



Educating for Everyday Democracy

This is Our Town Too

★★★ THE JURY PROCESS



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Dear Justice System Stakeholder:

The State Bar is pleased to continue its work with the Michigan Center for Civic Education, lawyers, judges, teachers and students around the state to teach the concepts of due process, equal protection, individual rights, and justice as they apply to the importance of jury service and the value of diverse jury pools. On behalf of our Law Related Education and Public Outreach Committee, and our Equal Access Initiative, let me thank you for joining us in this lesson.

Materials

These newly updated materials center around “This is Our Town Too,” a story written at fifth grade level by Grand Rapids teacher Wayne Bentley. Students who participate in this exercise should be assigned the story for reading before the jury lessons are taught. This can be done through classroom reading time or as a weekend assignment.

Also included in the materials is a jury curriculum with abstract, benchmarks, key concepts, instructional resources and a suggested sequence of activities. An introduction to the Sixth Amendment and precedent-setting United States Supreme Court cases are also included. A 24-minute DVD “It’s Not Fair if You’re Not There” is available to assist you in teaching students that a jury of one’s peers is possible only if each of us responds seriously to the call for jury service. Many websites are included in the appendix following the story, and hand-on lessons and interactive classroom activities can be found at those sites.

Possible Classroom Activities

The resources in this book can be used in a variety of school activities, ranging from:

- A one hour informal classroom discussion,
- A school assembly,
- A daylong exercise including a visit to a local courtroom, or
- An extended course of study.

The courtroom visit model can be used to help students experience the jury orientation, watch the “It’s Not Fair” video, hear from a trial judge, and ask questions of the jury commissioner. Any of these activities is suitable for a Constitution Day lesson as well.

Key to any activity is the participation of at least one lawyer or judge to serve as the link to the daily workings of the justice system. Some groups have included a prosecutor, a defense lawyer, and a judge to partner in this important message about every person’s responsibility as a potential juror.

Additional Resources

Your school's social studies curriculum coordinator, principal, and individual teachers can facilitate the teaching of this lesson. The State Bar Law Related Education and Public Outreach Committee staff (Candace Crowley, ccrowley@mail.michbar.org), Equal Access Initiative staff (Judy Hershkowitz, jhershkowitz@mail.michbar.org), Michigan Center for Civic Education Executive Director (Linda Start, Linda.Start@Oakland.k12.mi.us or your local bar association, <http://www.michbar.org/resources/associations.pdf> can help you put together a team to bring this lesson to your local school. Please feel free to contact any of them for information on how to communicate these important messages to young people.

Thanks again for partnering with lawyers, judges, teachers and students throughout Michigan to focus on the importance of jury service and the value of diverse jury pools.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet K. Welch". The signature is fluid and cursive, with a large loop at the beginning and end.

Janet K. Welch
Executive Director

This is Our Town Too

Educating for Everyday Democracy: THE JURY PROCESS



**Teach Students about the Importance of Jury Service
and the Value of Diverse Jury Pools**

This is Our Town Too

Educating for Everyday Democracy: The Jury Process

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Educating for Everyday Democracy: The Jury Process

Lesson: Jury Selection and Peremptory Challenges [case analysis]

Abstract:

In this lesson students will learn about the process of voir dire and the use of peremptory challenges. Through the study of three actual Supreme Court cases, students will gain the necessary background information for a classroom lesson. As part of their case analysis, students will identify the key legal issues and discuss the major issues. Finally, the students will discuss the impact of the decisions upon the perceived fairness of the jury system.

Benchmarks:

Identify the benefits and challenges of diversity in American life (III, 2, HS, 1).

Using actual cases, evaluate the effectiveness of civil and criminal courts in the United States (III, 3, HS, 1).

Explain why people may agree on democratic values in the abstract but disagree when they are applied to specific situations (III, 3, HS, 2).

Engage each other in elaborated conversations that deeply examine public policy issues and help make reasoned and informed decisions (VI, 2, HS, 1).

Key Concepts:

- Due Process
- Equal Protection
- Individual Rights
- Justice
- Civil Rights

Instructional Resources:

Stephen J. Adler, *The Jury: Trial and Error in the American Courtroom*, Times Books-Random House, New York, 1994.

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Kermit L. Hall, ed., *The Oxford Companion to the Supreme Court of the United States*, Oxford University Press, New York, 1992.

<http://caselaw.lp.findlaw.com> (search engine for finding and printing case law)

Case Summary Handouts

Sequence of Activities:

1. This lesson is used when students read and analyze the “This is Our Town Too” story. A mock trial component can also be used. Additionally, a DVD entitled “It Isn’t Fair if You’re Not There” can supplement the lesson as well.
2. Research shows that the use of outside resource people in teaching law-related concepts is very beneficial. Consider inviting an experienced trial attorney or judge to participate in this lesson. Their assistance explaining voir dire, peremptory challenges, and challenges for cause would be very beneficial. For assistance locating such a resource person, contact your local bar association, the State Bar of Michigan, or the Michigan Center for Civic Education.
3. Distribute “This is Our Town Too,” to be read either in class or assigned for homework.
4. Review the main points of the story using the guide questions provided in Handout 1.
5. Distribute case summary handouts for *Swain v. Alabama*, 380 U.S. 202 (1965), *Batson v. Kentucky*, 476 U.S. 79 (1986), and *Hernandez v. New York*, 500 U.S. 352 (1991).
6. Divide the class into equal size groups of three or four students, providing each group with one of the three case summaries. Obviously, individual case summaries can be assigned to multiple groups if necessary.

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7. Explain to the class that in the next lesson, they will be participating in a simulation of an actual case that went before the U.S. Supreme Court having to do with *voir dire*, and the use of peremptory challenges, *Batson v. Kentucky*, 476 U.S. 79 (1986). Tell them that before moving to that case, they will first examine two other cases that the Supreme Court decided, each of which is similar in many ways to *Batson v. Kentucky*, but which also has important differences.
8. Explain that in the United States, appeals courts follow past decisions, or precedent, when they make new ones. In order for the law to be seen as stable and predictable, it is important that similar cases be decided in the same way.
9. Ask the class, “Why is it necessary for the decision in a case before the courts to be predictable?” Or, ask the class to imagine a society where all court decisions are made in a vacuum, with no reference to previous decisions. Discuss the impact that this would have on the way individuals, businesses, and the government would behave.
10. Explain that there are times when the courts will reject precedent, and decide a case in a new way. *Brown v. Board of Education*, 347 U.S. 483 (1954) is a classic example of the U.S. Supreme Court rejecting the precedent of “separate but equal,” which had been established in the earlier *Plessy v. Ferguson*, 163 U.S. 537 (1896).
11. Instruct the group that everyone should read the case summary assigned to the group, and then work together to prepare answers to the questions on page 6, “Reviewing Precedent.” If time allows, instruct the students that those answers will be shared with the group. A group discussion can be centered on the answers. Inform them that the information from all three cases will be useful as background material for the position paper that they will be assigned concerning *Batson v. Kentucky*, 476 U.S. 79 (1986).
12. When all groups are finished, have groups share information on the three cases. One approach would be to form new groups, assigning at least one member of each of the three previous groups to each of the new groups. Each new group would spend time, sharing their information with their new partners. Alternatively, each of the original groups could simply present their findings to the class as a whole.

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13. Conclude the lesson with full-class discussion of these questions:
 - a. How do various court members regard the peremptory challenge process?
 - b. From these three cases, what does the class see as the pros and cons of the peremptory challenge process?
 - c. Which of the three cases is the most important precedent with regard to peremptory challenges? Why?
 - d. How does the Equal Protection Clause relate to the use of peremptory challenges?

Assessment:

1. Student participation in the group and class discussions
2. Handouts
3. A mock trial exercise can also be used to assess the students' understanding of the concepts from this lesson.

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Handout 1

Jury Selection, Voir Dire and Peremptory Challenges

The authors of the Sixth Amendment established that in “all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” State and federal laws outline the procedures for selecting such impartial juries. Jury pools, or lists of prospective jurors, are prepared randomly from rolls of registered voters, drivers’ license lists, and are now starting to include in some states those individuals with I.D. cards and those receiving a variety of social services.

A process called voir dire (“to speak the truth” or “to see them say”) is used to select a panel of jurors to hear a particular case. Prospective jurors in a trial are questioned by attorneys, or the judge, to reveal any potential for the lack of impartiality. If it is believed that the potential juror cannot be impartial, he or she could be challenged for cause. In addition, each side has a specified number of peremptory challenges, for which no reason ordinarily is given for dismissing the potential juror. While the Constitution does not guarantee the right to peremptory challenges, the practice is very old. Allowing peremptory challenges was an established practice under English common law. From there, the practice was transplanted to the American colonies.

The purpose of peremptory challenges is to eliminate extremes of partiality on both sides by allowing jurors to be excused for a possible partiality that does not fit the provable and legally recognized basis of a challenge for cause. Through the years, however, some plaintiffs have reached the courts claiming improper use of peremptory challenges to exclude groups of people from participation on juries. At risk is equal protection for the defendant and potential jurors, as well as the necessity of maintaining the public’s perception of due process in the courts.¹

1. What does the Sixth Amendment guarantee with regard to the right to a jury?
2. How do state and federal laws protect this right?
3. Define: voir dire, peremptory challenge and challenge for cause.
4. What is the purpose of the peremptory challenge process?
5. Why is there no limit on the number of challenges for cause and a limit on the number of peremptory challenges?
6. Why have some criticized the peremptory challenge process?

¹ Stephen J. Adler, *The Jury*, Random House, New York, 1994, p. 4.

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Handout 2

Reviewing Precedent

Before turning to the story of “This is Our Town Too,” it is necessary to review cases dealing with similar issues, much the way actual appeals courts do. The cases for review are *Swain v. Alabama*, 380 U.S. 202 (1965), *Batson v. Kentucky*, 476 U.S. 79 (1986) and *Hernandez v. New York*, 500 U.S. 352 (1991).

Instructions:

Read the summary of the case your group has been assigned. Working together, prepare answers to the questions below. Each member of the group should record his or her answers, and be prepared to explain them to others.

Questions for Case Analysis

1. What are the facts of the case?
2. What were the lower courts’ decisions?
3. What is the constitutional issue the Supreme Court must decide in this case?
4. What was the Supreme Court’s decision in the case (e.g., who won? What was the vote?)
5. What reasons did the majority use to support its decision in the case?
6. If there were important concurring or dissenting opinions, what reasons did the justice(s) use to support their views?
7. Do you think the Court made a wise decision in the case? Why or why not? (Your group does not have to agree on the answer to this question, but you must be able to explain the various positions of your group members to others.)

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Swain v. Alabama, 380 U.S. 202 (1965)

The petitioner, Robert Swain, a 19 year-old black man, was indicted and convicted of the rape of a 17 year-old white girl in Talladega County, Alabama. An all-white Circuit Court jury convicted Swain and sentenced him to death. Swain appealed to the Alabama Supreme Court, claiming that Talladega County had a record of exclusion of black jurors from jury panels. His claim was based on statistics such as the following:

- While black males over 21 constituted 26% of all males in that age group in the country, only 10-15% of jury panels from 1953-1965 were black.
- Although there had been an average of 6 to 7 blacks in criminal petit jury pools, no black had ever actually served on a petit jury since 1950.
- In Swain's case, there were 8 blacks in the petit jury pool, but none actually served, 2 being exempt and 6 being struck by the prosecutor in the process of selecting the jury.

The Alabama Supreme Court heard Swain's case, but affirmed his conviction for the following reasons:

- The defendant in the case is not constitutionally entitled to a proportionate number of his race on the trial jury or in the jury panel.
- The defendant did not prove any evidence of discrimination by the county's jury commissioners or the prosecutors.

The U. S. Supreme Court heard arguments in the case to determine if exclusion of black jurors from jury panels, and specifically the petitioner's jury panel, was the result of racial discrimination. In the 6-3 decision for the respondent, the State of Alabama, Justice White upheld the time-honored common-law method of peremptory challenges that Alabama contended afforded "a suitable and necessary method of securing juries which in fact and in the opinion of the parties are fair and impartial."¹ The court went on to observe, however, that the prosecutor could not use these peremptory challenges to exclude blacks from the jury for reasons unrelated to the case, but that the burden of proof was on the petitioner to prove that the prosecutor had been purposefully discriminatory in eliminating blacks from the panel.

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In his dissent, Justice Goldberg wrote that while peremptory challenges are commonly used in this country, there is no constitutional guarantee to challenge peremptorily. In fact, the Court has permitted numerous limitations upon the use of the peremptory challenge, for instance, allowing Congress and state legislatures to limit the number of peremptory challenges on both sides. To conclude Justice Goldberg restated the importance of upholding the 14th Amendment due process rights, and quoted a previous U. S. Supreme Court decision from *Smith v. Texas*, 311 U.S. 128 (1940): “It is part of the established tradition ... that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution ... but is at war with our basic concepts of a democratic society ... the Fourteenth Amendment requires that equal protection to all must be given – not merely promised.”²

¹ *Swain v. Alabama*, 380 U.S. 202, 212 (1965).

² *Id.* at 246-247.

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Batson v. Kentucky, 476 U.S. 79 (1986)

Batson, a black man, was tried for second-degree burglary and receiving stolen goods. During the voir dire, the prosecutor's peremptory challenges removed all four black jurors on the jury panel after hearing instructions from the judge that they were entitled to use their peremptory challenges "to strike anybody they want to."¹ Batson moved for a discharge of the jury, asserting that the removal of all black panelists violated his 6th Amendment right to a jury drawn from a cross-section of the community as well as his 14th Amendment right to equal protection of the law. The trial judge denied the motion and Batson was convicted on both counts. The Supreme Court of Kentucky denied Batson's appeal and affirmed the lower court's verdict.

The U. S. Supreme Court agreed to hear the case to decide this issue: does the use of peremptory challenges to remove blacks from juries on the basis of their race violate the Equal Protection clause? The U. S. Supreme Court ruled 7-2 in favor of Batson. In his majority opinion, Justice Powell wrote, "the State's privilege to strike individual jurors through peremptory challenges is subject to the commands of the Equal Protection Clause."² The prosecutor cannot "challenge potential jurors solely on account of their race or the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant."³ Further responding to Kentucky's argument that "unfettered exercise of the peremptory challenge is of vital importance to the criminal jury system,"⁴ Justice Powell stated that "the reality of practice ... shows that the challenge may be, and unfortunately at times has been, used to discriminate against black jurors. In view of the heterogeneous population of our nation, public respect for our criminal justice system and the rule of law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race."⁵ The *Batson* decision was limited in three ways. It applied only to the prosecution, only to criminal trials and only to challenges in which the excluded juror was the same race as the defendant.⁶

In his concurring opinion, Justice Marshall went so far as to advocate banning all peremptory challenges, stating that it was easy for prosecutors to assert facially neutral reasons for striking a juror that would be very difficult to challenge.⁷

Chief Justice Burger dissented, stating that this new rule against challenges "on the basis of race" could be extended to exclusions on the basis of sex, age,

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religious or political affiliation, mental capacity, number of children, living arrangements and employment in a particular industry or profession.⁸ Justice Rehnquist joined Justice Burger's dissent, writing that he did not see a threat to Equal Protection, as long as the State excluded potential jurors of any race, white, Hispanic, Asian and black equally in cases involving defendants of the same race.⁹

¹ *Batson v. Kentucky*, 476 U.S. 79, 83 (1986).

² *Id.* at 89.

³ *Id.*

⁴ *Id.* at 98.

⁵ *Id.* at 99.

⁶ Kermit L. Hall, ed., *The Oxford Companion to the Supreme Court*, Oxford University Press, New York, 1992, p. 67. However, since *Batson*, "the Court has widened and deepened *Batson's* basic constitutional rule," applying its antidiscrimination test to peremptories used by criminal defendants, private litigants in civil cases, by prosecutors where defendants and excluded jurors are of different races, and prohibiting jurors excluded on account of gender. *Miller-El v. Dretke*, 545 U.S. 231, 269 (2005)(Breyer, J. concurring). Furthermore, *Snyder v. Louisiana*, 128 S. Ct. 1203 (2008) is the most recent United States Supreme Court case to rely on *Batson*. In this capital murder case, the Court decided the prospective juror's nervousness, and his student teaching obligation, were insufficient race-neutral reasons to uphold a prosecutor's peremptory challenge.

⁷ *Batson v. Kentucky*, 476 U.S. at 107.

⁸ *Id.* at 124.

⁹ *Id.* at 137-138.

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Hernandez v. New York, 500 U.S. 352 (1991)

The petitioner, Dionisio Hernandez, was convicted on two counts of attempted murder and two counts of criminal possession of a weapon. The defense counsel objected that the prosecutor used four peremptory challenges to exclude Latino potential jurors. Two of the Latino jurors who were challenged had brothers who had criminal convictions, one being prosecuted by the same District Attorney's office. The focus of the claim was on the other two Latino jurors. The prosecutor defended his challenges of these two jurors by maintaining that, as Spanish speakers, they would be unable to accept the interpreter's translation of what was said by each witness and that this would have an undue impact upon the jury. He also pointed out that because all complainants and witnesses in the trial were Hispanic, there would be "absolutely no reason for me to want to exclude Hispanics" The trial court rejected the defense counsel's motion and the N.Y. Appellate courts affirmed the lower court's decision, holding that the prosecutor had offered a legitimate, race-neutral basis for challenging the jurors in question.

The U. S. Supreme Court took the case to decide if the test laid down in *Batson v. Kentucky* applied to this case. That test set forth these three rules:

- (1) The defendant had the burden of proof to show that the prosecutor exercised peremptory challenges on the basis of race;
- (2) If shown, the burden shifts to articulate a race-neutral explanation for striking jurors; and
- (3) The trial court must determine whether the defendant met his burden of proving purposeful discrimination.¹

In a 6-3 decision for New York, Justice Kennedy wrote:

"The prosecutor here offered a race-neutral basis for these peremptory strikes The challenges rested neither on the intention to exclude Latino or bilingual jurors, nor on stereotypical assumptions about Latino. The prosecutor's articulated basis for these challenges divided potential jurors into two classes: those whose conduct during *voir dire* would persuade him they might have difficulty in accepting the translator's rendition of Spanish-language testimony and those potential jurors who gave no such reason for doubt. Each category would include both Latinos and non-Latinos. While the prosecutor's criterion might well result in the

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disproportionate removal of prospective Latino jurors, that disproportionate impact does not turn the prosecutor's actions into a *per se*² violation of the Equal Protection Clause.”³

Blackmun, Stevens and Marshall, dissenting, concluded that the prosecutor's explanation was insufficient for three reasons:

- “First, the justification would inevitably result in a disproportionate disqualification of Spanish-speaking venirepersons.”⁴
- “Second, the prosecutor's concern could easily have been accommodated by less drastic means. The jury could have been instructed that the official translation alone is evidence.”⁵
- “Third, if the prosecutor's concern was valid and substantiated by the record, it would have supported a challenge for cause.”⁶

¹ *Herndandez v. New York*, 500 U.S. 352, 358-359 (1991).

² *Per se* is a Latin phrase that means “by itself.”

³ *Herndandez v. New York*, 500 U.S. at 361 (1991).

⁴ *Herndandez v. New York*, 500 U.S. at 379 (1991).

⁵ *Id.*

⁶ *Id.*

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The following material was created and intended to be used with the story “This is Our Town Too.” It can be used as discussion points or as a handout.

Vocabulary

Felonious assault

Beyond a reasonable doubt

Burden of proof

Self-defense

Presumption of innocence

Voir Dire

Peremptory challenge

Understanding the story

While reading the story find the many opportunities that Earl Jenkins had to drop out of the jury selection process.

Explain the two adversaries in the courtroom.

Discussion Questions

Is the prosecutor required to play “fair”?

Did Earl Jenkins have unique knowledge that made a difference in the jury’s deliberations? Explain.

After reading the story, is there something you feel the defense attorney could have done to better represent Jamal?

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Handout 3:**JURY REPRESENTATION**

Take a trip to the court and determine the representativeness of the juries.

Your responsibility is to get an accurate count on minority and majority jurors including African American, Hispanic, Native American, Asian American, and other minorities for each of three courtrooms you visit. Answer what type of case was being tried.

Court room:

Total number of jurors: _____
African American: _____
Hispanic: _____
Native American: _____
Asian American: _____
Other: _____
Type of case: _____

Court room:

Total number of jurors: _____
African American: _____
Hispanic: _____
Native American: _____
Asian American: _____
Other: _____
Type of case: _____

Court room:

Total number of jurors: _____
African American: _____
Hispanic: _____
Native American: _____
Asian American: _____
Other: _____
Type of case: _____

Student name: _____

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This is Our Town, Too

by Wayne J. Bentley
with Nylda Mark

WORK

Mr. Jenkins, the store manager, was closing the store early. There hadn't been any customers for the last fifteen minutes, so there was no need to stay open. As he walked home, his mind went to his daughter, as it always did.

Mr. Jenkins and his wife had moved near Eastown in order to be closer to the little convenience, liquor store he managed. The owner of the store was selling, and Mr. Jenkins was in the running to purchase the store. He had hopes. His daughter made it into the University of Michigan, and he needed a way to pay for her college so he sold the house and moved. It was better, he was closer to work and he and Mabel didn't need all that room. Mae was the first from their little family to make it into college. For that reason, Mr. Jenkins was all the more determined to see to it that he had enough money to see her through college. Selling the house and putting the money aside for Mae's college meant that he didn't have much to show for the many years that Mabel and he had run the store, but he had hopes. *We'll have to find a bank that will give an agin', half blind, black man a loan. Fat chance, Earl,* he thought to himself. Still, he had hopes.

HOME

It was a plain room, a living room that doubled as a TV room. There were knick-knacks everywhere, almost a lifetime of accumulation of things; figurines, shadow boxes, pewter, and glass. No particular rhyme or reason, just

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things. The TV was on, the mail and last night's paper were on the table between the his and hers easy chairs. Noises, dishes being put away, faucet running, the refrigerator compressor was working and the television was loud. "Good Morning Mabel," Earl shouted over the blare of the TV.

Mabel came from the kitchen to the living room to turn down the TV.

"You look absolutely ravishingly beautiful." It was a ritual between Mabel and Earl that he called her beautiful in the morning. His sight was so bad he couldn't tell if she was wearing an evening gown or a bathrobe, but he liked to say it and she liked to hear it, so they kept up the ritual.

"You know what I don't like about these talk shows? There's not one person on stage or in the audience that has come to listen, not even the hostess."

"We've been through this before. I am going to listen to my shows," said Mabel as she dried her hands on her apron. "Mrs. DeYoung stopped by with some mail that was delivered to the old house; it's there with the paper." Earl searched for the mail as Mabel continued. "It's from Kent County Circuit Court, they want you to serve on a jury." She always opened and read all the mail so Earl wouldn't have to read it if he didn't want to. He held the envelope under his huge magnifying glass with a special light that enabled him to see the print. Earl had one of these at the store to allow him to make change.

"If you want you can just throw it away. You know them white folks are going to do what they want anyway."

Earl looked at the form. It was a questionnaire and a summons to appear, and he would have to fill it out. "You know if everybody felt like that, then them white folks would have it easy. Ever since Vietnam, I've voted. If it was my duty to fight, it is my duty to vote, and if I don't vote then I ain't got anybody to blame but me. I do my duty and this is 'jury duty.'"

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“Yeah, well, what about the store? You can’t afford to be away right now with us tryin’ to buy it and all.”

“It won’t be easy, but it never is. We’ll just have to work it out,” said Earl with a note of finality.

Mabel knew what his answer would be when she first saw the summons. She was proud of his voting record and his efforts to keep it going. “I’ll fill it out for you and send it in,” she said in agreement.

LIVIN’ IN THE HOOD

It was a crisp afternoon. There was a brisk wind that carried the smells of charcoal and car oil. As Jamal and his friend, Dennis, walked down the cracked sidewalk of Franklin Street, they talked about school, girls, and the nice cars that passed by and somehow, someday that maybe they’d be lucky enough to own one. Abandoned houses with cracked windows and cars in their lots that said “for sale” on their windshields decorated the streets. This was all too familiar to Jamal. He had lived here for seventeen years as of two weeks ago, and he was just beginning to try and spread his wings. He and his friend were headed down to the park to play some basketball, and Jamal had the round, red ball tucked safely underneath his arm, taking it out every once in a while to dribble and spin. As they approached the corner of Lafayette and Franklin they noticed a group of guys walking toward them that looked familiar. There was one small one, and the two bigger ones followed him. They made a small triangle, taking up the whole, eroded sidewalk. Everyone else moved off to the side to make way for the three teenagers. As soon as the group was close enough, Jamal recognized that the small one was Cameron, the leader of a neighborhood gang. He would go out of his way to start something bad. Everyone who lived in the neighborhood knew it. That, and the fact that they

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sold drugs. But they were too good - they covered their tracks and the police were having a hard time picking them up. It was rumored that they were responsible for two murders. They called themselves the Franklin Street Boys. The two groups met in front of a small store called the Beer Store right on the corner of the two streets.

“So, what’s up?” asked Cameron smugly as he prodded his childhood friend.

“Leave me alone man,” Jamal said shrugging Cameron off. “Don’t you have anyone else to terrorize?”

“Well, yeah, but since we were in the ‘hood we decided to stop by and make a few sales, if you know what I mean.” Cameron presented a small pouch filled with white rocks to Jamal.

“Man get that crap outta my face!” Jamal protested.

Just then, an older man with an arm full of groceries stepped out of the store. Both groups quickly moved their attention to him. The old man walked forward with a blank look on his face; Cameron moved toward the man.

“Watch this,” he said defiantly to Jamal. “Hey old man,” the words slithered out of his mouth like a snake’s tongue. “I got a business proposition to make with you,” he said, presenting once again the small pouch.

“Leave me alone. The last thing we need in this neighborhood is any of ‘your type’.”

“My type? My type!?” Cameron joked sarcastically, as smiles bounced back and forth between him and his two gang members as they all laughed out loud. “And exactly what type would that be?” Cameron asked with a tone of voice that pleaded with the man to test him so that Cameron would have an excuse to make his next move more intimidating.

“A druggie, an ugly, filthy, nasty druggie!” replied the old man.

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“How about the man that don’t take no trash from nobody?” countered Cameron. “Or how about the man with the gun?” Cameron opened his shirt just enough to reveal the handle of a gun. Cameron made his move; he grabbed the ball from Jamal’s hands and bounced it off the old man. The groceries flew out of his arms making everything cascade to the parking lot pavement, breaking a fifth of Jack Daniels.

Jamal chased the ball but one of Cameron’s cronies reached it first. Now, all three gang members surrounded the man. The crony bounced the ball off the man once again and caught it and said, “Man you need some of the stuff we sell, not that booze. Maybe it’ll wisen you up a bit, teach you not to give us lip!”

“I’m not afraid of you!” yelled the old man who was hovering over the ground trying to salvage the rest of his groceries.

The other gang member bounced the ball off the man, this time aiming for his head. “Nice shot!” laughed Cameron. None of them paid any attention to the ball as it rolled into the street, but Jamal did, as he nudged Dennis, who followed as Jamal quickly took off after the ball, picked it up, and headed toward the park at a trot without looking back.

“Look!” the second gang member said.

“We’ll take care of that boy and his little friend later. We should get going -- we’ve got better things to do,” Cameron said as he started to lose interest in the old man who was now trying his best to get away. “And as for you old man, just hope we never cross paths again.” Cameron mockingly straightened the man’s shirt and brushed off the collar and started walking smoothly, slickly as though nothing had happened. His two comrades followed like two clowns finishing up an act, leaving the old man standing there in the middle of the grass-patched sidewalk looking alone and helpless.

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A MOTHER'S WORRY

“Hey Ma, I’m going out,” yelled Jamal as he trampled down the stairs in pursuit of the front door.

“Wait a minute,” called out his mother from the kitchen, as she stepped out and her conversation with her sister ceased. “Where do you think you’re going?” she inquired, wiping her hands on a dishtowel and throwing it over her shoulder. After which, she placed her fists on her hips as if the whole scene had been choreographed.

“I am going out with some friends to see the fireworks,” he said, anxiously reaching for the doorknob.

“Friends? Friends like who?” she insisted.

“You know, Ma. Dennis and some other people,” he said with an air of annoyance that proved he had said it many times before.

“That had better be it,” she continued. “I don’t wanna see you with any drug dealers”

“Ma,” he cut in. “We go through this every time I go out.”

“Yes, because I want you to know that there is danger out there. That you can’t just hang out with anybody.”

“Mmm-hmm,” his aunt said in the background. “Nowadays, if they catch you with someone else who has stuff on them, you get in trouble. Even if it ain’t yours.” “Yeah, I know. My friends don’t deal the stuff, and I know who does,” Jamal interjected.

“Yeah, but you can’t always tell,” said his mother, “By the way, did you clean your room?”

“Yes.”

“Did you”

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“Ma, it’s the Fourth of July, can I please go out with my friends?”

“I guess, but be back here by eleven, no exceptions. If anything happens, you find 35 cents and you call me,” she yelled after him.

“All right, Mom. C-ya.”

Jamal’s mother stood in the doorway as her sister came up behind her, “You know, he is a good boy.”

“I know, you just have to worry sometimes,” she said stepping back inside and closing the door to her house.

THE 4TH OF JULY

Christopher sat on his porch sharing a 40-ounce bottle of beer. He was still mad about losing his bottle of Jack Daniels the day before. “These young kids with their drugs and guns are no good. It ain’t just some of them, it’s all of them.”

The street was busy for 11:30 at night. The Fourth of July fireworks kept a lot of people milling around. There was the sound of police sirens in the distance. A group of people, with a dog, were standing in the middle of the street at one corner while there seemed to be some activity at the other corner of the street. Jamal, Dennis and their girlfriends were returning home from the fireworks. They had stopped at the Beer Store and bought some juice to drink. Jamal turned to Dennis as they crossed Franklin Street. “They’re set up on both corners. You think we should go around?”

“No, they seen us already, just keep walkin’ and nothin’ will happen,” replied Dennis. They walked down the street keeping as far away as possible, trying not to draw attention to themselves, when someone hollered at them.

“Hey you. Yeah you. I want to talk to you!” yelled Christopher from his

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porch as he recognized Jamal from the basketball confrontation of the day before.

“Ignore him, he’s drunk,” warned Dennis.

“Hey, I want to talk to you. Don’t think you can get away from me,” said the old man as he came down the steps.

“Go away old man, you’re drunk,” said Jamal.

“No, I’m not drunk and you shouldn’t talk that way to me.”

Just then the people at the corner took an interest in what was going on and said “Sic ‘em” to the dog. The dog didn’t respond, but the old man picked up a stick. It was actually an old slim board from a picket fence that had fallen apart. The wood was blistered and sharp.

As the drunken man swung his arm back and forth with the stick, Jamal broke his juice bottle and said, “Go back, old man, you don’t want to fight.” Jamal didn’t want to show fear with the gang members watching. But the old man kept coming, swinging his stick.

Jamal, taken aback at the old man’s sudden change from docile to violent, put forth his broken bottle in defense -- more to scare the old man than anything else. As the juice dripped off the crystal sharp edges of the broken bottle, it glimmered in the iridescence of the streetlights. The old man stumbled forward, and the one jab managed to cut the old man’s chin. The man dropped the stick, grabbed his chin, and then pulled his hand away to find it filled with blood. He looked at the kid, then his hand, as though for a second he did not know where he was, who he was or how he had gotten there. “You’ll pay kid, I know who you are, you and your gang friends won’t just get away with attacking me.”

Gang friends? Jamal thought to himself. “Whatever,” he said as he tried to brush off the ordeal.

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“You all right?” Dennis called out to him.

“Yeah, I’m cool. But that man wasn’t all right, he’s a fool carryin’ on like that.”

As they headed up Lafayette, Cameron, having seen the whole thing, stepped out from between two houses and knowingly said, “You’re playing our game now.”

“Get lost,” sneered Jamal, as he looked at the blood on the bottle in disgust and disbelief.

“Yeah whatever, you’re in for it now,” Cameron jeered back.

“What are you talking about?” Jamal asked.

“I saw the whole thing. Either way, just wanna let you know you shouldn’t bite the hand that’s gonna feed you. You gonna turn out just like me, you might as well accept it and get started while deals are hot,” said Cameron, bobbing his head to an unheard rhythm.

Jamal didn’t say anything out of confusion and fear. He and his friends kept walking.

ER

The man, Christopher Hendricks, was a 54-year-old who had lived with his wife of 21 years. He had a tendency to get drunk, but you couldn’t tell him that without his getting angry. So, not many people did, including his wife. After getting his chin cut, he stumbled to Saint Mary’s Hospital ER, which was a good five blocks away. As he walked up to the desk the receptionist gave him some clean gauze and asked him to fill out some papers and told him they would be right with him.

“Nurse... nurse,” he said slurring his words, “I need a little help.”

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“I’m sorry, you’ll have to take these forms here, fill them out and sit in line.”

“No, I need some help,” said Christopher, unaware of the more severe cases that needed help, already in the ER.

“I’m sorry, you’ll have to wait your turn.”

With great force Christopher slammed the clipboard that had just been handed to him down on the desk. Security came to the receptionist’s aid. “Yes sir, you need help?”

“Yeah, my chin is busted.”

“Who did this to you?” Security asked.

“Some punk off the street.”

“Do you know who he is?”

“Yeah I know his mother and some of the kids he hangs out with, too.”

“Well let’s take care of your chin,” he said, surveying it. “It’ll need stitches. I’ll call the police so we can find the kid, all right?”

“Yeah, whatever, I just wanna get the punk.”

JAMAL’S HOUSE

The next morning the phone rang at Jamal’s house.

“Good morning, is this the Webster residence?” asked a voice off the receiver. Jamal couldn’t tell whether it was a man’s voice or a woman’s voice but whoever it was they sounded very official.

“Yes it is, may I ask who is calling?”

“This is the Grand Rapids Police Department, is Jamal Webster there?”

“Yes I am. What can I do for you?”

“We are asking that you report here by noon for some questioning. Will

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you make it?”

Jamal was silent at first and then said, “May I ask what this is all about?”

“It seems that there was an assault last night, the night of July 4th, that you were allegedly involved in. We would like to hear what you have to say.”

“I’ll come down,” Jamal responded as thoughts of his mother’s warnings ran across his memory. *I’m not going to worry her, it can’t be a big deal, and he came at me with a stick. He started it. They have only heard his side. Everything will work out,* he thought to himself.

“Ask for Officer Harris.” The phone went dead.

THE GRAND RAPIDS POLICE DEPARTMENT

The Grand Rapids Police Department, the 61st District Court and the 17th Circuit Court shared the same lobby. There were people lined up at a window and there were a lot of people milling around. There seemed to be almost no business at the long police counter at the north end of the lobby. Jamal walked up to the counter.

“I was told to ask for an Officer Harris.”

“What is your name?” inquired the officer.

“Jamal Webster.”

“Have a seat and I’ll see if she is available,” was the impersonal reply from the officer behind the counter. He looked like a trainee.

Jamal sat at one of the three-seat couches and wondered if he was doing the right thing, coming down here without his mother knowing what was going on.

“Jamal Webster?” a voice announced.

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“Yes.”

“Please come with me.”

Officer Harris was a 5-year veteran of the GRPD.

“Our Department took a report of an assault that took place the night of July 4th, in the vicinity of Franklin and Lafayette. The report states there was an altercation between you and a Mr. Christopher Hendricks. Are you aware of this incident?”

“Yes,” replied Jamal cautiously.

“The incident report states that you hit him with a broken bottle,” Officer Harris continued. “Did you hit him?”

“Yeah I hit him, but he came at me with a stick,” Jamal rushed to add.

“I see,” said Officer Harris. “I am going to inform you of your rights. You have a right to remain silent. Anything you say can and will be held against you in a court of law. You have a right to an attorney. If you cannot afford one the court will appoint you one. Do you understand your right?”

“Yeah.”

“Now, so that there is no misunderstanding, I am going to record our conversation. OK?”

“OK,” responded Jamal feeling trapped.

“This is Officer Harris of the GRPD, and I am recording this conversation with Jamal Webster. Please state and spell your name for the record.”

“Jamal Webster. J-a-m-a-l W-e-b-s-t-e-r.” he answered, nervously.

“We are discussing the incident that took place on the 4th of July in the vicinity of Franklin and Lafayette between a Mr. Christopher Hendricks and Jamal Webster. Mr. Webster have you been read your rights and do you understand them?”

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“Yes.”

“Mr. Hendricks claims you hit him with a broken bottle. Did you hit him?”

“Yes, but . . .”

“Did you hit him with a broken bottle?”

“Yes, I hit him . . . “

“With a broken bottle?” the officer interrupted.

“He came at me with a stick.”

“Did you make him bleed?”

“Yes, but he started it.”

Silence.

“You’re not going to let me say anything, are you?”

“Mr. Webster, you are free to add anything you want, the tape is running. You will also get to tell it all in court.”

Jamal tried to explain but stumbled at the words. The tape recording and the trap angered him, frustrated him to the point of desperation. Finally he finished.

Officer Harris then said, “Then you hit him, right?”

“Yeah, I hit the motherf---- .”

VOIR DIRE

“All rise. Court is now in session, the Honorable Judge Howard Bergsma presiding,” announced the bailiff.

“Be seated,” commanded the Judge after he had taken his seat behind the large, wooden, raised desk.

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Earl was called to Judge Howard Bergsma's courtroom to undergo voir dire, the jury selection process. He wasn't too sure what that was but the jury clerk said it was kind of like a question and answer period. The Judge began by asking, "We are going to give you the names of the defendant and the witnesses in this case and if you know any of them we would like you to raise your hand and then we will ask you a few more questions about how you know them. Is that understood?" Most of the forty or so jurors nodded in agreement.

"This is a felonious assault case; it should not take more than a day to try. The defendant is Jamal Webster of Grand Rapids and the witnesses are Christopher Hendricks and Officer Harris, also of Grand Rapids. Do any of you think you might know them?" None of the prospective jurors seemed to know any of the witnesses. "Now," said the Judge, "the clerk will call out 12 numbers and the jurors whose numbers are called are to come forward. The first prospective juror will take the first seat in the top row at the far left, and each successive juror accordingly."

Earl looked around the courtroom and thought to himself, *I really don't want to be here. My odds are 12 out of 40, about one out of three, not too bad.* The clerk finished her drawing and the 12 jurors were seated. Earl breathed a sigh of relief.

"Good," said the Judge. "Now the prosecutor and the defense attorney will spend some time asking you questions. We want you to answer them truthfully and completely and don't leave anything out that you're not sure about. Remember we all want a fair and impartial jury so that justice can be served. Are there any questions before they begin?"

Again, no response. "Mr. Davey, you can begin your questioning," continued the Judge.

"Have you, your friends, or any of your family been the victim of a

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crime lately?” asked the prosecutor.

One middle-aged man, juror number four, raised his hand and said, “Yeah, my uncle was just mugged.”

The prosecutor then asked, “Would his mugging affect your decision in this case?”

The man replied, “Naw, I haven’t seen him in years.”

The prosecutor and defense attorney then continued their questioning of the other prospective jurors. The Judge then asked the prosecutor and the defense attorney whether they had any challenges for cause. Both replied, “No, Your Honor.”

The Judge then asked both whether they had any peremptory challenges.

The prosecutor replied, “Your Honor, I would like to thank and excuse juror number four.”

The Judge said, “The court would like to thank and excuse juror number four. Would the clerk please draw another number.” Juror number four walked off mumbling something.

The clerk called out, “Number 37.”

The number didn’t register with Earl at first and then he realized that it was his number. He jumped up a little too quickly and almost stumbled forward. Everyone waited for him to take his seat.

Jamal felt a sudden sense of relief. Up to now, he thought, no one on the jury looked like him, talked like him, dressed like him, or lived in his neighborhood. He hoped that juror 37 wouldn’t be kicked off.

The prosecutor asked Earl, “Have you been in trouble with the law?” Earl said, “My wife’s car is registered in my name and there are some parking tickets I haven’t taken care of yet.”

The prosecuting attorney smiled and said, “We won’t hold that against

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you. Have you had any trouble with the law, other than minor traffic violations?”

Earl responded, “No.”

Earl Jenkins raised his hand. “Yes?” asked the prosecutor.

“I just wanted you all to know that I’m legally blind and that I would have some difficulty seeing exhibits, charts or maps and stuff like that.”

“I don’t think that it will make a lot of difference in this case. But thank you for mentioning it,” the prosecutor remarked.

The prosecutor wondered if juror 37 knew Jamal’s neighborhood or his family, and thought he might want to excuse him. Rather than risk a *Batson* challenge, he decided to leave well enough alone. Besides, he felt juror 37 looked like he could be fair.

THE TRIAL

After a fifteen-minute recess, the Judge gave instructions on what constitutes felonious assault, and an explanation of “beyond a reasonable doubt” as a burden of proof. The Judge also explained the presumption of innocence. He said, “You are to listen to the testimony given and the facts brought out in court with the presumption that the defendant is innocent until proven guilty.” Earl Jenkins liked that. *I’ll listen until I hear enough facts that show he’s guilty and then I’ll listen for something to change my mind*, he thought to himself. The Judge continued, “Prosecution, the burden of proof is yours. Your opening statement, please.”

“Thank you, Your Honor.” The prosecuting attorney confidently rose to the podium. “Ladies and gentlemen of the jury, this is a very clear-cut case. The evidence will show that the defendant violently and maliciously attacked Christopher Hendricks, on the night of July 4, 2001. Christopher, a neighbor

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of the defendant, only wanted to talk to him about a meeting that occurred earlier in the week. Mr. Hendricks was concerned for the defendant's safety, and that is why he wanted to talk to him."

"These facts are not in dispute. On the night of July 4th, the defendant, his girlfriend, his friend Dennis, and Dennis' girlfriend were walking back to the defendant's house after the Fourth of July fireworks. When they passed Hendricks' house, Christopher called out to the defendant and asked to talk to him. The defendant refused, but Christopher insisted. As he went out into the street to talk to the defendant, some kids down the street commanded their dog to attack Mr. Hendricks. He grabbed a 2-by-4 to defend himself from the dog. This was all it took to set off the defendant. The defendant was chock full of angst, waiting for some innocent target to lash out at. His choice target - Mr. Christopher Hendricks."

"The defendant took the bottle that he had been holding, broke the bottom off it and viciously struck the victim. The bottle cut Christopher's chin and he immediately left to get medical attention. The defendant ran to catch his friends, while Mr. Hendricks ran to the emergency room."

The words burned into Jamal's mind. He was not angry, nor was he mad at Mr. Hendricks. Mr. Hendricks had swung at him first. He only hoped his lawyer would speak as well as the prosecutor.

Now it was Jamal's attorney's turn. "Let's look at the elements of self-defense. First, the defendant must feel that he is in immediate danger of attack; second, he can use equal force with no fine distinctions; and third, if he can escape danger by fleeing, he is required to do so. By the end of the trial I'm sure that you will see that the defendant's behavior met the elements of self-defense."

Jamal thought, *That third element, I should've run, but I wasn't sure if I could get away from the old man's stick.* For the first time, he was worried about the

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outcome of his trial.

The Judge called the two lawyers to a sidebar and asked them if there was any resolution or an explanation of the basketball incident from the day before the alleged assault. The prosecutor replied, “The descriptions are so radically different that I have instructed my witness to refer to it as a previous incident between himself and some boys in the neighborhood. Then if the defense wants to bring it up by putting the defendant on the stand to explain it, we reserve the right to rebuttal.”

“Is that acceptable to the defense?” asked the Judge.

“It will have to be,” replied the defense attorney.

“What was that all about?” asked Jamal’s mother as she stuck her head between Jamal and the lawyer sitting at the table in front of her.

“That prosecutor is a clever one,” replied the lawyer shaking his head. “We can’t bring up the basketball incident without putting Jamal on the stand, and if we do that the prosecutor will be able to cross examine Jamal and if that happens you might say something he doesn’t want to say.”

“The prosecution can call its first witness,” stated the Judge.

“The prosecution calls Christopher Hendricks to the witness stand.”

Mr. Hendricks was sworn in and after some preliminary questions the prosecutor asked, “What were you doing on the night of July Fourth just before the assault took place?”

“I was sittin’ on my front porch sharing a quart bottle of beer with my wife.”

“Were you drunk?”

“No.”

“What happened next?”

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“I saw Jamal and some other kids walking down the other side of the street and I said, ‘Hey I want to talk to you.’”

“Then what happened?”

“He said he didn’t want to talk to me because I was drunk and I said I still wanted to talk to him.”

“Why did you want to talk to him?”

“Because of an incident that happened the day before between me and some of the boys in the neighborhood.”

“Now, tell the jury what happened next.”

“Well, there were some people in the street at the corner with a dog and someone said ‘sic-um’ to the dog. So I picked up a stick.”

“Was the stick to protect you from the dog?”

“Yes.”

“Now, face the jury, and in your own words tell them exactly what happened next.”

Jamal stole a glance at the jury. They were all intent on what the old man had to say. His heart sank.

“The defendant broke open a bottle and came at me in the middle of the street. Yelling something at me. He cut my chin and I ran away from him to my house.”

“Did he chase you?”

“I don’t know.”

“Thank you, I have no further questions.”

“Your witness,” said Judge Bergsma.

“Thank you, Your Honor. Mr. Hendricks, you said that you were sharing a quart bottle of beer. Did you have anything else to drink earlier in the night?”

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“I might’ve had a beer or two.”

“Were you drunk?”

“No.”

“Do you get drunk often?”

“No.”

“Did you have too much to drink that night?”

“Objection, Your Honor,” said the prosecutor as he rose from his chair.

“That question has been asked and answered three times now.”

“Sustained. Move on please.”

“Thank you, Your Honor,” said the prosecutor.

“Mr. Hendricks,” continued the defense attorney, “You said that you picked up a stick. Tell us again why you picked up the stick.”

“To protect myself from the dog.”

“And you didn’t pick up the stick to attack my client?”

“No. It was the dog.”

“And not for the defendant?”

“Right.”

“Now, Mr. Hendricks, can you tell me who the people were at the end of the street?”

“I’m sure I don’t know”

“You didn’t know them at all?”

“I said I don’t know.”

“I have no more questions for this witness,” said Jamal’s attorney as he gave up any hope of getting more information out of Mr. Hendricks.

“Any redirect?” asked the Judge.

“No,” replied the prosecutor.

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“Then call your next witness.”

“The People of the State of Michigan would like to call Officer Harris from the Grand Rapids Police Department.” Officer Harris was brought in from the hallway in the back of the courtroom where she had been waiting. Jamal remembered the trap and thought that it looked like all the people of Michigan were against him. Officer Harris was sworn in and asked some preliminary questions. The prosecutor said, “Let’s move on to the conversation that you had with the defendant at the police department. Did you ask the defendant if he hit Mr. Hendricks?”

“Yes.”

“And what did he say?”

“Yes, I hit him.”

“Did you ask him if he hit him with a broken bottle?”

“Yes.”

“And what did the defendant say?”

“Yes I hit him with a broken bottle.”

“Did you ask the defendant if he knew if he made the victim bleed?”

“Yes I did.”

“And what did he say to that?”

“He said, ‘Yes, I know I made him bleed.’”

“Now Officer Harris,” said the prosecutor, “did you read the defendant his rights before he gave you these willing answers?”

“Absolutely.”

“Finally, just two more questions. Do you remember the exact words that the defendant used when you asked him if he hit Mr. Hendricks with the broken bottle?”

The prosecutor asked, “Would you turn to the jury and repeat the exact

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words that the defendant, Jamal Webster said when you asked him if he hit Mr. Hendricks with the broken bottle?”

Officer Harris nodded to the prosecutor, turned to the jury and said:

“Yeah, I hit the motherf ---- !”

The prosecutor waited for several seconds to let the confession sink in, then said, “I have no more questions at this time for this witness.”

Jamal’s attorney turned to Jamal and said, “We should see if we could still get the plea bargain. That witness hurt.”

“No!” interrupted his mother, “I don’t want him taken’ the rap for just being stupid, he’s not a criminal.”

“Your witness,” said the Judge.

“Officer Harris, didn’t my client say that Mr. Hendricks came at him with a stick?”

“Yes, he did.”

“Didn’t my client say that Mr. Hendricks was drunk?”

“Yes, he did.”

“Didn’t my client also say that Mr. Hendricks was swinging the stick?”

“Yes,” she replied.

“Objection, Your Honor. That’s hearsay,” boomed the prosecutor.

“Overruled, Mr. Prosecutor,” said the Judge.

“One last question, Officer Harris, did you ever consider listening to both sides of the story before you trapped the defendant into his statements?”

Officer Harris mumbled indiscernibly.

The Judge waited and then asked the defense attorney, “Do you have any other questions for this witness?”

The defense attorney didn’t look up but replied, “No further questions, Your Honor.”

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The Judge looked at his watch and said, “The time is going on 11:30. Let’s take a lunch recess and return at 1:00. I would like to caution the jurors that they should not discuss the case with each other or anyone else during the recess. This court is now in recess.”

LUNCH

Earl couldn’t see well enough to go out to eat downtown but he did manage to make it back to the big room where the jurors were kept while they waited for a trial. There were vending machines and a coffeepot but nothing looked appetizing to him. Mabel had offered to fix him a bag lunch but he had declined. She had to cover for him at the store while he was gone. All he had to do was sit in court and decide the fate of one young man. *No easy task*, he thought to himself.

“Hi Earl,” came the sudden sound of Mabel’s familiar voice from behind him. It was so unexpected that he jerked forward in his chair. “Look who I brought with me.” Mabel was followed into the room by an elderly couple Earl immediately recognized as the owner of the convenience store and his wife. “They called this mornin’ and said that they wanted to pick me up and meet you for lunch at the Hall of Justice.”

“Hi Earl. I know you are going to have a long day, so Peggy and I decided that we were going to get this over with as soon as possible.” Earl and Mabel sat silently as they both thought that the owner had sold the store and they would be looking for work.

The owner smiled as he began again, “This is a land contract. It sells the building and the inventory in the store to you for about the same amount I’ve been making in profit each month over the last five years as a monthly payment. The land contract has a balance due in five years that is the current

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value of the building. By then you should have no trouble getting a loan because of the equity you've built up over that time period."

"Whoa, slow down Marvin," said Peggy his wife. "Give them a chance to breathe."

Marvin smiled again. "Here look at this, take it with you, and you can have someone look at it for you," he said as he handed Earl the land contract. "Then give us a call. Peggy and I figured it out and we don't need all of our money up front and the safest investment, the way the stock market is going, could very well be the two of you."

Earl didn't know what to say. "This is really a surprise. I hope this works out for the both of us."

"I'm sure it will," replied Marvin.

"I brought some sandwiches," said Peggy. Mabel squeezed Earl's hand. "I hope you like turkey?"

There's always hope, thought Earl.

The two couples talked about Peggy and Marvin moving to Florida and other things they had in common. They asked about each other's kids. It was nice to hear Mabel and Earl carry on about Mae, thought Peggy. Finally Earl said, "I'm due back in court."

Everyone said good-bye; Marvin and Peggy walked out first to give Earl and Mabel a little time together.

Earl held Mabel by the shoulders and leaned forward and just whispered, "I love you." Mabel smiled, lowered her head and followed Peggy and Marvin out.

BACK TO COURT

The Court deputies brought Jamal back from the holding tank, while the

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defense attorney said to his mother, “If I put Jamal on the stand, the prosecutor will have him repeat the answers that he gave the officer and the jury will never find him not guilty. It’s up to you but I’d recommend against it.”

“I think you should testify, Jamal” said Jamal’s mother. “You have to tell them what you were thinking.” she said.

Jamal hesitated. Initially he had been unsure about testifying, but now, he thought to himself, there’s at least one person on the jury who might listen to what I have to say.

Jamal turned to his mother and his attorney and said, “You’re right. I do want to testify.”

After some preliminary questions, the defense attorney asked Jamal, “Why did you break the bottle?”

Jamal answered slowly and said, “I knew the gang was watching and at that point I felt I had to look tough to them.”

“At that point did you intend to use the broken bottle?” the defense attorney asked.

“No, he picked up the stick and I broke the bottle. That was it. I just wanted him to back off. Then, he came at me with the stick, so I jabbed at him in self defense.”

During cross-examination, the prosecutor could not get Jamal to budge from his statement, and finally, in a huff said, “No further questions.”

The attorneys proceeded to give their closing arguments, and then the Judge gave the jury their instructions. The Judge reiterated the responsibilities of the jury. He explained again what constituted a felonious assault, what were the elements necessary to establish self-defense, where the burden of proof belonged, what was an example of “proof beyond a reasonable doubt,” and the presumption of innocence. The Judge added that each juror should behave in a

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responsible way; that they should listen to each other and consider what each juror had to say and try to reach a unanimous decision. Finally, he added, “Your first order of business is to elect a foreperson.”

THE JURY ROOM

The jury filed into a room that looked like a conference meeting room. A long glossy pine table was in the center of the room surrounded by padded blue Steelcase chairs with wheels on the bottom. The room not only looked professional but smelled of new office furniture that gave it an air of obligation and power. As everyone found a seat, the women took their purses off their shoulders and placed them on the table in front of them. The men sat down and reclined.

“So, what do you think?” someone asked.

“Guilty, definitely guilty,” replied one of the women. She had red curly hair that was untamed and glasses with frames that to everyone else showed she was climbing up the ladder of age.

“Wait a second. The first order of business, like the Judge said, is to elect a foreperson,” responded another.

“What makes you say he is guilty?” asked a middle-aged man dressed in jeans and a flannel shirt.

“He looks like a street fighter to me,” said a third juror as he sat in the chair on the other side of the table from Earl.

There was an elderly, mild looking gentleman sitting at one end of the table who said, “This will probably go a lot faster if we first elect a foreperson and then decide that everyone gets a chance to say their piece and move on from there.”

Earl leaned forward in his chair and said, “I nominate you.”

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The elderly gentleman started to say, “That wasn’t my intention,” when someone else said, “I second the nomination.”

“Are there any other nominations?” someone else added. It appeared that the consensus was that the deliberations would get done sooner if the mild gentleman were in charge, so he was elected without opposition.

“Well, fine then, thank you for your support. I think our first order of business should be a short introduction starting with myself. My name is Carl Long, and I am a professor at Grand Valley. Shall we go around the table starting at my right?”

“Brian Fitzpatrick, I’m a bricklayer.”

“My name is Paul Pierce; I’m unemployed at the moment.”

“Sally Marshall; I’m a domestic servant.”

“Earl Jenkins, store manager.” *Store owner*, he wanted to say.

“Becky Blender, cashier.”

“Pat Thomas, secretary.”

“Ellen Vanhorn, student.”

“Bob Smith, realtor.”

“Candy Less, no jokes about the name, please. And I’m a florist,” said the woman with the red hair who had spoken earlier.

“Bill Lander, computer programmer.”

“Mary Grove, shoe store manager.”

“Thank you, I have your names down in front of me so I hope to call on you by name. When you want to respond to something someone else has said, please signal me or raise your hand and I will try to maintain the order in which you signaled to me. Now then, is there someone who would like to start?”

“Ms. Less, you were making some remarks earlier, would you like to

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continue?”

“Sure, I guess. I mean I think he’s guilty, how many different times did that officer get him to say that he hit ‘um? I wasn’t counting but it was a lot.”

“Yeah, I say guilty, too” added the woman sitting across from her. “Everything is right in front of us. I think it would be foolish to pass this one up and let him go. As far as I’m concerned he needs to be taught a lesson and we should make an example of him for others to see.”

“Sally Marshall is your name, right?” asked the professor as he kept an unofficial tally of votes.

The others all said something along the same order as Sally, except for Fitzpatrick and Earl who did not contribute to the conversation.

“All right then,” said the man at the head of the table, “I guess we all agree, let’s vote then to make it official. All who think Jamal Webster is guilty of felonious assault raise your hand and say ‘Aye.’” Eleven of the twelve immediately raised their hands in anticipation of getting out early. The one hand still down was Mr. Jenkins’. Everyone looked at him as though he had committed a crime.

“Why isn’t your hand up?” asked the woman with the red untamed hair.

“It isn’t up because I didn’t put it up,” said Earl.

The room exploded into conversation, most of it aimed at Earl. He just sat there looking around the room as though he was noticing it for the first time.

“Quiet please,” said the professor. “We’re not going to get anywhere if we all talk at once. Let’s just calm down. I see there is water on that table.

Let’s take two or three minutes and anyone who wants to can get some water and we will start again. We should listen to what every juror has to say.” With that he got up and walked over to Earl and asked if he could get him

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some water.

Earl said, “No, I’ll get it myself. Thanks, anyway.” Earl rose and followed Professor Long to the table that had ice and water. “Ran a lot of staff meetings with disgruntled professors have ya?” asked Earl as he accepted a glass of ice water from the professor.

“A few,” replied the professor smiling.

The professor was lean and stooped at the shoulders, never made a quick move, but appeared deliberate in all that he did. Even the glass of water was filled just right. Earl and the professor returned to their seats at the table.

“Listen to me,” said Jenkins, slowly rising from the chair, using his knuckles for support on the edge of the table. “I have to say that when I walked in here I heard Bob over there say, ‘He looks like a street fighter.’ Well, all I saw was a clean cut, well dressed, polite, young black man. Frankly, I didn’t like what he said and I haven’t been able to get over it yet and move on to the business at hand.” Earl sat back down.

Many of the jurors came to Bob’s defense; others jurors said nothing. Bob replied unapologetically, “Well, the testimony in the court sure pointed to him being a street fighter.”

“We all know that in a court of law you are innocent until proven guilty. The assault was undisputed. The only thing that remains are the elements of self-defense. Maybe we should go over them?” asked Professor Long. “Mr. Jenkins, would you like to start?”

“Not really, but I’ll try. First this Mr. Hendricks was a fool. If what Bob says is true, and Jamal is a street fighter, then Hendricks was either drunk or a fool to call him out to meet him in the street with a board in his hand. He might just as well wear a sign sayin’ ‘HIT ME I’M STUPID.’ I personally think he was drunk,” finished Earl.

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Again, everyone tried to talk at once. The professor, wishing to bring some order and keep the discussion going, said, “Ellen, I’m sorry I can’t hear you down at my end of the table. Let’s hear what she has to say.”

“Well, I never looked at it that way. We don’t know what happened the day before but no matter what it was I wouldn’t venture to call a kid that big to meet me in the middle of the street if I thought he was a street fighter. Hendricks was drunk.”

Several of the jurors raised their hands; a few just started talking. But when they saw the raised hands they quieted down and raised their hands, also.

“Thank you,” said the professor. “Mr. Fitzpatrick, we haven’t heard from you yet, would you care to comment?”

“Yeah, sure. I’m just a bricklayer, so I don’t know, but it seems to me if I went to court every time I popped some drunk that came at me with a board, then I would be in jail for life.”

Everyone smiled; a few even chuckled. The professor remarked, “Then in your opinion, Mr. Hendricks was drunk?”

“Yeah, he was drunk,” agreed Fitzpatrick.

Paul raised his hand and the professor recognized him. “The fact that he was drunk doesn’t change the fact that Webster cut him with the bottle. He is still guilty.”

The consensus of the jurors as the professor circled the table asking for comments was that Jamal was still guilty. It was clear that Earl had some misgivings but wasn’t ready to talk. Bob called for another vote and the professor reluctantly agreed, but said that this time he would prefer paper ballots.

“So, let’s vote,” he said, “and please no ‘chads’ or ‘dimples’-- just guilty or not guilty,” remarked the professor with the first attempt at humor in the jury deliberations.

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The jurors wrote down their votes and passed them to the Professor who then counted them without giving a running tally. Earl said to himself before sending in his ballot, *I know the Judge said that we should listen and allow ourselves to be convinced. Lord help me.*

“Eleven guilty and one not guilty,” announced the professor.

Bob stood up tipping over his chair and said, “We listened to you and considered what you had to say, but you know what? You’re not going to find him guilty, ever, are you? He’s black and you’re black and that’s enough for you to let him off, isn’t it?”

Silence fell across the room. Earl remained seated and said, “I’m black and Jamal is black, but this is my town and I don’t like the violence or the hate any more than anyone else. You think I want gangs on the street? Do you think that I want to set a street fighter free? Do you think that there are black people that think all black people are good and all white people are bad? Maybe you know some white people that think all white people are good and all black people bad. If there are people out there like that then I feel sorry for them. And if you don’t see beyond the color of a person’s skin then I don’t hold out much hope. I have a daughter at the University of Michigan. Do you think I want her to come back and work and raise my grandchildren in a town that is divided by color? This is my town and the town of my parents and my child and just maybe my grandchildren. I’m a voter in this town, a taxpayer. I want this town to do things right, to educate all our children, and right here and now I want justice to be served for both Jamal and Mr. Hendricks. You asked me if I am ever going to find him guilty. Now, I ask you, because he is black, are you ever going to find him innocent?” Earl rose, stood and faced the wall as if he wished to examine one of the prints more closely.

Silence again filled the chamber. Bob retrieved his chair. Finally Brian

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raised his hand. “Yes, Brian, do you have something you want to say?”
acknowledged the professor.

“It wasn’t Earl there that voted not guilty, it was me.” Brian looked up and down the faces at the table and said, “I think it was self-defense.”

Strange, thought the professor, *is this a microcosm of society; can this be worked out?* “Well,” he said out loud, “let’s go down the three elements necessary for a successful self-defense argument.”

He looked around the table and received several nods. Earl did not return to the table.

“The first element of self-defense is that the defendant has to honestly and reasonably believe that he was in danger of immediate attack. Is there any discussion on that point?” Becky tentatively raised her hand and the professor recognized her.

“Well, if the defendant felt that this Mr. Hendricks was drunk then I think that he could have believed that he was in danger of being attacked.”

“I believe that Mr. Hendricks called to the defendant first, didn’t he?” asked Paul. “Matter of fact, I think Mr. Hendricks said the defendant didn’t want to talk to him because he was drunk. Does anyone else remember hearing that?”

A couple of yes’s and a few nods.

Sally Marshall raised her hand. “I’m not sure whether Jamal honestly believed he was going to get hit. What do you all think?”

Earl spoke up. “Well, violence isn’t uncommon in this neighborhood, especially with fewer police officers on the street. It’s not unusual to see gang members and drug dealers on our street corners in broad daylight, even drunk old men with sticks. In that neighborhood, after dark, I’d be scared. I think we all would. Did Jamal honestly believe he was in danger? Only a fool would

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think he wasn't. And, remember how he testified. He was polite. He told us in no uncertain terms that he didn't intend to use the broken bottle. He said Mr. Hendricks came towards him and he had to defend himself. I believe him."

The jurors were silent for a moment.

Then the foreman said, "I agree. This is our town too, after all. Is there any more discussion on the first element? Well then, let's move to the second element. Equal force with no fine distinction. Who wants to start there?" asked the Professor.

Bill, the computer programmer, raised his hand and offered; "I don't think you can call a stick or a bottle unequal. They could probably do equal damage."

"Yeah, it's not like Mr. Hendricks came at him with a stick and the kid shot him with a gun. He used the weapon that was readily available to him."

"I agree," said Brian, "It would take a fine distinction to find Jamal guilty because of his choice of weapons he used to defend himself."

"The third element for self-defense is 'If the defendant can escape danger by fleeing, then he is required to do so,'" read the professor from the notes.

At that point, all the jurors agreed that Jamal couldn't have run away safely.

THE VERDICT

The moment of truth had finally come. Jamal sat waiting, anticipating the voice of reason that would soon determine the rest of his future. The courtroom was spacious, furnished completely in wood. A darkened antique look seemed to be the current theme, and a glossy touch gave an icy

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shimmering to the quality of the room. Jamal had not looked at the furnishings before. The benches lay in a row with an aisle parting them down in the middle. The courtroom was half full with a few people lingering, left over from other cases. The jury filed into the courtroom. Judge Bergsma stepped up to his bench and took his seat hovering over everyone else.

The gavel banged and in a large voice that vibrated Jamal's heart as it rapidly beat in his chest the Judge said, "Court is now in session. Has the jury reached a verdict?"

"Yes we have, Your Honor," said Professor Carl Long.

"Will the defendant please rise and face the jury. And will the foreman please read the verdict."

"We, the jury, find Jamal Webster not guilty of felonious assault."

Jamal sat in his seat with a sigh of relief. He looked at his lawyer and then at his mother in disbelief. Then he had such a feeling of reprieve that it radiated off him in showers of light. Jamal had made it. Jamal had been given a second chance.

Earl and the other jurors talked briefly before leaving the courthouse, and they all agreed to stay in touch. As he walked home, he knew that serving on the jury was the right thing to do.

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Appendix:

Supplemental Resources

The following websites contain other materials and lesson plans that can be used in conjunction with this program.

http://constitutioncenter.org/ncc_edu_Jury_Duty_Lesson_Plans.aspx

This website has **lesson plans and resources** designed for elementary, middle school or high school aged students that ask them to examine their understanding of responsibility and how society calls upon them to be responsible.

<http://www.crfc.org/americanjury/>

"The American Jury: Bulwark of Democracy" is an online resource guide for teachers, students, and citizens devoted to explaining the American jury system and its role in American life. It features lessons, information, and resources developed by the Constitutional Rights Foundation in Chicago.

http://www.americanbar.org/groups/justice_center/american_jury/resources/jury_innovation_resource_kit.html

This website contains a list of resources to aid an educator in designing a curriculum for teaching the jury process. The various links contain materials and lessons for jury related topics that can be tailored to fit education standards.

<http://www.abanet.org/yld/wethejury/wethejury.pdf>

"We the Jury" is a program for educating students about the importance of civic duty. This project, prepared by the ABA Young Lawyers Division, seeks to educate high school students regarding the civic duty of jury service.