

12 11 10 ANGRY OREGONIANS

JUDGE PAGAN

(at the conclusion of his introduction)

And now, we're heading into the jury room...

The Jurors take their seats at the front, if they haven't already.

JUDGE PAGAN

(cont.)

Although it is highly unorthodox, I will now read one last instruction to you here in the jury room, rather than from the bench with all parties and their attorneys present. Uniform Civil Jury Instruction No. 1015 (Verdict – Felony Case):

“Select one of your members to act as presiding juror. The presiding juror has no greater voting weight but is to preside over your deliberations and be the spokesperson for the jury. You should then deliberate and find your verdict.

If it becomes necessary during your deliberations to communicate with me, do so in writing. I will consult with the parties before responding.

No one except for you, the jurors, is to be involved in your deliberations. Therefore, do not tell anyone, including me, how many of you are voting not guilty or guilty until you have reached a lawful verdict or have been discharged.

This being a criminal case, 10 or more jurors must agree on your verdict. When you have arrived at a verdict, the presiding juror will sign the appropriate verdict form.

After you have reached your verdict, signal the bailiff. The court will be reassembled to receive your verdict.”

(Judge finishes): Thank you (walks out)

#1

Unless someone else would like to do it, I volunteer to be presiding juror. Everyone ok with that?

[other jurors chime in with “fine”, “sure”, “ok” and things like that]

#1

(cont.)

Ok. So then let's start off with a vote on the first count. Remember, we only need 10 guilty votes to convict.

#2

Are you sure about that? I know that's what the judge said but I've seen every episode of *Law and Order* at least twice and they always say the jury has to be unanimous.

#3

I think [he/she]'s right. I had jury duty when I lived in Washington, I served on a jury and we had to be unanimous.

#4

Well I'm from Louisiana and when I served on a jury there, we only needed 10 guilty votes for a conviction.

#5

Well, I had jury duty in New Hampshire and we had to be unanimous there.

#6

Well, I've always heard that Oregon and Louisiana are the only two states where 10, 11, or 12 guilty votes are enough for a conviction.

#7

I always thought there was a right to a jury trial in the US Constitution, and I figured that meant unanimous juries. Hey, maybe the professor-looking guy over there knows.

#8 - RICK

As luck would have it, I just happen to be a Constitutional law professor who, somewhat miraculously, survived voir dire and I'd be happy to tell you all about it.

#9

Wait. How did that not come up during jury selection?

#7

Never mind that. Professor, has the U.S. Supreme Court ever ruled on this issue?

8 -Rick:

Yes. In 1972, in a case called *Apodaca v. Oregon*, the Court held that Oregon's nonunanimous jury system didn't violate the Sixth Amendment.

#1

Ok, so that's the end of the issue, right? Let's vote!

#8 – Rick

Not exactly. *Apodaca* was a complex case that generated seven (7) separate opinions, and in recent years there have been arguments that its rationale has been undermined based on shifts in what's called the incorporation doctrine.

#2

Wow. That's fascinating. I do hope you elaborate on that.

#8 – RICK

Certainly. The guarantees in the Bill of Rights, including the Sixth Amendment jury trial right, originally applied only against the federal government. The Supreme Court has decided that most of these rights were "incorporated" to apply against the states when the 14th Amendment was enacted in 1868.

In 1972 when *Apodaca* was decided, the general rule was that when a Bill of Rights guarantee was incorporated like this, it didn't necessarily have to apply exactly the same in a state case as in a federal one. That was why it was considered constitutional to have a state court jury right that didn't fully

match the Sixth Amendment guarantee.
(Rick continuing)

Since then, though, the Court has at least arguably held that rights incorporated against the states apply in full force. As a result, defendants are now arguing that the rationale underlying *Apodaca* has been undermined, and nonunanimous juries in state courts are in fact unconstitutional. The U.S. Supreme Court hasn't yet taken up that argument.

#9

Wow! I never knew that! Thanks, professor!

#10

So, what a second... You mean to tell me that my opinion can be marginalized and ignored, just because I'm not in the majority? That really sucks! I was always told that my voice counts and now you're telling me that it really doesn't unless 2 other people also feel that way?

#11

How did that come to be the law in Oregon? If only there was a respected Oregon Court of Appeals judge who was here tonight, and who had an important case opinion while he was a Multnomah County Circuit Court bench, that addressed this very topic.....

#12

As luck would have it, there is! Ladies and gentlemen of the jury. Here to talk about some of the history of Oregon's non-unanimous jury verdict law, and issues that were raised in the *State of Oregon v. Olan Jermaine Williams* case, I present to you special guest speaker, the Honorable Bronson James of the Oregon Court of Appeals.

[Judge James Presentation]

[Sam to advance the Power Point slides as Judge James speaks]

...

[Judge James wraps up]

If time allows:

Group 1 (Annelisa and Zach)

Thank you! [Any additional thoughts, questions for Judge James?]

Group 2 (Mark, Patrick, Darlene)

Final words: Recent events [brief description of 1) Louisiana ballot measure; 2) ABA conference / position; 3) How the DA's in Oregon seemed to change position]