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Cruel and Most Unusual: A Research Story

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Cruel And Most Unusual

The juror sobbed uncontrollably. Make-up streamed down her cheeks. She intermittently cradled her face in her hands, or lifted it, gulping for air as it heaved out of her chest.

The judge had ordered the jury into the courtroom. They curiously, though not surprisingly, assembled themselves before him in the same order they usually sat in the box. A fellow juror patted the whimpering woman's back, dutifully.

"I am going to buy you dinner now," Judge Nielson smiled like he'd tossed a coin to a collection of street urchins, "or rather, Lincoln County is going to buy you dinner. There is a van outside. The bailiff and some deputies will go with you. Then you will return here and continue to deliberate. I remind you, you are not to discuss the case outside of the jury room."

A burst of wailing escaped the crying juror, who muffled it with both hands. Other jurors held her from dropping to the floor.

"Now go on. Enjoy yourselves," Judge Nielson said.

After the jury shuffled out, our defense team huddled. We surmised that the crying woman was being beat to hell in the deliberation room. We expected her to be a holdout. During jury selection, she said she was hesitant to give the death penalty, but not against it. The prosecution wanted her dismissed. During the trial, she was the only juror who would look at Leven.

Once the courtroom emptied, we floated off in different directions. I kept moving and kept to myself, preferring to handle the weight alone. Everyone on the team had their own demons to wrestle.

There is a lot I could tell you about Leven Piva: his life story, the murder he committed, his first twenty years on death row, his retrial, that he likes to read all the history he can get his hands on (he recently asked me to send him a copy of *The Federalist Papers*), or that he considers Subway sandwiches to be gourmet food and drinks Diet Dr Pepper (he worries about his blood sugar).

But if you and I were to meet, and we had enough time, and we drifted into unhurried, reflective conversation, I might tell you a little about his death penalty retrial, what a farce it was, and how the jury got tricked into ordering him killed.

Again.

The Supreme Court awarded Leven a retrial because the first jury did not get to hear any mitigation evidence. They should have. The relief applied to the punishment phase only. At the retrial, the jury would be instructed to find Leven guilty, and then decide on the punishment.

Leven's case fell to my team, the first public defender office that exclusively defends against death penalty cases. We are the only office of its kind. We get only death penalty cases, but all the death penalty cases, in almost half of Texas (and expanding).

All of our clients' have their lives at stake. If we don't do something, the state will almost certainly kill them. The playing field is not even. Since the death penalty was reinstated in 1976, juries have given the death penalty about 90% of the time in capital trials in Texas. Now that I know how the death penalty actually goes down, I can't believe it's not higher.

How this all started is an unlikely tale. I joined the team in its infancy, when it was just Walter Kaptane (the chief of the office) and me. Michael Opifex originally pitched the idea of such a team to judges in the administrative districts out in West Texas. Just like television promises "if you cannot afford an attorney, one will be appointed to you." In Texas, it was getting hard to get attorneys to defend capital

murder cases. For one, the State of Texas pays so little money that any lawyer with even a hint of success in a private practice has no financial incentive to take on a death penalty case. On top of that, Texas has recently increased the requirements to be death penalty qualified. Just few years back, there were over 700 attorneys in Texas who were qualified to try death penalty cases. When my team started, there were less than 90. If Texas wanted to keep killing people, they would need a permanent capital defense team.

Mike cold-called my department to ask "if anyone up there did any team building?" When my office phone rang, my brow crinkled. That phone never rings. I don't even know the number.

That called ruined me.

For good.

Today, I go all over designing capital defense teams and strategizing on death penalty cases. I help train death penalty lawyers. I was recently tapped to work with federal capital habeas units. I have no legal experience. I'm just a watcher. When I tell people how I think we might beat the death penalty, I always start by saying that I have no idea how it is supposed to work; "I know how it really works."

A long time ago, I wanted to make a contribution to society.

I was told to make a contribution to the literature.

I just went along with it.

It is early 2008. I am backing into the corner, hoping to disappear. I suppose this is normal for an ethnographer, but on top of wanting to bleed into the wall, I have an overwhelming sensation that I am not up to the task. I don't even know how I wound up here. There are lives on the line, and I am not sure if I believe in half of what I am about to say. I have no business being there. Unfortunately, I am in charge.

Stares cajole me to begin. I have laid out a blank slate, dozens of pages of flip-chart paper spread neatly across folding tables. We are about to rewrite the way the death penalty work is done. I squeeze the markers so no one can see me shaking. I swallow, my mouth dry from my lips to deep in my throat. I begin to speak.

At the end of the day, there is more ink than white space on any piece of paper strewn around the dank, empty room. There is not a tattered page that does not contain some list, diagram, or scribbling. Florescent lights hum. One quietly clatters. I crawl around the floor trying to collect and order the brain dump. I am not much of a praying man, but if I had known what the days ahead would bring, it might have done me some good.

I am not one of those regal, blustering, professors. I am what happens when the class clown becomes a professor, the result of some cosmic mistake. I should be cutting grass or pouring coffee, but I would not last a day doing anything but professoring, whatever that amounts to. I thought it would involve ivory towers and warm wood offices. Stupidly, I went and became a qualitative researcher, an ethnographer, as I've said, which is little more than a weather-beaten cultural anthropologist. I live among those I study, learn the rules that govern their social systems, participate in their culture, and spend copious amounts of time in unfamiliar settings. I am armed with a blue pen and a yellow pad. I watch. I write. I try to capture what I can on journeys, conscious of training that admonishes me to be objective. To watch, to report, to explain what I observe in academe. To describe it.

Ha.

I want to take a bat to it.

It is not a brave thing I'm doing. I'm scared. But how the death penalty works - as a highly institutionalized, myth-infused, social system - is not something I can just go along with. I have never been the kind of guy to speak up, to say something. I'm too afraid. Of what, I don't know. If my soup is cold, I'm too intimidated to bother the

waiter. If you barge me over, I smile politely and think nasty thoughts. When I witness injustice, any rage is silent. I purse my lips and think defiant thoughts: *Someone ought to do something!*

Who I am trying to be, is the guy that says something, that does something.

For a long time, I guess I just figured I had damaged myself too much to be of any help to anyone. But I am starting to get it. It's that very damage and ways in which I am broken, that make me capable. And besides, I don't think I could stop. I am used to tormenting pursuits I cannot quit.

I entered the court room. Leven was up at the defense table with Tom and Bobby, two attorneys on the team. Today was just a pre-trial hearing for Leven's case. Leven hunched forward in his chair. He looked about as threatening as an orange and white striped bean-bag. Defendants seem eerily misplaced in the courtroom. Largely ignored, they are invisible despite their physical presence, as those around them determine their fate.

In the punishment phase of a capital trial, the jury answers two vaguely and oddly worded innocuous questions that hardly seem capable of sending someone to the death chamber. Here are the two questions that Leven's jury answered:

Question 1: Do you find from evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that constitute a continuing threat to society?

Question 2: Are you convinced that there is no mitigating circumstance that would warrant a sentence of less than death for Leven Piva?

(They are further instructed):

"The first question must be answered "yes" unanimously or "no" by a vote of at least ten-to-two. The second question must be answered "no" unanimously or "yes" by a vote of at least ten-to-two" (from actual verdict sheet, and statute from Texas Code of Criminal Procedure, Article 37.071).

The jury first answers whether the defendant will continue to be a future danger to society. If they all agree he will be, they essentially tick the "YES" box. Then, they move onto the next question: whether there is any mitigating circumstance, such as mental illness, that would warrant a sentence of less than death. If they unanimously agree, they tick the "NO" box, Leven gets the death penalty. If, however, they do not agree unanimously on the first question — that the defendant is a future danger — then they are not allowed to go any further. The trial is over. The defendant is automatically given a sentence of life without parole. If they say yes on the first question, but do not agree unanimously on the second question — that there are no mitigating circumstances — the automatic sentence is again life without parole.

But no one ever tells the jury how the process really works.
No one is allowed to.

The jury gets some of the truth, but not the whole truth and nothing but the truth. They are told correctly that they must vote unanimously to find the defendant is a future danger. That's true. However, they are also told it takes at least 10 jurors to vote "NO" and deliver a verdict of life. That isn't true. It only takes one to deliver life. But the jury receives no instruction or direction for votes such as 7-5, or 4-8, where neither box can be ticked. They are led to believe this must arrive either at 12-0 to kill or at least 10-2 to give life.

That Texas statute is referred to as "the 10-2 rule." Another related statute further ensures the defendant's fate. It says that the jury cannot be informed of the result of a non-unanimous verdict. Even if the jury asks about what happens if they can't tick either box, they still cannot be told the truth. "Refer to the jury instructions," the judge says. Lawyers and judges from other states are flabbergasted at this level of bias and misinformation. Texas keeps these statutes in place because legislators and conservative lobbyists know it leads to more executions, and they want that. There's no place like Texas.

I've seen DA's use a highway metaphor to illustrate the capital sentencing process to a jury pool. They walked them through a PowerPoint slide presentation that depicts a freeway, with the main road and green signs leading straight to a death sentence. Events like "at least 10 of you vote no" were marked as caution signs that "detoured" (yellow caution signs) the jury off the highway and into a life sentence.

If the jury reaches a crossroads, and they are "unable to reach an agreement," they are instructed to "inform the judge."

They send a note to the judge. They get one right back: "Please continue to deliberate and try to reach an agreement."

If the message came from twelve angry men, the terse response falls upon twelve frustrated, confused, intimidated, hand-slapped children. Hopes of direction evaporate, leaving them crestfallen. They take the judge's response as an irritated order to reach an agreement.

Lawyers call it "the dynamite charge." It blows up any resolve that hold-out jurors have.

The law is supposed to search for the truth, not hide it. The truth, which no one can actually tell the jury, is that if they do anything other than vote 12-0 on both special issue questions, then the sentence is, by default, life without parole. Any juror can say, at any time, "We cannot agree, and I am done deliberating." The jury is simply unable to fill out the form. They don't tick any boxes. They turn it in like that. The trial is over. It is not mistrial. It is a completed trial, and the sentence of life without parole is legally mandated.

But jurors must chance upon these crossroads. If they do, the Supreme Court has ordered judges to accept a less than unanimous decision. Jurors never have to explain themselves. Their personal moral decision is considered too sacred to second-guess. A juror's decision is beyond reproach. The jury room, and whatever happens inside of it, is forever shielded from any review. The Supreme Court guards that jury room door, but will never open it.

But societal myths push the jury toward death. When they get stuck, they think the judge, as seen on TV, will brand them a "hung jury" and declare a mistrial. Even worse, sometimes the jury assumes the guilty killer will then be "free to go."

There is no such thing as a hung jury in capital sentencing. In a vacuum of information, facing a mountain of pressure, guess which box jurors tick? In the chasm between what the jury is told and how it really works, death lumbers forward like a runaway train.

Tom stood, attempting for the umpteenth time to derail, stop, or slow that train. He was arguing the next motion in a tall stack of pre-trial motions. The judge had monotonously rejected motion after motion. He had ruled in our favor only once, on a motion for individual voir dire, where potential jurors take the stand and are questioned about their views individually, instead of in a group. It is common practice in capital trials, but you still have to file a motion to make it official. The DA had made the same request.

"Granted!" Judge Nielson snickered. "Glad I could finally give ya' one."

Aside from moments like this that tickled him, he held us in disdain.

During another motion, the judge had perked up for a rare moment. "Hey, that's another one outta Tennessee ..." the judge seemed amused with himself for happening

to notice that Tom had cited a second Supreme Court ruling on a death penalty case that had originated in Tennessee.

"Do they even still have the death penalty in Tennessee?" Nielson asked wryly and grinned at Richard Galoba, the DA in Lincoln County.

Galoba was a broad guy with a rounded belly that seemed to squat into his feet. He was a former linebacker, and wore tight suits that seem to cut off his circulation and turn him red-faced, though he looked like that all the time. In court, his two emotional displays were to either raise his eyebrows incredulously or squint dismissively. The former projected disingenuous confusion, and the later made him look angry and constipated. Regrettably, the jury loved it, and took his displays as a proxy for their interpretations.

I actually find Galoba pleasant beyond his presentation. I have met with him several times for several hours. I think he and I get along because I am able to decipher when he is being helpful and reflexive, which is un-often, and when he is boasting or condescending, which is often. The later actually helps me calibrate the former.

I went to Galoba's office a few days after Leven's trial. He immediately welcomed me in, cleared his schedule, and gave me several hours of his time. He spoke candidly (sometimes) about the trial and the thinking behind the prosecution strategy.

"I think they have it on paper, your Honor." Galoba made a joke of how few people Tennessee killed. Then he and the judge shared a hearty laugh. Galoba barred his large yellow teeth. The judge denied our motion.

The judge and the DA collaborated all the time. Each of them knew only a dangerous amount of the law, so they worked together to flounder through. Sometimes, they searched each other's vacant eyes, hoping to telepathically click their minds together and spark the citation of some case law, any case law. But mostly they just hashed it out on the fly.

They played a version of the game show *Secret Password*, cuing each other to guess legal precedents.

"Weren't you telling me about a lady judge over in Dallas who made a ruling like this...?"

"Yeah, yeah..." Galoba eagerly took up the lead, "was that the one where...?", but then he trailed off, furrowed his brow, and endlessly searched the ceiling for inspiration.

"Well, at any rate," Nielson shrugged after a time, "denied."

"The next, your Honor," Tom said, "is a motion to find the 10-2 rule unconstitutional."

The judge nodded for Tom to continue, if he must.

"The jury receives improper information that leads them to believe they must have at least 10 jurors to vote for a life sentence on both special issue questions." Tom reviewed in detail how it takes one vote, not ten, to avoid a death sentence. "The jury deliberates under false instructions. Furthermore, we're not allowed to tell the jury the effect of a non-unanimous decision." Tom contends it is "misinformation for jurors" and leads to "jury confusion" about mistrials or hung juries, which the court is not allowed to clarify. Tom argued that "the 10-2 rule" violates the 8th Amendment, "which says one juror is entitled to return a life sentence. But if they are under the belief they need nine other jurors to join them, they capitulate and give death." Tom adds it is "coercive" and cites Supreme Court law that says the court is bound to provide the jury enough information to allow for "informed deliberation." Tom recommends a remedy. "I should be allowed to tell a juror who asks what the result of a single vote for life is." Tom went on to list a string of additional violations under the 5th, 6th, 8th, and 14th Amendments to "the Constitution of the United States."

I had seen the 10-2 rule operate in gut-wrenching fashion, during jury selection when a group of about fifty potential jurors were being qualified. After a lengthy but

elusive explanation of the sentencing process, jurors were given an opportunity to ask clarification questions.

Juror: "What happens to him if we don't all vote for death?"

Many of the potential jurors nod; they all want to know.

Lawyer: "The judge will tell you what he can when we get there."

Juror: "Well... does he go free?" They assume an acquittal.

Lawyer: "I am not allowed to answer that."

Like almost all of our pre-trial motions that day, the motion to find the 10-2 rule unconstitutional had been meticulously argued, then casually denied. Galoba had fumbled through his response. He cited absolutely no case law, but assured the judge that precedence *must* have been upheld, somewhere, sometime, since, after all, the statute still exists.

While attempting to follow Galoba's ramblings, the judge caught my eye. He gave me a bewildered look.

I shrugged back at him.

Galoba stumbled toward an awkward finish, but missed it, so he just quit talking. Nielson cocked his head at me, like a dog who'd heard a strange noise.

"Denied," Judge Nielson sighed, perturbed by the needless wait on Galoba to get to his inevitable ruling.

We expected the motion to be denied. This judge was certainly not the one with the balls to go declaring anything unconstitutional.

"Is there anything else?" Nielson stared at the clock.

"Yes, your Honor, but we can take them up after lunch if you like."

"They aren't just more of those constitutional ones, are they?"

"I'm afraid so, your Honor." Tom wasn't afraid at all.

The fact is, expecting to be denied, our only aim was to get the motion into the official court record. Tom had been so diligent, speaking clearly and slowly enough for the court stenographer to get it all down verbatim, knowing the judge wasn't listening, because one day, some day, many years from now, when this trial is well into the appellate process, the ruling on that very motion may be the one the Supreme Court overturns to award Leven yet another trial, maybe a fair one.

We need it on the court record that we objected to the 10-2 rule. If the Supreme Court ever finds it unconstitutional, even on a different case, on the grounds that it prohibits the jury from making an informed decision, all of the cases that might be affected will be reviewed, and Leven's case will be in the mix. Merely filing the 10-2 motion gives Leven a chance. If that day ever comes. If he's still alive.

Deliberations began. The judge had just finished reading the jury instructions, and the bailiff ushered the jurors back to the room where they had gathered every morning, took breaks, ate lunch, or waited whenever the judge called a short recess. In that room, those twelve people got to know each other; where they worked in real life, where they used to work, who's kid played what base or went to which soccer camp, who still had their wisdom teeth, who liked which vacation spots, who liked to fish and who liked to knit and who liked to do both, and who should've won Monday Night Football — the outside world rushing all around their real purpose, the only reason they ever met, and the reason they will be forever bound to one another.

"You are not to discuss the case," the judge had reminded them every time they left the box.

Now, it was the only thing they could talk about.

We watched that door to the jury room — all of us — the law, the victim's family, Leven, the judge, the DA, even the Supreme Court — all of us waiting for, or protecting them, while they perform their horrific duty. Once deliberations begin, they are profoundly alone. As the door shuts behind them, it seals off the outside world. There is no more information, evidence, or instruction. Any help they were gonna get, they got before that door closed.

I killed time. I sat with Leven at the defense table, attempting to have idle conversation. I told him not to drive himself crazy with what more he could have said or done during trial.

"You did just perfectly, Leven," I told him, referring to his testimony. Leven had not taken the stand at his first trial. For his re-trial, given that only punishment would be determined, our strategy was to have Leven detail the night of the crime, take responsibility, and share his remorse. This marked the first time he had spoken publicly about the crime — how he and his girlfriend lied about needing a ride, how they planned to take the truck by brandishing a knife, how they fought, how the blood scared him, and how he ran at the sight of it, taking nothing, except a life.

The victim's family filled the gallery.

Leven cried on the stand; as men cry, his face suddenly wet, his voice shaky and quiet. He withstood cross-examination well, and came off looking gentler more genuine than Galoba, which he was.

Sitting there waiting, I tried to change subjects. I had taken Leven's mother and sister, who had also testified, to lunch. They were proud of Leven and they wanted me to tell him. I did.

I also paced the halls; took walks outside. Leven was confined in the now-empty courtroom, while two sheriff's deputies milled about. Leven slumped at the defense table looking anxious and ashen.

"I just told the truth," he kept saying to fill the space of nothing-else-to-say. It was ironic now, that just after he had described how he murdered someone, that his harmlessness was most evident.

Leven was inept. He had not made a decision of any substance in decades. He ate when he was told, what he was told. He believed whatever he heard on talk radio. If something was funny, it was because someone else told him it was funny.

Leven loved Subway sandwiches, which we brought to the courthouse for lunch, but he didn't know how to order. You had your pick of different kinds of bread, meat, toppings, and dressings. And they were a foot long.

"Anything, man. Anything," he'd say when presented with all the fixings.

We got him everything.

He inhaled it.

"How much did that cost?" he asked.

"Five bucks."

"Is that a lot?"

"They've been out a long time. Is that good or bad?"

Leven wanted me to give him some hope, a take on the situation that could be interpreted as a good sign. I wouldn't do that to him. I told him I wouldn't hazard a guess. Even contemplating what might be going on in that room would only drive us crazy.

But we did get a clue. After three hours, a note came out of the jury room. When that happens, the bailiff informs the judge and the judge calls everyone back into the courtroom. We go on the record. The judge opened the note and read it aloud: "In Texas, is a suicide attempt a criminal act of violence?"

"I think it is?" As usual, Judge Nielson looked to Galoba to take a legal swing at it, or, lacking that, provide a little moral support for his wild speculation.

Someone on our team had actually done the legal research, but no one was asking us. Suicide does not constitute a "criminal act of violence."

The judge wouldn't know this. He didn't even know the basics of capital litigation. As Mike always says, "Not only do Texas judges not know the law — they aren't even curious."

Nielson's lack of knowledge couldn't hurt us this time. He's only allowed to send the standard note back: "I am unable to assist you in your deliberations. Please refer to

the jury charge." Yes, that little booklet of misinformation you got before we tossed you in the hole.

We knew they were stuck on the first special issue question, the future danger question, where the jury decides if the defendant is likely to commit "criminal acts of violence." If a defendant is not going to be a danger in the future, then there is no need to kill him.

We also knew they believed they had only two options, twelve to vote "YES," or at least ten to vote "NO."

Leven was not a future danger. I would describe him as "goofy-friendly." He has impeccable behavior on death row and had never been involved in any altercation whatsoever, and not for lack of opportunity. We had a parade of death row guards testify as to his stellar jail records and gentle demeanor. Leven had been written up twice in twenty years. Once, he had flubbed the laundry exchange and wound up with an extra wash cloth, an infraction. The other time, Leven had found a half-smoked marijuana joint in the cafeteria and kept it. That was fifteen years ago.

More recently came the suicide attempt, which is not an infraction. It appeared in his medical records. In 2007, suffering from depression, Leven tied a tourniquet around his arm and sliced into his veins with a razor blade.

The jury was about to kill him for it.

I knew the judge's non-response would send the jury into a tailspin of frustration. I couldn't sit still, so I left the courthouse and took a long ride out to the world-famous Cadillac Ranch on Highway 40 in Texas.

The row of half-buried Cadillac cars, seen more often in pictures than in person, exemplifies Texas legend. To actually see it is unimpressive. You simply pull off the highway and clod three or four hundred yards into a crop field. There you stand amongst what you barely recognize from the iconic photographs — ten Cadillac cars buried face down into the mud, taillights pointing skyward. Upon closer inspection, the real thing pales in comparison to the infamous imagery. Rubbing your hands across the dust-covered, decrepit shells, you wonder what holds them together anymore. It feels as if it will, any minute, crumble under its own weight. Up close, it's just a pile of junk.

Among the steel ruins, I think of the crying juror and wished buckets of resolve upon her. She was our only hope now. I despaired having to stand there in court and just stare at her while she wailed, unable to do anything. It was the kind of inconspicuous watching you do, that decorum demands, long after it has collapsed. She looked utterly abandoned in her grief, and whatever tore at her insides ravaged her outsides too. Sending the jury to dinner could not have come at a better time. Get some food. Reset. Refuel. Refasten your will, lady. You only feel alone.

The jury had not even digested their dinner. They were back less than twenty minutes when the bailiff went looking for the judge. They had reached a verdict.

Afterward, I stood outside the court house, consoling Leven's sister and mom. A few members of the jury came out, then the last of the court staff, followed by a few more jurors. The victim's family was celebrating back in Galoba's office. They had showered the jurors with teary "thank-yous" as the jurors exited the courtroom.

Then, they turned and ran cheering through the empty halls, and were finally corralled into Galoba's office for an impromptu pep rally.

Galoba had snuck into the juror's room to thank them.

"You guys did the right thing," Galoba told them. "He would have been out on parole if you hadn't of done that."

It was a lie, but what the heck, pats on the back are often accompanied by lies.

A few jurors stopped to smoke. I fretted helplessly in the knowledge that they had no idea what had just happened to them. Maybe somewhere they sensed their acquiescence. They stood an awkwardly distance from each other. They spoke quietly and solemnly. Small talk. They exchanged idle promises to "take care" as they parted.

The next week, I was back up in Lincoln County, on another case, in another cell, with another killer. Leven was gone. They had shipped him back to The Row lickety-split. I spent part of the day in Galoba's office, rehashing trial strategies and theories. Before heading back to Lubbock, I called the office to see if there was anything else I could do.

I was to meet someone. For the next few hours, I stepped right into a John Grisham thriller.

Several days beforehand, someone emailed our office claiming to be "one of the jurors" from Leven's trial. There are a lot of kooks. We didn't give it much weight at first. The public usually keeps their condemnation online in blogs or newspaper commentary, but emails to the defense team are not rare. The emailer eventually identified themselves as the crying juror. She regretted "what happened in the jury room." She hadn't been able to sleep. Could things be set right?

I felt dismissive. There are no such things as "second thoughts" in capital trials, river of tears be damned. Contrite jurors go to judges all the time, in all kinds of cases, confessing to horrible mistakes, wanting to change their minds. What's a law to do?

But I also knew we might learn a few things. I thought of our cases to come. More juries. What seemed most influential in their deliberations? Did they follow some process in voting? When they got stuck, what was it over? How did they reach a resolution? What did they think of this expert or that witness? I might get some ideas.

Then again, maybe she just wanted to cry again, and I would listen.

I pulled over as my cell phone battery blinked its last blinks.

I frantically searched along the walls of the gas station for a plug, my thumbs banging away to get one more message sent. I feared any delay in responding would be misinterpreted. We were immersed in a delicate yet tense conversation. Afraid she might back out, I tried to project calm via keypad.

I was also beginning to realize that glass-enclosed gas station booths don't have wall outlets. One more text, maybe. I promised her she wasn't doing anything wrong. The judge had released them from their duty. They were free to talk about the case. My over-reassurance only heightened her anxiety. And we had all the normal complications of hammering out a meeting. We would meet here. Then we switched it to there. This time would work better than that one, if she could get off work, and so on. It all felt very cloak and dagger.

On top of all the hoopla, everyone I ever knew picked right then to call me. It was the gas-station/cell phone version of the game show *This Is Your Life*. My mom, my brother, roommates I hadn't thought of in 20 years, a decade-old girlfriend who was suddenly demanding an apology.

I'm sorry, so sorry. Yes, I lied about losing that mix tape. No, I don't still have it. No, I'm not *still* lying.

More strange calls. We played soccer in the fifth grade. You made sales manager, eh? That's fantastic, bud. No, I don't need any. Me? Oh, I'm kinda still in school. No one from my past ever believed me when I told them I had become a professor, so I quit telling them. That I was washed up seemed much more plausible.

My fingers danced across my keypad. I sweated. I hit "ignore" to calls so I could keep texting, and I hit "ok" fifty times to low battery warnings.

"Can I unplug your coffee maker?" I yelled.

The kid behind the register jolted, then shot an incredulous stare.

"My wife is having a baby!" I waved my phone at him. Well, I still lie a little, I thought, as I tugged at the sticky cord.

I waited on what wasn't the best corner in Amarillo for a red truck to come along. I was still unclear as to whether the red truck would be the crying juror, or if I was to get in the red truck, which would take me to the crying juror.

What had I gotten myself into? For all I knew, I had been texting a lunatic who hadn't had their vengeance quenched by death. Perhaps it was one of the bloggers who "disagreed with defense teams," although in much less eloquent, albeit more sincere,

language. My mind raced with impending doom. Friends would mesmerize each other at my wake.

"I don't know why, but something just told me to call Hans that day." Or, "He sounded weird, like he knew he was in some sort of danger but wouldn't tell me." And likely, "Has anyone gone through his personal effects? Was there a mix tape?" Besides my own life and limb, I had my newly-invented wife and baby to think about, induced via hysterics only twenty minutes ago. Who would pretend to take care of them?

Before a red truck came along, I got another text: a change of venue.

Any apprehension left when the juror and I recognized each other from the courtroom. I made sure my note pad was already on the table before she sat down, much less dramatic than whipping it out after the conversation begins.

"I didn't want that to happen," she said. "The whole time, I just wanted to hug Leven and tell him that everything was going to be ok."

Well it didn't turn out ok, I wanted to say, but bit my tongue.

I asked her if she remembered the two questions.

She said she'd never forget them.

I asked which one they got stuck on.

"The first one."

"What happened in the room?" I asked.

"They kept showing me pictures of the crime scene and saying, 'Do you want this to happen again?' and 'If we let him out, he'll do this again. Do you want that on your conscience?'"

"And how did you go about voting?"

"We went around the table and said our vote one-at-a-time and talked if we wanted. One of the women wrote the votes down. If you said yes, she put a big checkmark by your name, but if you said no, she wrote down undecided. Then they'd put the pictures down in front of me and say things like, 'What can we do to help? How can we help you think it through?' They were trying to be consoling, but they also got frustrated every time we went around again. The woman taking down votes kept saying she was supposed to leave for vacation the next day."

"So what was happening when you broke for dinner?"

"I was a mess," she said.

"Were they bullying you?"

"It was over at that point."

"What do you mean?" I asked.

"We had just decided. And I was like, how are we supposed to eat right now?"

I pretended to sip coffee. I nodded reassuringly.

"I'm sorry," she started to cry. "I told that big lawyer from your side that I was the type to stand my ground. I promised him I wouldn't cave ...," she tried to collect herself, "but I did."

I nodded.

"I did not want this," she said. "I wanted life all along. I just didn't know how that was ever going to happen, so I folded."

I nodded.

"I just wish I could have done something, but I knew I would never convince nine of them to join me."

I nodded.

Weeks later, Amy called our office. She had done some research. There was no need to protect her now. She knew all about the 10-2 rule.

"That's how it really works?" she fumed. Amy had imagined a mistrial. She swore that if she had known the truth, Leven would have gotten life, or, they would still be in that room.

Amy visited death row.

She decided to go to law school.

She sends all her grades to Leven.

About the Author

Hans Hansen is an Associate Professor at Texas Tech University, and the Director of the Center for Innovative Organizations. He is also an Embrey Human Rights Fellow at Southern Methodist University. He is always getting mixed up with the wrong crowd.