

1 MR. NORMAN: Bill Powell and Haynie
2 Gourley had been very, had been partners and very
3 successful in the creation and operation of the
4 Capitol Chevrolet Company on Murfreesboro Pike.

5 They were both extremely well known in
6 the Nashville and the community, both from a
7 business standpoint, and socially. They were
8 considered to be eminently successful in the
9 automobile business and in the business world of
10 Nashville. They came to a parting of the ways.
11 They had some big division of opinion over the
12 business.

13 The story is that one morning, Bill
14 Powell and Haynie Gourley got in an automobile and
15 were just taking a ride to discuss their
16 differences. Well, a little while later, Bill
17 Powell come driving back into Chevrolet Motor
18 Company with Gourley on the seat shot dead, and
19 Powell shot in the leg.

20 Powell hollering and crying and insisting
21 that they get an ambulance right away, saying that
22 somewhere on the trip, some unknown person had got
23 in the back of the car as they were turning around
24 and shot Gourley, and shot him, and then
25 disappeared. Got out of the car and disappeared.

1 Well, he was charged with murder after
2 investigation. Of course, as I said, it attracted
3 a world of attention because of their prominence in
4 the automobile business, and in the professional
5 and social world of Nashville, and because of the
6 circumstances under when it happened.

7 I was retained in the case and became
8 associated with Branstetter. Branstetter was an
9 integrable worker and investigator, and the two of
10 us together, I think we made every investigation
11 that could possibly be made in preparation for the
12 trial of a case.

13 Of course, the State, through all the
14 resources of investigation at its command behind
15 it, they were looking under every rock and behind
16 every stone trying to find all the evidence they
17 could.

18 But, of course, it ended up as a
19 circumstantial evidence case. There were no
20 eyewitnesses to the shooting. And so it had to go
21 to trial as a circumstantial evidence case.

22 Well, the family had retained John
23 Hooker, Sr. to assist Tom Shriver in the
24 prosecution of the case. By the way, Hal Hardin
25 was an assistant under Tom Shriver, and he took

1 part in the prosecution, too.

2 Well, that trio worked hard. And there
3 was a lot of newspaper talk because John Hooker and
4 I were going to meet head-on. It was the second
5 time that we ever met head-on in a major trial.

6 We had tried many cases together on the
7 same side, along with Seth Walker. We three had
8 prosecuted some of the big cases of the preceding
9 years that had gotten a lot of notoriety. It was
10 pretty well known that John and I were always on
11 the same side.

12 But in the case of Tommy Osborn, of
13 course, I had defended Osborn against the heavy
14 stars in the world. And Hooker had prosecuted it
15 as an Assistant United States District Attorney,
16 and they had convicted Osborn. So as the papers
17 said, it was one to nothing for Hooker over me.

18 Well, because of John's status, which he
19 had earned and deserved, and because the public had
20 made up its mind definitely that Powell was guilty.
21 Haynie Gourley had been a very popular man in
22 Nashville. While he was mean as hell, made a lot
23 of people mad, he was widely known, I'll put it
24 that way.

25 And the sentiment, the public sentiment

1 was strong in favor of the prosecution and Hooker.
2 And the finger was pointed at us, and the papers
3 were laying, setting the stage for -- bent toward
4 the favor of the State and John over the defendant,
5 and Cecil and I who were defending him. And we
6 knew that.

7 Well, I did, as I have always done when
8 the chance presented itself in a case like that, I
9 took the role of an underdog from the beginning. I
10 had rather defend cases from the role of an
11 underdog than otherwise.

12 I think I've always thought it was an
13 advantage to you. So I didn't miss any opportunity
14 to create that stance. And it just fed the ego of
15 the other side and the news reporters who were
16 close to and favoring the other side. They began
17 to pour it on thick, as we used to say then.

18 Well, the case came on to trial. And I
19 will have to say that I got some awful lucky breaks
20 in the case. In order to create the -- lay the
21 basis for the prosecution and to show how the envy
22 of Powell toward Gourley had originated, they had
23 to bring in some businessmen to prove the business
24 relation as set up out there.

25 And to do that, they had to use some very

1 prominent witnesses, people like John Sloan of
2 Cain-Sloan and Company, Sam Fleming, president of
3 the Third National Bank, and some others.

4 Well, I had talked to those men, and, of
5 course, they were honest men. And when the
6 State -- they knew nothing about the facts of this
7 case. They were only used to set up their business
8 relation so that the State could then proceed to
9 show how the differences had started between them,
10 and why, as they claimed, Powell would want to kill
11 Gourley, or get him out of the way, or got so mad
12 at him, that he killed him.

13 Well, I was able to get from not only
14 these two very known and widely-respected
15 businessmen, on cross-examinations, I had them to
16 give Powell a splendid reputation for truth and
17 veracity, and I drew it long out of them.

18 Well, in the trial of a criminal case,
19 whenever you can draw something beneficial to a
20 defendant out of state witnesses, it is much
21 stronger in your favor than it is when you have
22 some testimony of the defendant's witnesses for
23 things in the defendant's favor.

24 Well, not only in the case of Sloan
25 and Fleming did I get very strong endorsements of

1 Powell's reputation, I would stop and say now, if
2 he were here on the witness stand and you knew no
3 different and if he told you something, would you
4 believe it. And each one of them said yes. I drew
5 it out and got it over to the Jury.

6 So when the curtain was first raised on
7 the case, don't you see, we were getting our feet
8 in the doorway where you don't ordinarily do it.

9 Well, it went on and there was instances.
10 For instance, they had -- I forget his name, this
11 young fellow that has this Ford Company here who'd
12 formerly worked for them out there. He tried to
13 hurt Powell.

14 And, of course, I was able on
15 cross-examination to show that Powell had
16 befriended him, and get him in the position of
17 turning on a friend, and then some other things
18 about his conduct on the witness stand that I
19 really think I was able to not only destroy him as
20 an effective witness for the State, but excite some
21 sympathy for the defendant out of
22 cross-examination. Well, we got some other breaks,
23 however, I won't go into all the details. That's
24 all in the file here.

25 One of the telling things that I was able

1 to draw out of witnesses for the State, in addition
2 to what I've said, was that when Powell drove,
3 rushed back into the Capitol Motor driveway with
4 Gourley there on the seat dead and telling them
5 what happened, that before he told them what
6 happened, he came in hollering get the doctor, get
7 the doctor, Haynie's been shot, get the doctor, and
8 he was crying. That stood us in good stead.

9 Then another thing happened in the case.
10 While the case was in -- they never had found the
11 weapon that they claimed Powell shot Gourley with.
12 Of course, Powell was saying, and which he's always
13 insisted, that there was an unknown assailant, that
14 he didn't, of course, know what kind of gun it was,
15 and what became of the assailant. Of course, they
16 never were able to find any assailant.

17 But during the trial, notwithstanding the
18 fact that from the time the thing first became
19 known, officers swarmed all over the place. They
20 combed every foot of the territory looking for a
21 weapon or any kind of evidence.

22 And for hours after it, and days and
23 weeks and months of that examination, nothing
24 turned up. But just out of the blue sky during the
25 trial, it came up that a pistol had been found out

1 there on the route in the weeds.

2 Well, the State immediately grabbed that,
3 and the newspapers did, saying it was the pistol
4 that was used in the murder case, and they had
5 pictures, and the newspapers are full of it. Of
6 course, the Jury, I don't think saw it. They
7 wasn't supposed to. But you can't ever tell what's
8 leaked to a Jury.

9 But, anyway, we demanded, of course, that
10 it be, we didn't have to demand it, the State was
11 going to do it, anyway, that they compare a bullet
12 found in Gourley's body, and they'd found one, and
13 compare it to the gun barrel of the pistol.

14 Well, they're finally done, and when they
15 brought it on, lo and behold, I was able to show, I
16 get the ballistics expert to say that he could not
17 under oath say definitely that that bullet was
18 fired by that gun, that he thought it was, it had
19 some markings, but he would not say under oath that
20 it was. Well, of course, with all these other
21 things, that helped us.

22 However, with all of that, and the fact
23 that Powell made a good witness, and he did make a
24 good witness, now, with all that, I think really,
25 after much reflection, that I won that case when I

1 picked the jury.

2 As I've told you before, I've spent much
3 of my life studying jury selection, because it is
4 with juries that all of my success has depended. I
5 never made any money out of the appellate courts.
6 If I couldn't win them right there before a jury,
7 whether it was a criminal case or a civil case, I
8 couldn't expect much to win them otherwise. I
9 never had much professional interest in the
10 appellate courts. Mine was always with the 12 men,
11 or now 12 men and women who compose the jury.

12 And I studied them. I spent a good part
13 of my life, I tried to know, when I got a jury
14 list, where every man, what part of the county he
15 came from, what he did, if he'd ever served on a
16 jury before. I had his name because I kept a list
17 of every juror in every term of court ever I had
18 for future reference.

19 And I could look back and tell whether
20 he'd been on a jury before, whether he'd been
21 inclined toward conviction or acquittal, whether he
22 had been a stooge of the district attorney, or
23 whether he had been an independent sort of juror.

24 And through that, and that's the only way
25 you can get it, through long years of experience,

1 and I had the advantage of them. Of course, Tom
2 Shriver had never tried many cases in his life.
3 And Hooker had never engaged in the criminal court
4 like I had.

5 Hooker had been principally all of his
6 life in the civil courts. And he was only in the
7 criminal courts of, the criminal cases that Seth
8 and I were in of some magnitude. And I think I, in
9 fact, I know I had the advantage over John by the
10 knowledge of picking jurors, especially in the
11 criminal court.

12 And then I knew a lot of them. I knew
13 their families. I knew the connections in the
14 county. And I could always try to find some mutual
15 thing that he and I, the prospective juror and I
16 knew about or had experienced, our kinfolks had,
17 established some rapport with them, some
18 connection. And not so much expecting them just to
19 decide for me just because it was me, but to
20 incline him to give me favorable consideration.

21 And, certainly, not to take anybody that
22 I knew by some past experience would be out to slit
23 my throat. And you must understand, whenever you
24 try a case, the people on your side think you're
25 wonderful if you win. But the people who lose

1 don't like you.

2 And every time I tried a case, it was a
3 50/50 picture. Usually, 50 percent of the people
4 involved liked me, and 50 percent of them didn't.
5 So in the future trial, all future trials, I had to
6 look out for those who were on the losing side of
7 cases that I had, or whom I might have offended by
8 cross-examining in certain cases.

9 So I had to more or less tiptoe through
10 the tulips whenever I picked a jury. But if I do
11 say it, I think I came to know how to do it. And I
12 think I won the Powell case on the selection of the
13 jury. I found some rapport with some of the
14 veniremen. And I happen to know that it proved
15 profitable when they went to the jury room.

16 And then, too, the State played,
17 overplayed its hand. There was a little arrogance,
18 and we were sitting over there playing the
19 underdog, which is always attractive to ordinary
20 people. They won't admit it, but most people don't
21 like to see somebody's nose rubbed in the dirt.

22 And the State was a little arrogant.
23 They'd conducted the trial, John and Tom did, they
24 were oblivious to it, but being pushed on by
25 favorable press and by a community that had

1 already, in their judgment, convicted Powell. I
2 think the jury resented the fact that we were
3 getting the rush act.

4 And we'd picked a jury that would resent
5 that kind of thing, and I think they did, and I
6 think that's the reason there was so much surprise
7 when the jury returned a verdict of not guilty.

8 Of course, I had pulled that old trick on
9 Hooker, which the newspapers said was the main
10 reason we won the case, which is not true, that is
11 if the attorney general, district attorney has
12 somebody assist him in the trial, ordinarily and
13 under the law, I think, the person assisting the
14 district attorney, whether it's an outside lawyer
15 or the assistant district attorney, he opens the
16 summation at the end of the trial, the argument of
17 the case, and then all counsel for the defendant
18 follow. And then the district attorney usually,
19 and as I say, I think under our law in the state,
20 closes the case.

21 Well, of course, everybody was talking
22 about what a great ability Hooker had to close a
23 case in argument, and there'd been a big buildup
24 about, as we approached the time for the argument,
25 about he and I contesting each other in oratory and

1 in argument before the jury, and all of that fuss,
2 fuss.

3 It had been built up to a climax, and had
4 the public hanging on expecting -- you couldn't get
5 in the courtroom in the trail of this case, for
6 that matter. But it was built up strong. And I
7 think the jury was kind of getting their belly full
8 of it.

9 And I kept wherever I could, if I could
10 fan the flame of the underdog, I did in the
11 courtroom and otherwise. Well, the time came for
12 it, and Tom Shriver opened the case. And Tom is
13 not a strong speaker, and I didn't think he hurt
14 us.

15 And so when he concluded, I knew that
16 Hooker was all prepared to have the last word in
17 the case and lambast us. And since Shriver hadn't
18 hurt us in the case, I decided on that I was going
19 to do what I'd done one or two times before.

20 And let me tell you right here that while
21 there had been a lot of talk and I've had a lot of
22 compliments about arguing cases, I learned pretty
23 early, and I learned this from Seth Walker, I
24 argued my cases as I went along.

25 Wherever I got a chance in

1 cross-examination of a witness, or direct
2 examination of a witness, I tried to act the part
3 to the jury, and in the questioning, I would make
4 arguments to the point that I was stopped by the
5 objection of the district attorney on many times,
6 which was sustained by the court quite promptly.

7 But I developed it, and used it right
8 strong, is as I questioned the witness, I kind of
9 argued my cases. So when that time came in the
10 Powell case, I'd been arguing the blame thing every
11 time I cross-examined a witness, and I had that
12 advantage on the State.

13 So after Tom Shriver made an ineffectual
14 argument, I got up and said, Your Honor, you can
15 charge the jurors. Now, the effect of that was to
16 end all further argument. We couldn't make any
17 argument, but Hooker couldn't make any argument.

18 Well, of course, John's feathers fell and
19 the crowd was disappointed. By that time, you must
20 also remember that our jurors are getting tired of
21 sitting there, been there days at a time, and they
22 didn't find any objection to it. They were ready
23 to decide the thing and go home, as they usually
24 are.

25 They don't want to sit there and listen

1 to a lot of argument, lawyers telling them what the
2 facts are when they had sat there and heard them
3 just like the lawyers had. And so ordinary jurors
4 are not too inclined to listen to arguments,
5 anyway.

6 So that ended that. They couldn't argue.
7 Well, of course, the rest of it's known, the judge
8 charged the jury, and the jury found the defendant
9 not guilty.

10 Well, to show you how it was building up,
11 Hooker's friends, and Shriver's friends, and the
12 Gourley family, and all those people who hung
13 around them and behind them applauding their
14 efforts during the prosecution had chartered a
15 certain restaurant here in town, and had a case of
16 champagne sent over there.

17 They were going to celebrate the verdict
18 of guilty. And I might say that the public of
19 Nashville had been fanned up and fed up by the
20 press, radio, and television to think that there
21 was going to be a conviction. But, anyway, they
22 were going to celebrate it. Well, there wasn't any
23 celebration by them that night.

24 Now, another thing happened during the
25 case. Early on, the television, because of the

1 notoriety and publicity of the principals, and the
2 case, and the way it happened, and the people
3 involved in the trial, they wanted, they made
4 application to the court to be allowed to televise
5 the trial.

6 Well, Hooker and Shriver were for it.
7 They were all for it, because everything was being
8 said by television and radio and newspapers was
9 slanted towards the State's side.

10 But I violently opposed it, and objected
11 to it. And the Judge, Allen Cornelius, would not
12 allow over it our objection. Well, that got the
13 radio stations, especially WLAC, and Chris Clark,
14 and Jud Collins, to some extent, kind of opposed to
15 me, and it just egged them on to plead the State's
16 case even stronger. And so I -- but in the end, it
17 made our victory more complete.

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