker and begin to write.

For two hours I write, listing every piece of evidence anyone names, colour coding: black for things in the car, red for the fiancée's claims, blue for police reports. I move the newsprint higher so that everyone can see. Ms B refers to the lists as “her posters”, indicating me. I ignore her. I suggest we go through

the list and prioritize each item: “A” designations are the most important. Anyone can nominate an item for “A” status, and then we all vote on it. Foreperson monitors everyone's turn so that all get equal time to talk. Every detail is included. The most important ones have the most “A” votes. I feel lighter as I write, like the dance is coming to an end. I smile, I move with hope and enthusiasm.

We exhaust the exercise. Foreperson summarizes: we now have two very well developed, but equally polarized, versions of the story, each replete with full details to support its version. On the side of Not Guilty are five: two who just really believe he was set up, and three who argue that the Prosecution did not provide enough evidence to secure “beyond a reasonable doubt”. “I feel like we are doing the work of the Prosecution,” says Ms M. I am on the side of Guilty: I believe I have enough circumstantial evidence to connect the dots. I believe it is my duty to use my reason, my peerage, to convict. I wonder if I am so attached to my duty or to my own version of the story, digging in my heels after having been forced to construct a reality that was under-supplied with matter. I fleetingly wonder if it was the pawn ticket that pulled me into my convictions, visualizing my grandmother's violated jewellery exchanged for vacuous grey powder. I no longer think I can bracket myself out of a problem such as this one.

Foreperson suggests that the proponents of a Completely Guilty verdict consider accepting Guilty on the lesser counts of possession. She says this very gently, pointing out that the alternative is a hung jury, which is not likely to be readily accepted by Judge. I think she is gracious and respectful, but I remember she is not offering to switch her position. I ask if we can first take an official vote on the Completely Guilty verdict. As expected, seven for guilty, five not. I understand: I would rather compromise to lessen the charge than convict a man I believed to be innocent. I will switch my vote. Five others agree with me. It is time for this to be over.

Ms K refuses to switch to Not Guilty. She is quietly sobbing, “I feel like I am lying...”. Mr J softly says that this lesser conviction is better than a hung jury, a retrial might never happen and there would be no consequences. Back and forth, crying, cajoling. Suddenly, at the other end of the table Ms B slams her notepad on the table, “Okay already, all this crying and shit, I will vote however you want!” She leaves the room, slams the door behind her. I examine the other faces, blankly staring back at me. I don't believe that she can be so vacant, not to understand that her changing her vote can accomplish nothing. I momentarily wonder if there are others in the room

equally removed from my reality. Ms B re-enters and sits back down. I wonder if she was returned by the bailiff. I wonder if we are all imprisoned here until we decide. Ms K agrees to change her vote. Now Ms B addresses the group, asks for an explanation. I cannot look at her. I turn away. Some other voice explains what everyone agrees to, that it is what she wanted, that we must now take the official vote.

At 1 p.m. we vote: Not Guilty on the charges related to distribution, Guilty on the charges related to possession of heroin and gun. Ms A could not actually raise her hand for the Not Guilty vote; she said Foreperson would have to accept her vocal "okay". She said she could not raise her hand to the compromise. We all voted to accept Ms A's voice in lieu of her hand. Foreperson sends the note to the Judge. We are summoned into the courtroom. Foreperson rises and reads the verdicts, one at a time. I wonder if Ms K is crying. Judge thanks us for our service, such anti-climactic words, "You are free to go", tells us we can speak with whomever we wish now, including the lawyers.

Back in the jury room, I peel my posters off the walls and roll them up, place them on the table with the to-be-shredded steno pads. I collect my coat and purse. Foreperson tells us what a good job we all did; I think, "She must be in HR". She collects business cards from some of us. I ask my end of the table, "Can you do this again?" Only Ms K says she will never again serve. I don't know, but I think of my partial friend from a lifetime ago, and I apologize to her in my head. Ms R, one of the Not Guilty tribe, tells me it was an "honour" to serve with me. Mr P thanks me for scribing. I travel down the restricted passageway for the last time, depleted, deeply sad.

### Jury Post-Partum

I go directly home, too early to be other than alone there. I turn on my computer. Amidst the dozens of waiting messages, already there is an email from Foreperson, titled "You won't believe". It read that she and Mr A had just talked with the defence lawyer. He told them the drugs belonged to an uncle who put them there and is now serving time for an unrelated crime. He told them that the defendant ran because he'd served time for an assault charge and had one more year left on parole, but that he'd never been arrested or charged with a drug related offence. He said that the fiancée was telling the truth about the car: defendant was on his way to get their daughter. Foreperson thanks the "voices of scepticism" for

having held out lest we'd worsened our already tragic error.

I feel sick. My last thread of self-trust and confidence is shattered. Can we call the Judge, say we made a mistake? I tell myself I did the best I could, but I find tears streaming down my cheeks. I wish I could run, but my daughter will be home soon. I do not deserve her, just having taken another daughter's father away. I take out my upright Hoover vacuum cleaner and turn it on, sweeping it over the carpet, hoping to suck air back into my lungs.

But something is not right to me about this email explanation. The uncle did it with the car jack in the tyre well. Why did the defence lawyer not present this information through the fiancée's testimony? I re-check my email about every ten minutes. Three checks, and there it is: an email reply from Mr J.

He spoke with the prosecutor on the way out, who told him that the defendant was caught about a year ago with a larger amount of heroin, hidden in the same place, in the same vehicle, but was not convicted. The Government thought this case was a "slam dunk" because of the amount of heroin and the evidence that the defendant ran. Heroin is a "morning drug", so distribution usually takes place at night to position the drugs for sale to the users in the early hours. They probably caught him too early, in that the drugs had not been broken down into smaller packages for sale. The defendant is on parole for assault with intent to murder, so our conviction will send him back to prison for the remainder of that term. The possession conviction from this case will probably be worth another one to two years of jail time. Mr J closed his email by saying "considering our different backgrounds and outlooks, I thought we got along very well and functioned as a team."

Giant, salty tears are streaming down my face as the door swings open and my daughter returns from school. "Mom, you're home! Why are you crying?" I hug her harder than I expect. "I am just so glad to be home," I reply. *Rashomon*<sup>1</sup>, I think.

<sup>1</sup> *Rashomon* is a 1950 film by Japanese director Kurosawa. In the movie, several people tell their version of one event. While everyone can agree that the event [a woman is raped and a man is killed] has taken place, no-one can arrive at the truth about what exactly happened. *Rashomon* has become common parlance to describe subjectivity of truth.

### About the Author



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