



IN THE **1st DEGREE**™

THE OFFICIAL STRATEGY GUIDE



RUSEL DEMARIA



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IN THE 1st DEGREE

Rusel DeMaria

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Author's Introduction

The purpose of this book is to help you get the most out of the game *In the First Degree*. The first few chapters are used to introduce the evidence in the case and give you a few hints about the physical evidence and the psychology of the principal witnesses. During the interviews and the trial phase of the game, I've written the whole story, including the thought process of the prosecutor. You don't have to read the whole story to get help where you need it, but, hopefully, you'll find it enjoyable to experience the game from Granger's point of view. And remember, this is only one path through the game. It is one of a few really good paths that lead to a first degree murder conviction, but it is by no means the only path you can take. Part of the fun of *In the First Degree* is trying different tactics with the witnesses and seeing the little dramas that unfold; so, by all means, experiment.

Part Four of the book begins a look under the hood of this game, and reveals a lot of what is going on in the recesses of the program. This is for those who want to know everything they can (and maybe more than they should). Chapter 15 gives you some general information about the way the game works. Chapter 16 is a very detailed look at each of your choices and how it affects the game. I recommend you ignore this chapter (and the following one) until after you've played the game a while. Using the information contained in Chapter 16, you can easily plot a course through the game to get different verdicts.

In Chapter 17, A Quick & Dirty Walkthrough, you'll get a condensed look at one ideal path through the game. You can try other ways, but our walkthrough will guarantee you a first degree conviction and the best ending.

Finally, I've included a section of jury instructions as they are given in the state of California. If you wonder what the definition of homicide is, or what distinguishes first degree murder from murder in the second degree, you'll find Chapter 18 elucidating. However you choose to use this book, I hope you have fun and get the most out of the game.

Rusel DeMaria
September, 1995

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Special thanks to Laura Zimmerman and Frank Sommerville, both real, professional news people, for having a sense of humor and going along with the parody of their professions. Nothing written here is meant to be taken literally with regard to them.

DEVELOPER'S WORD

Storytelling in the Interactive Environment

by Peter Adair

Thirty years of documentary film making has to be good preparation for something. Now I know. I'm an interactive director.

The great thing about making documentaries, as opposed to feature films, is that there seems to be a little more room for experimentation. Maybe because documentaries cost less (with absolutely no hope of making any money), or maybe because I've always worked as an independent, I could be inventive and figure out my own ways of telling stories. My films, no matter what the subject or purpose, always tell a story.

And there's really only one basic story, by the way: "Uh oh, Jose who has to walk through the woods has heard there is a fierce bear in there. The bear is chasing Jose now, swiping at his shirt. How will he ever survive?" (For those of you who are worried, with heroic effort, Jose barely escapes. . . uh, the bear.)

Early on in my movie-making career, I learned about telling more than one story at once. The trick is to make each story exciting, at the same time making them more interesting by bouncing them off one another. This, in effect, makes another story that is greater than the sum of its parts. The stories don't really have to have that much to do with each other. Intercutting essentially unrelated stories is a time-honored technique that I've used since my early films:

"Mary plants her corn but worries there will be no rain this year. /Uh oh, Jose who has to walk through the woods has heard there is a fierce bear in there. /Mary's corn plants are barely hanging on but through the drought she continues to pray. /The bear is chasing Jose now, swiping at his shirt. How will he ever survive? /A thunder storm approaches, the corn is saved; the bear can't cross the swollen river."

I think what fascinated me the most about interactive storytelling was how each element of an intercut, multiple plot line could be changed during the game and how the relationships between the stories might be altered or

affected by actions of the player. It is the relationship which changes the feeling and the meaning to the audience, so in an interactive environment, the complex interconnections of the stories become even more mutable and diverse. Not only is this expansion of potential inherently interesting to me, but it also helps solve some of the biggest design problems presented by this new medium.

The biggest problem, of course, is the geometric increase of story size at each plot point. Do we go through door A, B or C? Next do we go through D, E, F or G? Then H, I, J, K, L, M, N, or O? Beginning interactive storytellers quickly learn that this gets out of hand and try to invent various (usually contorted) solutions, such as looping back, to contain these voracious plot lines.

It helps to think of the plot as a tree. The tree grows taller, but it also grows wider as branches split and grow new branches. In the case of an interactive plot, you may actually have multiple trees, and you get a lot of variety in the story because the player may end up on different branches, or even different trees.

For example, in *In The First Degree*, it is significant if Yvonne says she saw the gun, but Simon says he didn't. Or vice versa. If you look at it mathematically, with just these two characters, there are eight possible combinations of them admitting to seeing the gun or not (and if you count all combinations, including witness order, there are thirteen possible combinations). Each of these possibilities could be significant, as far as our story is concerned.

I have never been a game player—I'm probably lacking the IQ and certainly lacking the necessary patience—but I love drama. The drama I love best deals with human stories of conflict. As soon as it became feasible to use moving video on the computer and to reach a significant audience, I wanted to try my hand at this medium. Finally, I could use actors talking, moving and emoting.

So if we wanted to move players with the pixels of a computer, our first priorities were to tell people's stories, to encourage an audience to identify with a character and make them care what happens to that character. This is very different, by the way, from caring about what happens to you. It is true that, as the player, you want your character to win—to get a first degree murder conviction—but winning is more of a gambit than a dramatic dilemma. This is why in a flight simulator or a war game there is adventure, but there is no drama. In this sense, in many games the player is not a dramatic protagonist. For example, in *Doom* the player's goal is to win, but it doesn't involve overcoming a dramatic dilemma.

We started *In The 1st Degree* by creating a very basic back-story involving a

murder. Then we began building our characters. Who was Yvonne? What were her foibles and strengths? What were her fears, ambitions, and so forth?

Once we had this framework, we wrote three stories for Yvonne, corresponding to each of her themes. These stories were each consistent with her character, but were also independent. Each of these stories had a fairly simple branching structure that allowed for changes as the player learns to interrogate her effectively. These three stories were just the beginning of our intercut format. Our thinking was to allow the player to play just Yvonne's themes and get a coherent and dramatic story. Likewise, the player could slice and dice in an entirely different way by playing Yvonne Gun, Ruby Gun, and Simon Gun themes, creating a different angle on the experience, and a whole different mega story emerges.

Novice interactive storytellers (which we certainly were) are always enamored by the power of the computer. The computer can do almost anything. The problem is that the brain can't. We started out by wanting everything to be relative to everything else (as it is in life.) If the player goes to Yvonne first and she says the door was open, then when he goes to Simon he will say it was open. If she says closed, he will say closed. But if we go to Simon first, well, you get the point. You can see that you can get really crazy really fast. And this example is about just two characters and two variables. It does seem to be magic when the computer is all-knowing, but allowing every element to interrelate with every other element is impossible to think about, not just in the abstract, but also when trying to keep narrative sense. (And we are, after all writing a narrative here.) We quickly found that we would run out of brain RAM and go screaming out of the room pulling at our hair if we didn't set some limits.

We achieved a twofold solution. First, we very carefully separated the stories of each character. We also separated each of their themes as well. This was a big breakthrough, because it allowed us some breathing room. In the end, the stories are not entirely unlinked, because we were then free to build careful bridges between the characters and the themes, but in very limited ways. The player will find these links as he or she experiences the game.

The second part of our solution grew out of our frustration with trying to write a branching, interactive script. Even with the limits on links between stories and characters, we found it impossible to tell how the overall story was working. Our first attempts were to put everything down on paper, using branching notes: "If you choose piece A157 here, and your score is more than 30, then go to piece A102." We quickly lost track of the story, the whole reason for reading it. With Brøderbund's help, we built what we called a "Text Engine" so the game and all the correct branching could be played on a

computer, but remained in dramatic script form. This breakthrough allowed us to tweak the story and the links enough so that we could have enough faith in the project in order to commit to the expensive and scary task of actually shooting the scenes.

We were fortunate—though maybe there was some foresight in it—that we chose the subject of a trial for our first interactive drama. (And for the record, I want to say this whole story was written, with the exception of the news clips, long before the O.J. Simpson tragedy.)

A trial is inherently dramatic, but, perhaps more importantly, the relativity between events and characters is controlled and commonly known. Most speech is either monologue (opening statements) or dialogue (interrogations). Trials proceed in an orderly, modular fashion—prosecution’s first witness, defense cross, prosecution’s second witness, defense cross, etc. This format greatly limits the choices a designer, and ultimately, a player, can make. This is good because too many choices are always a problem.

As a side note here, I always find it curious how people think that interactive media is somehow more real than other media (the term virtual reality aside). Is a movie more real than a poem, for instance? This notion seems to spawn questions about the game like; “Why didn’t you include jury selection (or any of a multitude of things) in the game? They have it in a real trial.” My reply, “as a matter of fact we DID have some of these judicial elements in early designs but we found them boring,” never seems satisfactory. One would never ask this kind of question of a movie. Perhaps it’s because a movie flows over the passive audience more completely, so they accept the choices of the film maker. Or perhaps it’s as Marshall McLuhan suggested, that a new medium is always magical, so we think it is somehow a literal representation of reality.

Anyway, we had a good setting for our drama—one that limits choices, but has very definite, familiar elements with the emotional human conflict we needed. Up to this point, my experience as a film maker had served me well. I was totally lost, however, when I realized that a key design element of an interactive movie is the concept of multiple plays. There is nothing inherent in multi-threaded movies requiring multiple plays. But when they are also games and when they cost fifty dollars each, they have to be interesting to play many times.

My partner Haney Armstrong took the lead in the re-playability aspects of *In The First Degree*. We soon came to realize that playtime, which for a movie is about ninety minutes, was for our game/movie ideally at least ten hours. (It turns out to be about fifteen hours for the average player to win, without using this hint book.) We realized that both dramatic surprises and game progress

needed to be doled out over the whole ten (or fifteen) hours. Of course, these elements usually come at the same time because they are linked; i.e., when the characters get dramatic you are likely making progress. This meant that we could not give out the goodies too fast and have nothing new for the more advanced player. On the other hand, we couldn't go too slowly or it might bore beginning players.

I finally came to realize that we had to think of the whole game play-cycle (the theoretical ten hours) as the drama, and shape it in a classical three-act structure. Each act had to have its own dilemmas and denouement, with a big final climax just before the final curtain when the player has finally won. We discussed two methods we might use to meter out these goodies: keeping track of how many times a player has played, or simply using an internal scoring system. We choose the latter, assuming that on subsequent plays that players will make progress.

As others have commented, storytelling and interactivity are inherently in opposition to one another. Drama requires the suspension of disbelief. The audience has to forget that they are in a theater. If the person next to you talks too loud or if the actor bumps into the curtain, the magic is (at least for the moment) lost. Drama requires forgetting where you are, but interactivity requires input and consciousness.

As an aside here, the whole notion of suspension of disbelief, or identification with a fictional character, or intense concern for how a fictional story is going to come out, is one of the most amazing and endearing of human traits. The feelings are intense, and in no way logical. How can we get so involved in a plot which begins "It was the hardest thing that I ever went through, I almost didn't survive, I remember on that night when. . ." ? We're already involved and getting scared, and yet we know the narrator survived just fine. He's talking to us, isn't he?

Just because one medium requires suspension of self-awareness and the other requires conscious involvement doesn't mean that the two can't work together. But it requires special schemes that make jumping back and forth acceptable. We looked for a balance between the interactivity and the drama. It is hard to mix twitch games, which by nature require a lot of input, with dramatic or non-interactive sequences. *Myst* works particularly well, because it is so atmospheric that the slower pace of the input compliments the mood.

For us, discovering this rhythm—and rhythm is everything (especially in movies or theater)—is a large part of making the game work, and will continue to challenge us in our future work. Non-interactive sequences (they actually call them NIS's) make traditional game designers very nervous. But all dramatic pieces by nature are non-interactive sequences. So our task was to

discover the micro-rhythms at work; i.e., how long an answer can we get away with after the player clicks on a question? We learned that fairly long answers were sometimes acceptable, but that it was important to vary the lengths so that some sequences are now single words and others go on for maybe a minute.

When we got brave, we actually began designing whole sequences where no player input was allowed—the cross examinations are a good example. The rule for me is that something surprising and new has to happen in the sequence for it to work and not make players tap their fingers. I think our opening sequences, the introductory news and Looper in the diner are good examples of NIS's that don't work all that well. In our defense, we needed them to set up the story, but I don't expect players to watch them more than a couple of times. For the next game, we will try to find another solution for this early exposition.

Actually, from a dramaturge's point of view, I would like to experiment with much longer NIS's. I would like to have something like a discussion or an argument between several characters, but it would be assembled on the fly (i.e., at playtime). In other words, what each character says in the conversation would be determined by the player's interaction with that character up to that point. I hope my brain survives.

It will be interesting to see if a whole piece, i.e. a whole multi-threaded movie—I hate calling them 'products', which seems to be the common industry term—could succeed in holding players' interest without requiring any input after the beginning. Maybe it would open by asking the player to choose the personality of each of the lead characters. Maybe there would be sliders. . .

(HEROINE: Smart————+————Dumb)

(HERO: Mean————+————Kind)

(SISTER: Aggressive————+————Passive)

(BOYFRIEND: Dumb————+————Dumber)

(BOSS: Absent-minded————+————Perfect memory)

The player would adjust the sliders, then watch the drama they designed. Who knows? It might work. We'll see. . .

© 1995 Peter Adair

Peter Adair has been an independent film maker for over twenty-five years. His films include *Holy Ghost People*, *Word Is Out*, *Stopping History*, *The Aids Show* (with Robert Epstein), and *Absolutely Positive*.



IN THE 1st
DEGREE

PART ONE:
SCENE OF THE CRIME

CHAPTER ONE

Gathering Evidence

Note to Players of *In The 1st Degree*:



The following account details one possible path through this game—perhaps the best and most dramatic path—that leads to a first degree murder verdict. It is important to note that there is more than one way to get the first degree verdict and the order in which witnesses are interviewed and examined on the stand can vary without affecting the verdict. In this account,

all the most damaging testimony is obtained, and the order of witnesses and questions creates the most dramatic story. Moreover, background is given that supports the strategy and tactics used by the prosecutor in the case. You can read part of this account, getting some clues about how to play the game at different points. Or you can read all of it, which will give you a path from beginning to end. We recommend you try playing the game your own way first. This is an opportunity for you to create your own drama. It is not necessary to play the game exactly as indicated in this account. Note that what you do in the pre-trial phase of the game affects how the trial goes, so if you think you've done very well, you might save the game at various points, then experiment with different approaches. For more information about how ***In The 1st Degree*** works, and how to play the game, see the second part of this book.



Murder Over Dinner

I hate it when I first hear about murder cases on the television news. Even worse, I hate it when the case turns out, following a lengthy and public investigation, to be mine. That's what happened in the Tobin/Barnes murder case. I was channel surfing over what I call dinner when the bulletin came on—about Zachary Barnes being killed and all. Sort of made my spaghetti go limp, if you know what I mean. So I switched off the tube and put on some jazz.

By the next morning, I had forgotten about the evening news entirely. I was well-rested, ready for another humdrum day. Got ready for work, went downstairs, and fired up my slightly aging BMW convertible.





Of course, I didn't know the Barnes murder was going to be my case at the time. I was just a spectator. But I had had some bad breaks in the past few years—most notably that Hayes Valley fiasco. I was still smarting over that one, and the DA, my boss Julie Ann Wong, wasn't about to let me forget it—not with a reelection campaign on the horizon. So it would be just my luck to land the assignment for a high-profile murder case like this one.

Cases like this can do you a lot of good—if you win them, like I usually do. But lose a big case to some overzealous Doberman of a defense lawyer or step on the hem of some judge's robe, and you lose a lot of brownie points with the DA's office. . . and just about everyone else. Not that I needed brownie points. It's just that my confidence was a little shaken. For some reason, they always assume I'll take on the high society set—and this artsy little crime seemed just the kind they'd saddle me with.

When I arrived at the office, my message machine began nagging me. "You've got messages," it beeped—again and again—as I fixed myself some coffee. Sandy—my part-time "office manager"—was probably at her club getting her daily ogling by the muscle-bound set. She kept irregular hours, but then, so did I.

My office was on the third floor of an apartment building along the Embarcadero. It had a pleasant view of the Bay Bridge and Treasure Island—I could almost see Marin County and the Golden Gate Bridge, too, if I craned my neck out the window. It wasn't your usual assistant DA's office, but then I wasn't your usual assistant DA. I had a small stash of cash of my own, and more style than the average civil service grunt. Still, I like to prosecute. I like it a lot. Oh, and of course, I had a small, dingy office downtown. The city provided it and I tried to pretend it wasn't there whenever possible. How did I get away with this? It's a long story. . . started years ago—maybe I'll tell it some time.

I finally got around to my answering machine, pressing the appropriate buttons to pick up the messages. Three were from my current girlfriend—two friendly, one hostile. Not a bad average. Then there was one





from Julie Ann Wong—my boss. She told me to get my butt over to her office "when it was convenient." She didn't approve of my independence, and my recent failure in court didn't argue my case very well.

A few hours later, I walked up the stairs to the third floor. I didn't much like the elevator, and sort of picked my way through the sweaty chaos of the DA's suite of offices until I had gotten to Wong's corner.

She waved me in. Wasting no time on preliminaries, Julie Ann told me that the preliminary impression in the Barnes case was murder, and that I would probably be assigned to it, "if I behaved myself," I think were her parting words. Of course, this was just a little jostling on Wong's part. It would take several months before the police had finished their investigations and I was formally on it. But Wong had warned me. I should make like a Boy Scout and be prepared.

Three months later, the police had finished their investigation, and I was on the case.

The Assignment

This is how it happened. Believe me, I wasn't really after this case, but Wong called me in, and she didn't mince words.

"You're going to take the Barnes murder, Granger, and I expect a conviction. Murder One. Any questions?"

Joselyn Williams was also in the room, and I was getting some nasty glances from her direction, so I figured she had wanted the



case and was peeved that it was being foisted on me when I hadn't even asked for it.

Just to be difficult, I said, "Why don't you give this one to Joselyn?"

To which Wong quickly replied, "Why don't you mind your business and just tell me when you'll be ready to go to trial? We want a quick resolution for this one. It's a hot potato."

By "hot potato," Wong meant it had political implications—black victim, white perp, society folks, mayor's office. Yeah, I could see why they wanted this one buried fast, and why they were anxious for a conviction. But why me?

"Why me?" I asked.

"I don't know," answered Wong, completely without sincerity. "Perhaps because you've got something to prove and I expect you'll be real careful not to screw up."

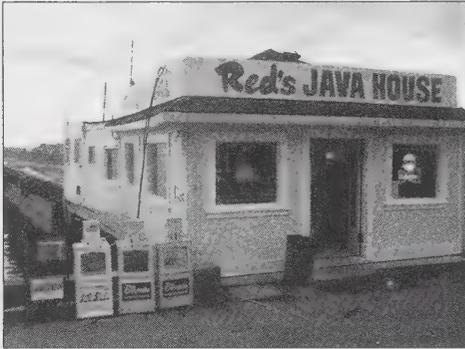
If there was any more sensible reason for choosing me to try this case, I could tell I wasn't going to find it out from Wong. The DA was not in a good mood, and I judged it was best to beat a hasty retreat and hope the case against Tobin didn't have any loopholes that he could use to slither free. Although I had not yet studied the evidence and the police reports in depth, scuttlebutt around the DA's office was that Tobin was going up the river and the cops had a pretty good case against him. Still, a good defense attorney can take a pretty good case and turn it into dogfood.

I mumbled something suitably humble and obedient, to all appearances a perfectly well-trained corporate canine, and tried not to let the DA's office door smack me in the butt on my way out. What was done was done, and, well, I couldn't think of any reason not to take the case. It was tempting to have an argument with Wong so I could get in a few shots about her political aspirations, but it was even more fun watching Joselyn squirm. Besides, it was good for her.

Looper in Red's Java House

As soon as I escaped Wong's office, I went looking for the investigator on the case. Looper. Inspector Looper.

Let me tell you about Looper. Cheerful. A real happy camper. What's the problem? It's simple. A cheerful homicide investigator



is. . . well, imagine Mary Tyler Moore as a mortician. Out of place. And besides, I think Looper likes me.

But Looper's a good investigator. I caught up with her at Red's Java House, and she dished out a lot of dirt over pancakes and syrup.

It turned out that there was trouble in paradise. A real rat's nest under the posh surface of the art gallery. It's just like I always say, "Scratch a socialite, find a motive."

Summarizing what Looper told me, there was some kind of love triangle going on. What did she say? Shtupping the girlfriend? A love letter? Now that was a good starting place. Society people are always shtupping each other's girlfriends/wives/mistresses. A motive for murder? Perhaps.

Then there was the question of the insurance money. Half a million dollars was a nice chunk of change, even for these high society types. If I could find any evidence that they had money problems, then this "robbery" might turn out to be a little too convenient. . . .

Of course, I was going to be like a little bug under a magnifying glass. Lots of heat put on by the fact that Yvonne Barnes, the deceased's wife, worked as a press liaison to the mayor's office. Ever since I'd helped to send one crooked mayor packing, the mayor's office tended to treat me like I was bringing this year's dose of the Asian flu in my briefcase. All part of the job.

CHAPTER TWO

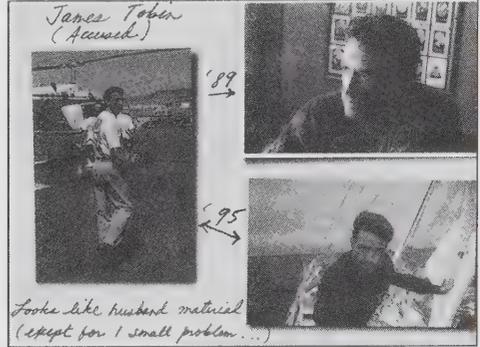
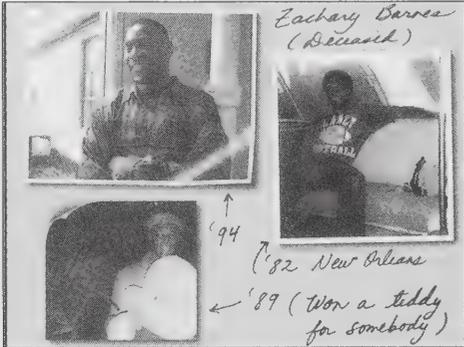
Examining the Evidence

The Crime Scene

I decided not to join Looper in her pancakes, but headed back to the office to look over the evidence she'd collected.

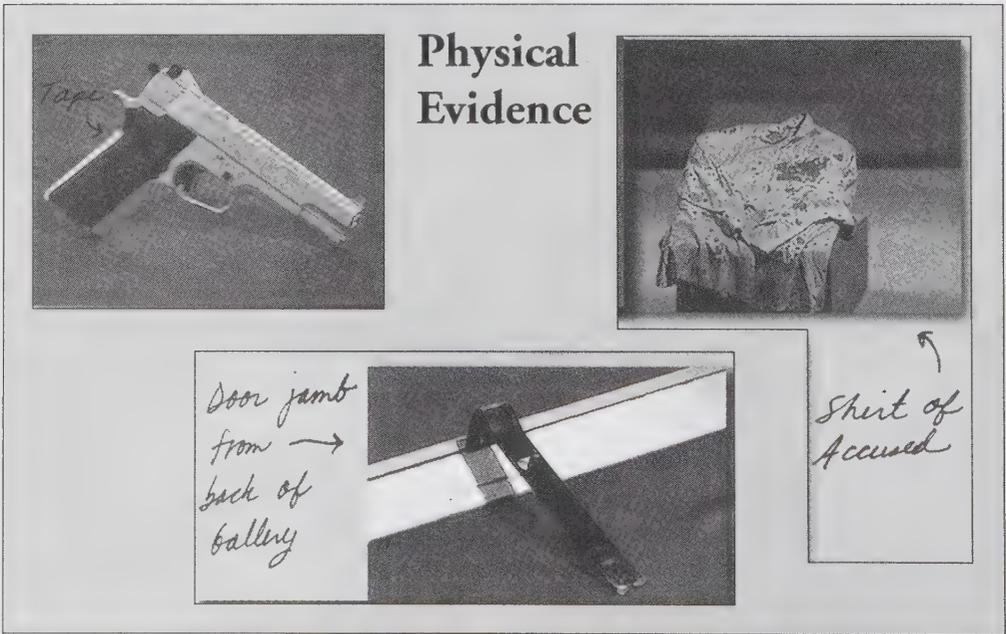
First, I looked at the crime scene photos. Best to go over them first. They tended to ruin lunch. These were typical. Showed Barnes lying in a pool of blood. Murder's never pretty. I put the photos away and shuffled through the folder. Found some scrapbook photos of Barnes and Tobin. Some lab photos of the main physical evidence—the gun, a bloody shirt, and a door jamb

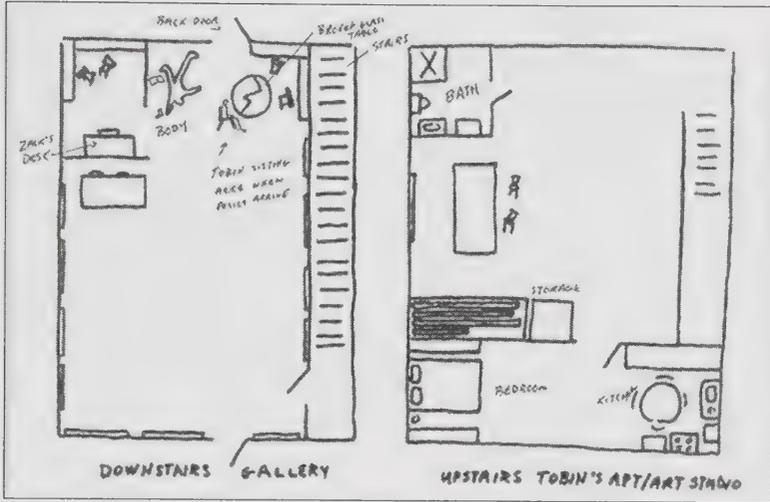




from the back of the gallery. Not having read the reports yet, I had no idea what these were, though it was a safe bet the gun was the murder weapon. Or the door jamb. Nah. Just kidding. It's OK to have a sense of humor in my line of work. I just keep it well hidden and only trot it out at Christmas parties and the like. . .

The floor plan of the gallery was next. It showed the position of the deceased and of Tobin when the police arrived on the scene, and the complete physical layout of the gallery. A glass table near the victim had been broken, and I jotted down my observation of this fact in my casebook. Of course, by this time I had virtually exhausted one ball-point pen on a legal pad.





Time to look at the witness reports. I decided to start with Ruby Garcia, Tobin's girlfriend. The report detailed her family situation and current employment. Typical girlfriend report. Sticking up for the boyfriend. Based on Looper's comments in the report, I wondered if she was as clean as she sounded.

Simon Alphonsus Lee. Itinerant errand boy. Not much here, but maybe a little question about his fancy motorcycle. Got to

POTENTIAL WITNESS BACKGROUND			
WITNESS NAME RUBY GARCIA	ADDRESS 1818 N. Stanton Place S. F. 94107	PHONE	
TYPE OF CASE MURDER/Armed	CASE NO. 20054433-65	DATE	
DATE May 4 4:44 17:4	INSPECTOR ASSIGNED Loughry, R. 3507		

Prior Convictions (List by Case Number) NONE

Age (approximate if unknown) 21

Description
Female / Hisp. / 5'3" / light brown eyes / approx 110 lbs

SUMMARY

Ruby Garcia is a 21-year-old female, single, living in San Jose. Her father is an unemployed car mechanic, youngest of 8 sons and 4 daughters. Two of the brothers, Octaviano and Jesus, have minor records. Ruby has a high school diploma '91. Applied for and received scholarship at Art Institute of San Francisco. She is currently a student in the Art Institute of San Francisco. She has lived with her boyfriend, Simon Alphonsus Lee, for the past year or so. She has been a victim of domestic violence towards her but she is covering for him. She has been a member of a club South of Market called 'The Club' for a couple months a week. She couldn't get anyone there to say anything, but she is the most cooperative witness I've ever interviewed.

POTENTIAL WITNESS BACKGROUND	
WITNESS NAME SIMON ALPHONSUS LEE	ADDRESS 1720 14th Street S.F.
TYPE OF CASE MURDER/Armed	CASE NO. 20054433-65
DATE May 4 4:44 17:4	INSPECTOR ASSIGNED Loughry, R. 3507

Prior Convictions (List by Case Number) NONE

Age (approximate if unknown) 21

Description
Male / Black / 5'10" / Dark / Dark / Medium / Tall / 170 lbs

SUMMARY

Simon Alphonsus Lee is a 21-year-old male, single, living in San Francisco. He is currently a student at the University of California, San Francisco. He has been a member of a club South of Market called 'The Club' for a couple months a week. He is the most cooperative witness I've ever interviewed.



POTENTIAL WITNESSES	
WITNESS NAME	ADDRESS
TYPE OF CASE	CASE NO.
DATE	INSPECTOR ASSIGNED

Prize: Convictions (list by Case Number)

Age (approximate if unknown)

Description:

SUMMARY

Page of

look into that. Otherwise, the guy seemed to have found his level, Looper's little crack about the District Attorney notwithstanding.

That left Yvonne Barnes. Looper's profile showed a smart, ambitious, upper-crust. . . uh, perfect lady. Tough, too. The most important clue in Looper's report dealt with the gallery. Apparently business had fallen off a little of late. I scratched an entry into my notebook and started digging through the file again. I came across a letter from the same

Yvonne Barnes. How generous of her to call me a "competent attorney." Her largesse knows no bounds.

The letter itself was revealing in the way that one person's bias can reveal more than they intend. Mrs. Barnes wanted to be sure the "real" facts of this case didn't get lost in "certain lurid rumors." I guess we know what "rumors" she's referring to. She mentions the theft that took place previously at the gallery; suggesting that the theft and the murder were linked. It didn't take a genius to get her drift. Subtlety was not her strong suit. Still, even though she had an ax or two to grind, she made some good points, so I filed the letter away, then rifled through the thick file until I found what I considered the *pièce de résistance*.

Yes, I had saved the best for last. It was a letter from Zachary Barnes to Ruby Garcia. It was a very revealing letter.

FROM THE DESK OF YVONNE BARNES
15 BARNES PLACE
SAN FRANCISCO, CA 94107

Dear Mr. Granger: May 17.

I am writing in regards to the murder of my husband, Zachary Barnes, and the case you are prosecuting against James Tobin. I understand you are a competent attorney, but I fear the essence of the case is getting lost in certain lurid rumors.

I provide the following summary so you may better consider the true implications of related events:

- First, I would like to remind you of the well-publicized theft that took place in The Barnes Gallery a month before the murder.
- Second, not long after the theft, my husband became suspicious of Mr. Tobin. His suspicions were fueled by several irregularities, not the least of which was Mr. Tobin's insistence that the alarm system be disabled a few days prior to the theft.
- Third, when my husband confronted James Tobin and aired his suspicions, Mr. Tobin admitted his crime - and threatened my husband's life if he went to the authorities. I was witness to the above threat, which took place five days before the murder.

It doesn't take a genius to see the facts behind this case. James Tobin is a puerile, self-absorbed man who will stop at nothing to advance his own interests. Though I have little faith in people of the world these days, I am still more than willing to take the stand if it will help convict my husband's murderer.

If I can be of further assistance, please feel free to call.

Sincerely,
Yvonne Barnes



*Printed from the
computer of E. Barnes*

Dear Ruby red, I want to talk to you about what happened between us the other night. The feelings are so strong I can't think of anything else. Ruby, things are getting so complicated, I don't know what to think anymore, but I've decided the least I can do is tell the truth. What I told you then was true, I have very deep feelings for you - all right, I love you. I've said it.

But what I did last night was not right. I love my wife Yvonne and shouldn't have allowed things to go as far as they did. (I don't know how I'll face her.) And it's not fair to Jimmy either. We both know he's made a lot of mistakes, but I'm sure he's not such a bad guy. Finally, Ruby, what should be important to you is your own work because it is good, and could get lost in all this mess. Capiche?

Love,

Zack

No doubt about it, Zack and Ruby had done it—not the murder, of course, but the other thing. . . in the sack. Murders often involve sordid little love triangles. Jealousy was often all the motive we needed to establish, but in this case there was more.

After examining the physical evidence, my two threads of investigation were pretty well determined. First, I would have to look into the details of the so-called theft that had taken place at the art gallery. Second, I would have to look into the jealousy angle. Greed and jealousy—the two pillars on which I would base my case against James Tobin. I couldn't have asked for a more solid and reliable foundation.

CHAPTER THREE

The Witness Tapes

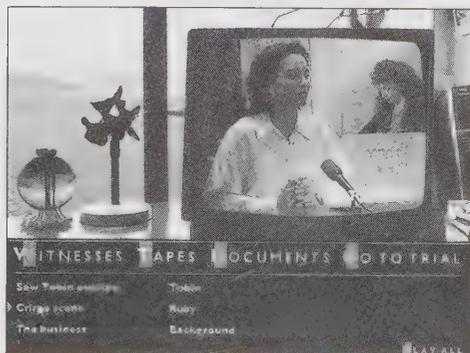
My next step was to examine the taped interrogations Looper had edited for me. There were four sets of tapes, one set for each witness, and one set for the accused, James Tobin.

Yvonne Barnes Tapes

I started with Yvonne Barnes. She was icy, taut. . . a rope. You see that sometimes; the shock is too much and only complete control prevents them from breaking down. But in Mrs. Barnes' case, I wasn't sure. I suspected that control was her middle name.

Saw Tobin Outside

Mrs. Barnes is anything but indecisive. She's sure Tobin murdered her husband and





blurts that out right away in the first tape I watched. Her opinion is not the issue here, but her observations are. She describes seeing Tobin in the alley behind the gallery, and she speaks confidently about what she saw. Tobin was wearing a black shirt, held a stick in one hand, and a yellow “bundle” in the other.



Crime Scene

As she describes the scene, I can see that the stress is getting to her. Her memory is good, though, and she seems to describe the scene accurately. I’m struck only by her slight defensiveness when Looper asks her if she’s seen the gun before. Think I might want to look into that. . .

The Business

A pretty straightforward account of the business arrangement between Barnes and Tobin. I do note a resentful tone when she describes Tobin’s rent as “next to nothing.” No love lost here, and a long ten-year history.



James

She recounts a history of increasing dysfunction on Tobin’s part, which she says escalated after his divorce. Asserts that “Zachary made Tobin.” This further confirms her low opinion of Tobin. She talks about his new paintings. “Nobody could have sold them. . .”



Ruby

Reading between the lines here, I get the feeling that Mrs. Barnes was closer with Tobin's former wife than with Ruby. But more importantly, she feels some sense of betrayal by Ruby. She must have known about the affair. But how does that figure into the case? Does Mrs. Barnes' knowledge of the affair connect any of the events leading to the murder?

Background

Mrs. Barnes is clearly a proud woman. And she has a right to be. She's an accomplished professional with a good job in the Mayor's office, but, by her own admission, she may not have been a picnic to live with. . . On the other hand, Barnes didn't commit suicide, so her domestic qualities aren't really in question here.

Ruby Garcia Tapes

First Reactions

Ruby's an attractive kid. Looks genuinely shook up—no surprise there. I get the impression she knows more than she's willing to say. They usually do at this early stage. Let's see what else she reveals.



Where She Was

She was parking the car during the murder. But more importantly, I can tell she gets touchy easily. When Looper gets tough, Ruby gets exasperated and has a tendency to clam up.

Crime Scene

She reveals some chinks in Yvonne's armor by her description of the crime scene events. What did Mrs. Barnes mean when she accused each of them of killing Zachary?

Who set up meeting

Not cooperative when Tobin's attacked. Make note.

Background

Ooh. Sensitive about her relationship with Tobin and possible role in breakup of his marriage. On the other hand, she can be sympathetic. Witness Looper's outburst and inability to say "bitch." Finally, she's proud of her scholarship and ability. . .



Relationships

Has praise for both Tobin and Barnes. Shows some distance from Mrs. Barnes based on her friendship with the former Mrs. Tobin. On the subject of her relationship with Barnes, she's uncooperative and clams up. We already know there's more to this than she's willing to admit. Got to find a way to get her to open up. Probably the letter is the key.

Art Theft

She's very reactive when it's suggested that Tobin might have been violent toward her. A pretty good sign that Looper's hit a nerve. She continues to buy Tobin's story and defend him, as well.

Simon Alphonsus Lee Tapes

First Reactions

His first thought is that he's been hauled in because of the stolen paintings. Some guilty knowledge here? I think I'll want to push him down that road. Unfortunately, Looper didn't pick up on it at the time. One thing, though. He doesn't look smart enough to lie for very long, or very convincingly. He should be an easy nut to crack.



Tobin and Zack

Seemed to be ready to believe that Tobin did it. Nothing concrete here, but there may be more under the surface—a seamy side to the Tobin/Barnes relationship that Simon knows but isn't saying. . . yet.



The Gun

Doesn't seem to know anything about the gun. Or does he?

Simon and Tobin

Has reason to be loyal and grateful to Tobin.

Background

Nothing here that wasn't in Looper's profile of the witness.

Ruby

This guy hasn't got anything bad to say about anybody. But he knows things he isn't saying. I'm sure of that. He's pretty turned on by Ruby, but wouldn't have the guts to tell her so, is my guess. But he'd defend her if she needed him to, and keep her secrets.



Zack and Yvonne

Seems to be pretty respectful of Barnes, but not so fond of Yvonne. Nothing much here. No apparent problem between Simon and Barnes, though.



His Job

Worked mostly for Tobin, but did some jobs for Barnes. Doesn't look Looper in the eyes when she asks whether Tobin ever asked him to do anything illegal. Was more forceful in his denials of other issues. This reaction is suspicious. What did Tobin ask him to do?



Tobin's Temper

Once again, Simon is the soul of discretion and totally lacking in candor. Tobin had no temper? I'm highly doubtful of that. As to threats to kill someone, who knows?

James Tobin Tapes

At the Crime Scene

He's obviously in pain, covered with blood. He seems well enough to tell his story about how Barnes attacked him, though. How the bullet would have killed him if he hadn't stood up and taken it in the leg instead. ****Make a note to have forensics check this out**** I'm sure the wound must have hurt, but he's a little dramatic about it—playing for sympathy? Diverting attention from something?. Tells about hitting his leg on the glass table, gun going off a second time. Then they take him to the hospital.





Yvonne's Story

He's cleaned up now, in the interrogation room at the police department. He says he has nothing else to hide. Acts sincere. Glib denial of Mrs. Barnes' story about seeing him in the alley. Categorical, even convincing denial. Is he lying? If so, he's pretty good so far.

The Gun

Looper must be getting to him because he's beginning to look a little haggard. Denies having seen the gun before. Says something about how Zack has talked about getting a gun. Is he making this up on the spot? Mentions a "scheme" about the art insurance. So he admits the theft was a fraud, claims it was Barnes' idea. Of course, one would expect him to say that. "Zack brought the gun. Zack tried to kill me right there in the gallery."

Cash Box

Denies seeing the cash box. Looper looks a little suspicious. Me too.

New Story

Looper mentions bags on hands of victim, mentions gunpowder tests. She threatens him with a murder charge if Barnes' hands are clean. He thinks about it, then says he lied. Looks like a little kid. "I didn't think anyone would believe me." Paints the same story up to the point of being shot in the leg. Talks about a struggle with Barnes, how the first shot hit Barnes, so he says he panicked because he didn't think he'd be believed. Says he shot





himself in the leg. He was looking pretty bad by this time, and finally asked to see a lawyer. Never too late, I guess.

Looking back over the tapes a second time, I'm struck with this man's ability to lie convincingly. It's clear that his first story is a lie; at least part of it is contradicted by his later story. Which brings into doubt other aspects of his story. In fact, I don't believe him at all. I think he did it, with premeditation. I think he planned to kill his partner, Zachary Barnes, and try to make it look like a robbery. When he was interrupted by the early return of Yvonne Barnes, he quickly ran upstairs and shot himself to make it look like self-defense. That's the story I'm going to try to prove, but I've got to have some help. I need witnesses and more information. Time to get on the road. . . .



IN THE 1st
DEGREE

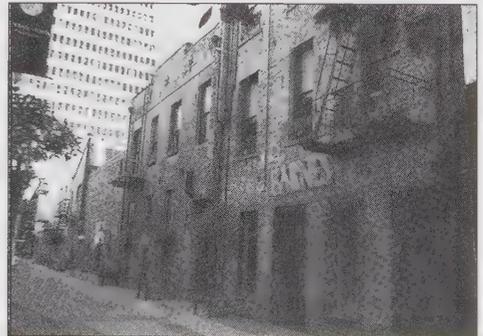
PART TWO:
THE INTERVIEWS

CHAPTER FOUR

Interviewing Ruby

On my way to interview Ruby, Looper called. We joshed a little, and then she told me about the gun. It was registered to Zachary Barnes' cousin. So far, Looper had struck out trying to link it to Tobin. For a first degree conviction, we would need to show that Tobin acted with premeditation, which means, we would like to show that he was in possession of the murder weapon before the events that led to the crime occurred. This would be an important link in our chain of evidence.

I met Ruby at the apartment she and Tobin shared above the Barnes gallery. She was in the paint studio, surrounded by paints, old rags, and half-finished canvases. She sat in a wooden chair, her





arms folded in a defensive posture, and asked me why I was going after Jimmy. She was still convinced it was an act of self-defense.

I decided to start with Zack, and take an easy approach.

“Did people like Zachary Barnes?” I asked.

She seemed to loosen up when she thought about Barnes and didn’t have to be defending Tobin. She liked Barnes, that was clear, and admitted that Barnes’ personality had a lot to do with the success of the gallery—even if the guy’s sense of humor did leave a lot to be desired.

I decided to keep things light. Remembering her obvious pride in her own accomplishments, I asked, **“Did Zack ever take an interest in your work?”**

Now it was time to liven up the interview. She was feeling better, I could tell. Her arms were no longer folded and she was beginning to look relaxed. Gently, I asked, **“Did something happen between you two?”**

She took it better than I thought. It was apparently not a big deal to her. She admitted that she had been motivated by jealousy over Tobin’s infidelities and had gone to see Barnes, ostensibly to





talk about her work. But then she admitted that “he and I did it.” She seemed sort of pleased with herself. I thought it was strange that she was so casual, so I asked her about it, still real gentle so she wouldn’t show that temper I saw in the tapes with Looper.

“Given what happened to Zack, do you feel getting involved with him was a mistake?”

Well, this got more of a reaction that I had expected. Suddenly, Ruby’s face fell. She was full of remorse, blaming herself for the whole thing. I felt sorry for her.

“Ruby, it’s ridiculous to blame yourself for everything that happened,” I told her, offering a sort of fatherly reassurance. I was letting her off the hook. She looked down at the floor and thanked me. I guess I felt I was getting somewhere with her. Now for something a little more hard-hitting.

“Did Jimmy ever find out about the affair?”

She told me about the note—the one we already had in the evidence bin—and continued to blame herself, saying “Sometimes I can be so stupid!” I still felt sorry for her, but I wanted to know how much she knew. She said Tobin snatched the note from her before she had read it all.

“Snatched it? So you never got to see what was in the note?”

The floodgates really opened now, and she spilled her guts. . . about how Zack died before she could talk to him about the note; about Tobin’s jealousy and how nobody but Zack and Yvonne were ever nice to her. . . that sort of thing. Zack was going to help her get a show. Poor kid. She was going to have a tough time in the real world.

So I figured I’d gotten all I could from her on the subject of Zack, and turned to the Art Theft, shakier ground, to be sure. This was bound to raise her protective issues as I skirted around Tobin’s possible involvement in the “theft.” I decided to avoid mentioning Tobin at first.

“Tell me about the theft,” I asked simply. Let her put it in her own words, with any spin that came to mind. That way, I wasn’t making any accusations or insinuations. We’d get to





that, eventually.

She told the predictable story of a mystery thief who cut the paintings out of their frames, probably to sell in another country. I wasn't sure if she completely believed this story. Did I detect a hint of doubt around the eyes? I decided to keep warming her up by asking about Tobin's work. Of course, I was going somewhere with all this, but she, presumably, didn't know where that was.

“Like a lot of people in this city, I think Jimmy's a very good painter. Can you describe the stolen works?” Spoken like a true art aficionado. I was careful to call him Jimmy, like she did. We were becoming pals.

Ruby described the new series as something “darker” than before. She also admitted that Tobin had removed a couple of his favorites from the gallery the night before. Strangely, she seemed to see nothing odd or suspicious in that. It has been my experience that a criminal's wives and girlfriends are generally the last to accept the truth about their husbands/boyfriends. . . whatever. Ruby was Cleopatra, queen of de Nile.

When she motioned toward Tobin's favorite, which she claimed to like, it was all I could do to look interested instead of telling her it was hideous and she was a dupe. Instead, I asked, diplomatically as hell, **“I was just wondering, how did the public respond to Jimmy's new work?”** As if I didn't already know.

I could see in Ruby's face a mirror of Tobin's attitude toward “the public.” Do you ever get the sense that you're listening to someone else's words when you hear a person talk? That's what it was like hearing this sweet, confused girl spout the cynical ideology of her famous boyfriend. As if the public was wrong and they didn't understand the true genius at work. She quoted



Tobin—this time directly. “You have to paint what you feel.”

Well, it was show time. I had been leading up to this, and I finally had to broach the touchy subject of money; **“Do you mind if I ask you some personal questions about finances?”**

She sort of shrugged her shoulders and said, “I suppose.” She didn’t look any too happy, and her knee was doing a dance of its own. I didn’t think much of it. Most people are nervous when being questioned by a DA. Like I’ve said before, it comes with the territory.

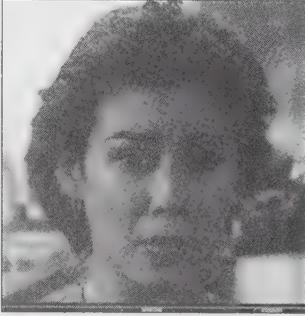
I tried to put her at ease, and kept my voice neutral. There was no hint of accusation or suspicion in my voice. Just a sort of casual question. **“I appreciate your help. Did the failure of Jimmy’s paintings in the marketplace create a financial crisis around the gallery?”**

The picture she painted for me was of two men who had gotten used to a lavish lifestyle, only to see it disappearing before their eyes as Tobin’s new paintings failed to sell. I could see the wheels turning in Ruby’s head as I gradually led her to the possible conclusion that money problems could have led to Tobin or Barnes being involved in the theft. When I asked, “Could one of them have been involved in the theft?” she answered, “I suppose it’s possible.” Now we were getting somewhere. Here was the big question.

“Ruby, can you tell me where Jimmy was, the night the paintings were stolen?”

“No. Not really,” was her answer. But her eyes told another story, darting around and looking elsewhere. You can tell a lot from the eyes, and I knew she was lying. But she got defensive when I pressed her. Good old Ruby. Loyal to the bitter end.





I switched tactics and went after the gun. That weapon was critical to our case, and we needed to link Tobin to it. My guess was that Ruby could help with that. But it wouldn't be easy to break through her staunch defense of Tobin. I started with Zack, knowing this wouldn't raise her hackles.

“Do you know if Zack owned a gun?” I made the question sound like, “Do you know if the 49ers won last week?”

The thinking took visible form on Ruby's face as she considered this question. Her brow furrowed in deep concentration, and finally she said she didn't think it was the kind of thing Barnes would have. Now to give her a little surprise.

“You might be relieved to hear the gun that killed Zachary Barnes was registered to his cousin.” No danger for beloved Jimmy here.

I think my little sleight of mouth worked. It's always good when you can surprise a witness. After all, they almost always know more than they're telling, and getting them off balance can sometimes jog their mouths to freedom. Besides, it was clear that she had other ideas about the gun's origins. Jimmy, perhaps? I decided to go with that thought.

“I thought you'd be relieved, but you sound surprised.”

She was relieved, she admitted. Then. . . bingo! The break I was looking for. “It's just—I went into Jimmy's cabinet, the night before Zack died, and. . . well, this whole thing is just so confusing.”

Yes? Go on Ruby, I thought to myself. Don't stop now!

Aloud, I said, **“Think back and see if you can remember what you saw.”** Very gentle. No accusations or suspicion. Just a kindly authority figure helping her remember.

I could tell this was difficult for her, but she was really an

honest kid. I'd counted on that. Now she revealed that she had seen something in the cabinet. A gun, she said at last.

"A gun?" I blurted out, practically panting. I caught myself quickly. I couldn't blow it with her now, even though I had what I had come for. "Where is this work cabinet, in the gallery?" I asked, basically just babbling so she wouldn't see how excited I was.

"No," she told me. "Upstairs in me and Jimmy's loft, in the painting studio."

"When did you see it?" I was under control again. Gentle. Soft.

She was rubbing her neck like maybe it would help her think or something. "The night before Zack's death," she answered quietly.

"Could you identify the gun if you saw it?" I asked, hopeful that she was past prevarication.

"I think so." Good girl! I almost hugged her. She was a little tentative and obviously sad about it all, but I couldn't help that. Anyway, I had what I was after.

"I guess that's all the questions for now." I packed my legal pad in my briefcase and stood to leave. I handed her a business card and told her she could call me day or night if anything came up. That was pretty standard, and I didn't figure I would hear from her, but just in case, I included my home number. You can never tell when a witness will come up with an attack of guilt or a sudden surge of memory.

"What do you think the chances are that Jimmy will go to jail?" she asked, nervous and I think afraid to hear the answer.

I was honest with her. Well, basically. "It's hard to say," I told her, though it wasn't hard for me to say. "A lot depends on what you say on the stand," I added, I don't know why. Just giving her something to think about. That might have been a mistake, but I couldn't take it back, now. It was definitely time to leave and I made my way out to the street. I turned for a moment to study the Barnes Gallery. It was a sad-looking place with its owner dead and its principal artist in jail. I fired up the Beemer and headed back to my office.



CHAPTER FIVE

Interviewing Simon

Simon was working out in the industrial area. While I was driving over there, I grabbed the cell phone and called my machine at the office. It was past seven, the office was closed, and my voice mail was operating. The machine told me there was one message waiting. I played it and nearly drove into a truck! It was Tobin. Calling me, of all people. Well, couldn't hurt to listen, I decided. Who knows what BS he's going to sling to get himself off. Could be revealing.

So Tobin basically accused Simon of stealing the paintings under orders from Zack. There was something about a horse costume, and Tobin called my attention to the new Kawasaki bike that Lee had somehow obtained shortly after the theft. Tobin further claimed that Lee admitted his guilt when confronted and blamed Zack for putting him up to it. I scribbled some notes, balancing a pad on the steering wheel while dodging dump trucks, as I drove through a construction zone.





I found Simon at the messenger service building. We met in the bicycle warehouse in back. He sat on a bench-like affair in front of a yellow, Formica-covered table. He didn't look happy to see me. I had asked him to wait for me at work instead of going home for the day. I thanked him for that, and he was off-hand about it.

"No problem," he tossed out.

"I thought you quit this place to work at the gallery," I ventured.

Simon shrugged his shoulders. "I did, but since the gallery folded I had to come back." He didn't sound overjoyed, but this was a guy who sort of let the world kick him around and without a lot of complaints.

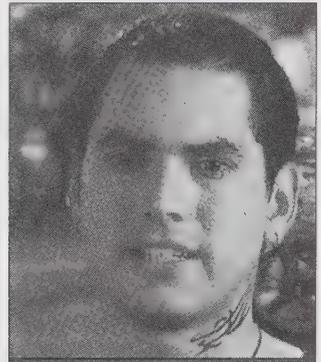
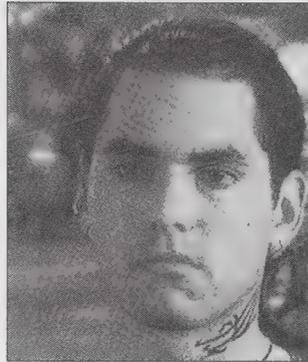
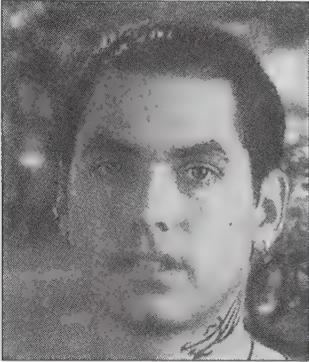
"No deliveries now?" I asked, to be sociable and break the ice a little.

"No," he answered. "Things shut down at 7:00." I could tell he had something to say, so I waited, and a moment later he continued. "I just want you to know that everyone thinks I'm on Tobin's side, but I'm not."

This could be good. Obviously, Tobin wasn't exactly on Simon's side, either. Nothing like pitting them against each other. . . "Why do they think that?" I asked innocently.

"I don't know," he answered, meaning something else, I think. "I guess 'cause I was his assistant, and I had to do what he said."





“Why?” I asked, just to needle him. I think it worked, too.

“‘Cause he was my boss. I had to kiss his ass—make him think I was always on his side—which I wasn’t.”

There was some heat in this answer, and I got a glimpse into the relationship between Lee and Tobin. There was no love lost here, and Simon didn’t strike me as a great art lover. But what did he love, besides Kawasakis with big engines? Time to get to work.

I started with the art theft and went directly to the point. With this kid, I didn’t figure to play all the little kissy-face games I had with Ruby.

“Simon, did you stop by the Barnes Gallery the night Tobin’s paintings were stolen?”

He got interested in the ragged sleeve of his sweatshirt for a moment, feigning a casual disinterest in what I was saying.

“Why?” he asked.

“It’s likely to come up in court.”

So he told me, pretty matter-of-factly, that he had stopped by to borrow some petty cash from the gallery. He seemed somewhat



proud of the fact that they let him do this, as if not many people had trusted him that much in the past. I let that go and asked if anyone else was in the gallery when he stopped there. He said no.

Well, the motorcycle was a key question mark here. I went ahead and asked him about it. **“I noticed, out front, that you have a Kawasaki,”** I said.

He was pretty proud of his bike. That much was clear. “Yeah. It’s mine.”

I wanted to keep him talking, so I asked, “What size?”

“750.”

“How long have you owned it?”

“I got it a few days before Zack died.”

“How much?”

“Fifteen hundred.”

“Are you making payments. Or did you pay cash?”

This got his attention. I was getting pretty specific about his bike, and he sort of squinted. “What are you asking for?”

I decided to keep my interest purely casual. “Just curious,” I stated. “Did you pay up front?”

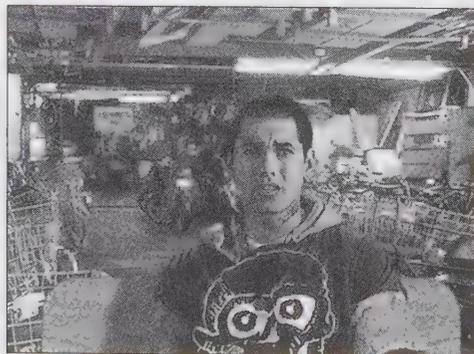
“Yeah. I did.” He was angry, daring me to find some fault with it.

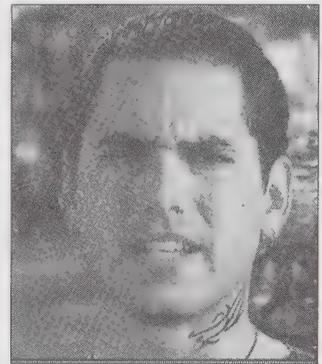
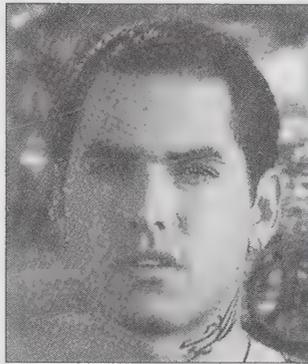
I decided to see if I could trap him in a lie. **I asked what he was wearing on the night of the theft.**

“A sweatshirt. . . like this. . . and shorts.” He fingered his sweatshirt and spoke slowly, measuring the words—or making them up. “I remember, because it was cold out.”

Right. So why did Tobin say you were in a horse costume? I thought. Even Tobin wouldn’t make up something that absurd.

“I just picked up a call off my message machine from James Tobin. Want to know what he told me?”





“What?” He was trying not to look interested.

“He said he saw you in front of the gallery the night the paintings were stolen. You were dressed up in a horse’s costume.” Let’s see what he does with that.

Eyes looking down and to his right. Caught in a lie. Oh, well, Simon. Make the best of it. “You’re right, I forgot. I was the back half.”

“Could’a guessed,” I mumbled under my breath. “He said you stole the paintings and Zack gave you the money for the Kawasaki.”

That got his attention for real. “Yeah? He’s an asshole,” he spat out. He was really angry all of a sudden. “Bunch of frigging lies. I was at the gallery, came by to get some money, but Tobin was the one stealing the paintings. Not me.” Ah. . . Divide and conquer. Tobin was about to be cooked and served up on at least one count.

“He see you there?” I asked with all the casual nonchalance of a snake.

“Yeah, he saw me, put his arm around me, and asked if I would do him a favor.”

“What favor?”

“He asked me to be quiet. To say nothing, to nobody. I can’t believe he’d try to stick this crap on me.” Yeah, Simon, but you’re not facing a first-degree murder rap, now are you?

I thought about asking if Tobin had paid him off, but I changed my mind. I could have pressed him, but I figured I would get what I needed later. I decided to go after the gun next. He was mad, now, but I figured he was done with protecting Tobin, or anyone else, for that matter.



“Did you ever see a gun in the Barnes Gallery?” I asked.

I thought he was getting smart, but though his lips said, “I don’t remember,” his body language said, “I’m lying.” His head bowed and his eyes were looking down at his shoes. Not a good liar. I decided to press him.

“Simon, I’m not in the mood for games. Did you ever see a gun in the gallery?”

“I’m not playing games,” he said with some heat. He was getting mad again. Good.

“We’ll see,” I said ominously.

He thought about it for a long moment, then spoke in a drawn-out monotone, “Yeah. . . In Zack’s office—the drawer. It had a silver facing and black grips.”

I pushed home the point. “You didn’t mention this to Inspector Looper.”

He shrugged. “No, I was pretty upset.” As if that was some kind of reason, and I was supposed to accept it. Sure, your honor, everybody lies when they get upset.

“Being shook up is no excuse for lying,” I told him. **“Did you ever actually see Zachary with the gun?”**

He took a deep breath. Good. Now it’s time to bare all your sins. “Yeah,” he said.

Quickly, I asked “When?”

“Monday night—the week before he died,” he continued with a shrug, as if not positive of the date. “Zack was standing at his desk. He unsnapped his brief case. . . and slid a pistol into the drawer.” He motioned with his hand to illustrate the action.

“What’d you do?” I asked, intrigued.

“I got out of there,” he said, as if that was what anybody would have done. “I don’t think he ever saw me.”

I had a hunch; I wanted to know, **“Who’d you tell about the gun?”**

He denied telling anyone about the gun. I pressed him about Tobin, but he still denied it. I wasn’t sure it was true. At one point, he said, “Tobin can play just about anybody for a fool.” And he admitted that he had been one of the fools, sometimes. Finally, he said, “Look, things were pretty tense around there. Tobin said Zack was out to get him, and I believed him. At least I did then.”

“The way you describe it, you should have told your friend Tobin about the gun,” I suggested mildly.

“Why would I do that?”

I led him along. “You say there was all this tension in the gallery. Then Zack stashes a gun in his office, but you don’t warn your friend Tobin. Who’s gonna believe that?”

Simon was turning a little red in the face. He was like a kid caught by the hall monitor out of class. Kids like this all think we’re stupid and we’ll accuse anyone of anything. “Look,” he yelled. “I’m not stupid. The police say Tobin plugged Zack with that gun.”

“So?” I asked innocently. He was definitely getting ready to blurt out the truth. I could feel it. I just strung him along a little more.

“Everyone knows I was Tobin’s slave . . . that I would do just about anything he wanted. If I go to court and testify that I told Tobin about the gun, they’re going to think I was in on it.”

“Were you?”

“See?” he said, as if this proved his point.

I ignored his question and posed one of my own.



“There’s a good chance, before this thing is over, Tobin will tell us the whole story. What will you do then?”

This stopped him short. Clearly, this was a young man on the horns of a dilemma. “I don’t know,” was all he could think of after several seconds of deliberation.

Time to bring out the heavy stuff. But I wanted to ease into it, so I asked him about Ruby. I had some suspicions, and he confirmed them.



“Were you and Ruby close?”

This loosened him up and he told me how they were bonded because they were both the youngest in the gallery group, and how they had been spending a lot of time together. When asked, he admitted that he would have been happy to get involved with Ruby, but that she

seemed to like older guys.

“Maybe she’ll change her mind,” I lied. Then I continued with my interrogation. **“Simon, do you know anything about a letter Zachary Barnes wrote to Ruby Garcia?”** If they were so close, he should know about the little peccadillo between Ruby and Zack, though I half expected him to lie about that, too. He surprised me.

“Yeah,” he said with a proud smile. “I’m the one who gave it to her.”

“You?” I was clearly taken aback.

Simon continued with more animation than I had seen in him previously. This obviously meant a lot to him. “Ruby called me, said Zack had something for her. . . and could I pick it up on the way to work.”

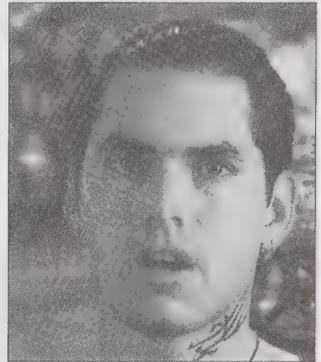
“You know what was in the letter?”

“No,” he said. Was he a little disappointed?

“So you gave it to her. . .”

“Yeah. She was really excited. Went straight in the next room and started reading it.” His expression turned a little sour as he added, “I got really pissed.”

Sometimes, I was even beginning to like Simon. He was so. . . simple. “Why?” I asked, just to keep him talking.



Shrugging, he told me, “I don’t know. I guess I didn’t want to be their ‘love messenger.’”

Hmm. Could it be our little boy scout was caught in another lie? **“Why’d you call yourself a ‘love messenger’? I thought you said you didn’t know what was in the letter. Simon, you opened it, didn’t you?”**

Immediately, the lie came to his lips. “No!” But I bored in.

“You were jealous, right?”

He repeated his denial, started to say something about Zack not even sealing the thing, but I didn’t let him finish.

“You had a crush on Ruby, didn’t you?”

“No,” he said, for the third time, then continued in a defiant tone, “I opened it—and this is the truth—because James told me to start watchin’ out for stuff.”

I asked him what he meant.

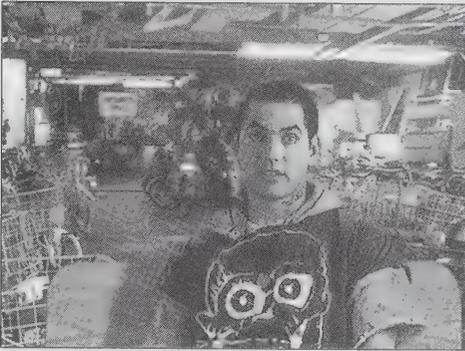
“Zack had been acting kinda weird lately—at least that’s what James thought—an’ he wanted me to keep an eye on ‘im.”

Finally, the truth squeezed out of that little hole Simon called a mouth. But there was one more thing I needed to know to seal Tobin’s fate.

“Did James Tobin know about this letter?”

Simon didn’t hesitate this time. He told how Tobin had caught Ruby reading the letter and described what he heard—that they had had a fight, that Tobin had then come downstairs, punched a hole in the wall, said, “Zack has been screwing Ruby and he’s going to be sorry,” then wiped a vase off his desk angrily. At that point, Simon says he got his “butt out of there.”

There was more here. I was pretty sure of it. I pushed a little harder. **“Simon,”** I said firmly, **“you told a very different story to Inspector Looper the night of the murder.”**



Well, he made his excuses first. “I was James’ friend. . .” and all that. But then he told how he and Ruby had talked after the letter incident and how she had been shoved around. His voice softened when he talked about Ruby. It was clear he felt bad. Why? Because he had obediently told Tobin about the letter and which, in his mind,

caused the whole fight.

Finally, when he was finished with this latest little revelation, **I asked him if he had ever told Ruby what he did.**

He was as outraged as I had seen him yet. “Of course not,” he blurted out. “What am I going to say, that I was Jimmy’s little toad—that I was spying on her?”

I could see he was mighty worried about what Ruby would think. “Don’t worry,” I offered, “she won’t be in the courtroom while you’re testifying. Witnesses aren’t allowed to. . .”

He interrupted me even more agitated, “Are you crazy? She’d hear about it.”

I was getting a little tired of all this. “Simon.” I tried to sound very firm. “How are you going to feel if Tobin gets away with what he did?”

It didn’t have much effect on him. He continued to escalate, and I was afraid I was losing control. “I don’t give a damn what happens to that asshole.” He was practically yelling by now. Then I think what I said finally penetrated his thick skull, which was remarkable in itself. “All right,” he said, calmer now. “I’ll think about it.”

Now I could have offered some kind of deal to save him embarrassment, but I wasn’t about to do so. This kid needed to come clean. On the stand. So I told him, **“Simon, I’m going to insist you tell the full story in court. Do I have your full cooperation?”** My tone of voice said I wasn’t going to take no for an answer.

He still tried to weasel out of it. “I don’t know. I really don’t want Ruby to. . .”

“I don’t care what you want,” I interrupted, completely taking

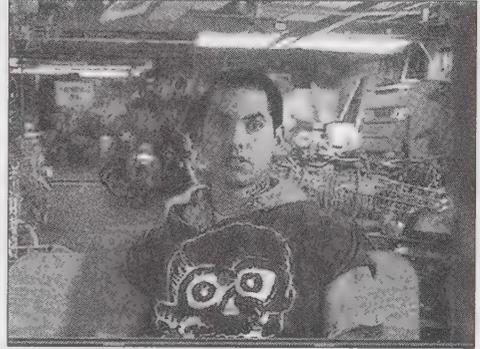


over. I could see all his parental issues coming up before my eyes. I was his father, or any authority figure who'd ever told him what to do against his will. And I didn't really care. "Your job on that stand," I said in my best no bullshit voice, "is to tell the truth."

He looked away, completely cowed. He said, "Yeah," but I wasn't entirely sure he meant it. It didn't really matter. I would handle Simon Alphonsus Lee on the stand. I had no doubt about that. I stood up to go.

"That's all I have for now, Simon. I just hope you get this all sorted out by the time you're called to testify." I wasn't in the mood to coddle him.

"Hey, I can't wait," he answered sarcastically. Good old Simon.



CHAPTER SIX

Interviewing Yvonne

I was on my way to Yvonne Barnes' posh loft/apartment South of Market when I got a ring on the car phone. It was Looper. She wanted to tell me about the "jimmy" marks on the door jamb of the Barnes Gallery. I couldn't tell if she was making a joke—you know, "jimmy" and Jimmy Tobin? She made a crack about taking the door jamb—"the whole damn jamb"—but that was about par for Looper's sense of humor.

I made it to the security gate and rang the bell. Mrs. Barnes buzzed me in and I took the stairs to get a little exercise. She was





on the fourth floor. I was puffing noticeably when I got there, out of breath, and she looked at me with an amused expression. I guess to Mrs. Barnes, I must have seemed to be some lowlife she was forced to deal with. She was gracious; I'll give her that, but I didn't flatter myself that she and I were in the same social stratum. Of course, if I

could convict James Tobin, she and I would be great buddies—for at least five minutes.

I decided to start with the art theft. Yvonne's letter clearly focused on that event, and, as if I had any doubt, she asked me if I had gotten the letter. OK, Mrs. Barnes. We'll deal with the letter and the art theft, but under my terms.

Well, Mrs. Barnes certainly knew how to control a conversation. She managed, almost in one slightly breathless string of sentences, to tell me why Tobin had killed Barnes (the insurance fraud cover-up, of course), to dismiss the "sordid rumors" of an affair as irrelevant, and to bring up her letter again. Dogged and persistent.

Well, I could tell that I'd better deal with the letter, or she'd probably become antagonistic. This woman wanted to know she was boss. I decided to humor her, for the moment.

"Your letter was very helpful, Mrs. Barnes. Let's explore some of the details."

I knew I had scored with her. Her simple, "Thank you," was loaded with satisfaction.





“You mention in your letter that Tobin threatened your husband’s life. . . .”

She spoke confidently about a night roughly a week before the murder when she had overheard an argument between Tobin and her husband. According to Mrs. Barnes, Tobin had stated that going public about the “insurance thing” would be the end of the gallery. When Barnes responded that the gallery would survive, Tobin had apparently uttered the threat, “Not if you don’t.”

“You heard him clearly?” I asked.

“Oh, yes. He was threatening my husband’s life.”

Now, I had no way of verifying the truth of what Mrs. Barnes was asserting, but she spoke about it confidently and with conviction. She would certainly make a credible prosecution witness, despite her obvious bias in the situation. Sometimes the truth is what the courtroom decides it is. Mrs. Barnes could be an effective weapon against Tobin.

I asked about the alarm system, one of the key elements that pointed to the defendant, if correctly interpreted. I was interested in what her testimony on the subject might be.

“Oh, yes, but supposedly there had been a lot of false alarms.” Was there a touch of cynicism in her voice?

“Why didn’t you have it fixed?” It seemed the reasonable thing to do.

“Zachary said that money was tight right now.” Oh?

“I thought the gallery was a huge success.” I tried to sound surprised.

“It was, but very few of Tobin’s paintings sold at the last show, and that created a cash flow problem.” She said the name Tobin like it was something dirty.



I asked the important question. “Was the alarm turned on the night of the theft?”

She shook her head. “No,” she told me, slowly. “Tobin shut it off a few days before, saying that he was sick of it going off. After the robbery, Zack and I were both suspicious.” No kidding.

When she didn’t have anything else to add, I turned my attention to the crime scene, and what she had observed.

I started with Tobin’s story. **“You’re aware I assume that James Tobin admitted to firing the gun that killed your husband.”**

With a little shake of her head, she said “Yes, I read the papers.” There was a touch of smugness in this that I didn’t entirely understand. But I continued on with my questions, figuring that her smugness would disappear soon enough.

“He claims it was self-defense, and that your late husband was plotting to kill him.

As expected, she was incensed. She accused Tobin of setting up the race track meeting to use as an alibi. She claims that her arrival on the scene caused his plans to fall apart. I wanted to know more.

“What happened when you returned?”

She gathered her thoughts for a second. She spoke confidently, looking me directly in the eyes. “Ruby had just dropped me off when I saw Tobin in the alley outside the gallery doing something by the door.” Her gaze fell, then. “He’d already killed Zachary by then.”

This last statement would draw an instant objection from Cynthia Charleston, Tobin’s defense attorney, if we were in court. But we weren’t, and besides, I wouldn’t mind Mrs. Barnes voicing her opinion. But I wanted to hear more.





“Remember any details?”

“Distinctly,” she said, and her expression was like a laser sight centered on Tobin’s head. Again, I thought, she’ll make a great witness. “He carried a yellow, like, bag or bundle and a big club. He was wearing a black T-shirt with the gallery logo.”

I scratched some notes on my legal pad. Items for follow-up; “What happened next, in the street?” I asked.

“After he spotted me, he went inside, panicked, and shot himself. That was the shot I heard.” Probably, Mrs. Barnes. Probably so, but you didn’t see it for yourself, did you, I thought. But I kept these thoughts to myself. I wanted to get her to think about this “club,” which was not a club at all.

“**Are you sure it was a club?**” I asked, prodding her memory.

I had to give it to her. She wasn’t like some people—completely stuck with one image. She actually admitted she had been a distance away. I thought I’d give her something to think about.

“Did you know there were fresh crowbar marks found on the door jamb?”

She didn’t miss a beat—practically interrupted me. “He was faking a break-in!” I could see the lights going on in her head. “That was a crowbar he had.”

I encouraged her in this direction, attempting a little humor at the same time to loosen her up. There was more to come. “You’re right. You should be writing murder mysteries.”

She waved off my levity. “This isn’t a murder mystery.” After a moment of thought, she added, “You know, that’s why the place was in such disarray.”

“But Tobin is going to claim the mess was all a result of the brawl he and Zack had.”



“Oh, he’s lying. . .” she said quickly, as if this were an established fact, not open to dispute. I could see the wheels turning in her head. “A fight between them could account for the broken table and the mess, but why was the cashbox lying out?”

I checked my legal pad and found the other item I wanted to clarify. **“I’m having trouble with your description of Tobin’s shirt.”**

She seemed to take umbrage to the question, as if I were questioning her veracity. But I didn’t let up. I had to deal with the inconsistencies in her story.

“You said you saw him in a black T-shirt that morning, but we know he was arrested in a yellow dress shirt.”

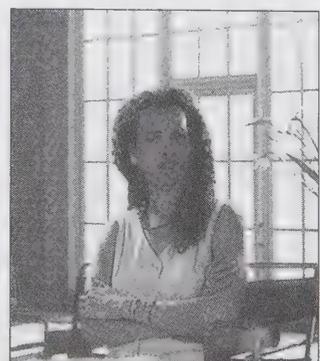
I got the feeling this was the first time she had considered the discrepancies in her story. But she didn’t take long to make the proper connections. Closing her eyes, she called up the vision of that morning. “I have such a clear image of him standing there in that black shirt, carrying that bundle. . .”

I prodded her along. “Yvonne, what color was the bundle?”

“Yellow,” she said. Then it hit her. “My God. Tobin changed shirts. He had to change ‘cause he got Zack’s blood on the other shirt. He changed into one of the black T-shirts from the box.”

I confirmed her idea—how Tobin had wrapped the gun in the yellow shirt when he went outside.

She was fuming. “Oh. . . He is such an evil, calculating man,” she said slowly as the reality of the situation took shape for her. “After spotting me, he went back inside. As my husband lay there dying, he was figuring out the story he told me—about this big fight they’d supposedly had. That’s when he put the gun on the floor and changed into the yellow shirt. That son of a. . .” She stopped herself short. Remarkable control, I thought. Sort of scary.





Now I wanted to bring up what might be the most sensitive issue. But Yvonne and I had a real camaraderie going here. Now was the time. . . I decided to work my way up to it, though.

“What can you tell me about Zachary’s cousin, Daryl Barnes?”

Well, I must have gotten too close, because she once again made an attempt to assert control over the situation.

“Mr. Granger, I have a question of my own first. Am I right to assume you have a pretty good case?”

Quick on the draw, I turned her question to my advantage. “We had a very good case until I learned the murder weapon was registered to Daryl Barnes.” Ball’s in your court, madam.

“But. . . there’s a plethora of evidence.”

Back to the subject. “Mrs. Barnes, please give me some background on Daryl.”

She seemed to have given up grilling me for the moment, and she answered, “He’s a nice guy, a city police officer.”

“Has Tobin ever met him?”

“I doubt it.” She was playing with her hair. This was about as close to a nervous gesture as this ice queen was likely to make. I had a feeling I was getting somewhere.

“So Tobin’s never been over to Daryl’s house?”

“No.” She almost seemed disappointed to have to admit this. I needed to pursue the angle of Tobin’s access to the gun.

“How do you think Tobin got the gun?”

She didn’t seem to see the importance of Tobin’s access to the gun. I told her it was important.

“Why?” she asked. “He’s admitted to pulling the trigger, and we know he lied to the police. It’s obvious he’s guilty.” Yes, Yvonne. It is. But to get a first degree conviction. . . What was





she hiding? Why didn't she want to talk about the gun? I decided to lay it on the line.

“Mrs. Barnes, you do understand that to get a conviction, we must tie the murder weapon to the defendant?”

“Well, there's something I haven't told you.” I watched her struggle, as if exploring some inner dialog—perhaps an issue of conscience. I waited patiently, and at last she spoke. “I borrowed the gun from Daryl, and brought it here, to the loft.”

You could have knocked me over with a canary feather. We knew from talking with Daryl Barnes that the gun had disappeared mysteriously, but we all assumed that Zachary Barnes had taken it. Why hadn't Looper gotten this little gem of information? This was a major surprise, and I needed to know more. Or was she lying? I decided to attack the story. “A city police officer loaned you his gun? I must say, I have a hard. . .”

She interrupted me heatedly. “It wasn't his service revolver,” she stated. Then, more contritely, “I took it without asking. He and his wife were on vacation, and I had a key.”

OK. It was plausible. “So how did Tobin end up with it?”

“Zachary didn't want it in the house. He disliked guns, and he said we should take to the gallery for safekeeping until we could return it to Daryl.”

“And?”

She shrugged. “Tobin must have stolen it from Zack's office at the gallery.”

It was a little weak, but I suspected it was true. She had been hiding something, and at the time, this little revelation fit the bill. Still, I pushed her to see how strongly she would stick to her guns, so to speak.



“Mrs. Barnes, are you sure this story is accurate?” I asked, but nicely.

“Yes.” She didn’t hesitate.

“It is very important,” I insisted.

“I’ve told you everything about the gun you need. . .” It was a dismissal. “Mr. Granger, I would like you to be aware of my situation.”

I started to mumble some polite words about how sympathetic I was, but she cut me off.

“No. You can’t begin to imagine how this all feels.” I couldn’t argue with that. But she wasn’t finished. “You’re aware that I work at the mayor’s press officer?”

“Yes.” Of course I knew that.

“The mayor has told me that this whole thing reflects poorly on his administration. And I have to say, next to Zack, my career is the most important thing in my life.” I suspect that her priorities probably hadn’t been that clear when Zack was alive, but kept my silence. “So,” she continued in a sort of slow, clipped and precise voice, “if you need the emotional, weepy widow in the courtroom, I will not be able to oblige. I plan to maintain complete control of myself at all times.” I couldn’t say I was surprised, but I didn’t say anything, other than to acknowledge her honesty.

Then it was time to go, and I thanked her for her cooperation.

“Thank you,” she answered. “I want nothing more than to see justice done.”

“I will do my best,” I told her sincerely.

“I hope it’s good enough,” she said, fiddling with her long hair.

Ouch. That was a good one, Mrs. Barnes. I didn’t show that I was wounded, though. “Me, too,” I responded lightly, and then I said good-bye.



CHAPTER SEVEN

Telephone Calls

As we neared the trial, I received three interesting telephone calls. The first was from Ruby Garcia. She had been visiting Tobin, and, as I might have predicted, he had gotten her all confused. Now, according to her, Zack, that nice man who had shown an interest in her art, was a son-of-a-bitch. I noticed parenthetically that she didn't have the restraint of Yvonne Barnes. No surprise there. I tried to calm her, but she accused me of using everything she said against Tobin. Actually, her actual phrase was "against us!" Now she and Tobin were "us." I knew there was only one reply I could offer.



“Ruby,” I said firmly, and I hoped, fairly, “all I ask from you in court is that you tell the truth.”

“Truth!” She practically spat the word. “What the hell is truth? All you lawyers know is how to twist the truth and turn it into lies! Why can’t everybody just leave us alone!”

I couldn’t argue with her. For one thing, she had slammed the phone down. But she had a point. The object of a trial should be to get at the truth. Sometimes my profession placed too much emphasis on winning. I just hoped Ruby’s innate honesty would make an appearance along with her when she sat on the stand and testified.

The second phone call was from Yvonne Barnes. She was apologizing for not being “entirely forthcoming” in our interview. I wasn’t sure what she meant, but she declined to clarify it. There was nothing I liked less than having a sure witness suddenly change stories on me. It was a rule of the courtroom never to ask a



question unless you already knew the answer, but I was confident that, with Looper’s help, I wouldn’t be put in that situation. Asking blind, exploratory questions on the stand was a good way to get trapped and lose the case. I had to believe, though, that Mrs. Barnes would remain a solid witness and would do considerable damage to James Tobin.

I had done all I could. I had my theories, my witnesses. Subpoenas had gone out. The whole case was researched, the evidence catalogued, and we were ready to go to trial and send Tobin away. My witnesses were acting strange, but that wasn’t too unusual before an important trial. Everything that could be done, had been done—but for one thing. It was time to talk to the press.

It was the eve of the trial. I was jittery, like I was before every major case. I had the tube on, and was half-heartedly watching the Channel 2 News. The field reporter had been camped out at the courtroom recently, and had tried to get a comment out of me on several occasions. I had declined to give him one, of course. So they had nothing much to put on the air, but that never seemed to

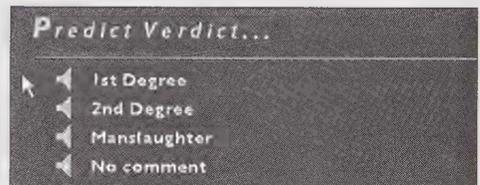


stop them. They prattled on about the trial, saying nothing at all, for about thirty seconds or so, then shifted to some other inane topic. I was only half listening. Then the phone rang.

This was the third call I had alluded to. It was Frank Sommerville himself, offering to go off the record for a prediction about the trial from me. Well, I had known Frank off and on for several years, and I knew he'd keep the confidence, if only to be sure he could get good dirt from me in the future. One slip, and he'd never get a word from me again, and he knew it. So I put a face on it for him.

"Frank, I'm happy to tell you that I'm supremely confident we'll win this case. We'll get a verdict in the first degree. . . or, I'll buy you and Laura dinner."

"That's chutzpah," he said, with some admiration. "I wish you luck tomorrow. See ya."





IN THE 1st
DEGREE

PART THREE:
THE TRIAL

CHAPTER EIGHT

Beginning the Trial



Jury Selection

Jury selection was the usual point/counterpoint skirmish that all prosecutors and defense attorneys must engage in. When it was over, I was relatively happy with the selection, but, I'm afraid, so was my competition—defense attorney Cynthia Charleston.

The jury consisted of a fairly good mix of genders, ages, races—all the diversity the city of San Francisco could offer. Whether this jury benefitted the prosecution or the defense was difficult to tell, but I suspected that it benefitted the defense for the most part.

Well, this was the jury—like it or not—and now it was up to me to convince them that James Tobin was guilty. With all the casting done, our little play was about to raise the curtain and begin the first act.



Day One: Opening Statements

The big day came, and the trial began. We all made our way up to our tables. The judge called the court to order and the bailiff read the charges. Of course, we had already had some pre-trial conferences with the judge, defense attorney Cynthia Charleston, and my staff.

Cynthia Charleston was a pretty young attorney who had made quite a name for herself in recent months. She was a high-priced mouthpiece, and some thought that Tobin had one of the best on his side. I'd seen her work in previous trials, had even gone up against her, and I generally found her preparation good, and her courtroom presence excellent. She did have a tendency to come off a little strident sometimes, and it didn't serve her well, but I had enough respect for her to expect a good fight. I also expected to win.

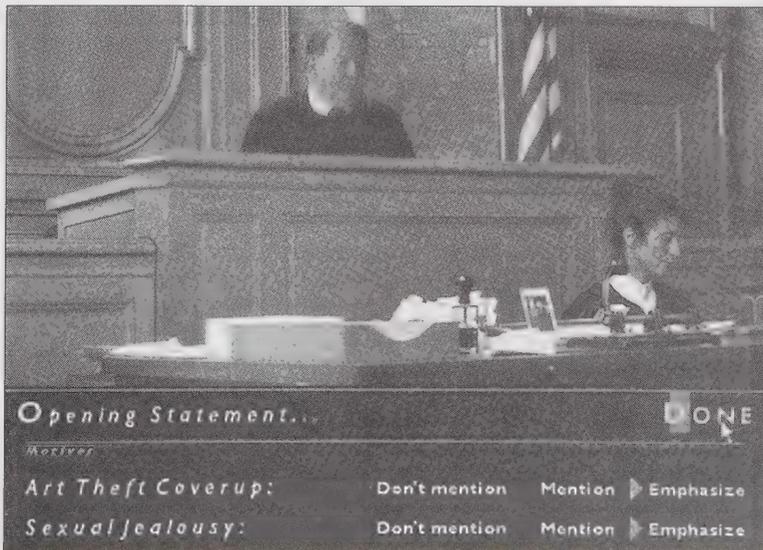
Outside the courtroom, Cynthia and I were cordial acquaintances. We tended to find ourselves at the same kinds of events. But I would stop short of saying we were friends. I think, for Cynthia Charleston,



any prosecutor was a mean-spirited killjoy who enjoyed nothing more than sending innocent people to the gas chamber. Of course, she had to know better—most of her clients were probably guilty as hell—but she had the instincts of a good defense lawyer. Protect the client. Win the case. Don't give in to the enemy. And prosecutors like me were. . . the enemy.

In the judge's chambers, we had already discussed the ground rules for the upcoming trial, and of course, Cynthia had tried to object to some of our evidence, but the judge said he would allow it all. There were some other minor skirmishes. I could sense that Charleston was a little desperate. Of course, she had Tobin's side of the story, our witness list, and all the necessary bits of disclosure we were required to provide. But I doubted that she had all the information we had. That's why she was nervous. I think she knew that Tobin wasn't telling her the truth. Or at least I presumed he wasn't. If he was telling the truth, then I would have expected her to be even more nervous.

Anyway, court was finally in session, and I was called to make my opening argument. I had two main themes in my case, and I





decided to emphasize both of them. One was the cover-up for the phony art theft. The other was the theme of sexual jealousy. Yvonne Barnes' opinion notwithstanding, there was good reason to look at both angles. Either one might help send Tobin away, but together, they formed a strong net in which to entrap him.

My opening statement was brilliant, if I do say so myself. I set the scene of James Tobin as a calculating killer. I was particularly proud of the phrase, "he had a gun in his pocket, an alibi on his mind, and murder in his heart." I followed that one with the particulars of the art theft, emphasizing Tobin's greed, his wounded pride, and his fear of discovery if his partner Barnes went public about the fraudulent insurance claims. Then I talked about the jealousy motive, not exactly naming names, but telling the tale concisely as if it were an age-old story that everyone recognized as a valid motive for murder. By the time I had finished, I had the jury thinking seriously about James Tobin, the murderer. I thought I caught a momentary flinch on the part of





Tobin as I spoke. Over all, however, Tobin gave the impression of a confident man—just what his attorneys wanted.

Cynthia Charleston followed my opening statement with one of her own. I had to admire the way she managed to discount the facts as I knew them and paint a picture of a misunderstood man, one who had tried to bring the truth to light when he discovered his partner's perfidy (her word, exactly). A man who wouldn't hurt a fly. And the defense would show that this man, James Tobin, had struggled with a murderous Zachary Barnes, barely grabbing the gun before it went off, tragically killing his partner, who, despite all that had happened, was his friend. God, she was good. I almost believed it myself. But I knew better, and tomorrow it would be time to let the jury in on the little secret.

The preliminaries had taken most of the day, so the judge decided to adjourn before we started calling our witnesses. Somehow, I ended up in a greasy spoon, wolfing down a burger, when I saw the news was already commenting on the first day of the trial. They had enlisted the dubious opinion of one Richard Fleece, a law school professor with a breezy style and just enough credentials to make people think he was making sense.

At least he seemed to admire my "dramatic" opening statement. But then, he also gave my opponent her due. In all, he wasn't far off the mark.

Then they interviewed my opponent, Cynthia Charleston, who basically accused us of proceeding with this case for political reasons. "By now," she intoned seriously, "with all the publicity, they don't dare turn back." Well, what could you expect from a defense attorney?

CHAPTER NINE

Day Two: Simon Lee

To begin my case, I decided to lay some groundwork by calling Simon Lee to the stand. I figured to get more powerful testimony from Yvonne Barnes and Ruby Garcia, but I was looking to build this case carefully, reaching a dramatic crescendo, if possible. It was a lot like orchestrating a great symphony. Simon would be the overture, establishing some themes. The other witnesses would embellish on those themes. In the end, Tobin would be singing a sad song from behind bars.





Simon was all dressed up and looked profoundly uncomfortable in his suit and tie. I could tell he wasn't looking forward to all this and could hardly wait to get out of court and change back into his sweatshirt and shorts, or horse's costume. . . whatever. I let him sit there a moment while I stood in front of my desk, my back to Simon, and pretended to examine my notes. Truth be told, I was a little nervous, but it was a trick of mine to leave a witness on the stand for just a couple of extra beats. Meanwhile, I was taking some slow, deep breaths and getting ready for my performance. . . clearing my head. When I'd judged Simon had sweated enough, I turned slowly from my desk.

“Mr. Lee, did you stop by The Barnes Gallery on February 25, the night the defendant's paintings were stolen?”

“Yes. And I saw Tobin.” I was surprised. I hadn't expected him to volunteer the information about Tobin's presence. I had expected to dig it out the hard way. I smiled.

“You saw James Tobin in the gallery?” I asked conversationally. “What time was this?”

He thought only a moment before answering, “About three a.m. I walk in, and there's Tobin, standing in the middle of the gallery. He's got a razor knife in his hand – and some of the paintings had been cut out of their frames. At first I thought he was making some kinda new art.”

Cute. “And what was your second thought?”

He shrugged. “He was ripping the place off. But I couldn't figure out why he'd steal his own paintings.” This genuinely seemed to confuse Simon. I asked if Tobin had said anything to him, and Simon answered that he had told him to keep quiet, that he could do anything he wanted with his own paintings. I asked if Simon had later discussed the theft with Tobin, but he said no.





This seemed to end the subject for Simon, but not for me. **“Mr. Lee, aren’t you leaving something out of this story?”** I was clearly indicating by my tone that I knew he was—to which Cynthia Charleston immediately objected.

Before the judge could rule, I said, “Forgive me, Ms. Charleston,” I spoke with mild sarcasm, making her look a little ridiculous. Then I changed directions.

“Mr. Lee, did the defendant offer you anything in exchange for your cooperation?”

“Not really.” His eyes were shifting around, a sure sign he was nervous.

“Not really? Mr. Lee, on March 10th, you purchased a motorcycle from the San Bruno Cycle Works. Did you pay cash?”

He admitted he did.

“Was it typical for you to have this amount of cash on hand?” The way I asked the question made it clear I already knew the answer.

“No,” he admitted.

“Where did you get it?”

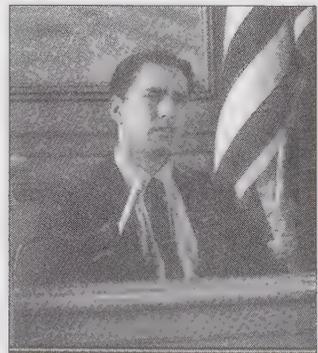
He was caught, cornered with no place to go. He didn’t have any convenient lie ready. “It was a bonus,” he said lamely. “It showed up in my pay envelope at work. I never asked for it.” Now here was the old Simon I had gotten to know—guilty, defensive, caught with his hand in the old cookie jar.

“Really?” I asked, a clear invitation for him to continue.

He looked down. “Tobin gave it to me. Said, ‘Merry Christmas.’”

And happy New Year, I thought. This pretty much clinched the insurance fraud angle. Unless Ms. Charleston could discredit Simon, Tobin was already going down for one count. Now to go for more. . . .

I walked up toward Simon, standing only a few feet away. He looked like a deer caught in the headlights of an oncoming semi.





“Did anyone—at any time—keep a gun on the premises of the Barnes Gallery?”

“Yes,” he said decisively.

“Zachary Barnes had one. He had it in a drawer in his office, locked up. It had a big, fat barrel.”

He said it was silver and that he remembered seeing the name Smith & Wesson stamped on the barrel. “I remember I was at work

that night and saw him from across the room. He took it out of his leather briefcase and slid it into his bottom drawer and locked it.”

When I asked him, Simon denied telling Tobin about the gun, denied, in fact, that he had ever seen it again. Of course, I knew he was lying.

I walked slowly toward my desk. Looper was gazing up expectantly. When I reached the desk, I turned around slowly.

“When you saw Zachary in his office, holding the gun, was he about as far from you as I am now?”

He thought about it, squinted a little, then said, “I don’t know. Maybe a little farther.”

“And you never saw the gun again,” I asked, just to be sure. He said no.

I reached into a pocket and pulled out a pack of gum, holding it up so he could see it in my hand. “What kind of chewing gum is this?” I asked him. I was ready for Cynthia to object, but she didn’t.

Simon squinted again, trying to read the letters on the package. “I don’t know,” he admitted after a moment. “I don’t remember which one has the blue pack.” Poor Simon. He looked like a complete fool.

“It’s Beemans, Mr. Lee. A good old-fashioned brand.” I could see that he still hadn’t figured out where I was headed. “Now, if you couldn’t read the bold, oversize type on this package, how could you possibly read ‘Smith & Wesson’ on a gun from across the room?”





He had no answer and said as much. I asked him if he wanted to reconsider his statement that he never saw the gun again, and he sat there as if struck dumb by the question, looking down in a clear admission of guilt, his eyes casting this way and that as if he might find an acceptable answer somewhere else.

I asked him again if he had taken a second look at the gun in Barnes' office.

He finally made his decision. There was no other way out. He took a long, deep breath and said, "Yeah. I went back. I looked at it again and saw the words on the barrel."

"Did you go by yourself?"

Still, he was resisting the truth. "I can't remember."

I didn't let him get away with it, though. "That's ridiculous," I told him.

At last, he blurted out angrily, "I didn't know what Tobin was going to do with the damn gun. I had no idea." He obviously felt guilty.

I told him to slow down and start from the beginning.

"Like I said, I saw Zack bring a gun into the gallery. I was worried about what he might be planning because there was so much garbage going on between him and Tobin. So I told Tobin about the gun—thought I should warn him. So we got the extra key, unlocked the drawer, and I showed it to him."

"How'd he react?"

Simon shrugged. "I couldn't tell really, if he was excited or mad, but he mumbled something, I think, like, 'Good work Simon. I'm glad to have this.' "

Now I had Tobin linked with the art fraud and with at least some knowledge of the gun and the opportunity to obtain it. My case was shaping up. Time to work on the jealousy motive.





“Did you ever hear the defendant mention the affair between Zachary Barnes and Ruby Garcia?”

He didn't hesitate this time. “Yeah. I heard him and Ruby.” I asked him when he had heard them.

He answered with complete confidence. “A couple days before the murder. They were in their apartment. Upstairs from the gallery where I was. But I wouldn't call it a conversation. James was yelling his head off.” He paused just a moment. “At Ruby,” he added at last.

“What did he say?” I asked.

“He had just discovered a love letter from Zack—and he was mad as hell, yelling threats and stuff.” There was a little hesitation in his speech as he dealt with the words “discovered a love letter.” Clearly he was having a guilt attack.

I decided to back up and get the story straight for the jury. I asked him if he'd actually seen the letter in question.

“Yeah,” he answered seriously. “Zack gave it to me to give to Ruby at the loft.”

“Was the defendant home?”

“He was coming up to the loft and I passed him on the stairs on my way down. After I had dropped off the letter.”

I asked him to describe what happened next.

“Tobin busted through the bathroom door and caught Ruby reading the letter. He grabbed it from her, and then he pushed her around and slapped her. She was screaming.”

At this point, Ms. Charleston objected, rightly, that this was hearsay since he wasn't in the room at the time. Simon answered her directly, saying “I could hear it. Anyway, Ruby told me!”



Charleston appealed to the judge who chewed out Simon roughly for his outburst and instructed him only to answer questions directed at him from the examining attorney—in this case, me. Poor Simon was having a rough time of it. But it was almost over. Just a few more questions.

I asked Simon if he had read the letter. He admitted that he had looked at it, that he'd thought he was looking out for Tobin's welfare when he did so. **So, of course, I asked him if he had told Tobin about the contents of the letter.**

Reluctantly, he admitted as much. "But I wish I didn't," he added regretfully.

"When did you tell him?"

"Right after I gave Ruby the letter, when I ran into him on the staircase."

"What happened next?"

"He went into the loft an' he and Ruby started fighting."

"Did you see the defendant again that day?"

"Yeah, about a half hour later—downstairs—when he put his fist through the wall and cleared his desk and everything went on the floor, including a new vase of flowers. It broke."

"He say anything?" I prompted.

"He said that Zachary was a real bastard to be gettin' it on with Ruby and that he was going to make him very sorry."

"You ask what he meant by that?"





Simon made an exasperated sound. “You crazy?” he asked me.

Well, Simon had been a great help. His testimony had established Tobin’s guilt in the art fraud, his knowledge of the gun, and his jealousy over Ruby’s infidelity with Zack. Not bad. . . and this was my first witness. I turned him over to Ms. Charleston.

Cynthia tried to attack Simon’s testimony about the gun, asking if he had ever seen Tobin actually in possession of the gun. Simon answered truthfully that he had not. He also admitted that Barnes had not mentioned it as having been missing at any time. Up to this point, she was doing fine—not enough to reverse the effect of Simon’s testimony on direct, but still, she was attempting to cast some doubt in the minds of the jury. Then she began a line of questions that led to disaster—for her, and for Tobin.

“So Zachary Barnes was the last person in possession of the weapon?” she asked.

“I don’t know,” Simon told her sincerely. “Like I said, the last time I saw the gun was on Tuesday, when I showed it to James.” He was remembering the events and clearly losing himself in the past. At this point, the defense should have interrupted and prevented him from going on, but Cynthia seemed mesmerized by this testimony. Could she have really thought Simon was about to say something helpful to her client? “It was weird. I remember he touched me on the shoulder. And when I think about it, it gives me a chill.”





“A chill?” she asked, I think intending to ridicule Simon, but she was too subtle. He didn’t get it at all, but continued sharing his private stroll down memory lane. Cynthia really should have stopped him. Instead, she let him answer.

“Yeah, I realize I gave Tobin what he needed, a way to kill Zack.”

Her back was to me, so I couldn’t see her face, but I could see every muscle in her back and shoulders tense as she fought for control. She knew she had just blown it, and there was nothing she could do to fix the situation. But Cynthia Charleston was tough. She knew how to cut her losses, and within moments she was hammering away at Simon again. As if nothing had happened, she asked, “Mr. Lee. On the night you delivered the deceased’s letter to Ms. Garcia, did you actually see her and James Tobin quarreling?”

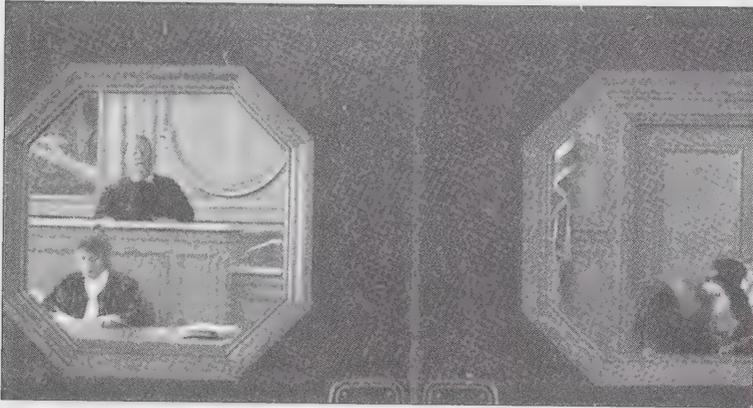
“No. But I heard them.” He answered.

“You were one story below. Could you actually make out the substance of their conversation?”

Simon was clearly feeling attacked, and he was starting to heat up. “James was yelling pretty loud,” he said, explaining carefully. Cynthia was clearly not getting on his good side.

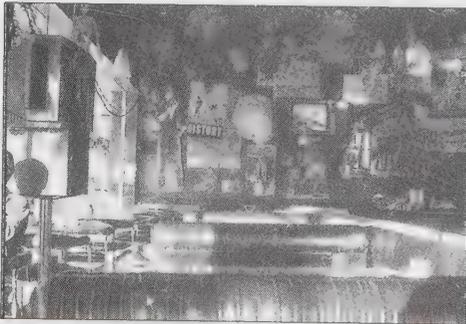
“But could you decipher his exact words?” she persisted.

Blowing up, Simon answered, “I could decipher he was out of control.” The audience reacted strongly to this, and the judge had to tell them to be quiet. Then Cynthia retreated, like a beaten dog. In this moment, I could have kissed Simon. Well, at least I felt a sort of paternal pride in how he had bested Charleston and helped to hang Tobin. Yes. It was a real pleasure watching her face as she skulked back to her seat, saying, “No more questions.” I didn’t feel the least bit sorry for her. She had brought doom on herself—and her client.



I made my way to the first of several cheap diners I would frequent during the course of this trial. It was a local hangout with lots of pop culture icons plastered everywhere. It had a certain . . . ambiance, I guess you'd call it. And the food wasn't bad, either, if you liked grease.

A TV on the wall was blaring the irritating commentary of that "expert" from Channel 2, Dr. Fleece. To his credit, he had only praise for my performance. That was the kind of "expert" TV analyst I liked. He called me a "cunning legal master, and said I performed "with the skill of a surgeon." As the anchorwoman sequed to the next story, I tuned it out and ate my BLT in silence. Tomorrow, I would call the widow to the stand.



CHAPTER TEN

Day Three: Yvonne Barnes

Yvonne Barnes was dressed in an elegant, but unpretentious striped suit. A simple strand of pearls and some tasteful earrings completed her ensemble. Her hair was pulled up on her head in that mysterious way that women have. She looked like the pure professional woman. Her face, however, was stern. . . determined.

I started out by asking her questions about the crime scene. I wanted to establish the facts and what she had witnessed, which would further sink Tobin's ship.



After a few preliminaries, I asked Mrs. Barnes, **“On the morning of March 13 at approximately 9:00 a.m. you and Ms. Garcia left the gallery to go to a meeting, is that correct?”**

Unlike Simon, there was no extra thought or effort that went into her answers. A simple “Yes” was all I got.

“And you two returned early because the meeting was canceled?”

“Postponed. . . correct.” Ever in control, she had to revise my phrase like a patiently chiding schoolmarm. It was a reminder to be careful with her.

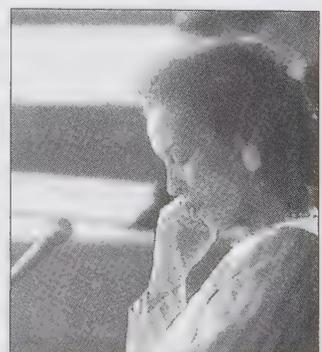
I continued to lay out the scene, describing how she was dropped about a block away in the alley behind the gallery. Then I asked her to describe what she saw next.

“James Tobin was outside of the gallery jimmying the back door with a crowbar. He saw me coming so he went back in.” She turned to face the jury as she delivered this accusation. Interesting how her story had become more certain than it had been when I’d first spoken with her. No matter. It was the story I wanted her to sell to this jury—and it didn’t hurt any that it happened to be the truth.

Of course Charleston hadn’t fallen asleep, so she was up with an objection on the grounds that the testimony was speculation on the part of the witness. The judge properly sustained the objection, but I was sure the picture would remain in the jury’s minds, especially after the testimony of Simon Lee.

That damage done, I asked her about if she could see what Tobin was wearing in the alley that morning.

“Yes,” she answered confidently, completely unfazed by the defense councilor’s objection. “He had on a black T-shirt with the gallery logo on the back.”





She was doing fine. I decided to avoid the discrepancy of the shirt, since I knew Charleston would simply object again to any speculation on Yvonne's part. One objection was no problem, but we didn't want to drink at the same trough too often. **Instead, I just asked her what happened next.** Best to stick with what she'd observed at the scene.

"I heard a shot from inside as I came to the door. I unlocked it and went inside."

I asked her what she saw.

She closed her eyes a moment, as if recreating the scene of her husband's murder in her mind, then said, "My husband's body lying crumpled on the floor, Tobin sitting nearby holding his leg moaning."

She was cool, but not cold. There was a matter of fact quality to her voice that was at once chilling and appealing. The perfect witness, in some ways. Totally credible, the object of great sympathy, strong. The only place the armor cracked was when she uttered the name Tobin. With a subtle emphasis, she made his name sound like something that had crawled out from the mold between the tiles in the men's restroom.

I asked her to describe the physical state of the gallery next.

Again, she seemed to visualize the scene first, then spoke carefully. "A glass table top had been shattered so there were shards all over—some of them in the pool of Zack's blood. And I remember a cashbox was lying upside down on the floor."

She looked down when she talked about Zack's blood, but otherwise kept her composure remarkably well.

Then I asked what she had done, and her answer was both sad and vulnerable at the same time. "I tried to help my husband," she said. Then after the briefest of pauses, she added, "and then called 911."



I let this statement sink in for just a moment, then **asked her if the defendant had explained what had happened.**

“Yes, as soon as I opened the door and saw Zack on the floor, Tobin started telling me about ‘the fight’—how he got shot and how he broke the table.”

“Did he explain why the cashbox was on the floor?” I added.

For the first time, there was some fire in her answer. “No, he couldn’t explain that because it didn’t fit in with his new fight story. It was left over from his attempt to fake the break-in.”

I thought Charleston would object to that, but she didn’t. I wasn’t complaining, though.

The next item on my agenda: The gun.

“Mrs. Barnes? Did you have knowledge of any firearms kept on the premises of the Barnes Gallery?”

She was under control again. With an icy calm voice, she said, “Yes. The one that killed my husband.”

“Was this your gun?” I asked.

“No. I borrowed it from Zachary’s cousin, Daryl. A Vietnamese woman across the street was attacked, and I felt I needed protection.”

“Did you discuss this with your husband?”

“Yes,” she answered, but she looked down. She wasn’t really a very good liar. “He became quite upset. Insisted on taking it down to the gallery for safekeeping.”

When asked, she said he had put it in the desk drawer in his office. This story didn’t ring true; not all of it, at any rate. I needed the truth from her.

“Do you understand what’s at stake in this trial,” I asked, like an adult to a child.





This really set her off. “Counselor, do not patronize me,” she said heatedly. “Yes, I do.”

“Do you understand that the defendant in this case admits he killed Mr. Barnes, but what’s. . .”

She was getting really steamed now. “Yes, I do,” she said between gritted teeth.

I kept going without stopping for her comment, steamrolling her. “. . . but what’s at stake here likely revolves around who brought the weapon to the murder site?” I finished.

I think I finally pushed through the importance of this to Yvonne. She said, “I understand,” in a tiny, defeated sort of voice. But I wasn’t through with her yet.

“If it pleases the court, I would like to read a few lines from Inspector Looper’s interrogation of the defendant, Mr. Tobin, conducted on the afternoon of the murder.”

My esteemed colleague was on her feet. “The defense objects! How is this relevant?”

I was ready for the objection. “Your honor, it reflects on the witness’s understanding of the significance of the line of questioning, and therefore her motive to tell the truth.” I was bluffing. Cynthia’s objection was completely appropriate, but sometimes you can get some latitude from the court if you come up with a good-sounding explanation and sound particularly confident about it.

The judge mentally flipped a coin on the issue and I won. He overruled the objection and allowed me to proceed.

“I read from page fifteen of the transcript, wherein the defendant says, quote, ‘Zack had a scheme going with the art insurance. He was trying to get me to go along, but I wouldn’t. So



he was afraid he'd lose his little gallery and have to rely 100 percent on his wife's career. Ultimately he was a real loser. I'm telling you, Zack brought the gun. Zack tried to kill me in cold blood.' End quote."

As I read from Tobin's transcript, I could see Yvonne doing a slow burn. It was pure torture for her to listen to this man's lies—the man who had killed her husband—and not respond. She squirmed in her seat, but said nothing.

I walked over to her, standing so the jury could still see her, but close enough so she could see my eyes and read the sincerity and determination in them. **"Mrs. Barnes, I will ask you once again, do you know how the gun belonging to your cousin got to the gallery?"**

There was a moment of silence in which I thought she was going to lie again, but then, in a very small, husky voice, she said, "I brought it?"

"And why did you bring it?" I asked gently.

She tried to look away, but couldn't. Finally she said, "I brought it to threaten my husband."

"Your husband?"

"Yes." Her eyes finally fell.

I might have left it there out of pity for her, but I couldn't. The jury needed to hear all of this.

"Could you tell us why you intended to threaten your husband?"

"I found out he was sleeping with Ruby. He'd written her a letter, on the computer, and I came across it accidentally."

What came next was a difficult admission for the fastidious Mrs. Barnes. She told of being in Barnes' cousin's house, taking



care of things while he and his family were on vacation. She spoke about the jealousy eating her up, her phone call to Ruby in which Ruby admitted that the affair was her fault. Then the phone call to her husband, who'd lied about it. "He'd never lied to be before," she said with a mixture of regret and incredulity. Finally, she told of how they had come to reconcile, to talk for hours, and had come out feeling closer than ever before. It was a sad, ultimately tragic, story and she finally broke down and cried as she recounted it. In the end, she told how they took the gun to the gallery until it could be returned to Daryl's house. Her last statement was, "He really did hate guns." The crowning irony in a sad tale.

I took a very deep breath and waited a moment for Yvonne to compose herself. I still had one item on my agenda. It was time to take a closer look at the tensions between Barnes and Tobin, and the events surrounding the murder.

"Did you witness an argument between your husband and the defendant Tuesday before the murder?"

"Yes. I walked into the gallery, and Tobin was yelling at my husband. There was a wooden chair, broken, between them."

I asked her what she had heard Tobin say, and I could feel the tension in the courtroom rise as she recounted the confrontation.

"He was shouting, 'You go public with the insurance fraud, and it'll be the end of the gallery.' I remember Zack saying 'The gallery will survive.' Then Tobin stepped forward, pointing his finger, saying 'The gallery might survive, but you won't.'"

She put a little anger in her voice, indicating the mood with which Tobin had spoken. Then, when she quoted her husband, her voice went soft and patient. And at the point when Tobin pointed his finger at Barnes, she, too, pointed a finger. It was

interesting how effectively she played both parts of the argument without seeming to be acting.

Of course, the words were a little different from what she had told me in the first interview—a little stronger. Interesting how people's memories may change over time to solidify an image they want to have. Still, it was close enough, and it wouldn't look good for Tobin.

When I asked her what happened next, she said she had stepped between them to break it up.

Now was the time I had to begin my little game with Mrs. Barnes. She was hiding something—she had told me as much—and I had to give her plenty of motivation to reveal all her cards. I began attacking Zachary Barnes.

“Mrs. Barnes, wasn't your husband a co-beneficiary in the policy that covered the gallery?”

Her simple “Yes” was enough to warn me that I was on thin ice here. But I didn't back down.

“What was the amount of money he was due to receive?”

This set her off. She was really angry. “I'm not sure, but I resent this line of questioning.” Of course you do.

The judge admonished her, but she didn't stop. “All that's left is his good name, and now you want. . .”

OK. I'll have to work up to this, I thought. “I'll withdraw the question,” I said.

She settled back in her seat, a little more wary than before. I had a purpose here, so I decided to keep going, but more subtly. **I asked if the gallery was a financial success.**

This mollified her. She was proud of the gallery, and it showed. She told the court how it was one of the most successful small galleries on the West Coast. As she spoke, she was





unconsciously fingering the pearls around her neck. This was the first sign of nervousness I had seen from her. I asked if the gallery had been profitable recently.

A downward glance. “No.”

“Why?”

“James Tobin, against everyone’s advice, completely changed his painting style. The last show didn’t sell well,” Looking down, she added, “It created a cash-flow crisis for Zachary.”

This was an understatement, but the point was made. Again, when she used the word “Tobin,” it obviously didn’t sit well on her tongue. But I was going for the punch line here.

“Wasn’t the crisis so serious that your late husband feared losing the business?”

Grudgingly, she admitted, “I suppose. . .”

“Would Zack’s share of the insurance money have saved the gallery?”

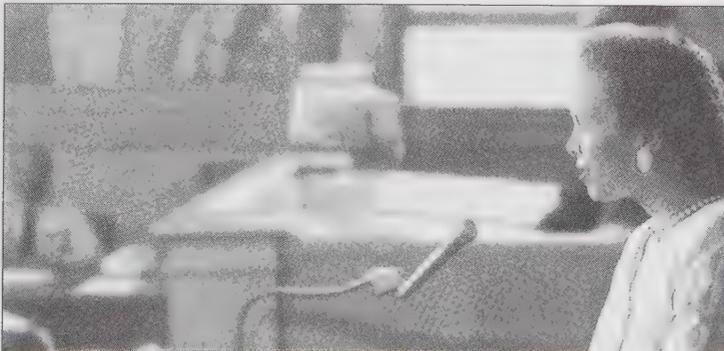
She looked threatened, but could not take back the question. “Yes,” she answered. “Why?”

“In fact, Mrs. Barnes, couldn’t your husband have been involved in the theft?”

Almost immediately, Charleston was objecting, but she thought better of it and withdrew her objection. I think it was one of those knee-jerk objections, and on second thought, she realized that it probably didn’t matter if Barnes was involved or not—not from her client’s point of view, at any rate. After all, wasn’t that Tobin’s contention all along?

But Yvonne wasn’t about to have her husband’s name dragged into the insurance fraud.

“No!” she said calmly and forcefully. “The answer is no, and I have proof.”





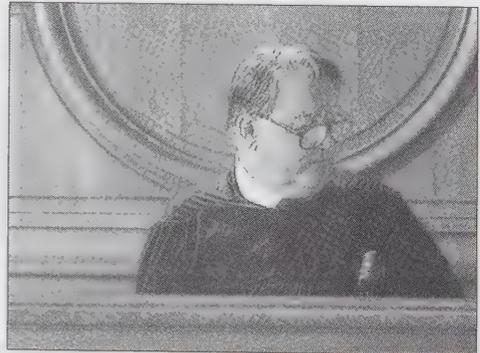
The courtroom was suddenly still. “Proof?” I asked weakly. What was this woman up to? I thought. Oh, God, don’t let her do something foolish and jeopardize this case.

“Just before the fight,” she said calmly, “I’d overheard a tape on the phone machine.” She pulled something out of her purse—a small cassette tape—and said, “I kept it.”

All hell broke loose. The audience roared, the defense objected, and the judge began to bang his gavel. Of course, we immediately headed for the bench to argue the admissibility of this surprise evidence, but the judge cut us off. “The witness will surrender the tape, and the court will recess to consider admissibility,” he ordered.

What followed were several tense hours in the judge’s chambers while we listened to the tape, argued about it. . . each attorney making a case before the judge. He listened to it all, and like all judges, made up his mind at some point during our argument and eventually let us know. He would allow the tape. There was no evidence of tampering, and it was important to the case. The fact that it hadn’t been properly disclosed previous to the trial was not the fault of the prosecution, so no misconduct applied.

Charleston had seemed convinced that this was some slimy ambush orchestrated entirely by yours truly, but the judge, bless his heart, didn’t buy it. Charleston grumbled, which earned her a hard look from the judge, but there was nothing she could do. I could almost see the





Procedural Note



In a real trial, this tape would probably have to be subjected to some intense expert scrutiny to determine that it is authentic and that it has not been tampered with, but for dramatic purposes, the judge rules on it in chambers.

word “appeal” flashing through her mind. She knew this tape would hurt, and badly.



Later, back in court, the judge had the tape played for the jury. It was Tobin, warning Barnes not to say anything about the phony theft. He stopped just short of threatening Barnes, and only because the machine stopped recording at just the crucial moment. I watched Tobin out of the corner of my eye, and he was visibly uncomfortable hearing his own voice incriminate him. This was solid evidence that Tobin had perpetrated the theft and that Zachary Barnes was going to turn him in. Motive for murder? If nothing else, it was a major sucker punch to Tobin, and it left him reeling.





It was the defense's turn now. Cynthia went right to the attack, trying to salvage something. Unfortunately, she was up against a tough lady, and she got herself into even more trouble than before.

"Mrs. Barnes, did you see your husband take the gun to the gallery?"

Composed as ever, Yvonne answered, "I saw him leave our loft with it, yes."

Cynthia was after any crumb she could get. "So, you didn't actually see him go into the gallery with it?"

Yvonne made light of it, as if it wasn't of any significance. "I didn't follow him across the street, if that's what you mean."

Charleston changed tactics. She walked over to the evidence table and grabbed the plastic bag containing the bloody yellow shirt that Tobin had worn at the gallery. "Do you recognize this shirt," she asked.

"Yes, it is Tobin's. He wore it on the morning of the crime."

"Alleged crime, Mrs. Barnes," Charleston corrected. You could almost see the tension building between these two women, both of whom were strong, independent, and used to getting their own way. The claws were coming out.

"Call it what you. . ." Yvonne began to argue, but the judge broke in and stopped things from getting any uglier.

Cynthia recovered quickly and went back to her main point, though not without at least one more dig. "You will notice it's yellow, or more accurately, ochre, yet you said he had on a black T-shirt."

If Cynthia was thinking to shake up my witness, she had another thing coming. "He put on the shirt after he killed Zack," answered Yvonne with absolute conviction. "He certainly couldn't



wear the bloody one outside, so he took it off and used it to hide the gun on his way to dump both of them. When I saw. . .”

Finally, Cynthia saw this wasn't going well and tried to interrupt, but Yvonne wasn't having any of it. “When I saw him outside the door, he went back into the gallery and changed into this one again,” she finished.

Instead of letting well enough alone, Charleston persisted in this line of enquiry, challenging Yvonne's story. “Preposterous. When was there time to change shirts? You followed him right into the gallery.”

Poor Cynthia. She hadn't done her homework, and now she was going to pay for it. Yvonne was way ahead of her. “As a matter of fact, there was plenty of time to change. I had to walk about a block, then I had to open the door, which I found out Tobin had double locked. By the time I had looked into the bottom of my bag. . .

At last, but far too late, Cynthia backed off. “Thank you. . . Thank you, Mrs. Barnes, you've answered that question. Now I have another.”

Ever hopeful, the defense blasted off in another direction, perhaps fishing for some inconsistency or weakness to attack. A way to put a positive spin on things for her client.

“When you went into the gallery, you saw evidence of a fight, correct?”

Yvonne was not going to be led by the nose, however. “No,” she said categorically, “there was no fight. Tobin killed Zack and then afterwards made it look like a fight.”

“Please, just answer the questions, Mrs. Barnes,” Charleston said in a forlorn attempt to regain control. “This story of yours about Tobin playing dress-up while faking both a struggle and a



break-in is entertaining, but you don't have any evidence to support it, do you?"

This was, in fact, the one real point Charleston had made. Everything that Yvonne said was her construction, her interpretation of the events, and it wasn't supported by any tangible evidence. Yvonne was composed and effective when she answered, though. She said simply, "No. Just what I saw."



At that point, Looper kicked me below the table and leaned over whispering. "Granger. You've got to put me up there," she said. I figured she was hearing what I was hearing and was prepared to support Yvonne's story. I joshed her a little, but I knew she was right.

Today was my workout day, and I went directly to the health club for some racquetball. As I was changing, the news came on in the TV in the locker room. I paused to listen to how the news reacted to the events of the day. There was the typical banter, but the upshot of it was that I got good reviews. Laura Zimmerman recognized that some of today's testimony had bearing on a possible first degree verdict. Dr. Fleece was typically goofy, but recognized the importance of Yvonne's testimony about the gun.

Tomorrow, I was hoping to conclude my case, starting with Inspector Looper and following with Ruby Garcia.



CHAPTER ELEVEN

Day Four: Inspector Looper

Inspector Looper had convinced me that she could help clarify Yvonne's story about how Tobin had faked the break-in and struggle. I decided to put her on the stand while Yvonne's testimony was still fresh in the minds of the jury.

Looper was all business when she took the stand. There was none of her usual goofing off. I asked my first question. **"Did you find a broken glass table top near the body?"**

She said yes, and I then asked, "Did the defendant say how it got broken?"

"He told me he crashed into the table with his leg, before Zack was shot, while they were struggling for the gun."





This kind of testimony was pure business. None of the emotion or maneuvering involved in trying to ferret out the truth from mendacious witnesses. Pretty dull stuff, but important to establish evidence clearly for the jury.

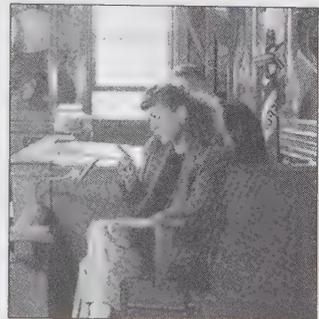
“Was the position of the shards of glass consistent with that story?”

“No. There were fragments of the table all over the floor and a few on top of the victim. But no fragments under the victim’s body. Therefore, the table had broken after Zack hit the ground.”

I worded the next question carefully. When describing what might or might not have happened in a crime scene, it’s important to be as precise as possible about your inferences. **“Is the position of the glass consistent with the defendant intentionally breaking the table after Mr. Barnes was lying dead on the floor?”**

She thought about this question a moment before answering. “I can’t say it was intentional, but there’s no question the glass was broken after the body fell.”

“Was there any evidence that indicated the table broke as part of a struggle?”





“No,” she said, more confidently. “There was no evidence of a struggle.”

Next, just to be complete, I decided to have Looper talk about her favorite door jamb. “**Your honor, would the bailiff please show the witness People’s Evidence 17 and 18.**” When the bailiff had brought the items over, I continued. “**Inspector Looper, can you tell the jury where you found item number 17?**”

She examined the items and responded to my questions about them, clearly identifying them as the items taken from the scene of the crime. When I asked her to line up the crowbar with the marks on the doorjamb, she did so and pronounced, “It’s a match.”

“And did you find the defendant’s fingerprints on the crowbar?” I asked.

“Yes,” she replied. “All over it.”

It was important not to give the defense anything to attack or turn to their advantage, so I asked, “**Did you find other fingerprints on the crowbar?**”

Looper knew what to say. “Yes, there were a few prints from Simon and Zack. That only makes sense because they worked



Procedural Note



Looper's testimony is sort of a shorthand version of the testimony of a forensics expert. Unless her qualifications were previously accepted by the court, some of the testimony she gives might be considered the opinion of a non-expert. In such a case, the defense would object.

However, for the purposes of the game, Looper is considered an expert in such matters as the conclusions to be drawn from the positions of the glass shards and the presence of other fingerprints on the crowbar.



there. But all the overlays, the prints on top, were from the defendant."

Charleston tried to attack Looper on the basis that Looper had a personal stake in getting a conviction because of an incentive system that rewarded detectives for convictions. This was absurd, and I objected. It was a feeble attempt to discredit a perfectly

fine member of San Francisco's finest, and I don't think anyone really appreciated it. On the other hand, many people who end up on juries have a deep and abiding distrust of the police and the legal system in general. Not all of this distrust is unfounded, either. So even the suggestion that the police had an ax to grind or a personal motive could reach sympathetic ears. As onerous as it seemed to me, it wasn't a bad tactic for the defense to use.

The judge decided to call an early recess that day, so we all went home, and I didn't get to call Ruby to the stand. But I got the first really good night's sleep in a week that night. Tomorrow I would call my last witness, Ruby Garcia.



CHAPTER TWELVE

Day Five: Ruby Garcia

My final witness was Ruby Garcia. She was a key witness to both the jealousy motive and the fraudulent art theft, and I knew she had a lot to say. I started out with some questions about the phony art theft. I wasn't sure how she was going to react. Ultimately, I hoped to capitalize on the one weak place I knew she had—her guilt.

Ruby walked hesitantly up to the witness box. I could see she was nervous. Even though I felt sort of sorry for her, knowing that this was going to be painful, I was eager to get going, and not a little nervous myself. This was the culmination of my case against James Tobin. After this, the defense would have its





chance. I wanted to seal up any loopholes and lock up any avenues of escape before the defense got started.

Ruby was wearing a simple dress; nothing too fancy. She looked good, I thought, and she'd make a good witness, assuming I could get through her defenses.

Once she had settled into the chair, I started in with some innocuous questions about the night of the alleged theft.

“Where were you on the night the defendant’s paintings were stolen from the Barnes Gallery?”

She thought about it a moment, perhaps making a decision about whether what she said could hurt Tobin or not. I hoped my preliminary interview with her had left her with some sense of responsibility to the truth. I wasn't sure, though. Quickly, though, she began to recount the events of that evening, “I came home from school about six. Jimmy seemed a little nervous.”

It was tempting to ask her about Tobin's nervousness, but Charleston would be all over that one, claiming that Ruby was not trained in psychology, and so forth. I decided to stick with Tobin's movements on that night. I asked if he had left the loft after dinner, but she said no, that he'd gone to his studio; that they had gone to bed around eleven.

“Do you recall the defendant leaving the bedroom at any point during the night?” I asked the question with as little emphasis as I had asked the previous ones, hoping she would tell the truth.

It was clear that she had an inner struggle over this question, but it was quickly resolved. The truth won.

“Yes,” she said.

“At what time?” I followed.

“About three in the morning,” she answered, remembering the scene. “He was in street clothes, and he had one of those wool, like, navy caps on.”

Now that certainly sounds suspicious, I thought to myself. Sneaking a quick peek at the jury, I saw some heads turn. They were listening. Good.

“Did the defendant explain to you what he was doing, wandering around fully dressed in the middle of the night?”

Ruby recounted Tobin’s story about hearing a sound downstairs, but not finding anything amiss. I asked her when she first learned that the paintings had been stolen.

“The next morning. Jimmy left the loft early. On an errand or something. Zack came by, all upset. He said someone had broken into the gallery and Jimmy’s paintings were gone.” She thought a moment, then added, “Now that I think about it, that’s really when the trouble between Zack and Jimmy started. . .”

Good. Now we’re suggesting motive, friction. . . perhaps problems that could have led to murder. I wanted to keep her going on this path.

“What else did Zachary say?”

After hearing Ruby’s theory of what happened—how the real thief had hidden while Tobin searched, then reappeared to complete his nefarious task, Zack seemed unconvinced. “Zack was suspicious,” Ruby said. “He goes to me ‘What a stunt. Jimmy’ll never get away with this.’”

Now to nail down the motive. **“Did you tell the defendant about Mr. Barnes’ suspicions?”**

“Yeah, I told him,” she said. She was caught up in the story.

I asked about Tobin’s reaction. Still caught up in the telling of the incident, she forgot for a moment about her loyalties and simply began blurting it all out. “Jimmy lost it,” she said animatedly. “. . . said Zack better keep his big ideas to himself, or he’ll. . .” Then it hit her. She was about to say Tobin had threatened Barnes. She caught herself.



I prompted her to continue, but she only shook her head and said, "I don't know. He didn't finish."

Well, we had enough for the jury to draw its conclusions. I moved on to the next area of questioning. The subject of the gun.

"Did you ever know the defendant to keep a gun in his possession?"

Maybe my timing wasn't so good. After the last near slip, she was more guarded this time.

"No." She shot at me, with perhaps a little too much heat.

I pressed on, reminding Ruby of something she had told me before. The defense should have objected to this statement, as it wasn't a question and its truth could only be determined by calling me to the stand, which wasn't likely to happen. However, I guess Cynthia didn't think it was important enough to object to. "Ms. Garcia, you told me in an earlier interview that you'd seen a gun in Tobin's work cabinet, in your loft apartment."

She already had her answer on her lips—uncharacteristic of Ruby, who generally waited until a question was asked before coming up with an answer. This had the look of a prepared lie. "Yes—but when I went back and looked, I saw I was mistaken. It was a pair of pliers."

That really threw me. I half expected her to come up with some lie, but. . . a pair of pliers? And she expected the jury to believe that?

Just to emphasize the absurdity of this little case of "mistaken identity," I repeated her statement in the form of an incredulous question. "You mistook a pair of pliers for a gun?"

She wasn't so sure, but she said, "I guess so."

"So you never saw a gun in the residence?" I asked, just to get all this straight.





“No,” she said, forcefully.

I was getting a little frustrated with her insistence on sticking to this silly story. “Or knew about one,” I plodded on. Ruby was getting agitated, and I was making the mistake of letting her stubborn streak come forward. Finally, she held her hand out and, very firmly, said, “I told you. No.”

Well, that was about the end of that. If I had persisted, Charleston would have objected that I was badgering the witness, and I would look bad to the jury. So much of what happened here was for the jury’s eyes and ears. I decided to change directions. . . to pull out my heavy artillery.

I instructed the bailiff to take Zachary Barnes’ love letter, People’s 23, from the evidence bin and hand it to Ruby. I stood off to the side so the jury would have a good view of her, far enough away so as not to seem at all threatening. Ruby was best handled gently.

“Ms. Garcia, please read the contents of this letter to the court.”

“Out loud?” she asked, practically pleading with me not to make her do this.

“Out loud,” I said gently, but firmly.

She began to read the letter, and her voice was steady as she read it. She seemed as interested in its contents as the rest of us, and furrowed her brow in concentration as she read.

“Dear Ruby Red, I want to talk to you about what happened between us the other night. The feelings are so strong I can’t think of anything else.”

Then she stopped. It was clear that she was overcome by the letter as she read it obviously for the first time. This is what I had counted on.





“Ms. Garcia, did you ever get to read this letter before?”

“No.” Her voice was tired and sad.

“Please tell the jury why.” I instructed her. I had walked over to my desk and was sort of leaning casually on the edge. I was the very picture of nonchalance.

“ ‘Cause Jimmy took it before I could read it.”

I let that statement hang there. No doubt the whole jury was now wondering what happened when Tobin got hold of that letter. But then again, we all wanted to hear the rest.

I told her, in an almost bored tone of voice, as if it was of little consequence, to **continue reading**.

Ruby began to read. At first, her voice was steady, but little by little, as she read Barnes’ deepest feelings for her—for the first time—she became visibly emotional. She began to cry, and, right after reading his declaration of love for her, she simply couldn’t go on.

I gave her a couple of seconds to compose herself—no more—then I said, quietly, “Please continue.”

For a moment, I thought she would say no or complain, but she went on with it. Deep down, I know she wanted to get this over with. Also, she wanted to know what Zack had said. Of course, I already knew how Zachary Barnes had told her in the letter that he loved his wife, that Jimmy was basically a “good guy,” and, perhaps most importantly, how Ruby should value herself. “Finally, Ruby,” he wrote, “what should be important to you is your own work, because it is good and it could get lost in all this mess.”

Now, everybody has a weakness or a particular longing in life. Ruby’s, I knew, was for people to encourage her to express herself, to believe in her. She had said as much in our interview.



And yet, Tobin had convinced her that Barnes was never serious about his interest in her career, but only wanted “to get into her pants,” as she told me on my cell phone that day before the trial began. Here was proof, in the dead man’s own words, that he had truly cared, and that Tobin was lying to her.

She cried for a moment, then seemed to come to a conclusion—the very conclusion I was hoping she would come to.

“I lied,” she said very quietly.

“Please speak up if you can,” I asked.

She gathered her strength, knowing that she was betraying Tobin. “I lied,” she said more forcefully. “I’ve been lying.” Then she broke down and began sobbing.

The judge granted Ruby a few minutes to calm down, then I continued with the question on everybody’s mind. “**Did you lie about the gun?**”

Ruby’s head was down, and she spoke almost inaudibly. “Yes,” she breathed. Then she looked up and continued resignedly. “I saw it in the work cabinet the night before Zack died.”

I asked her to describe it. “It was silver, and had a black handle. I knew he put it there.”

Charleston was up on her feet objecting immediately, as well she should. The judge sustained the objection, but I was satisfied that some damage was done. The jury clearly had received the image of Tobin putting the gun in the cabinet, an event Ruby had never witnessed.

But of course Ruby didn’t care about the finer points of courtroom politics. Having made her transition from alibi to accuser, it was as if she suddenly saw Tobin for what he was. In her own words, she “lost” it. Her outburst was short and fierce, but wonderfully damning. I was sure the jury would note how





this demure young lady, at first defending Tobin and obviously under his spell, had suddenly started accusing him of murder in open court. I was smirking as I pretended to check my notes. I didn't want anyone but Charleston to see my expression. It was the expression of the proverbial cat after eating the proverbial canary. Only I had just made this particular canary sing.

There was just one more formality, but a necessary one. **I ordered the bailiff to hand the gun to Ruby so she could identify it,** which she did in short order. She even remembered the tape on the back of the handle.

"I should have talked about it," she said at the end. "I was just too afraid."

I told the court that I was done with the witness. "No more questions, your honor."

Then Cynthia Charleston started in on Ruby, trying to discredit her testimony by showing her to be unfaithful. Then she got Ruby confused with a question about her "lover." She was patronizing and unfriendly. I thought it was a mistake. Finally, she suggested that Ruby and Zachary had been co-conspirators.

"Ms. Garcia, is it true that you and Zachary Barnes planned to run off with the insurance money after James Tobin's paintings were stolen?"





“Objection,” I yelled.

The judge took a moment, then said, “Sustained!”

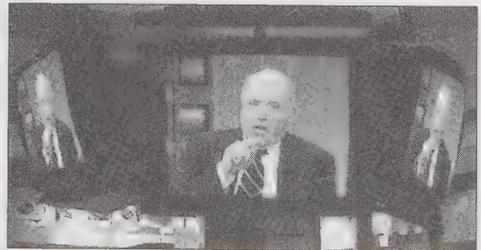
Charleston was done with the witness, and we adjourned for the day.

Procedural Note



Here, and elsewhere in the game, attorneys may yell out “Objection!” However, it is necessary to state the nature of the objection, and the judge should ask for an explanation. In this case, the reason for the objection is not made clear.

After I left the courthouse, I went over to a local electronics store. I was looking for a new remote control. Mine had broken. So I saw not just one, but several Dr. Fleeces on the tube analyzing the day’s events. He called me a “crafty court fox.” Since he seemed to be praising my performance, I decided I could live with him, however pompous and long-winded he was. Besides, I couldn’t disagree with him. The final testimony in my case had gone quite well, and I knew I would sleep soundly that night. Tomorrow, the defense would start its case, but I didn’t envy Charleston. I hadn’t left her much to work with, unless she was considerably more resourceful (or crooked) than I thought.



CHAPTER THIRTEEN

Day Six: James Tobin

Charleston's case involved some character witnesses and a few professional "experts," but there was little she could do to shake the testimony of my witnesses, all of whom had at one time been Tobin's friends, and all of whom had incriminated him.

I suspected she was reluctant to put Tobin on the stand, but I was also pretty sure he had insisted. Criminals with his kind of ego always think they can convince anybody of anything. Tobin clearly wanted a chance to shine his light on the jury and dazzle them with it. And Cynthia knew, barring some miracle, that Tobin was going down on at least one count of fraud, and probably no better than second-degree murder, too. With Tobin insisting on





being put up there, with no compelling evidence to contradict the prosecution's case, she had to make the hard choice and put him on the stand. She probably had confidence that his urbane manner and sincere appearance would sway the jury. Or perhaps she thought our predominantly female jury would find him attractive. Whatever the reasons, she called her client, James Tobin, to the stand.

Of course, Tobin wove a story that was full of inconsistencies—outright lies already contradicted by the evidence and the direct testimony of my witnesses. He was a smooth liar, I had to give him that. He spoke earnestly, using his hands and head for good effect. You really wanted to believe him because, well, how could anybody be so sincere and appear so honest and not be telling the truth?

“James, this past year, what was the financial health of the Barnes Gallery?”

“Well, to be honest, it was close to failing.” He sounded like Beaver Cleaver talking to Ward.





“Did you and Mr. Barnes make plans to remedy the situation?” Such innocuous language for a criminal conspiracy! Really, Ms. Charleston.

“Exactly,” he said, bobbing his head up and down in exaggerated agreement. “He suggested that we arrange to have the paintings stolen from the gallery and collect the insurance.”

I was beginning to get sick listening to this smooth, smarmy bastard try to put the blame on Barnes. He proceeded to tell a story that painted him as the good guy, just trying to protect the gallery, which they had worked for all their lives. It was heart-wrenching. He told an almost-convincing story of how he’d cut the paintings from their frames and how Zack had had them destroyed. It almost fit the evidence. . . .

Next, he claimed to have changed his mind. He looked toward the jury and said, “my conscience bothered me and wouldn’t let up.” That was crap. This guy had no conscience. He went on to assert that it was he who had threatened to go to the authorities. I felt a sharp pain in my shin. It was Looper, making sure I was paying attention. I ignored her.

Tobin also claimed that Barnes had threatened his life several times. He admitted that Simon had told him about the gun in the gallery, but embellished a little by claiming also that Simon had told him Barnes was planning to use it against him, thus justifying his removal of the gun from the drawer. He also admitted—and this was a departure from all previous stories—that he had brought the gun to the meeting, claiming to have been afraid of Barnes. It was a thin story, and I doubted that anyone, even the six-year-old in the front row, was buying it. But he persisted.





“As soon as I mentioned the theft, Zack yanked open the office drawer, looking for the gun.” There was another sharp pain in my leg, and this time, I kicked her back. I heard. I knew what was wrong with his testimony, and I would nail him on cross—if I could still stand up, that is. I gave Looper a glare, then a smile that said, “This sucker’s mine.” She grinned back and didn’t kick me any more.

Tobin, meanwhile, continued talking about the incident with Zack and the gun. “When he didn’t find it, then he blew up, coming at me screaming and threatening me. I—drew the gun in self-defense, telling him to back off. But he just kept coming at me. He grabbed me and. . . and the gun went off. And that’s just the way it happened.” He paused for effect, then finished with a regretful, “I wish it wasn’t true, but it is.”

Nice performance, I thought. A riveting fantasy tale. And now, Charleston turned him over to me. “Your witness,” she said.

The judge turned to me and said, “Prosecution, do you wish to cross-examine?”

About as much as I want to take my next breath and sleep in a comfortable bed tonight, I thought

Yes, your honor,” I said.

I took my time, letting him sit there and squirm while I went through my notes. I had him on a couple of obvious lies. I didn’t think it would take much to break him, once his well-rehearsed script no longer sustained him.

I walked up to the podium where he sat, sweating, then purposefully turned my back on him, facing the jury. “**On Sunday, March 11th, you made a telephone call to Zachary Barnes, correct?**”



"I can't be sure about dates," he said weakly.

"Certainly you remember this particular conversation. It was recorded on the phone machine, and played here in court."

His response surprised even me. "That tape is inaccurate," he blurted out.

"The tape is inaccurate?" I repeated incredulously.

Now he tried to backpedal, spreading his hands in an attempt to make his story seem true. "Well, the context is inaccurate. I was trying to persuade Zack to withdraw the claim." What fantasy world did this guy live in, anyway? He spoke very carefully, clipping his words and emphasizing his point.

"You were? Mrs. Barnes testified that she overheard you threaten her husband's life later that same afternoon." I mimicked his clipped delivery as I attacked him with the truth. "So, in fact, you planned the murder. It was premeditated."

He was barely under control. He knew perfectly well what I was saying, and he had to deny it, despite the evidence. "I have told you, I never threatened Zachary's life." He was getting desperate, exactly where I wanted him. "It's her word against mine," he retorted. It was clear to me who the jury was going to believe, but I had to rub it in.

"Mrs. Barnes was mistaken?" I asked all dripping honey.

Tobin was sweating profusely and his calm exterior had evaporated. "She's lying," he mumbled between gritted teeth, almost below the threshold of hearing; then, louder, "The bitch is lying, that's all." He then launched into an attack on Yvonne Barnes, claiming that she was willing to see him convicted of murder to protect her own reputation. He ended up screaming, "I . . . am . . . innocent." His eyes were wild, and I made sure I wasn't blocking the jury's view of him. It was like a bad Perry Mason episode.



After a moment, I continued my questioning. **“Mr. Tobin, you admit bringing the gun to the gallery?”**

Once again, under control, he spoke in a low voice, with just a touch of harshness. “Yes,” he answered. He nodded with some hesitation, as if to indicated his sense of guilt.

“This is a new story for you, is it not?”

“Yes, I guess so.”

“And, where did you get this gun?”

“I already told you. I got it from the drawer in Zack’s desk.”

“Simon Lee mentioned that this top drawer was locked. How’d you get in?”

“Well, I knew that the key was kept behind the mirror in the bathroom. It’s the kind of drawer that locks automatically when you close it.”

“So, if you want to open it, you’ve got to go get the key and unlock it?” I asked, all innocence. Just idle curiosity.

“Yes.” He didn’t seem to see where this was headed.

“In your most recent version of what happened,” I said, emphasizing the word recent, “you said Zack went to the gun drawer and yanked it open, scaring you.”

“Yes.” He seemed grateful that I was telling his story so well.

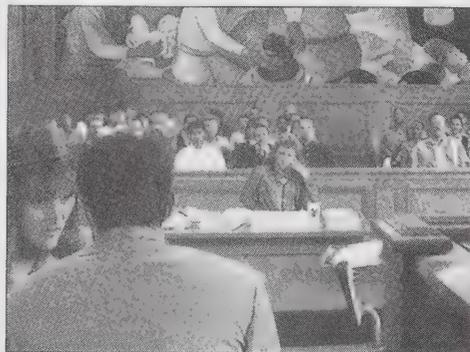
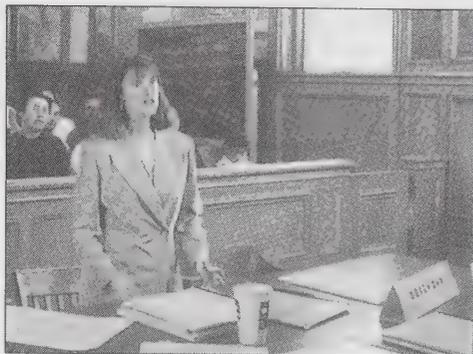
Now I lowered the boom on him. “What’d he do? Run into the bathroom, get the key, run back, insert it into the lock. . .”

“No,” he interrupted. “Uh. I– Maybe he reached down into the bottom drawer, or. . . maybe he had the key a– all along. All I know is that I was scared, and that I thought that he was reaching for the gun.” Poor little Jimmy.

“I thought you had the gun. . .” I interjected.

“Well no. Uh, yes. N– Yes. Why are you trying to trap me?” He now looked like a frightened animal, beyond reason. He turned to





face the jury, a crazy look on his face, and said, “Can’t you see that he’s trying to trap me?” He looked like a child who has just been spanked.

At this point, Charleston finally came to his rescue—far too late, of course—and asked for a moment with her client. The judge gave her what she asked for, and she approached the witness box and whispered something to Tobin. I imagined she was trying to get him to calm down, and I imagine he was telling her that he couldn’t take much more. When she had finished, I went right back after him.

“Mr. Tobin, why did you shoot yourself in the leg?” I asked.

“I was afraid that no one would believe me unless I could show that Zack tried to kill me.”

“And as your partner Zachary Barnes lay bleeding to death at your feet, your first thought was to protect yourself?”

“N- no,” he lied. “I gave him CPR.” He was looking off to the right; Avoiding my eyes.

Where in hell did he come up with this stuff? I wondered. Aloud, I asked, “You gave CPR to man who was bleeding through the throat?”

“Yes,” he said quickly. “I- I mean no. . .”

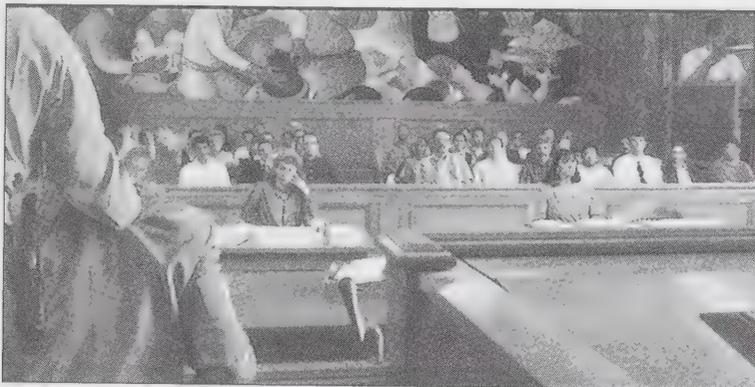
“As a matter of fact, you went outside into the alley as Yvonne Barnes said,” I suggested.

“Yeah, well she is lying.”

This was pathetic, and I knew I had him. I just couldn’t resist breaking him apart a little more. He was despicable.

“For many years, you and Zachary had a successful partnership, yes?”

I didn’t wait for an answer. I pushed him. “And Yvonne was part of your circle of friends?”



He looked down at the floor, practically choked on the words, but he said, "At one time."

"Simon loyally helped you with your work?"

"Yes," he admitted.

"And Ruby? The woman you love?"

"Lying whore," he breathed.

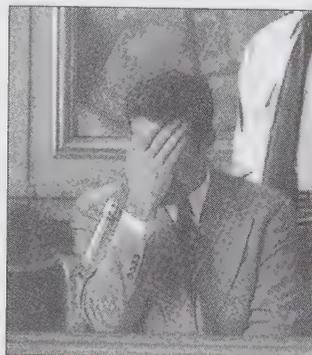
"I see," I replied, as if he had said, "She looks better in red." I continued, "So now you claim that all these friends, Simon Lee, Ruby Garcia, and the late Zachary Barnes. . ."

"Lying scheming scum," he screamed. He was on his feet.

"They all wanted my insurance money. Why doesn't anybody see my side of it? If I had a competent attorney. . ."

Meanwhile, as this outburst ran its course, the judge was yelling, too, telling Tobin to sit down. Finally, the guards had to restrain him and force him back into his seat.

Then he turned to face me, completely over the edge, and said, "And you. You put them up to this. I know you did." Right, James. I made them all tell the truth.



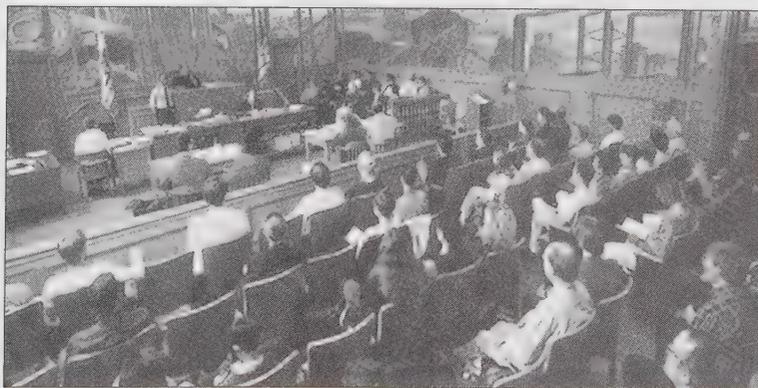


Under my breath, I said, “The rantings of a desperate man.” Louder, I continued in an almost bored tone, “No more questions, your Honor. I’m done with this witness.” I turned away and walked back to my chair.

“Does the defense wish to call another witness?” asked the judge.

Charleston sat back in her chair, completely discouraged, and said, “No, your Honor. We’re finished.” And the word finished had a finality in it that one almost never heard from a defense attorney.

Then it hit me. Maybe they knew their case was hopeless, and they were going to try in appeals to claim inadequate representation. It had been done before, getting a mistrial declared, based on incompetence on the part of the defense. Especially in a capital case like this one, the courts were very careful to be sure a man got a fair trial, and competent representation. Of course, that would mean this trial would have to be repeated, and I didn’t much relish that idea. I put the whole thing out of my mind. For the moment, I knew we had our conviction, even before I heard the jury’s verdict. This man was toast.



CHAPTER FOURTEEN

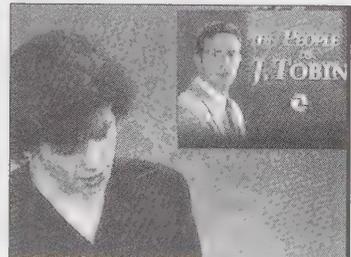
Epilog



What followed was pretty much what I had expected. I was interviewed by the press until my throat was raw. But even they went away, eventually. And then, life went on.

About a year later, I read in the paper that Ruby Garcia finally got a show in a small art gallery. I thought about going, but decided at the last minute not to. Yvonne Barnes had long-since quit the mayor's office and was rumored to be back in television news somewhere. Simon Lee was hit by a car and was getting a hefty insurance settlement from the messenger service where he had worked. I had no idea what he was doing, or even if he still lived in the city.

Tobin was still in the penitentiary, awaiting his appeal, no doubt. Ironically, the value of his paintings skyrocketed, and it was said that he was producing a new series from the prison that was very popular among the San Francisco elite.



And with the money he got for the movie rights, well, let's just say he wouldn't have to defraud any insurance companies any more. Go figure.

Julie Ann Wong got reelected, of course. She and I were "buds" again. At least, as long as I didn't mess up any important cases.

Cynthia Charleston—now there was a case. Somehow, she had managed to turn herself into a golden girl despite the loss and the poor defense, and now she was a partner in a big law firm, pulling in a high six-figure salary. Go figure.

Looper and I occasionally eat a plate of pancakes together and joke around. She finally got a promotion—to a desk job. She hates it and keeps plotting a way to get demoted so she can return to the field. I wish her luck; she's one of the best.

I was hired as a consultant on a big made-for-TV movie. My career took a definite turn for the better. And I traded in my Beemer for a new Jag. I love being a prosecutor. Life is good. Go figure.



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IN THE 1st
DEGREE

PART FOUR:

**A CLOSER LOOK AT
IN THE FIRST DEGREE**

CHAPTER FIFTEEN

General Background

In the First Degree lets you play the part of prosecutor, Sterling Granger. You make the choices that ultimately determine the fate of the accused murderer, James Tobin. In playing the game, you must come to understand the key elements of the case—the phony art theft and the affair between Ruby and the deceased, Zachary Barnes. You must also find out what the three key witnesses are hiding. Each of them has a secret or two, and your skill as an interviewer will be critical in obtaining that information.

The game has basically two main phases—the pre-trial investigation and the trial itself. During the pre-trial phase, you must look at all the evidence, including taped interviews of the accused and the three witnesses, crime reports from Detective Looper, various photographs, and two letters—one, a love letter from Barnes to Ruby, the other a letter from the widow of Zack Barnes, Yvonne.

Pay attention to the subtle clues included with this evidence and shown in these tapes. Besides some factual information, you can gain some understanding of the personalities of the witnesses. It is critical to handle each witness according to their personalities if you want to get the best verdict possible, because it is up to you to secure their testimony on the stand by laying the groundwork in pre-trial interviews.



Under the Hood

What you don't see while playing the game are several numeric values—scores—that get updated as you play. One score is an overall score for the game. The other scores are for each of the witnesses—Simon, Ruby and Yvonne. If you ask the right questions, appropriately handling the witness during pre-trial interviews, your score for that witness will rise and you will be able to get the critical information from them during the trial. If you handle the witnesses poorly, they will be uncooperative on the stand, sticking to their lies, and you won't be able to get a first degree verdict.

In the story walkthrough at the beginning of this book, we have written one possible path to the first degree verdict. Every branch is indicated there. However, there is more than one way through the game, still obtaining the best outcome. However, some paths of inquiry lead to disastrous results, and can easily cost you the first degree verdict.

In order to get the jury to find Tobin guilty of murder in the first degree, you must do well enough in trial for the defense to call Tobin to the stand, and you must ask him the right questions. Note that different questions will be presented to you, depending on the testimony of the other witnesses. If you trap him in his lies and break him down on the stand, you will get the first degree conviction. If you do not, the best you can get is second degree murder. If you do very poorly, the judge will rule for acquittal and Tobin will walk.

Although you cannot see these scores, you might find it interesting to know how the game determines the verdict.

Hidden Score (base score, 10 points)

0-17 points Acquittal

You really have to have blown it big time with all the witnesses to get this result.

18-40 points Not Guilty

You simply did not establish your case.

41-66 points Manslaughter

You didn't establish the necessary connections, for instance, between Tobin and the gun.

67-100 points Second degree murder

You did a good job of establishing Tobin's guilt, but you failed to expose his lies when he was on the stand.



Effect of Opening Statements

In the opening statement, you decided which themes to discuss and how heavily to lean on them. If you fail to prove a theme during the course of the trial, you lose a few points, more if you've emphasized the theme. If you do prove what you assert in your opening statement, you receive ten additional points when the prosecution rests its case. Certain key testimony is necessary to establish these themes, which we will look at in the specific sections for the trial witnesses (to follow).

The Witnesses

General Strategies

Each of the three key witnesses—Simon, Ruby, and Yvonne—has his or her own personality, and each must be interviewed differently. In the story walkthrough at the beginning of this book, you can read in fictional language what might be going on in the mind of the prosecutor as he speaks with these witnesses. Here's a more concise, nutshell personality profile of each witness.

Ruby

A fragile, sensitive lady. She's not very self-confident and easily becomes defensive. Be careful when attacking Tobin. She's very protective. Try to be subtle. Ask about Tobin rather than be suggestive or accusatory. Ruby's strongest motivation is a need for encouragement and recognition. Play on that. Don't push her. Lead her into subjects she's comfortable with, like Tobin's artwork, Zachary's encouragement; play on her emotions.



Simon

A troubled kid. Simon has a hard time with authority, but you shouldn't coddle him. Be tough and don't let him snow you. On the other hand, avoid direct accusations, especially if they link him with the illegal activities at the gallery.



Yvonne

A classic control freak. Yvonne needs to be in control, but so do you. Best recourse is to acknowledge her input, but steer her where you want to go. You must know when to push and when to give in. Although she's a "friendly" witness, she will withhold critical information if you don't find a way to get her to open up. Think about what motivates her, and try to determine when to attack Tobin and when to ask suggestive questions about Zachary Barnes.

One additional note: Yvonne's analysis of the case is pretty good. She's worth listening to.



WARNING! WARNING! WARNING! WARNING!

This section reveals the underlying scoring and details of how the game works. By selectively reading this section, you may be able to obtain information that will help you through the game. However, you may also see more than you want. Read selectively if you still want to figure things out for yourself. On the other hand, if you've pretty much given up and simply want to play the game for the best result, see the next chapter—the Quick and Dirty Walkthrough.

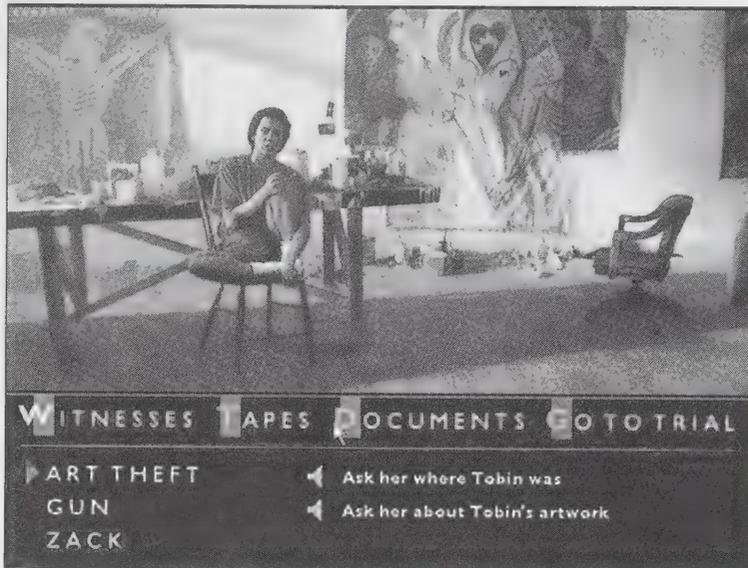
CHAPTER SIXTEEN

Specific Game Analysis

Pre-Trial

In this section, we look at the specific questions you may ask during the pre-trial interviews and how they affect the score for each individual witness. These questions are not necessarily listed in the order you might encounter them in the game, and you may not see some of them at all, depending on how you've played the game previously. However, knowing which questions lead to positive or negative scores can allow you to have more fun with the game, even intentionally getting less than ideal scores to see different parts of the story that don't occur if you play perfectly. Remember also, some questions and answers will trigger other events elsewhere in the game. In order to get certain testimony from a witness when they are on the stand, you must have laid some groundwork for that testimony in your pre-trial interviews.

During the pre-trial phase, your scores have no effect on the overall game score, only on the score for each witness. Simon, Ruby, and Yvonne all start out with scores of 30.



Ruby

Art Theft

Questions Leading to Positive Scores

Ask her about the theft. (Ruby +3)

Ask her about Tobin's artwork. (Ruby +5)

Were the paintings popular? (Ruby +5)

Were there money problems? (Ruby +7)

Questions leading to Negative Scores

Ask her where Tobin was. (Ruby -5)

Who benefited from the insurance? (Ruby -5)

Ask about her role, or What was her involvement? (Ruby -10)

Ask about her artwork. (Ruby -5)

Ask her about the insurance. (Ruby -15)

Was there a financial crisis? (Ruby -10)



Gun

Note: Some of the questions in this thread have different results based on your current score with Ruby. If you've managed to ask questions that lead to negative scores, then Ruby's answers will be different, and so will the scores you obtain. We've noted the score values with the questions.

Questions Leading to Positive Scores

- Did Zack have a gun? (Ruby +3 if Ruby's score is 30 or greater)
- Reveal who owns the gun. (Ruby +5 if Ruby's score is 30 or greater)
- Why is she surprised? (Ruby +5)
- Ask her for more information. (Ruby +10)

Questions leading to Negative Scores

- Ask her about Tobin's use of guns. (Ruby -5)
- Ask her about her role. (Ruby -25; Ruby kicks Granger out, end of interview)
- Reveal who owns the gun. (Ruby -5 if Ruby's score is less than 30)
- Suggest that Tobin is lying. (Ruby -10)
- What about Tobin? (Ruby -5)
- Insist on more information. (Ruby -15)

Zack

Note: Some of the questions in this thread have different results based on your current score with Ruby. If you've managed to ask questions that lead to negative scores, then Ruby's answers will be different, and so will the scores you obtain. We've noted the score values with the questions.

Questions Leading to Positive Scores

- Was Zack popular? (Ruby +3)
- Did he help her career? (Ruby +3)
- Was she intimate with Zack? (Ruby +3)
- Ask if she restrained herself. (Ruby +5)
- Did it go farther? (Ruby +5)
- Ask her if anything happened with Zack. (Ruby +5)
- Did Tobin find out? (Ruby either +3 or +5 depending on current score)
- Did she ever read the note? (Ruby +11)



Questions leading to Negative Scores

Did Tobin hate Zack? (Ruby -7; *This is a pretty disastrous way to start this line of questioning, and many of the subsequent negative question/answers stem from this bad start, even though the questions are similar to those asked on a more positive path.*)

Did she sleep with Zack? (Ruby -3)

Ask about Zack and her career. (Ruby -3)

Didn't Zack help her? (Ruby -5)

Ask about Zack's interest in her. (Ruby - 5)

Was she fond of Zack. (Ruby -5)

Does she have any regrets? (Ruby -5 if score is below 15)

Was Tobin faithful? (Ruby -5)

Did Tobin influence her or Ask about Tobin's influence on her. (Ruby -5 or Ruby -10 depending on when it's asked)

Did she love Zack? (Ruby -5)

Did Tobin blow up? (Ruby -2)

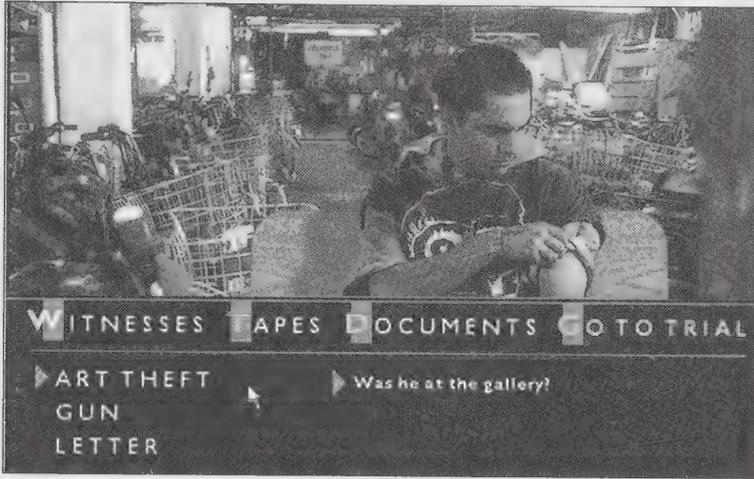
What did Tobin say? (Ruby -5 if Ruby score is less than 25)

Is she sure? (Ruby -5)

Did Tobin hit her? (Ruby -10)

Question Tobin's actions. (Ruby -10)

Does she understand Tobin's motive? (Ruby -10)



Simon

With Simon, if you get off on the wrong foot by asking him questions that lead to negative scores, you may not be able to get the best results when asking questions about other subjects.

Art Theft

Note: To get the positive answers about the Art Theft, you must have a score with Simon of 30 or better, or you'll be forced onto an unproductive path. Best to tackle this subject first.

Questions Leading to Positive Scores

Reveal Tobin's phone call. (Simon +20); must be after the motorcycle questions or it won't score the points)

Questions leading to Negative Scores

Did he steal the paintings? (Simon -10)

Accuse him of theft. (Simon -10)

Did Tobin pay him off? (Simon -11)

(Hint: This is the last question in the Art Theft thread. Leave it unasked for a maximum score. This means jumping directly to another witness without finishing all of Simon.)



Gun

Questions Leading to Positive Scores

Ask again if he saw the gun. (Simon +5 if Simon score is 30 or better.)

Ask him if Zack had the gun. (Simon +5)

Suggest he should have told Tobin. (Simon +5)

Suggest that Tobin will confess. (Simon +10)

Questions leading to Negative Scores

Suggest he delivered the gun. (Simon -15)

Ask him for more details. (Simon -10)

Ask him to reveal more. (Simon -5)

Who else knew of the gun? (Simon -5)

Suggest he was involved. (Simon -12)

The Letter

Questions Leading to Positive Scores

Ask about Ruby. (Simon +3)

Suggest he looked at the letter. (Simon +5 if Simon score is 30 or better.)

Attack his story. (Simon +5)

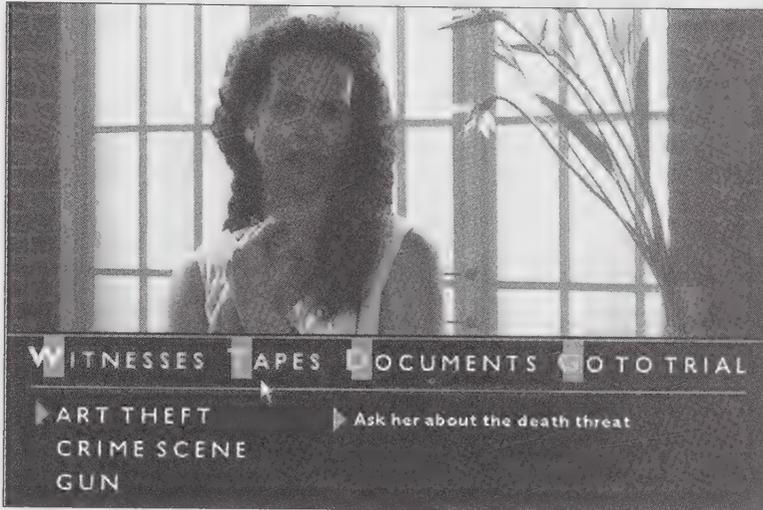
Push him to cooperate. (Simon + 10)

Questions leading to Negative Scores

Did he enjoy betraying Ruby? (Simon -15)

Suggest the situation was unfair. (Simon -10)

Offer him a deal. (Simon -10)



Yvonne

Art Theft

Questions Leading to Positive Scores

Follow up on her letter. (Yvonne +5)

Ask her about the alarm system AND Ask her about the death threat. (Yvonne +5)

Questions leading to Negative Scores

Ask her other questions. (Yvonne -10)

Ask if Zack was a beneficiary. (Yvonne -20)

Ask her if the affair was the motive. (Yvonne -15)

Ask her for more information. (without previously asking about the death threat and the alarm system) (Yvonne -5)

Crime Scene

Questions Leading to Positive Scores

Was it something else? (Yvonne +5)

Follow up on the shirt problem. (Yvonne +10)



Questions leading to Negative Scores

Did Tobin arrange the meeting? (Yvonne -3)

Does she have proof? (Yvonne -15; this question also disables the good path on Yvonne's gun interview during pre-trial, so if you do this path before asking about the gun, stay away from this question!)

Can she add anything? (Yvonne -5)

Ask her for more information. (Yvonne -5)

Gun

To get positive points on this path, you must have at least 30 points with Yvonne. If not, she will clam up after a few questions and the best you can do is come out without losing any points.

Questions Leading to Positive Scores

Explain the importance of the gun. (Yvonne +5 if Yvonne score is 30 or better)

Question her story. (Yvonne +5)

Questions leading to Negative Scores

Did Zack bring the gun? (Yvonne -15)

Explain the importance of the gun. (Yvonne -10 if Yvonne score is less than 30)

Suggest a better story. (Yvonne -10)

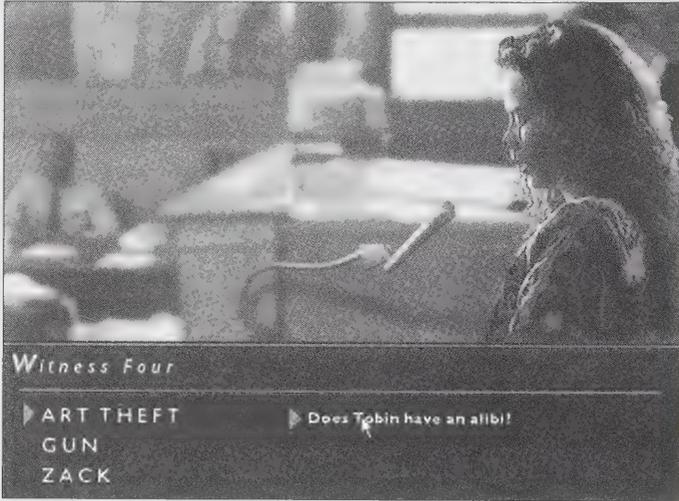


The Trial

In this section, we look at the specific questions you may ask during the trial. These questions can affect both the individual witness' scores and also the game score, which is, in large part, what determines Tobin's fate. These questions are not necessarily listed in order, and you may not see some of them at all, depending on how you've played the game previously. For instance, if you have attained a very low score on any witness, you will not be able to extract the most damaging testimony from them on the witness stand. Also, if certain answers were not given in pre-trial interviews, then certain questions do not become available to you during the trial. It is important to note, also, that the same question may appear, but lead to a different path. For instance, in Ruby's testimony about the art theft during the trial, the first question is always, "Where were you on the night the defendant's paintings were stolen from the Barnes Gallery?" However, this question will get a different response from Ruby depending on certain conditions. If you had previously asked the question with the heading, "Were there money problems?" in the pre-trial interview, you will get an easier path with Ruby, requiring only a score of 60 or better for a helpful answer. If you had not asked that particular question, Ruby will lie in defense of Tobin, unless your score is quite high (greater than 80).

Remember also, some questions and answers will trigger other events elsewhere in the game, for instance, whether Looper becomes available to testify, or whether Hayes is called to the stand. In order to get certain testimony from Ruby, Simon or Yvonne when they are on the stand, you must have laid some groundwork for that testimony in your pre-trial interviews.

In this section, we list those questions that lead to positive answers as well as the basic parameters that allow these questions to become available during game play.



Ruby

Art Theft

Does Tobin have an alibi? (Game score + 5 if positive conditions are met.)

Did you sleep through the theft? (Game score + 3)

Ask her for more of Zack's story. (Game Score + 1 if Ruby score 82 or greater)

Pursue Tobin. (Game score + 4)

Gun

If you have not gone through the Zack path, then Ruby will always lie when first asked if Zack had a gun. The way it works is that the maximum points you can have after the pre-trial interviews is 98. In order to get Ruby to admit to seeing the gun, you have to have at least 99 points. Since you can't gain any points when asking about the art theft, you must ask about Zack to get the necessary 99 points for Ruby to come clean about the gun. You can also get Ruby to admit to lying about the gun in the Zack thread if you previously went through the Gun thread and she lied.

Did Tobin have a gun? (Game score + 2 if Ruby score is less than 99, and if Ruby did previously admit to seeing the gun in pre-trial interviews)

Did Tobin have a gun? (Game score + 11 if Ruby score is 99 or greater)

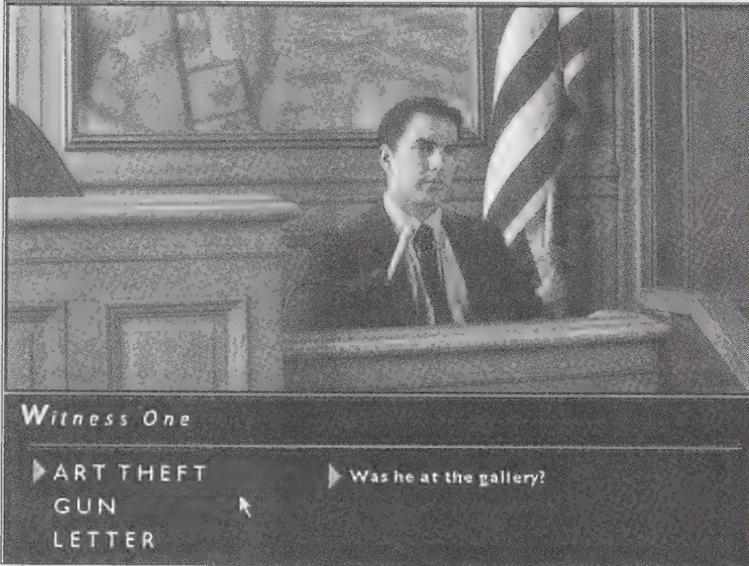
Show her the gun. (Game score +3 (only if previous path is taken))



Zack

Ruby's testimony about Zack and his letter are critical to the prosecution's case. One of the main goals of the game is to get Ruby to admit that she saw Tobin with the gun, which is only accomplished by getting her to see through Tobin's influence and realize that Zack was her friend, after all. Playing on her sympathies gets her to turn on Tobin. In this case, the key is to get her to read Zack's letter aloud. However, this is only effective if you have gained a pretty high score already with Ruby. A score of 82 or better is needed to get her to soften up and allow the contents of the letter to reach her. If your score with Ruby is less than 82, you're pretty much sunk with this witness, and her testimony about the gun is a big part of the case against Tobin.

Asking Ruby to keep reading the letter after she stops causes her to keep going and break down. The game score is increased by four at this point. Then, when she admits that she lied before, asking if she lied about the gun gains nine more points and may set up Tobin's appearance as a defense witness. Showing Ruby the gun gains another three points to the game score.



Simon

Art Theft

Simon will admit to seeing Tobin at the gallery ripping off his own paintings, but only if properly handled during pre-trial interviews. If you really insult him, a path is triggered in which you have no hope of getting him to testify against Tobin. If you only mildly blow it with him, but your score with Simon is 81 or better, you can still get the admission. If you ask the big 20-point question (see the pre-trial list), you will get the damaging testimony every time. When he does implicate Tobin, your game score goes up by five points. Then, if you ask him about the motorcycle, you gain another five points, and the fraud verdict against Tobin is pretty much a lock.

Gun

Simon's gun testimony can help to implicate Tobin, but, once again, you must have handled him correctly in pre-trial. If you follow the perfect path with Simon, you will always get the admission that he saw Zack with a gun in the gallery office. If your pre-trial interview is not quite perfect, but not disastrous, you can still get the admission about the gun if your score with Simon is 80 points or better. Your game score goes up two points if you get this admission.



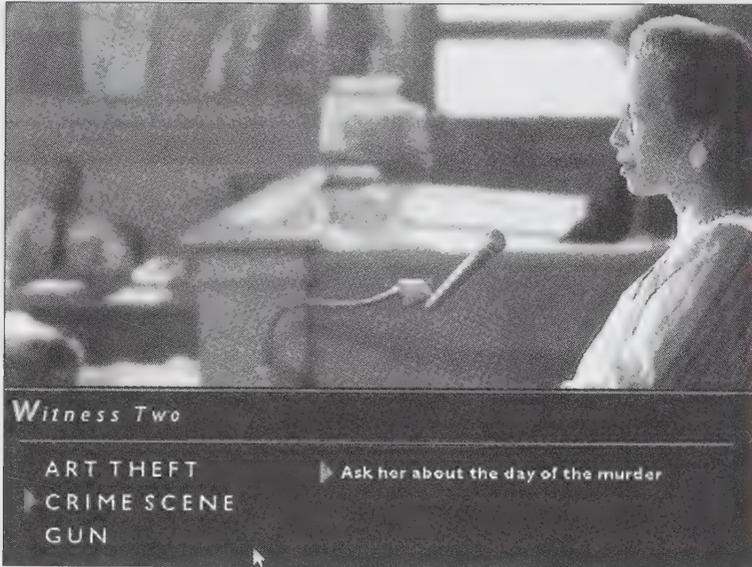
Assuming you get the best answer from Simon on the first question, you want to challenge the consistency of his story next. This sets up a scene in which Granger traps Simon in a lie. Following this, accuse him of telling Tobin. This question triggers a lot of events in the game, including the defense lawyer's disastrous cross-examination in which Simon says he gave Tobin a way to kill Barnes, and adds six points to the game score.

Letter

Again, the same question will appear, but will lead to different resulting paths, depending on your path through the pre-trial interview with Simon and your score with Simon. One path is only slightly helpful to your case, even though it results in a dramatic cross-examination scene. The other path allows you to use Simon to paint Tobin as a violent and jealous man.

If you get on the better path, Simon will be cooperative and will readily admit to hearing the argument between Tobin and Ruby. The next question to ask is the one that establishes the chronology of events leading up to the argument. This adds two points to your game score.

At this point, you must stay with the letter. Ask him if he read it, and he will admit to reading in the course of following Tobin's orders. Then ask him if he told Tobin about the letter and your game score is increased by three more points. This also triggers another unproductive cross-examination by the defense.



Yvonne

Art Theft

Yvonne is a friendly witness, but she can be mishandled. The key to her art theft testimony hinges on how well you did with her in the pre-trial interview, and which choices you make in trial. The maximum score you can obtain with Yvonne in pre-trial is 65. You must have 56 points or better to get onto the path of questions and answers that leads to her revelation of the answering machine tape that incriminates Tobin in his own voice. The best path to take is to explore Zack's role in the theft as soon as possible. If your score is high enough, your next question will be about the gallery's finances. Now, if you follow up on Zack's motive, Yvonne will produce the tape in order to protect her husband's name and reputation. This even adds six points to the games score. It also ensures the fraud verdict against Tobin.

Crime Scene

There are two paths in Yvonne's crime scene testimony. One leads to a favorable result for the prosecution. The other is not so good and doesn't help the case. To get on the favorable path, you must handle Yvonne correctly in pre-trial interviews about the crime scene. During the trial, you do not want to bring up the issue of the shirt switch with Yvonne. Instead, keep her telling her story, then ask her to



tell what Tobin had said at the scene of the crime. This will add five points to your game score and enable Looper's appearance as a prosecution witness. You'll know this if Looper leans over and tells you to put her on the stand. The key is to keep Yvonne's speculation to a minimum. By getting her to testify accurately and honestly about what she saw and heard, you open the way for Looper to corroborate her observations.

Gun

Yvonne's testimony about the gun can be effective or very harmful, and it all depends on how you did with her in pre-trial interviews about the gun and also the crime scene. If you asked her if she had proof of what she believed to be the case, you encourage her to lie, which will be disastrous during trial. She will also lie if you mishandle her in the pre-trial gun interview. You do have a chance to recover if you blew it in the crime scene dialog, but your score with her must be at least 61.

If you get on the right path for Yvonne's testimony, you will need to clarify the importance of the gun in the case as well as read from Tobin's transcript. This will get Yvonne to admit bringing the gun, and the real reason she did so. It also adds nine points to your game score.



James Tobin

Tobin is called to testify if the prosecution's case is good. There are different sets of testimony and related questions on cross-examination for Tobin, however, depending on what has happened during the trial. If Yvonne reveals the answering machine tape, then Tobin's best testimony and questions for the art theft are enabled. For the best gun testimony, Ruby must have linked Tobin to the gun in either the Gun or the Zack threads, and the your game score must be at least 85 points. Therefore, the key moments in the trial are the answering machine tape and Ruby's testimony about Tobin and the gun.

Art Theft

If you did not get Yvonne to reveal the tape, but you did get Simon to admit to catching Tobin ripping off the art gallery, then you will get a line of questioning that does not lead to the ideal result, but will allow you to gain three points in the game score. To do so, ask Tobin about the love letter from Zachary to Ruby.

If you have gotten Yvonne to reveal the tape, then ask him about the phone message. This gains five points. If you now ask the correct question about the gun, you will enable the climactic ending in which Tobin blows it big time.

Gun

There is only one perfect path of testimony and questions on the subject of the gun. If Simon links Tobin to the gun, a secondary path of testimony and questions is enabled, but this isn't at all ideal and only allows you to gain up to three points to the game score.

The idea path for James' gun testimony and questions is enabled by Ruby's admission that she saw Tobin with the gun, either in the Gun thread or in the Zack thread. On this path, you need only to ask Tobin about the fight details, then catch him lying. Do not accuse him of murder! Asking the correct question adds five points to the game score and, with the proper question on the art theft thread, enables the climactic closing scenes in which Tobin makes a total ass of himself.

Other Witnesses

Looper

Looper's testimony helps to nail Tobin, but she will only be available for testimony if you have gotten the appropriate testimony from Yvonne regarding her observations of the crime scene. When talking about the crime scene and the broken table, be sure to ask if Tobin broke the table. Her testimony will add three points to your game score. On the issue of the crowbar used in the fake break-in, be sure to disclose the fact that Zack's prints were also found on it so Looper can put a positive spin on that subject and avoid the defense attorney's questions about it. This also adds three points to the game score.



Hayes

Hayes is an expert defense witness who is called to refute some of the testimony in the prosecution's case. Hayes will only be called to the stand if you have gained a certain number of points before resting your case. Hayes will testify on two

subjects. The first is the presence of bruises on the decedent's arms. The second subject has to do with the position of the victim's hands during the events surrounding the crime. Hayes will be called to testify about the bruises if your game score is between 37 to 50 points. If your game score is above 50 points, he will be called to testify about both the bruises and the hands.

However, if Ruby has testified during your examination of her that Tobin did have the gun in either the Gun thread or the Zack thread and your game score is at least 85 points, then Hayes will not be called at all, and James will be called with the best set of testimony and cross-examination questions enabled.

If you do get Hayes, you can gain some game score points if you ask the proper questions. On the subject of Bruises, ask him what the cause of the bruises was. This adds three points to your score. On the subject of Hands, ask if his hands were up for another reason. This adds five points to your score.



WARNING! WARNING! WARNING! WARNING!

This section gives you the answers to the game. If you don't want the answers, don't look here!

CHAPTER SEVENTEEN

Quick & Dirty Walkthrough

For those who want just the facts, ma'am.

Winning the game means obtaining a first degree murder conviction against James Tobin. To do so, you must handle the witnesses properly to get the responses you want from them. Each witness is different, and the following summary tells you exactly what path to take to get the ideal result. This is not the only path available. There are other ways to get the first degree conviction. This is just one of the most interesting ways to do it, and is the same way indicated in the story walkthrough at the beginning of this book.

To begin with, you will want to look at the tapes and the evidence in the case. Read the beginning of the story walkthrough for some idea what the tapes and the evidence reveals, if anything. Then it's time to start on the witnesses. It doesn't really matter what order you choose to interview the witnesses in the pre-trial phase, so we'll start with Ruby.

Note: We've included the hidden scores with the questions so you can get an idea what is going on behind the scenes in the game.

Ruby

Base Score 30

Art Theft

- Ask her about the theft. (+3)
- Ask her about Tobin's artwork. (+5)
- Were the paintings popular? (+5)
- What was the financial situation?
- Were there money problems? (+7)
- Where was Tobin? (optional)



Interim score for Ruby: 50

Gun

- Did Zack have a gun? (+3)
- Reveal who owns the gun. (+5)
- Why is she surprised? (+5)
- Ask her for more information. (+10)



Interim score for Ruby: 73

Zack

- Was Zack popular? (+3)
- Did he help her career? (+3)
- Ask her if anything happened with Zack. (+5)
- Does she have any regrets?
- Suggest it's not her fault.
- Did Tobin find out? (+3)
- Did she ever read the note? (+11)



Final pre-trial score for Ruby: 98



Simon

Base Score 30

Art Theft

Was he at the gallery?

Ask about his motorcycle.

What did he wear?

Reveal Tobin's phone call. (+20)

Do not ask the final question here!



Interim score for Simon: 50

Gun

Did he see a gun?

Ask again if he saw the gun? (+5)

Ask him if Zack had the gun. (+5)

Who did he tell?

Suggest he should have told Tobin. (+5)

Suggest that Tobin will confess. (+10)



Interim score for Simon: 75

Letter

Ask about Ruby (+3)

Did he know about the letter?

Suggest he looked at the letter (+5)

Did Tobin find out?

Attack his story. (+5)

Ask if he told Ruby.

Push him to cooperate. (+10)



Final pre-trial score for Simon: 98



Yvonne

Base Score 30

Art Theft

Clarify Tobin's motive.

Follow up on her letter. (+5)

Ask her about the death threat.

Ask her about the alarm system. (+5)

Optional: Ask her for more information.



Interim score for Yvonne: 40

Crime Scene

Review Tobin's story.

What happened next?

Was it something else? (+5)

Can she clarify the shirt story?

Follow-up on the shirt problem. (+10)



Interim score for Yvonne: 55

Gun

Ask her about Daryl Barnes.

Could Tobin have gotten the gun?

Explain the importance of the gun (+5)

Question her story. (+5)



Final pre-trial score for Yvonne: 65

Prediction for the press:

1st Degree Murder, of course.



The Trial

Game Score 10

Opening Statements

You want to Emphasize both the Art Theft Coverup and the Sexual Jealousy motives, even though you really only need to prove one of them. Following this walkthrough, however, you will easily prove both.

In the trial, the order of witnesses does not really matter, but for dramatic reasons, we like to call Simon first, Yvonne second, Looper third, and Ruby last.

Simon



Art Theft

Was he at the gallery? (Game score +5)

Suggest he was bribed. (Game score +5)

Gun

Was he aware of the gun? (Game score +2; Simon score = 100)

Ask about the consistency of his story.

Accuse him of telling Tobin. (Game score +6)

Letter

Did Tobin know about the affair?

Establish chronology. (Game score +2)

Did he read the letter?

Did he tell Tobin about the letter? (+3)

Interim Game Score: 33
Final score for Simon: 100

Yvonne

Crime Scene

Ask her about the day of the murder

Follow-up on her story.

Ask her about Tobin's story. (Game score +5)

Gun

Did she know about the gun? (Game score +2)

Clarify the importance of the gun.

Read Tobin's transcript.

Challenge her gun story. (Yvonne +5)

Ask her to explain. (Game score +9; Yvonne +15)

Art Theft

Did she see the fight?

Explore Zack's role in the theft.

Ask about the gallery finances.

Follow-up on Zack's motive. (Game score +8; Yvonne +15)

Interim Game Score: 57

Final score for Yvonne: 100

Looper

Base Score: 50

Ask about Tobin's broken table story.

Did Tobin break the table? (Game score +3)

Examine the crowbar marks.

Disclose Zack's prints on the crowbar. (Game score +3)

Interim Game Score: 63





Ruby

Art Theft

Does Tobin have an alibi? (Game score +5)

Ask her about Tobin's story.

Ask her for more of Zack's story. (Game score +1)

Pursue Tobin. (Game score +5)



Gun

Did Tobin have a gun? (Game score +2)

Does she know anything about the gun?

Zack

Ask her to read Zack's letter.

Did she read it before?

Ask her to keep reading. (Game score +4; Ruby score reaches 100)

Did she lie about the gun? (Game score +9)

Show her the gun. (Game score +3)

Interim Game Score: 91
Final score for Ruby: 100

At this time, the prosecution rests its case. Because you have proved your case, as indicated by your opening statements, you get an added bonus of 10 points, which brings the game score to a perfect 100.



James

Base Score: 30

Art Theft

Use the phone message.

Gun

Examine fight details.

From here on, it's just a matter of watching the show as Granger asks a few more questions and Tobin freaks out. In the end, you get to hear the happy verdict from the jury. Congratulations. You win.



CHAPTER EIGHTEEN

California Jury Instructions



In a trial like the Tobin Murder Trial, the judge will read and hand out a list of instructions to the jury before they begin deliberations. For those of you who are curious about what the real issues in this case are, we've reprinted here many of the instructions the jury would receive in a similar case in the state of California, where In the First Degree takes place. These instructions help define the different degrees of murder and the issues by which the verdict is determined. We've taken the liberty of placing James Tobin's name where the defendant's name would normally appear.

Homicide Defined

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicides, which are lawful.



Murder Defined

James Tobin is accused in Count 1 of the information of having committed the crime of murder, a violation of Penal Code Section 187.

Every person who unlawfully kills a human being with malice aforethought is guilty of the crime of murder in violation of Section 187 of the Penal Code.

In order to prove such crime, each of the following elements must be proved:

1. A human being was killed.
2. The killing was unlawful, and
3. The killing was done with malice aforethought.

A killing is unlawful if it is neither justifiable nor excusable.

“Malice Aforethought”— Defined

“Malice” may be either express or implied.

Malice is express when there is manifested an intention unlawfully to kill a human being.

Malice is implied when:

1. The killing resulted from an intentional act,
2. The natural consequences of the act are dangerous to human life, and
3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought.

The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed.

The word “aforethought” does not imply deliberation or



the lapse of considerable time. It only means that the required mental state must precede rather than follow the act.

Deliberate and Premeditated Murder

All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree.

The word "willful," as used in this instruction, means intentional.

The word "deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. The word "premeditated" means considered beforehand.

If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the ideas of deliberation, it is murder of the first degree.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it include an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, he decides to and does kill.



Murder by Means of Lying in Wait

Murder which is immediately preceded by lying in wait is murder of the first degree.

The term “lying in wait” is defined as waiting and watching for an opportune time to act, together with a concealment by ambush or some other secret design to take the other person by surprise. The lying in wait need not continue for any particular period of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.

[The word “premeditation” means considered beforehand.]

[The word “deliberation” means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.]

Unpremeditated Murder of the Second Degree

Murder of the second degree is the unlawful killing of a human being with malice aforethought when there is manifested an intention unlawfully to kill a human being but the evidence is insufficient to establish deliberation and premeditation.

Manslaughter—Defined

The crime of manslaughter is the unlawful killing of a human being without malice aforethought. It is not divided into degrees but is of two kinds, namely, voluntary manslaughter and involuntary manslaughter.

Voluntary Manslaughter—Defined

[James Tobin is accused in Count 1 of the information of having committed the crime of voluntary manslaughter, a violation of Section 192 of Penal Code.]

Every person who unlawfully kills another human being



without malice aforethought but with an intent to kill, is guilty of voluntary manslaughter in violation of Section 192 of the Penal Code.

There is no malice aforethought if the killing occurred upon sudden heat of passion or in the honest but unreasonable belief in the necessity to defend oneself against imminent peril to life or great bodily injury.

In order to prove such crime, each of the following elements must be proved:

1. A human being was killed,
2. The killing was unlawful, and
3. The killing was done with the intent to kill.

A killing is unlawful if it was neither justifiable nor excusable.

Sudden Quarrel or Heat of Passion and Provocation Explained

To reduce an intentional felonious homicide from the offense of murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of such character and degree as naturally would excite and arouse such passion, and the assailant must act under the influence of that sudden quarrel or heat of passion.

The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinary reasonable person in the same circumstances. A defendant is not permitted to set up his or her own standard of conduct and to justify or excuse himself or herself because his or her passions were aroused unless the circumstances in which the defendant was placed and the facts that confronted him or her were such as also would have aroused the passion of the ordinarily reasonable person faced with the same situation.

The question to be answered is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment.



If there was provocation, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed such provocation and had all the elements of murder, as I have defined it, the mere fact of slight or remote provocation will not reduce the offense to manslaughter.

Murder or Manslaughter—Cooling Period

To reduce a killing upon a sudden quarrel or heat of passion from murder to manslaughter the killing must have occurred while the slayer was acting under the direct and immediate influence of such quarrel or heat of passion. Where the influence of the sudden quarrel or heat of passion has ceased to obscure the mind of the accused and sufficient time has elapsed for angry passion to end and for reason to control his conduct, it will no longer reduce an intentional killing to manslaughter. The question as to whether the cooling period has elapsed and reason has returned is not measured by the standard of the accused, but the duration of the cooling period is the time it would take the average or ordinarily reasonable person to have cooled such passion and for that person's reason to have returned.

No Specific Emotion Alone Constitutes Heat of Passion

Neither fear, revenge, nor the emotion induced by and accompanying or following an intent to commit a felony, nor any or all of these emotional states, in and of themselves, constitute the heat of passion referred to in the law of manslaughter. Any or all of such emotions may be involved in a heat of passion that causes judgment to give way to impulse and rashness. Also any one or more of them may exist in the mind of a person who acts deliberately and from choice, whether such choice is reasonable or unreasonable.



Due Caution and Circumspection—Defined

The term “without due caution and circumspection” refers to negligent acts which are aggravated, reckless and gross and which are such a departure from what would be the conduct of an ordinarily prudent, careful person under the same circumstances as to be contrary to a proper regard for human life or to constitute indifference to the consequences of such acts. The facts must be such that the consequences of the negligent acts could reasonably have been foreseen. It must also appear that the death was not the result of inattention, mistaken judgment or misadventure, but the natural and probable result of an aggravated reckless or grossly negligent act.

Murder and Manslaughter Distinguished

The distinction between murder (other than felony-murder) and manslaughter is that murder (other than felony-murder) requires malice while manslaughter does not.

When the act causing the death, though unlawful, is done in the heat of passion or is excited by a sudden quarrel such as amounts to adequate provocation or in the honest but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury the offense is manslaughter. In such a case, even if an intent to kill exists, the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder (other than felony-murder) and not manslaughter, the burden is on the People to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion or upon a sudden quarrel or in the honest, even though unreasonable, belief in the necessity to defend against imminent peril to life or great bodily injury.

Homicide—Proximate Cause—Defined

To constitute murder or manslaughter there must be, in



addition to the death of a human being, an unlawful act which was a proximate cause of that death.

A proximate cause of a death is a cause which, in natural and continuous sequence, produces the death, and without which the death would not have occurred.

Duty of Jury as to Degree of Murder

Murder is classified into two degrees, and if you should find the defendant guilty of murder, you must determine and state in your verdict whether you find the murder to be of the first or second degree.

Doubt Whether First or Second Degree Murder

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give defendant the benefit of the doubt and return a verdict fixing the murder as of the second degree.

Doubt Whether Murder or Manslaughter

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give defendant the benefit of such doubt and find it to be manslaughter rather than murder.

Evidence of Provocation May be Considered in Determining Degree of Murder

If the evidence establishes that there was provocation which played a part in inducing an unlawful killing of a human being, but the provocation was not sufficient to reduce the homicide to manslaughter, you should consider the provocation for such bearing as it may have on whether the defendant killed with or without deliberation and premeditation.



Evidence of Provocation May be Considered in Determining Degree of Murder

When the evidence shows the existence of provocation that played a part in inducing the unlawful killing of a human being, but also shows that such provocation was not such as to reduce the homicide to manslaughter, and you find that the killing was murder, you may consider the evidence of provocation for such bearing as it may have on the question of whether the murder was of the first or second degree.

Unanimous Agreement as to Offense—First or Second Degree Murder or Manslaughter

Before you may return a verdict in this case, you must agree unanimously not only as to whether the defendant is guilty or not guilty, but also, if you should find him guilty of an unlawful killing, you must agree unanimously as to whether he is guilty of murder of the first degree or murder of the second degree or voluntary or involuntary manslaughter.

Jury May Return Partial Verdict—Homicide

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime of first degree murder (as charged in Count 1) and you unanimously so find, you may convict him of any lesser crime provided you are satisfied beyond a reasonable doubt that he is guilty of such crime.

You have been provided with guilty and not guilty verdict forms as to Count 1 for the crime of murder in the first degree and lesser crimes thereto. Murder in the second degree is a lesser crime to that of murder in the first degree. Voluntary and involuntary manslaughter are lesser to that of murder in the second degree.

Thus, you are to determine whether the defendant is



guilty or not guilty of murder in the first degree or of any lesser crime thereto. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it to be productive to consider and reach tentative conclusions on all charged and lesser crimes before reaching any final verdicts.

Before you return any final or formal verdicts, you must be guided by the following:

1. If you unanimously find a defendant guilty of first degree murder (as to Count 1), your foreperson should sign and date the corresponding guilty verdict form. All other verdict forms (as to Count 1) should be left unsigned.
2. If you are unable to reach a unanimous verdict as to the charge (in Count 1) of first degree murder, do not sign any verdict forms (as to that Count), and report your disagreement to the court.
3. The court cannot accept a verdict of guilty of second degree murder (as to Count 1) unless the jury also unanimously finds and returns a signed verdict form of not guilty as to murder of the first degree in the same Count.
4. If you find the defendant not guilty of murder in the first degree (as to Count 1) but cannot reach a unanimous agreement as to murder of the second degree, your foreperson should sign and date the not guilty of murder in the first degree form, and should report your disagreement to the court. Do not sign any other verdict forms.
5. If you unanimously find a defendant not guilty of first degree murder, but guilty of second degree murder, your foreperson should sign and date the corresponding verdict forms. Do not sign any other verdict forms (as to that Count).



6. The court cannot accept a verdict of guilty of voluntary or involuntary manslaughter unless the jury also unanimously finds and returns a signed not guilty verdict form as to both murder of the first degree and murder of the second degree.
7. If you unanimously find a defendant not guilty of murder in the first degree, and not guilty of, murder in the second degree, but are unable to unanimously agree as to the crime of voluntary or involuntary manslaughter, your foreperson should sign and date the not guilty verdict form for first and second degree murder, and you should report your disagreement to the court.

Jury May Return Partial Verdict—Homicide

James Tobin is accused (in Count 1) with the crime of murder. Murder is divided into two degrees—murder of the first degree and murder of the second degree. Voluntary manslaughter and involuntary manslaughter are lesser and necessarily included crimes.

The court has provided you with verdict forms for each count charged and for each lesser and necessarily included crime. You should determine whether James Tobin is guilty or not guilty of the crime of first degree murder (alleged in Count 1) and any special finding you are directed to make. If you unanimously agree that James Tobin is guilty of the crime (alleged in Count 1) and any special finding you are directed to make, you will have your foreperson date and sign the guilty verdict and return with it into court. Nothing further will be then required of you as to Count 1.

If you unanimously agree that James Tobin is not guilty of murder of the first degree, you will have your foreperson date and sign the not guilty verdict for the crime of murder of the first degree and you will determine whether James Tobin is guilty or not guilty of murder of the second degree. If you unanimously agree the defendant is guilty of the crime of



murder of the second degree, you will have your foreperson date and sign the guilty verdict of murder of the second degree and nothing further will be required of you as to the crime of murder alleged in Count 1.

If you unanimously agree that James Tobin is not guilty of murder of the second degree, you will have your foreperson date and sign the not guilty verdict for the crime of murder of the second degree and you will determine whether James Tobin is guilty or not guilty of the lesser included crime of voluntary manslaughter or the lesser included crime of involuntary manslaughter. If you unanimously agree the defendant is guilty or not guilty of the lesser included crime of voluntary manslaughter or the lesser included crime of involuntary manslaughter, you will have your foreperson date and sign such guilty or not guilty verdict and return it to the court together with the not guilty verdict on the offense of first degree murder and second degree murder alleged in Count 1 as well as any special finding you are directed to make.

You must unanimously agree that the defendant is not guilty of first degree murder before you may find James Tobin guilty or not guilty of second degree murder. If you are unable to unanimously agree on the allegation of first degree murder, your foreperson shall report such fact to the court. If you are unable to unanimously agree on the allegation of second degree murder, your foreperson shall report such fact to the court.

You must unanimously agree that James Tobin is not guilty of second degree murder before you find him guilty or not guilty of voluntary or involuntary manslaughter.

If you unanimously agree that James Tobin is not guilty of the crime of first degree murder and second degree murder alleged in Count 1, but after due and sufficient deliberation you cannot agree that James Tobin is guilty or not guilty of either voluntary manslaughter or involuntary manslaughter, your foreperson shall report such fact to the court and then return to the court the signed not guilty



verdict of the crime of first degree murder and second degree murder alleged in Count 1.

If you unanimously agree that James Tobin is not guilty of the crime of first degree murder and second degree murder alleged in Count 1, you must have your foreperson date and sign such verdicts and return them into court regardless of what may happen in your deliberations on any lesser included crimes of voluntary manslaughter and involuntary manslaughter.

Special Circumstances—Introductory

If you find the defendant in this case guilty of murder of the first degree, you must then determine if one or more of the following special circumstances are true or not true: Lying in Wait, Murder for Financial Gain, Murder in Performance of a Crime.

The People have the burden of proving the truth of a special circumstance. If you have a reasonable doubt as to whether a special circumstance is true, you must find it to be not true.

You must decide separately each special circumstance alleged in this case. If you cannot agree as to all of the special circumstances, but can agree as to one or more of them, you must make your finding as to the one or more upon which you do agree.

In order to find a special circumstance alleged in this case to be true or untrue, you must agree unanimously.

You will state your special finding as to whether the special circumstance is or is not true on the form that will be supplied.

Special Circumstances—Murder of Witness to a Crime

To find that the special circumstances, referred to in these instructions as murder of a witness to a crime, is true, each of the following facts must be proved:

1. The person killed was a witness to a crime.



2. The witness was intentionally killed for the purpose of preventing his testimony in a criminal proceeding.
3. The killing was not committed during the commission or attempted commission of the crime to which the person killed was a witness.

Special Circumstances—Murder for Financial Gain

To find that the special circumstances, referred to in these instructions as murder for financial gain, is true, each of the following facts must be proved:

1. The murder was intentional, and
2. It was carried out for financial gain, and
3. The defendant believed the death of the victim would result in the desired financial gain.

Special Circumstances—Sufficiency of Circumstantial Evidence—Generally

You are not permitted to find a special circumstance alleged in this case to be true based on circumstantial evidence unless the proved circumstance is not only (1) consistent with the theory that a special circumstance is true, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence is susceptible of two reasonable interpretations, one of which points to the truth of a special circumstance and the other to its untruth, you must adopt the interpretation which points to its untruth, and reject the interpretation which points to its truth.

If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

**Special Circumstances—Jury Must Not Consider Penalty**

In your deliberations the subject of penalty or punishment is not to be discussed or considered by you. That is a matter which must not in any way affect your verdict or affect your finding as to the special circumstances alleged in this case.

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