

Ladies and Gentlemen, I would like to take you with me back to 1976 to a courtroom in a state capital in one of the Middle Atlantic states. The courtroom is one of the new modern ones with high ceilings that appears more appropriate for running the North Carolina four corner offense than trying a lawsuit. Seated in the spectator section of the courtroom are 40 citizens who much to their chagrin have been unable to come up with a legitimate excuse to be excused from jury duty. Seated at the table on the right as you are facing the front of the courtroom is the Government, the bureaucrats, the people who have spent a portion of every working hour over the past several years figuring out every loophole possible to avoid paying this claim. Inside assistant attorney general, resident engineer, construction engineer. Seated at the other table are the good guys, the contractor, the person who at great financial risk has built a road that will benefit the people of the state for years to come. I sit on the inside chair. Next to me is a legal assistant from our office. She is the sergeant in this battle we are about to fight. She has all of our exhibits organized, in order, and ready to present to the court. Seated next to my legal assistant is the president and majority stockholder of the contractor. This is his first time in court and he feels like he is in the waiting room at the dentist's office. He knows he needs to sit in the dentist's chair to relieve the pain, at the same time, he cannot wait for it to be over with. I have asked him to leave his Rolex watch and his diamond pinky ring at home.

At the front of the courtroom are the sheriff, the clerk and the court reporter, and finally sitting at the very front and up above everyone else and sitting there half asleep like the bump on the log he is, is his honor, the judge. A man of 55 years of age who has spent 85% of the last 12 years of his professional life deciding such questions as which car got to

the intersection first, whether the husband or the wife is at fault in the divorce, and who robbed the local convenience food store. He has already decided that the 5 days it will take to hear this complicated construction case will be the worst 5 days of his entire professional career and on Monday morning at 9:30 as I gaze up at him, he is cussing himself under his breath for not transferring this case to the most junior judge.

With that setting at 9:30 on a Monday in June, 1976, the trial begins, and I do not know if you have ever thought of it this way, but the trial that is about to begin is like a combination of the theatre and a pro football game. We are creating an artificial world for the jury just as the actors in a play do for the audience. We are also in the trenches fighting it out and, at the end, one of us will go home a winner and the other will go home a loser.

At 9:30, the clerk calls our case and then performs the function of whittling down the potential jury from 40 to 20. She does this by pulling ping pong balls with numbers on them from a fishbowl. When down to 20, the jurors are asked several questions by the judge to determine if they should be struck from the jury for cause. Then, the assistant attorney general and I each get to strike 4 jurors to get the number down to 12. It goes back and forth one at a time and I notice he is getting rid of each person who has ever set foot on a college campus, even if it was just for a football game. I am getting rid of those who I believe have no measurable IQ. We end up with a jury of no college graduates, and I am concerned about that because our case is a complicated one.

It is now time for the opening statement. I step up to the podium and begin to tell a story.