

Jennifer  
Re: PARROTS <sup>1</sup>LANDING CASE

Ind. 15/00

12/10/00

Sanderson, J.

1 COURT COMMENCED ON THURSDAY,  
2 OCTOBER 12, 2000, AT 10:09 A.M.:

3  
10:10AM 4 THE COURT: Good morning, ladies and  
10:11AM 5 gentlemen.

10:11AM 6 On Monday, October 9th, the array from  
10:11AM 7 which a jury for these proceedings would be  
10:11AM 8 selected appeared before this Court. Prior to  
10:11AM 9 the array appearing, the Deputy Clerk of the  
10:11AM 10 Court tells me that she explained to the array  
10:11AM 11 that if any of them had made travel  
10:11AM 12 arrangements or were required to be away during  
10:11AM 13 the course of the trial, that they should  
10:11AM 14 advise me if and when their name was called.

10:11AM 15 In addition, I advised the array before  
10:11AM 16 any names were selected that if a potential  
10:11AM 17 juror had any connection with this case either  
10:12AM 18 by direct or personal knowledge of the events,  
10:12AM 19 the defendants or the witnesses, that they  
10:12AM 20 should tell me when their name was called.  
10:12AM 21 Several people did so and were excused.

10:12AM 22 Seven jurors were selected over the course  
10:12AM 23 of the morning and were all individually sworn.  
10:12AM 24 That oath states:

10:12AM 25 " I swear, All Mighty God, that I

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(EXTRACT - R vs. MERREN, WEIBE & SOBREJUANITE)

10:12AM 1 will faithfully try the several  
10:12AM 2 issues joined between our Sovereign  
10:12AM 3 Lady the Queen and the prisoner at  
10:12AM 4 the bar and give a true verdict  
10:12AM 5 according to the evidence, so help me  
10:12AM 6 God."

10:12AM 7 After the jury was sworn, they, along with  
10:12AM 8 the rest of the array, were released to allow  
10:13AM 9 counsel the opportunity of raising certain  
10:13AM 10 legal questions for the Court's determination.

10:13AM 11 Subsequent to the jury being released, I  
10:13AM 12 received a note from Mr. Beckett, the Court  
10:13AM 13 Administrator, which indicated that one of the  
10:13AM 14 jurors, Mr. Kennedy McGowan, had tickets to  
10:13AM 15 accompany his wife to Florida for an  
10:13AM 16 appointment for surgery for her. The tickets  
10:13AM 17 were purchased for travel on October 26th with  
10:13AM 18 a return on October 29th. The note said,  
10:13AM 19 however, that the return date was about to be  
10:13AM 20 or had been changed to November 2nd. The note  
10:13AM 21 also said that Mr. McGowan is said to know a  
10:13AM 22 witness.

10:14AM 23 On Tuesday afternoon, the seven members  
10:14AM 24 selected for the jury returned and I explained  
10:14AM 25 to Mr. McGowan that it could be problematical

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10:14AM 1 for the Court to excuse him at this stage and I  
10:14AM 2 wanted to know if it was an urgent situation or  
10:14AM 3 was necessary that he travel to Florida with  
10:14AM 4 his wife. He said it could not be considered  
10:14AM 5 an emergency or urgent situation.

10:14AM 6 He then went on to tell me that he had  
10:14AM 7 another reason for being excused. He said that  
10:14AM 8 his ex-wife worked in the law offices of  
10:14AM 9 Mr. Murray, counsel for one of the accused, and  
10:14AM 10 it would make him feel "uncomfortable" if he  
10:14AM 11 had to go to those offices during the course of  
10:14AM 12 the trial to pick up his daughter. He told me  
10:15AM 13 that he did not recognise Mr. Murray before he  
10:15AM 14 was sworn in.

10:15AM 15 I asked him if it was necessary that he go  
10:15AM 16 to the offices of Mr. Murray during the  
10:15AM 17 three-week period and he said he could make  
10:15AM 18 other arrangements. I asked him if he felt  
10:15AM 19 that he would be unable to be impartial because  
10:15AM 20 of his ex-wife's association with Mr. Murray  
10:15AM 21 and at that time, senior counsel Mr. LaMontagne  
10:15AM 22 interjected and said that Mr. McGowan had said  
10:15AM 23 he would feel uncomfortable. I recall that  
10:15AM 24 Mr. McGowan again confirmed that he would feel  
10:15AM 25 uncomfortable, but did not say that it would

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10:15AM 1 affect his impartiality or why he would feel  
10:15AM 2 uncomfortable. Crown counsel indicated that  
10:15AM 3 they were concerned and it was obvious that  
10:16AM 4 Mr. LaMontagne was concerned.

10:16AM 5 Indeed, it was my own impression from  
10:16AM 6 Mr. McGowan that he was using this explanation  
10:16AM 7 in order to be relieved of his jury duty  
10:16AM 8 responsibilities so that he might go to Miami  
10:16AM 9 with his wife.

10:16AM 10 At that point, his wife rose from the body  
10:16AM 11 of the courtroom and advised me that  
10:16AM 12 Mr. McGowan and her had made these plans to go  
10:16AM 13 to Florida some time ago and urged me to allow  
10:16AM 14 him to join her.

10:16AM 15 It was apparent to me that Mr. McGowan at  
10:16AM 16 that point would do or say what he considered  
10:16AM 17 necessary in order to be excused. It seemed to  
10:16AM 18 me that if he remained a member of the jury, he  
10:16AM 19 would be angry and bitter and, therefore, there  
10:16AM 20 was a real risk that he would not fulfil the  
10:17AM 21 oath that he had taken to give a true verdict  
10:17AM 22 on the evidence.

10:17AM 23 I adjourned the matter and directed the  
10:17AM 24 jury to return the next day, Wednesday,  
10:17AM 25 October 11th. Before court was convened, I met

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10:17AM 1 with all counsel in my chambers to discuss this  
10:17AM 2 difficulty. All counsel shared my concern that  
10:17AM 3 there was a real danger that Mr. McGowan could  
10:17AM 4 do injustice to one of the parties -- either  
10:17AM 5 the Crown or the defendants -- because he was  
10:17AM 6 an unwilling and unhappy juror and, therefore,  
10:17AM 7 he should be excused.

10:17AM 8 No counsel indicated that there was any  
10:17AM 9 real problem arising as a result of his  
10:18AM 10 ex-wife -- whom I was told was divorced seven  
10:18AM 11 years ago -- working in Mr. Murray's law firm.  
10:18AM 12 The problem was plainly that he would be angry  
10:18AM 13 if forced to stay and that could affect the  
10:18AM 14 outcome of this case.

10:18AM 15 It was also agreed in chambers that it was  
10:18AM 16 not clear whether or not I could release or  
10:18AM 17 excuse Mr. McGowan and select a new juror from  
10:18AM 18 the array or whether the trial would have to be  
10:18AM 19 adjourned. Counsel requested time to research  
10:18AM 20 that question and the Court reconvened at 2:30  
10:18AM 21 yesterday to hear submissions. It was agreed  
10:18AM 22 by counsel and accepted by the Court that I can  
10:18AM 23 excuse Mr. McGowan and select a juror from the  
10:18AM 24 previous array. That is what I propose to do.

10:19AM 25 Mr. McGowan, you are excused as a juror,

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10:19AM 1           however, the Court feels it has no alternative  
10:19AM 2           but to direct you to appear before the Court at  
10:19AM 3           10:00 a.m. on November 15, 2000, to show cause  
10:19AM 4           why you should not be found in contempt of  
10:19AM 5           court. If so found, you may be fined or  
10:19AM 6           imprisoned or both. You should seek legal  
10:19AM 7           advice and I recommend that you retain a lawyer  
10:19AM 8           to represent you. A copy of these reasons will  
10:19AM 9           be available from the Court Registry in  
10:19AM 10          approximately 10 days.

10:19AM 11           You and your lawyer should consider that  
10:19AM 12          your request to be excused and its manner and  
10:19AM 13          timing have delayed these proceedings by one  
10:20AM 14          day. That involves the time and expense of at  
10:20AM 15          least seven lawyers and five court staff.

10:20AM 16           In addition, it has been necessary to  
10:20AM 17          recall and inconvenience the array, both  
10:20AM 18          yesterday and today, for the purpose of  
10:20AM 19          selecting another juror to replace you.

10:20AM 20           You are excused and ordered to appear at  
10:20AM 21          10:00 a.m., Wednesday, November 15, 2000.

10:20AM 22           MR. MCGOWAN: Thank you.

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10:20AM 24           **[EXTRACT CONCLUDED AT 10:20 A.M.]**

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10:20AM

DG Sanderson

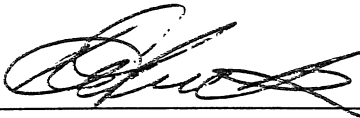
His Lordship Justice Sanderson  
Judge of the Grand Court

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**REPORTER'S CERTIFICATE**

I, **DARCIA C. HEWAK**, Official Court Reporter, do hereby certify that the foregoing pages are a true and accurate transcript of the proceedings had in the said Court and reported in machine shorthand by me on the date and place aforementioned.



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DARCIA C. HEWAK

