

## Jury Pool

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First, the background story.

According to the State, just after his sixteenth birthday Mizrak Lincoln sexually assaulted Linda Wallerbee, a 105-pound woman who was 36 at the time. The State said it happened at dusk under the tall oak tree by the manmade canal in the county park which separated the neighborhoods each called home. Ms. Wallerbee, then a married debt collection agency supervisor, lost her husband and job within a year of the attack.

As described in the local paper the day before Lincoln's trial, and it was a good paper, its factual accounts close to 50% accurate, Lincoln was the remaining defendant from a teenage rampage that included the gang rape of Linda Wallerbee. According to the paper:

“The State has alleged that Lincoln, with five other boys, age 12 to 16, assaulted Ms. Wallerbee as the centerpiece of a two-hour crime spree comprised of joyous and angry vandalism, the pelting of bikers and joggers with rocks and garbage, public urination and defecation, a strong-armed carjacking to facilitate their escape, and a 110-mph car chase with police that ended at the concrete divider of the adjacent freeway. One witness called what she saw ‘pure savagery—a group of males acting like a pack of animals.’ ”

The article didn't mention Lincoln was not in the carjacked vehicle or otherwise identified at the crime scene.

The “five other boys” were arrested on the freeway and agreed, after being charged as adults, to pleas ranging from 12 to 20 years. Police, not sure they'd caught everyone involved, tagged the case “open.”

Lincoln was arrested four years later. After police picked him up Ms. Wallerbee said she could not identify Lincoln as one of her rapists or as anyone she'd ever met or seen.

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Lincoln would not have been arrested but for the most luckless, for him, of events. The link turned out to be DNA—his and Ms. Wallerbee's—on a condom found the evening of the attack draped over a root of that oak tree by the canal.

At the time the condom was collected and analyzed Lincoln's DNA was not in the government's Combined Information DNA Investigation System or, as it was called by most, COIDIS. (The official charged with creating the acronym picked COIDIS because it made him and his co-workers laugh.) Lincoln's DNA would not be in COIDIS to this day were it not for a kidnapping-homicide on his street one pale-sun morning about four years following Ms. Wallerbee's nightmare, after her case was labeled, some would say ironically, “cold.”

Leaning back that pale-sun morning over an old black sedan parked outside his apartment Lincoln was approached by the investigating detective. After Lincoln assured him he knew nothing of the kidnapping-homicide the detective asked Lincoln to sign a “Consent to Provide DNA Specimen for Laboratory Analysis” and offer a sample to rule him out as a suspect. “Standard operating procedure,” the detective said. Lincoln signed the form without reading it and provided the sample—just four quick swabs inside his left cheek. The tests were run and Lincoln was indeed excluded as a suspect.

Unfortunately for Lincoln, his DNA was a match to the dried-up condom sitting in Wallerbee Rape Evidence Box 2. When confronted with the news Lincoln, according to the detective, admitted his presence during the Wallerbee attack, but as a “mere observer,” offering no further explanation.

Lincoln rejected a 10-year plea offer and elected to stand trial, even though he could face life if convicted. His defense counsel tried to explain that although every accused has the right to a jury, judges tend to “kick the jail-cell key further away” if the defendant will insist on putting everyone through a trial.

Lincoln’s trial would wait two years after his arrest, six years after the crime.

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“As you all know, you are here because you have been summoned to jury duty,” said the court bailiff in his extra-loud voice. “Your case is State v. Mizrak Lincoln.” He glanced at his clipboard to make sure. “Now I know this area’s too small for a straight line, but I need you to line up however you can, by your assigned number on your jury pool badge, with you first Number 1 all the way to you Number 40. And please make sure your badge is securely pinned and easy to see.” The bailiff took a step toward the courtroom door. “Oh, and all laptops and smart phones need to be turned off and placed under your chair after you are seated.”

This area outside the courtroom where the jury pool was planted had a low ceiling, industrial-green walls, no windows and poor lighting, all contributors to its suffocating feel. There were food wrappers, paper clips, glass fragments and dried liquid stains on the floor.

At first clumsily, then with some rhythm, the pool snaked into what resembled a multihued small intestine. Some shifted their feet to avoid the liquid stains and glass fragments as they all waited for the bailiff to permit their newly-formed organism to move. After two false starts he flashed a thumbs-up and yellow smile then opened the courtroom door. The line marched in serpentine until Number 1 was halted by the bailiff’s stiff right arm at the threshold.

Inside, Judge James J. Joneson (known as “Triple J” back in college when he dealt pot from his dorm) rose, as did the assistant district attorney, defense counsel and accused. They were, except for

the accused, each to different degrees and in different ways exhibits of physical excess. The accused, baptized Harold Lincoln but now, after a formal name change, called Mizrak, was not tall and bone thin, maybe 120 pounds.

Slouched in his stance, Lincoln wore an unstructured I'm-not-here face anchored by dark bug eyes. His dreadlocks fastened into a massive ponytail that fell to the small of his back over a tiffany white shirt garnished in front with a narrow black tie. The top shirt button was open and the tie knot loose, sloppy, hanging two inches too low. Although most people rarely looked at Lincoln after darting away from their initial glance, he was striking to view.

Stacked at the doorway, anxious to function again as individuals, the jury pool received explicit instructions from the bailiff, twice repeated, how to walk inside and sit. There were two seating sections. One, the main section, three rows of eight chairs directly facing Judge Joneson's bench, was called the box seats. The other, three rows of five chairs on a raised platform way back in an alcove, was nicknamed the bleachers. After an intricate walk-wait-sit ceremony all 39 chairs in the box seats and bleachers were filled. This left Number 40, a young hospital nurse, no seat. She was inelegantly nudged inside and told to wait.

The bailiff, after some searching, located a chair and wedged it between the alcove wall and the first seat of bleachers row two. He motioned the nurse toward it with a wagging pointer finger. Even though the box seats and bleachers always had a total of 39 seats, and every jury pool was 40 people, and the bailiff had been doing this job for two years, he grinned like he'd solved the dilemma of the unseated juror for the first time. The nurse was embarrassed and annoyed.

In accord with custom, the judge, lawyers and accused had remained standing until the jury pool was fully seated. In accord with a second custom, one taught by smug jury-selection consultants, the two lawyers had tried to establish milliseconds of eye contact with each potential juror as she or he crossed the threshold. This attempt to connect, to establish rapport, included their lawyer smiles some would call, if being charitable, forced. Lincoln had remained expressionless as the jury pool entered, his dark eyes far away.

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Joneson, a criminal court judge for six years, was ready to address the crowd. He looked bored and tired, even though it was a Monday morning after a restful weekend in early January. Although it should have felt to him like a second layer of skin, Joneson was uncomfortable in his unconstructed black nylon robe. It had become semi-transparent from over washing and clung electrostatically to the clumps of his frog neck and potbelly.

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Judge Joneson had risen to the bench the way most in the county had. He'd attended a regional law school and graduated in the middle of his class. This made finding work with a decent law firm hard. After a year of trying with no luck he offered himself to the public as a solo practitioner, using phonebook pages to advertise his value in matters ranging from crime and personal injury to immigration and unfair labor practices. He took every paying customer, regardless of subject matter or skill, year after year.

After nineteen years of practice, a senior judge in his area died of a stroke and Joneson registered his candidacy as soon as he could secure the 2,000 required signatures from county residents. The signatures were gathered easily by Joneson's young intern outside large chain stores once she explained to the shoppers no one was asking they buy or donate anything—please just sign.

Joneson's success on Election Day had depended on how much money he'd raised for billboards, how he looked on them, how many of his friends would show up to vote for him and convince others to do the same, and how many would prefer the way his name looked on the ballot next to his two competitors'. Eight percent of eligible voters showed up, almost none with knowledge of the character, intellect or legal expertise of the three candidates. Joneson won by 86 votes. Steady salary and benefits, pension, undemanding work hours, and remaining his own boss, this time with real power, became his.

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“Good morning, and thank you all for volunteering,” Joneson said, deadpan. He always tried to break the ice with this joke. After the usual awkward silence, he switched to his rote formal voice,

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but not before clearing his throat with a sharp ‘peep’ while blinking twice hard, one of his several tics.

“Before we begin, I need to tell you about the nature of today’s proceeding so you understand what we want from you. Today we will choose six of you as jurors, and two as alternates, to see and hear evidence at the trial of the accused, which will begin right after we complete our selections. The alternates will be backups, ready to step in, if any of the chosen six fall ill, do not show up the next day, or are discovered to have behaved badly. If we lose more than two jurors, that’s a mistrial and the whole thing starts over.

“Our rules for a trial, which you should consider when giving answers in this proceeding, require you to adjust traditional notions of fairness, like your natural expectation to hear each person tell his side and know all facts helpful to decide correctly. For example,” Joneson explained, “if I decide that a fact, although relevant and undisputed, would overwhelm you with waves of emotion likely to cloud your judgment, you will not hear it. And the accused does not have to tell you anything and you can’t fault him for that. While these rules sound contrary to common sense, they are the result of years of study about what juries may not hear based on flaws of human nature. Our search for truth deserves no less.”

Joneson decorated his eyes with the hanging metal-framed glasses clasped by the fake-gold chain nuzzling his neck. With both hands he grabbed the thick open book that had been spread across his bench, throat-peeped/double-blinked, and started to read.

“The crime for which Mizrak Lincoln is charged, pursuant to section 3.15(4) of our criminal statute, is ‘sexual battery upon a person at least 12 years of age, without that person’s consent, by, subpart (a), penis penetration in any orifice of that person or, subpart (b), digital or foreign object penetration in any genital or anal orifice of that person.’ ” Book in hands, Joneson snapped forward both his elbows. The first row of box seats jumped back, afraid their heads would be thumped.

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“Now,” continued Joneson in his wrapping-up voice, “first the assistant district attorney, then the accused’s defense counsel, will introduce themselves and ask you questions. They will test to see if your judgment may be affected by any opinion you hold, or any influence upon you created by outside factors, such as upbringing and life experiences.” The nurse raised her eyebrows.

At the wave of Joneson’s hand in his general direction, assistant district attorney Dick Linker (he preferred Dick to Richard or Rich) rose and walked toward the bleachers. A gentleman in his early sixties with thick white hair hard to comb, Dick was about five-six in height and enormous around his middle—a planet. His braces (he called them suspenders) ran down his pink dress shirt underneath his dark suit pants where they gripped tightly the buttons sewn inside, but the straps, no matter how firmly buckled, couldn’t stop his belly from smothering the pants’ waistline and folding it inside out.

Although Dick was a “lifer” (“I’ve been doing this for over 35 years...” usually made it into his closing statement to a jury), he looked fresh and focused. He loved these shows, and performed his roles in them buoyantly, so much so he sometimes needed to assure his audience he did not take lightly the serious nature of his subject matter.

Dick’s second personal pride, after those courtroom personality skills, was his evidence chart, which only he and his assistants were allowed to see. The chart had a separate vertical column for each element of the crime Dick needed to prove. Within each column empty rectangular boxes waited to be filled, then shaded green, as supporting evidence was produced. If the evidence was ambiguous, it could not be placed in a rectangle but would appear in an adjacent gray circle just “outside the box,” a phrase which in this context made Dick giggle. If at the end all columns were solidly green with little surrounding gray, conviction usually followed. For Dick, a pale, gray chart at the end of a trial was a half-empty theater at the finale on opening night, an analogy close to him ever since he dropped his acting career to go to law school.

After introducing himself to the jury pool, Dick shared some general observations he thought important to condition them to his view of the case. These included how guilt can be established with

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no witnesses, police testimony should be presumed credible, and the accused may be guilty even when it takes six years to find him and bring him to trial.

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The reason Lincoln's trial had waited two years after his arrest was a successful motion made by his defense counsel, Gil Jacaranda. In a hearing before one of Joneson's fellow judges a month after Lincoln was charged, Gil argued, and that judge agreed, using Lincoln's DNA to match it to another, unrelated crime violated Lincoln's legitimate expectation of privacy and therefore could not be used against him in the Wallerbee case. Dick appealed this decision, and won. The three justices of the higher court who heard Dick's appeal unanimously ruled an "uncoerced, voluntary, written and signed consent stating the DNA collected would be analyzed in COIDIS" left no right of privacy. When they'd met to discuss the appeal those three justices just shook their heads at the notion anyone still honestly had such expectations, and smiled whenever one of them said "COIDIS."

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Gil Jacaranda was once a local high-school football standout, an offensive lineman whose main job each game was to protect the team's quarterback and running backs from being clocked, tackled, concussed, and worse. He'd taken that job seriously, often citing it as his DNA for defending the accused against the onrushing, disorganized and overwhelming force of the law. Gil was a very big man, piles of muscle and fat from the top down his very tall frame, testaments to his epic binges of weightlifting and eating.

Gil made decent money defending the accused, mostly in the local drug economy, but not from cases like Lincoln's. Gil thought he needed to defend people like Lincoln once in a while for what he considered a modest \$15,000 fee, the minimum Gil required to cover defense costs and not resent his client. It made Gil feel principled and professional. It also created good publicity for his law practice. Once Lincoln was able to scrape the money together from every friend, relative and other source he could find, which took some time, Gil was happy to get started.

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Gil had mapped his strategy for Lincoln's defense soon after he took the case. First, he would try to have the condom excluded from evidence. If that failed, as it ultimately did, Gil planned to argue at the trial there was no way to prove how his client's genetic material landed on the condom.

"They would like you to believe my client participated in this assault, but that's not what the scientific evidence has proven," he would say. He had no intention to explain further, only later to follow with what he considered would be his ace in the hole. In his closing statement, Gil planned to challenge the jury in his come-to-Jesus voice with:

"If Mr. Lincoln was part of this rampage, this *wilding*, this maniacal spree, can you—*any of you*—truly believe he had the time, prudence and presence of mind to use a condom?! Please! Makes no sense! *You know there is some other story here.*"

Gil did not plan to make a specific suggestion how the DNA of Linda Wallerbee and Lincoln on the same condom found at the crime scene could otherwise be understood.

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Each member of the jury pool had completed a questionnaire upon arrival at the courthouse. It asked for name, age, family status, job description, and experience as crime victim or accused. Dick had copies of them, as did Gil and Joneson. Dick had placed his copies in a certain order, and adorned them with paper clips, green, yellow and red, depending on the issues he planned to explore. He had three pen markers, also green, yellow and red, in his shirt pocket.

Dick began his questioning. Before targeting any individual, he asked, "By a show of hands, how many of you believe, based on a personal experience, you may not be able to decide this case fairly?"

Six women, three from the box seats and three from the bleachers, raised their hands. No one seemed surprised.

"Of those who have raised their hands, who is comfortable explaining why openly in this proceeding?"

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Number 40, the nurse in her wedged chair, and Number 10, an older woman in the box seats with a fleshy face, kept their hands up.

“And which of you prefer to tell Judge Joneson, Mr. Jacaranda and me in a private session in the judge’s chambers at the lunch break? Please raise your hands.”

This question produced a mild groan as it dawned on some it might be a long day. The other four women re-raised their hands, one visibly resentful of the need for a second confirmation of her decision not to share her story in front of dozens of strangers. Joneson marked down the jury pool numbers of the four women.

“Number 40,” said Dick, “let’s start with you. I see from your questionnaire you are 31 years of age, unmarried, and for the past three years a registered nurse in the Sexual Assault Nurse Examiners, or SANE, unit of our county hospital. Can you please explain why you believe you may not be a fair juror?”

The nurse, recovered from the lone-seating incident, was confused why the question needed to be asked. She explained that while she, herself, was not a victim of sexual assault, her work in the SANE unit, where she met women ruthlessly injured in sickening events, could make impartiality difficult.

“I hear and see them in my mind,” she said. “All the time. I’m not sure I can handle a case like this. Especially where the victim was 12 years old and...”

“Hold on,” Joneson interrupted. “Why are you saying the victim was 12?”

“You said it when you read us the crime.”

Joneson’s shoulders slumped, followed by an elbows-snap.

“The criminal statute I read to all of you describes an offense against an adult, as opposed to a child. Twelve years is the beginning of ‘adulthood’ to define the victim. I think it has something to do with estimating the time of female puberty. The victim in this case was 36.”

Most in the jury pool let their mouths fall open or just shook their heads. Nearly everyone thought the victim was 12.

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“Are you saying,” said the nurse, clearly upset, “the law considers a 12-year-old girl an adult victim because she is developing breasts and hips?”

“I’m not saying that,” Joneson quickly responded amidst a rapid succession of tics. “I was speculating. It could be our legislature believes the... uh... act of sexual battery on someone who has developed as opposed to a prepubescent deserves to be treated as a different offense. For gosh sake, we treat 12-year-olds as adult criminals.” He took a deep breath. “I don’t know why the statute starts at 12, but our victim was 36, her name is Linda Wallerbee, and let’s just leave it there and move on.” Joneson closed his eyes and kept them shut, wanting to kick himself. The name of the victim was not supposed to be disclosed until the trial started.

Dick, sensing an opportunity to score points with the judge, made a dramatic pivot to the box seats and said, “Number 10, tell us about *your* experience,” just as the nurse, now mildly shaking, had opened her mouth to say more. As Dick began with Number 10 he put a big green checkmark on the nurse’s questionnaire to denote he would be happy to have her as a juror.

“Number 10...” repeated Dick, violently shuffling his papers to find her questionnaire, “...I see you are widowed, 58 years old, do not work, and have some personal experience with crime. Please tell us what happened.”

The widow began to cry softly.

“Three years ago...”

“I’m sorry,” Dick said, “the court reporter needs to hear you. Everything you say must be recorded.”

“I...I’m s-sorry....”

She made her voice louder, but that made her cry harder.

“Three years ago I was held up in front of the drugstore by my house, and I (sob) gave my purse and watch to the man, but he (sob) beat and (sob) beat me until I was knocked out. It’s hard to remember because I was (sob) in a coma after....” Her voice trailed off and she continued to cry, but again more softly, as her chin gradually settled to her chest.

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“Is that your only experience with crime?” Dick asked gently after waiting the five seconds necessary to show a proper weight of human decency.

“No.”

She stopped crying and lifted her head.

“Eight years ago my husband was killed in the bar he always went to after work. He got in a fight over a game of pool and the other guy stabbed a cue stick in his throat. The hospital doctor said people don’t usually die like this and maybe the pool ball the guy threw to his head after he fell killed him, or maybe both together.”

Most in the room now stared at the floor or a wall.

“Were either of these criminals caught and brought to justice?” Dick asked.

“No,” said the widow. “Maybe they tried but they never caught anyone. Even the guy in the bar. Everyone there saw, but he ran away and no one would say who he was.”

Dick waited a moment then briskly nodded to punctuate the end of their dialogue. He put a yellow question mark on the widow’s questionnaire.

Dick walked back toward the bleachers. He assiduously divided his attention equally between the two seating sections.

“Now I would like to ask if anyone has had an experience with law enforcement which could make it hard for you to believe what a detective says in the witness box.” At this, snickering could be heard around the jury pool. Dick pretended not to hear, but quickly added, “I’m not asking if you’ll believe whatever the detective says, just if you can evaluate his truthfulness based on what you hear and see without bias because he is law enforcement.”

Number 4 shot up his hand.

“I see...” said Dick as he found Number 4’s questionnaire “...you are 28 years of age, unmarried, and work in construction. Why did you raise your hand?”

The construction worker, stopping after each word to accent his contempt, said “I will not believe one thing any detective says.”

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“Why?” asked Dick as he placed a big red “X” on the construction worker’s questionnaire.

The construction worker told his story. It involved his brother’s ex-girlfriend “fabricating” a charge of rape against his brother right after they broke up, the two investigating detectives’ refusal to believe his brother, the nine-month “torture” of his family and “smearing” of their reputations, and the detectives’ refusal to relent until his brother agreed to a no-jail plea for simple assault.

“*She* is the one who should have been arrested,” his voice crackled.

Dick of course had stopped listening a while ago, and was already thinking of the next jury pool member to engage, but his curiosity drew out of him another question.

“Was there *any* evidence your brother hurt her?”

The construction worker’s jaw tightened as he gathered his response.

“She looked pretty messed up after they fought, and they like had sex right before or after, or something, I don’t remember exactly what my brother told me, but that’s not rape.”

Dick did not ask for further clarification.

After chatting with another dozen or so in the jury pool, Dick froze and squeezed tightly his questionnaires. He was sweating, a lot, even though the room was cold, and he felt numb. The nurse noticed, and her face showed concern, but after about 30 seconds it all seemed to subside. Dick looked up, matted his forehead with his suit-pocket handkerchief, noticed his heart was beating faster than normal, then said, “That’s all I have.”

“Thank you, Mr. Linker,” said Joneson, oblivious to Dick’s episode. “Mr. Jacaranda?”

Gil stood slowly then walked with street attitude toward the box seats, stopping only when his waist brushed the front rail of the first row. He had not taken his questionnaires with him. The two jury pool members closest to Gil had no choice but to stare into his midsection, feeling he’d invaded what should have been their personal space.

“I would like to talk to you about presumption of innocence, burden of proof and reasonable doubt,” said Gil, “things I’m sure you’ve all heard about in movies and on TV.”

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Perhaps aware he was causing annoyance, Gil took a step back. With his voice deep, resonant, and well-modulated, Gil began his well-worn jury pool lecture.

“You all know according to our law my client sits before you an innocent man. *An innocent man*. He has done nothing wrong—*nothing*—unless and until the prosecutor proves to you beyond a reasonable doubt—*any shadow of doubt*—he did the terrible act of which he is accused.”

Gil tried to sweep his eyes methodically over the eyes of all 40 in the jury pool, one at a time, ending with the nurse. The nurse looked agitated.

“Moreover,” he continued, “Mr. Lincoln need not say one word to you. *Not* that he is innocent. *Not* that he didn’t do it. *Not* give you any explanation. *Not* anything—*anything*—to shed light on why he was brought here or why you should find him not guilty.”

Gil folded his arms across his chest and bobbed his head up-and-down seven or eight times. The nurse decided she did not like Gil.

“Finally, I tell you it’s your job to make a judgment in this case unaffected by Mr. Lincoln’s appearance. Inside he is a person, like each of you.” Final pause.

“Do any of you have an issue with anything I’ve just said?”

Three immediately raised their hands, all men, Number 2, Number 11 and Number 26.

“Let’s start with the bleachers,” said Gil. “Number 26, talk to me.”

Number 26, age 61, was slight of build and had dark pocked skin and wavy black hair, where hair remained. He spoke English well enough, but his home-country accent sometimes made him hard to understand.

“I just think,” said Number 26, “if police tell me he do it he need to convince me he not do it. Why they arrest him and he here if he not do it? That’s all I say.” He shrugged.

“Are you saying the government doesn’t have to prove anything to you—at all?” asked Gil, not sure he heard right. “If Mr. Lincoln does not prove to you he is innocent, you will find him guilty?”

“Well, the police need to say what the man do, but then the man need to prove he not do it, yeah.” Another shrug.

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“Thank you.” Gil turned to the box seats. “Number 2, what’s on your mind?”

Number 2 stood, shoulders back and firm, knees joined and straight. He’d recently turned 23, was well built and in training to be a county firefighter.

“You don’t need to stand, sir,” Gil said. “Please sit, relax, and talk to us.”

“Well,” said Number 2 as he reluctantly lowered himself, “it’s what you said about the way Mr. Lincoln looks, how I can’t take that into account. When I look at him, I have to take it into account.”

“His hair, his skin?” Gil suggested.

“No.” Number 2 looked offended. “This man’s accused of a monster crime. Now he comes to this courthouse, to stand trial and say he’s not guilty, and he shows up and sits here with that... I-don’t-give-a-whatever face, no jacket, and his tie all messed up. I already know what I think.”

“Thank you.” Gil fought to suppress facial expression.

“Okay. Number 11. I believe like these two other gentlemen we’ve just heard speak, you also have some disagreement with the rules I’ve explained?”

“Yeah...” said Number 11, starting slowly. “My thing is...whatever the rules are, if a guy don’t take the stand, he’s guilty. I know it’s his right, but that don’t change if you didn’t do it you take the stand, you look us in the face, you tell us.”

This was not like Gil’s narcotics trials. In those, half the pool would complain that drug laws still existed, how the government had ruined too many lives with its tired “war,” and they’d rather just not be part of it. In Lincoln’s case, the morality behind the charge was not open to reasonable debate and the jury would be seeking retribution. Gil thanked Number 11.

He would always think of these three men as the unholy trinity of jury selection.

Gil continued with others in the pool, tossing questions like an abstract expressionist flinging paint to see what sticks, and how it looks, until satisfied he had a decent read. He concluded there was maybe one, the cop hater, who might consider “not guilty,” and he knew Linker would not let the cop hater on the jury. Other than the cop hater, he speculated, none would wait more than an hour to convict, and it would take that long only if they felt sheepish returning a verdict after deliberating

only 10 minutes. As Gil sat back down next to Lincoln he gently rubbed and patted his shoulder, a tactic he used to suggest to those watching that his client had human feelings.

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More should now be said about Mizrak Lincoln—whether he had any connection to Linda Wallerbee, was a “mere observer” of her attack, why he supplied DNA, what induced his name change, and more—but since he was not going to testify, and that information would not be presented to the jury, it is not relevant at this time.

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“Ladies and Gentlemen,” said Joneson who’d been silent and looking down for some time as he worked to complete the Easy Crossword from the morning newspaper, “it’s time to break for lunch. There’s a cafeteria in the lobby, not too bad. I strongly recommend you not venture outside. And please, please remember you may not discuss this case, or anything said in this room, with one another or anyone else, or seek information about this case from anyone or any source.” His head did a lightning stretch-and-tilt up and to the right.

As the jury pool filed out using the same system required for their entrance, but in reverse, Joneson told the four women who’d voted not to speak openly to line up by the door near his bench. Once the others left, the silent four were led by the bailiff to the judge’s chambers followed by Joneson, Dick, Gil, Lincoln, and the court reporter who would be recording their private words.

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The lobby cafeteria was, as Joneson told them, indeed okay, especially if one liked fast food, iceberg lettuce for salads, and vending machine ice cream. The pool members, 36 now that the silent four were gone, sat at separate tables, or if at a same table with enough distance to be considered alone. No one wanted to be suspected of disobeying Joneson’s instructions, especially those who had every intention, and could barely wait, to disobey them.

After finishing their food, about half the pool eagerly began to search “Mizrak,” “Lincoln,” “Wallerbee” and “rape” on their laptops or smart phones. They felt no guilt breaking the judge’s

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rules—to the contrary, their collective mood was resentful pride, though some did peek up occasionally to check no one was watching them cheat. One of the laptop searchers, a man in khakis and a polo who'd just suffered a painful bankruptcy, saw Linda Wallerbee had been a debt collection agency supervisor. "Well," he whispered under his breath, "I guess not all victims are innocent."

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The 36 were paraded back inside the courtroom. They did not see the four silent women, and no one made further mention of them. The bailiff had instructed the 36 to find the same chairs they'd used in the morning, including the wedged chair for the nurse, even though four were now empty, two in prime box seats.

Joneson, who remained standing, had a different face—he had news. He raised his chin high as his nape's gathering skin folds would permit and pursed his lips.

"Welcome back, everyone. I now have the pleasure to inform you that during the lunch break we have been able to choose from among you, and have so chosen, a jury of six, and two alternates, for the case of the State v. Mizrak Lincoln."

He liked proclaiming his decisions.

"All of you, except the eight I am about to call, should stand, but only after I read the names of the eight so you know who or whom"—he was never sure which to use—"should stand and who or whom of you should not, and then those of you properly standing shall, after I name the eight who will, I repeat, stay seated, leave the courtroom, and you may continue your day as you choose, relieved of your jury duty responsibilities until the next time you are called, at least a year from now and not earlier, so says the law, and I thank you for your service today and trust you found it enriching and appreciate more than when you arrived the *pers-pi-cacity* of your criminal justice system." He had waited all day to use that word and delivered it like he was sucking a lemon drop.

The rejected 28, now standing, gathering their belongings, were not sure how to feel. Some looked confused, some hurt, a few relieved, a few insulted. The chosen eight, peacefully seated, looking accomplished, were those who had said next to nothing or given the most noncommittal

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answers to Dick and Gil. Dick and Gil, and Joneson for that matter, knew—though would not admit so out loud—these eight were the ones, like they always were, who wanted most to be on the jury. The ones with intuitive strategies for getting picked. The ones with undisclosed personal agendas to pursue, and scores to settle, through the power being handed them to imprison another.

The rejected 28, the bailiff again their drum major, performed their final exit procession. The door closed behind the nurse just as she crossed the threshold. Those remaining in the courtroom, including the chosen eight, and even Joneson, all looked refreshed, animated, inflated. All, that is, except Linda Wallerbee, who was not there yet, except in name, and Mizrak Lincoln, who was there, but continued to look not present.

\* \* \*

Dick won the trial. It didn't matter that his evidence chart was mostly gray. The trial began, as Joneson had promised, soon after the jury was picked. Closing arguments were delivered about the same time the next day. The verdict was returned in one hour. Three weeks later Dick had the heart attack he'd telegraphed to the nurse and was put on medical leave.

Joneson sentenced Lincoln to 40 years in a maximum security prison. He tried not to imagine what was going to happen, over and over, to someone of Lincoln's age, stature and face in that facility.

Gil had \$13,100 left from his \$15,000 fee, the amount he chose not to spend on Lincoln's defense. He used it to take some high-school football buddies to Las Vegas on the long Martin Luther King Day weekend.

Linda Wallerbee has maintained she does not remember ever seeing Lincoln before his arrest.

Mizrak Lincoln has remained silent.

\* \* \*

If Mizrak had testified, which he told Gil he wanted to do, he may have said he knew Linda. That would have been true. They started seeing each other weekly, same day, same time, in the same secluded spot under the tall oak by the canal, four months before his sixteenth birthday.

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Mizrak may have told the jury Linda's attack by the "pack of animals" that evening interrupted their open-air, condom-protected sex, and there was nothing he could do but watch, even though he knew those boys from his neighborhood.

Mizrak may have wanted to suggest for the jury's consideration, if the judge permitted such suggestion, that Linda's denial of knowing him was probably shame that her former husband, family and friends would learn not only about their affair, but that she was doing it with someone like him.

If asked by either lawyer why he gave up his DNA to the kidnapping-homicide detective, Mizrak may have said the detective was clear with him refusal meant "coming down to the station for who knows how long" and he didn't see how it could get him in trouble.

That is what he, Mizrak Lincoln, may have said.

Gil told Mizrak he would quit if he took the stand. Gil told Mizrak his testimony, and how it would be viewed by the jury after he gave it, made Gil's facts messy and complicated, and created unnecessary work. Gil would have none of it.

\* \* \*

If Linda had testified differently, which she told Dick she wanted to do, she may have admitted the affair. After all, her husband was now living with another woman and Linda didn't go out much anymore to see family or friends.

Linda may have told the jury that at a coffee shop where she asked they meet the day before her attack, she told Mizrak their under-the-tree unions had to stop.

Linda may have said Mizrak showed physical pain, and rage, hearing this, so to soothe she (reluctantly, knowing better) offered to meet him the next evening at the usual spot to give him a "warmer closure."

Linda may have wanted to share for the jury's consideration her visceral knowledge, if the judge permitted such sharing, that Mizrak organized the animal pack's activities that evening with her desecration planned as the main event.

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If asked by either lawyer why she believed he had done such a thing, Linda may have said she often saw Mizrak and those boys clowning and roughhousing together in the park, and was sure she noticed a calm pleasure on Mizrak's face as they each did it to her, and so such a thing was apparently Mizrak's idea of a "warmer closure."

That is what she, Linda Wallerbee, may have said.

Dick reminded Linda of her statements to police that she did not know Lincoln and could not identify him. Dick said her new story, and its quite juicy details, would make Dick's facts messy and complicated and, anyway, all he really needed was the DNA on the condom. Dick did not mention, though when he thought of it the irony struck him, that Linda would be confessing to statutory rape of Lincoln multiple times before he turned 16. Dick would have none of it.

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The jury, of course, would also have none of it. Only the straightforward case of the State v. Mizrak Lincoln, who changed his name after his arrest because he needed to be someone else.

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