

PRAISE FOR *CASE ANALYSIS*

“Jim McComas is a trial lawyer extraordinaire with skills that amaze even the most polished trial attorneys. In *Case Analysis*, McComas shares the secrets of his notable successes in fighting for the underdog. With clarity and detail, McComas teaches us how to win the hard cases against an over-resourced opponent. In *Case Analysis*, we have found the Ark of the Covenant in trial law.”

—Ronald S. Sullivan Jr., professor, Harvard Law School,
director of the Harvard Trial Advocacy Workshop and
the Harvard Criminal Justice Institute

“In *Case Analysis*, Jim McComas uses his tremendous skills as a lawyer and educator to provide clear, concise instructions on how to dissect and understand those seemingly impossible cases—and win! *Case Analysis* is an insightful, step-by-step blueprint for lawyers to understand and plan for a successful verdict in those cases where the facts, the law, and more appear to be against you.”

—Penny Marshall, former chief federal defender
for the U.S. District of Delaware, former president
of the Association of Federal Defenders

“*Case Analysis* is a ‘must-read.’ Author Jim McComas translates his phenomenal track record into a brilliant step-by-step method for building your case while undoing the opposition’s.”

—Jo-Ann Wallace, president and CEO of the
National Legal Aid & Defender Association (NLADA)

“*Case Analysis* focuses on our trial presentation to the jury, our only audience, and the real life information they need to come back with the right verdict. During the years I worked with Jim McComas as an investigator and trial assistant, I saw this method put to use in impossible cases with amazing, unbelievable results.”

—Monique Rapuzzi, independent investigator

“Jim McComas is a genius in the courtroom, but he also can translate his winning ways to the page. Read this book, and you will learn what works with juries and why it works, whether you are trying civil or criminal cases, and whether you are just beginning your trial practice or have been at it for years.”

—Mark Rochon, criminal defense attorney,
former chief of the Trial Division at the Public
Defender Service for the District of Columbia

“This book is a must-read for trial lawyers. It reminds us that trials are won by thorough Case Analysis and provides a clear, organized method for evaluating the strengths and weaknesses of any case.”

—Jamie Gardner, litigation partner, Patton Boggs, LLP,
and instructor in clinical programs at
Harvard and Georgetown Law Schools

CASE ANALYSIS
*Winning Hard Cases against
the Odds*

JAMES H. McCOMAS



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AUTHOR'S NOTE

The examples in this book are derived from actual cases, in all of which I participated. However, the example cases often consist of composites of several cases. Moreover, the names of all litigants, witnesses, and counsel and other identifying details have been changed. For these reasons, any similarity between the fictionalized names, and other particulars in this book, and real individuals, companies, and cases is strictly coincidental.

PUBLISHER'S NOTE

This book is intended for practicing attorneys. It does not offer legal or psychological advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

As set forth in the Author's Note, the cases described in this book are composites, and the names and other identifying details of participants, litigants, witnesses, and counsel (other than the author of this book) have been fictionalized except where otherwise expressly stated by the author.

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FOREWORD BY JONATHAN A. RAPPING

Seven years ago, I resigned from my position as the training director for The Public Defender Service (PDS) in Washington, DC, to move to Georgia. A new statewide effort was under way to reform indigent defense, and I was recruited to develop and run training programs for that effort. In July 2005, we held a week-long trial advocacy program for the state's public defenders in Athens, Georgia. Eager to put together a great program, I invited the best trial lawyers I knew to serve as faculty. They came from a variety of states throughout the country. Their ages ranged from thirty-something to sixty-something. They included men and women. They were African American, Caucasian, and Latino. But what they all had in common was that they learned to be trial lawyers at PDS. Their tenures at PDS spanned four decades. Most did not overlap with one another at PDS. But all were close friends and colleagues. The public defenders who attended the program watched these lawyers teach and were amazed that a group of people who seemingly had little in common, apart from having at some point worked in the same public defender office, could each be such outstanding advocates.

What was it about PDS that consistently produced such phenomenal trial lawyers? Coupled with an uncompromising client-centered perspective, the answer lies largely in the way we were taught to approach our cases. We all learned that cases are won and lost long before the trial begins. That one begins earning not-guilty verdicts the moment he or she gets the case. That the ability to perform well is intricately connected to the process of Case Analysis. It is an art that was honed at PDS and passed down among the generations by one man who was among that faculty. He is the author of this book. Through this book, he passes this critical methodology on to each reader. What public defenders across Georgia witnessed that week was largely the fruit of the genius of Jim McComas.

Over the last seven years, I have had the great fortune to work with public defenders across the country. Many are committed and talented lawyers. But far too often, the quality of the lawyer is measured by his or her ability to very quickly identify winning cases and to effectively “shoot from the hip” in the courtroom. I have heard defenders brag that they can differentiate winning cases from losers simply by reading the police report, viewing this as a positive skill nurtured through experience. Others have boasted of being able to pick up a file and try the case the next day, as if this “ability” is the hallmark of a true trial jock.

While these attitudes are extreme, and likely not embraced by anyone who chooses to enrich his or her practice by reading this book, many lawyers hold them to varying degrees. Assessing the likelihood of success without putting in the work required to accurately make that prediction, and overreliance on the degree to which pure trial skill is responsible for winning cases, impede many of us from maximizing our chances of success. They are self-imposed limitations, and as Jim tells us in this book, “The greatest limits on advocacy are always self-imposed.” This book helps us understand exactly why this mind-set is a self-imposed limitation and provides a methodology for freeing ourselves of these psychological shackles.

In this book, Jim warns against thinking like a lawyer and urges us to remember that our clients’ fates lie in the hands of jurors. These are laypeople who employ common sense shaped by the world around them. Jurors are moved by facts and feelings, not by law. When we understand this lesson, we can begin to identify those facts and perceptions that most move jurors. They are present in every case. Some have the power to move the jury to our side. Others, to do the opposite.

Our ability to identify these “outcome levers,” as Jim calls them, is the first step toward a successful trial strategy. They are often not immediately apparent in the always lacking narrative of the police reports. We must discover them through investigation, discovery, and pretrial litigation. Our ability to analyze all sides of how these outcome levers will impact our jurors is the next step, essential to incorporating them into the most viable defense theory. Our ability to maximize the impact of those outcome levers

that support our theory of innocence, and to minimize those that help our opponent, is the final step. Jim teaches that this is done through our motions strategy, voir dire, opening statements, cross-examination, direct examination, jury instructions, and closing argument. Everything we do in the courtroom is driven by a strategy to maximize our outcome levers and to minimize theirs.

The Case Analysis method depends on trial preparation for its success. It teaches that the best trial lawyers must also be wonderful investigators. They must excel at pretrial litigation. They must develop a creative and aggressive discovery practice. They must master the applicable law for any given case. The lawyer who files boilerplate motions, engages in routinized discovery, relies solely on standard jury instructions, or fails to direct the investigative process will miss opportunities to identify and develop outcome levers. The best trial lawyers are masters of all these skills. They are each as much a part of the trial as the devastating cross-examination or the eloquent closing argument. In fact, these “trial practice” high points come directly from the lawyer’s Case Analysis. As a matter of fact, these “trial practice” aspects of the trial depend on the lawyer’s proficiency in these other areas for their success. When the lawyer who excels in all preparation and trial areas applies the Case Analysis method described in this book, his or her power to move a jury is unparalleled.

Jim came to understand this lesson early in his career as a public defender. As the person responsible for training lawyers at PDS, he began passing these lessons on to the lawyers he trained. As the head of the Trial Division, he continued to spread this message. For the twenty-three years since he left PDS, Jim has returned to teach this invaluable lesson to every lawyer who came through PDS after him.

Case Analysis has become part of being an effective trial lawyer at PDS. It works! It answers the question that continually came up in Athens that week in July 2005: “What was it about PDS that consistently produced such phenomenal trial lawyers?”

This book gives every reader the insight required to apply this method to each case. It will change the way each reader approaches representation.

Jim tells us that every case can be won, that we just have to have the courage and discipline to win it. He reminds us that we can be outspent, but never outworked or outthought. He gives us a process through which we can find a way to win that hard case. It requires discipline. It requires thoughtfulness. It requires hard work. But, as Jim reminds us, it is free. Thanks for your gift, Jim, and for sharing it so broadly.

—Jonathan A. Rapping

Jonathan A. Rapping is the founder and CEO of the Southern Public Defender Training Center, an organization dedicated to recruiting, training, and mentoring public defenders across the South in an effort to groom a new generation of defenders who will raise the standard of representation in the region. He is also an associate professor of law and the founding director of the Criminal Justice Honors Program at Atlanta's John Marshall Law School.

Mr. Rapping started his career at The Public Defender Service for the District of Columbia, where he later served as training director. He left PDS to become the training director for Georgia's then-new statewide public defender system. He subsequently spent a year in New Orleans, building its training and recruitment programs in an effort to help reform the public defender system there in the wake of Hurricane Katrina. He has trained, supervised, and mentored hundreds of public defenders across the country.

ACKNOWLEDGMENTS

Thanks from the get-go to my mentor and close friend W. Gary Kohlman, who taught me how to pay attention and search unceasingly for opportunities in trial. And to my brothers-by-choice—my law school, then DC Public Defender Service (PDS) colleagues—Jimmy Klein and Prof. Charles Ogletree, for their decades of friendship, loyalty, and support. Thanks to the amazing women who co-counseled trials with me in DC: Avis Buchanan, Angela “Amani” Davis, Syrie Davis, Penny Marshall, Rita Pendry, and Kim Taylor, as well as the awesome advocate Michele Roberts, who succeeded me as Trial Chief. Thanks also to Jonathan Rapping, the outstanding trainer now tirelessly helping Southern lawyers bring quality representation to their indigent clients. And to all the other lawyers who have done the hardest work at PDS, for their great friendship, loyalty, and effort, both when I was there and since then, as I’ve had the privilege of seeing them in training every year since 1988.

Then there’s twenty years in Alaska, where I met three great lawyers who became dear friends: Rick Friedman, to whose firm I was *Of Counsel* for ten years, who encouraged me for decades to write this book; Cindy Strout, who tried fascinating murder cases with me throughout the vast lawless stretches of the last frontier; and Phil Weidner, who never asks for, or grants, any quarter. Also, thanks to my special plaintiff’s-case consultants, attorneys Kirsten Friedman and Lesley Zork.

Thanks to my mother and father, Hazelyn and Harrold McComas, for providing the intellectual environment and education opportunities that made my career possible. And thanks to my dear friend Brian Long, who helps me maintain some sort of balance in my life by sharing with me his intimate knowledge of the wildness of northern Wisconsin.

Finally, and now, at last, once again first in the line of my focus and attention, I want to thank my remarkable wife of thirty-seven years, Anne, and my sons, Dan and Henry, for allowing me

to pursue the consuming trial work I did for thirty years and for filling my life with love, humor, and excitement along the way. I treasure every moment.

INTRODUCTION

This book contains the “keys to the kingdom” of much greater success in trial litigation. It provides the best method to identify what determines outcomes in trial cases and to develop the factual substance necessary to maximize our chances of winning. Outstanding criminal defense attorneys throughout the United States have validated these brave claims with decades of practice.

We never enjoy a resource advantage over our adversaries. To the contrary, prosecution systems typically have enormous resource advantages in litigation. So, we have to use what is available to even—and then overcome—the odds. Thinking is free, and effective Case Analysis is where good lawyers for the underdog turn the tide.

We can also work harder than our opponents—a fact that can improve our odds and demoralize the other side. And we can care more. Because our clients are people, not institutions, and because our representation is always thoroughly client based, our emotional connection to the actual people we represent is a powerful motivating force. Let the other side make jokes about “true believers”—the fact is, they are confused and frightened by the strength of our commitment to our clients.

Where did this method of Case Analysis come from? I had the privilege of working for the first eight years of my practice at

The Public Defender Service for the District of Columbia (PDS). There, I learned a tradition of excellent, client-based representation. I followed PDS's initial, full-time, six-week training program with four years of felony trials and a hugely informative year in appeals. I developed this method in my fifth year, when I wrote and conducted the training program for the incoming class of ten lawyers, with an experience range of zero to five years practice. Revising the whole curriculum for this class required that I consciously focus on what we did and why it worked (or, in some cases, didn't).

The big breakthrough, however, came in my seventh and eighth years, when I served as Chief of the Trial Division. A typical day would require that I listen to, and give feedback on, other attorneys' opening statements, proposed cross-examinations, and closing arguments before court started. Then I observed key portions of many of the serious felony trials our office had going across the street in Superior Court. Hours of consulting with lawyers about investigation, preparation, motions work, and trial planning followed. Evenings meant going with our lawyers to the jail, doing mock cross-examinations of our clients to see if they should testify, and preparing them if they were going to do so. I devoted weeks to more of the same, minus the court observation.

In short, I had the unique—and invaluable—opportunity to be personally involved at crucial points in hundreds of serious felony cases. The Public Defender Service tried over two hundred of those cases in those two years, and the verdicts gave me immediate insight into what worked and what didn't. The result was the method of Case Analysis described in this book. Ever since I left PDS, they have asked me to return every year to do a day of training on the subject of Case Analysis for the new, incoming lawyers. Every year since 1988, I have done so. The purpose of this book is to share this approach with a much wider audience of dedicated trial lawyers.

By the time of trial, we know a vast amount of information about our cases but will only present a small portion to the jury. The core insight is that, within that small portion, only a few facts and circumstances determine the outcome for either side.

Accordingly, our task is to functionally analyze the case in order to identify those few points that can determine the outcome, and which we will call *outcome levers*, on either side of the case. Once we have found the outcome levers, our job is to eliminate or minimize the prosecution's points, while maximizing ours. With this understanding of what really matters, we select the defense theory that best fits our outcome analysis. Finally, we create our story: a plausible, persuasive, factual reality of our client's innocence.

This book proceeds with the following organization:

Chapter 1, "The Primary Case Example," covers the case *State v. Peter Piper*. I use this example to illustrate the method of Case Analysis in later sections.

Chapter 2, "Determine the Outcome," identifies and uses the small number of circumstances in every case that can determine the outcome for either side. It also helps us identify the "trapdoors," through which an otherwise-successful presentation can fall to failure.

The thinking in chapter 2 requires us to scrutinize the whole case and all of its components, in order to find the parts of the case that are especially important. This may be a branch on a tree of fact in the factual forest or some phenomenon having nothing to do with facts at all. Once we identify the outcome levers for each side, we must find and use all the legal, factual, and advocacy tools that can eliminate or minimize the prosecution's levers, and maximize the impact of our own. The final step is to develop a summary case theory that factually and legally implements the understanding we have attained from the preceding steps.

In chapter 3, "Develop the Facts—Create a Plausible, Persuasive Reality," we develop a highly detailed reality of the events. This is both plausible and persuasive and shows the client's factual and legal innocence. This analysis encourages us to become aware of the huge amount of maneuvering room that exists in the facts of any case. This vastness enables us to develop a plausible, persuasive reality that will produce the desired outcome.

We repeat this Case Analysis, reevaluate it, and modify it throughout the representation, from first impressions when we

pick up the case, through the pretrial preparation and litigation stages, and all the way through the actual trial. New information, rulings on motions, and events in the courtroom or community can all alter how effective our thinking was before we discovered them or before the events occurred. Typically, our own understanding develops over time, and our Case Analysis must develop with it.

Chapter 4, “Tips to Prepare and Organize the Case,” provides simple checklists to go through when preparing for trial.

Chapter 5, “Maxims for Attorneys for the Underdog,” consists of thirty-two truths about representing accused people and trying cases. Their purpose is to provoke thinking and discussion as well as provide some inspiration for those who do this hard work.

Chapter 6, “Conclusion,” is a final explanation of how this Case Analysis method is integral to every stage of preparing for and conducting litigation.

The appendices contain short discussions and long examples of some of the actual tools we can use to eliminate or minimize the opponent’s outcome levers and maximize the impact of our own. Sample voir dire questions, motions to admit other crimes or bad acts evidence against witnesses, and to exclude it against our client, a Notice of Expert, and some demonstrably effective special jury instructions are all referenced in the text and are included in the appendices.

1

THE PRIMARY CASE EXAMPLE

State v. Peter Piper

The following case scenario appears throughout the book as an example. This example appears to be a simple, straightforward, prosecution-loaded criminal case. However, when we analyze it effectively, it produces a multitude of opportunities for a successful defense.¹

Here's the case:

Peter Piper (PP) is in trouble again in Anytown. He has juvenile adjudications for Robbery-1 (three years ago) and Manslaughter (thirty months ago). He was committed to kiddie jail—the Troubled Youth Center (TYC)—and released after eighteen months, having been a model prisoner. PP is an African American teen, about five foot ten, handsome, slim, muscular, and dark skinned. He has a slight black mustache, very short

1. This example is based on an actual case that I tried in the early 1980s. Cross-examinations of the two most significant witnesses in this case—both of which are rooted in the Case Analysis below—appear in my book *Dynamic Cross-Examination: A Whole New Way to Create Opportunities to Win* (2011).

black hair, and “TYC Members Only” tattooed on the back of his left hand.

Now, barely eighteen, PP is in critical condition in the hospital, the result of a gunshot wound inflicted by white shopkeeper Quarrel Kwiktrigger (QK), who claims PP and two other black teenage males robbed and stabbed him. PP is indicted for Attempted Murder-1 and Robbery-1. QK has become something of a celebrity since the incident. Locally admired for fighting back, he has also been on local radio shows and at least one national television talk show.

Anytown is a typical middle-American city of about 500,000 people, of whom 85 percent are white, 10 percent are African American, and 5 percent are Hispanic. Juries in Anytown are usually all white, although occasionally one minority member will end up making the cut.

PROSECUTION SCENARIO

QK is a twenty-seven-year-old Caucasian resident of Anytown and is married to a stay-at-home wife. They have a two-year-old child and another one on the way. On Friday, May 6, 2011, QK was working alone in his clothing store, Quarrel’s Cool Clothes, located on Fourth Avenue.² At about 12:45 p.m., QK says two black teenage males entered his establishment and began browsing through the racks. QK later told the 911 operator that “one of the boys was older, light skinned, tall, and had a long scar running down the right side of his face; the other was young, dark skinned, short, and had a distinctive blond goatee.”

Shortly thereafter, QK says a third male entered the store, browsing. QK described this person, on the 911 call he made after the shooting, as slender but well built, height and age unknown, dark skinned, close-cropped hair, and wearing an orange sweater under a buttoned-up red-and-black-plaid lumberjack shirt or jacket, with a gold stud in his left ear and “TYC Members Only” tattooed on the back of his left hand. This third person asked QK

2. See the diagram on page 11.

about a brand of jeans Quarrel's Cool Clothes did not carry; then he left, with the first two young men following on his heels.

According to QK, about ten minutes later, at 1:00 p.m., the same three teens returned to, and entered, the store. The first two subjects remained near the door, with "Blondie" staring back into the store and "Scarface" watching the street. The third guy came to the counter and asked to see the best baggy jeans QK had, while at the same time displaying a thick roll of cash with a \$20 bill on top.

Trying to keep all three in sight, QK says he showed the third guy to the back rack in the store. The third guy requested a certain size, and QK turned to a nearby shelf. Suddenly, he felt sharp stabbing pains in his back and fell to the floor. QK says he looked up and saw the third guy holding a steak knife. The third guy and "Blondie," who had come into the store, grabbed twelve of the most expensive jeans and ran out.

Once he heard the door slam, QK got up, got his .357 Magnum revolver from under the counter, and gave chase. Seeing a "a flash that looked kinda like red plaid" turning north into a crowd at the corner of Fourth and E, QK says he ran to the corner and saw the man who stabbed him running away about fifty feet up E Street. QK fired one shot. At first, and in every statement until the grand jury, QK claims he doesn't know if he hit the guy. At grand jury, he admits he shot PP "square in the back," saw him fall and lie still, and thought, "*Good, I killed the m-----f-----.*" QK says he immediately returned to his store and called 911. On the 911 call, in every statement, in grand jury, and at trial, QK insists that he did not approach the body of the man he shot. QK gave the detailed descriptions mentioned above on the 911 call and said he fired from the E Street corner at the robber fifty feet north of Fourth Avenue.

Officer Krupke is the first officer to find PP lying facedown on E Street, 110 feet north of Fourth Avenue.

Krupke asks, "What happened?"

PP replies, "Don't know. Walking home . . . guy ran . . . by . . . got shot."

Krupke asks, "How do you feel?"

PP replies, "Am I dying? Feel's like I'm dying."

Officer Krupke observes PP as he stands over him and writes in his notebook that PP is “slender, well built, height and age unknown, close-cropped hair, and wearing an orange sweater under a buttoned-up red/black plaid lumberjack shirt/jacket, with a gold stud in his left ear, and ‘TYC Members Only’ tattooed on the back of his left hand.” PP’s head is cocked, such that the right side of his face is down on the pavement. His left hand is to the left of his left shoulder, palm down, and the right hand is to the right of his right shoulder, palm up. Both legs are bent at the hip and the knee. There is no blood trail, only blood at the body. Officer Krupke recovers an expended large-caliber slug on the sidewalk ten feet south of the body.

Three days later, Officer Krupke shows QK a photo array containing five DMV photos. PP’s photo is the first picture in the array, and PP clearly has the darkest complexion of anyone of the five shown. QK immediately picks PP’s photo as the third robber, the stabber, and the man he chased and shot at. Officer Krupke pats QK on the back and says—“Good job. That’s the guy.”

Three weeks later, a lineup is held. PP is the only person in the lineup whose picture was also in the prior array. PP has noticeably darker skin than the others in the line. QK emphatically identifies PP as the person who robbed and stabbed him. Officer Krupke pats QK on the back and nods approvingly at him. QK is very emotional on the 911 tape and at the lineup. QK is 100 percent sure of his identification and tells your investigator, “I’ll never forget that face. I see it in my dreams.”

EVIDENCE IN ADDITION TO PRECEDING STATEMENTS

Other available evidence is described by category below.

Forensic Evidence and Missing Evidence

Officer Krupke finds a knife with a bloody tip on the counter of the clothing store. Subsequent tests reveal no useable fingerprints on the weapon. Serology and DNA tests confirm that the

blood on the knife is Quarrel's. Ballistics testing confirms that the slug found ten feet south of PP's body was fired from QK's .357 Magnum revolver.

Neither stolen baggy jeans nor any big roll of bills are recovered on or near PP, or at the store or shooting scenes, or anywhere else. Neither side finds any witnesses who saw any African American teenage males come running out of the store. Nor does anyone admit seeing QK run out with, and ultimately fire, his gun. Nor does anyone say they saw what happened after the shot, until police arrived.

Medical Evidence

Fortunately, QK's injuries were superficial—four stab wounds penetrating the skin less than a quarter-inch each. By contrast, PP suffered a through-and-through gunshot wound of the abdomen, consistent with being caused by a large-caliber handgun, like a .357 Magnum. The surgeon, Dr. Kildare, identifies the entrance wound as in front, about one inch above the navel and slightly left of the midline. Dr. Kildare finds the exit wound on PP's back, level with the entrance wound, but five inches left of the midline.

The records show low levels of cocaine in PP's system, indicating use sometime in the preceding ninety-six hours. The records also detail the multiple surgeries and heroic medical procedures required to save PP's life during his two-week stay in the hospital, before he was carted off to jail to await trial.

Tangible Evidence

The state seized PP's clothing from the hospital. Because it is obvious he suffered a gunshot wound, the state did not request lab analysis. We examine the clothing at the police department. Obvious bullet holes appear in the left back side of the orange sweater and the lumberjack shirt. These holes line up with each other, about five inches left of the midline and one inch above a line level with the navel. There are no other bullet holes in the clothing. There is a soaking bloodstain on the inside front of the orange sweater, just above where the wearer's navel would be.

ELEVENTH-HOUR SURPRISE

Two weeks before trial, the cops bust fourteen-year-old Sucha Snitch (SS) on drug charges (four crack sales to undercover cops in the high school parking lot). He is short, dark skinned, and has a struggling blond goatee. SS is already on juvenile probation for armed robbery (purse theft from a teacher at knifepoint; unidentified African American accomplice-lookout was older, tall, light skinned, and had a long scar running down the right side of his face).

At the beginning of his statement to Officer Krupke, SS asks: “Am I being busted for stabbing that clerk on Fourth Avenue? Those damn pants didn’t fit anyhow; I should have killed the m-----f-----!” Asked how many times he stabbed the clerk, SS says, “More than three and less than five, man.” SS makes no mention of PP or anyone else participating with him in the Fourth Avenue robbery. Asked about accomplices, he replies: “Not saying. Not saying.” SS denies associating with anyone named “Peter.” Officer Krupke concludes that SS is the “Blondie” subject that QK described.

Officer Krupke contacts the DA, who promptly cuts a deal with SS’s lawyer: no probation revocation on the prior armed-robbery case; a no-contest plea and delinquency adjudication with probation for simple possession of cocaine; all other pending crack-sale charges dismissed; no prosecution for the clothing store Attempted Murder-1/Robbery-1. All SS has to do is testify “truthfully.” Under the deal, SS will remain in custody at TYC until after he testifies, at which point an expedited disposition hearing will be held so he can be released on probation.

By doing the deal with SS, the DA hopes to clinch the case against PP, who is already indicted in adult court and whom QK has already identified as the stabber. Contrary to every episode of *Law & Order*, police and prosecutors almost always prefer the first bird in their hand to having to reopen and rethink cases once they have filed charges.

Naturally, by the time he testifies at trial, SS will put the knife in PP’s hand and identify him as the mastermind of the robbery. SS will also testify that he was PP’s only accomplice, that QK was the only other person in the store, and that no scar-faced person was in the store or involved in the robbery and stabbing.

DIAGRAM OF THE SCENE OF EVENTS

Scale: 1 inch = 75 feet

P= where Peter Piper fell and was found, 110 feet from corner

