

June 7, 2023

**OL' SPARKY ©**

A Stage Play

By

Lawrence B. Fox  
1834 Pennsylvania Avenue  
Hanover Township  
Allentown, PA 18109

Telephone 610-861-9297  
Facsimile 610-861-5989  
LBFox@LBFoxLaw.com  
www.lawrencebfox.com

All rights are reserved under International and other applicable Copyright Conventions. Published in the United States by Lawrence B. Fox. No quotations or other portions of this play may be reproduced in any form without written permission from the author.

This play is a work of fiction. Names, characters, places and incidents are the products of the author's imagination or are used fictitiously. Any resemblance to actual events, locales or persons, living or dead, is entirely coincidental.

The storage, transmission, retention, or other publication of the material contained herein is prohibited without the express written agreement of Playwright Lawrence B. Fox.

Copyright 2022 by Lawrence B. Fox. This play is registered with the Writers Guild of America, East.

<b>List of Cast Members .....</b>	<b>iii.</b>
<b>Synopsis .....</b>	<b>v.</b>

**ACT I**

<b>SCENE ONE – A CHANCE MEETING AT LUNCH .....</b>	<b>01</b>
<b>SCENE TWO – THE JAILHOUSE INTERVIEW .....</b>	<b>05</b>
<b>SCENE THREE – THE TRIAL.....</b>	<b>12</b>
<b>SCENE FOUR – THE JURY DELIBERATES.....</b>	<b>17</b>
<b>SCENE FIVE – JUST ANOTHER DAY AT THE OLD PARISH PRISON..</b>	<b>22</b>
<b>SCENE SIX – THE ELECTROCUTION.....</b>	<b>29</b>
<b>SCENE SEVEN – A MUSICAL INTERLUDE .....</b>	<b>35</b>
<b>SCENE EIGHT – A SECOND DEATH WARRANT.....</b>	<b>37</b>

## ACT II

SCENE NINE - A TELEPHONE CONVERSATION.....	40
SCENE TEN – ARGUMENT BEFORE THE SUPREME COURT.....	46
SCENE ELEVEN – A MATTER OF INTERPRETATION.....	49
SCENE TWELVE – A QUIET DINNER AT HOME.....	55
SCENE THIRTEEN – SWEET DREAMS.....	62
SCENE FOURTEEN – A TELEPHONE CALL TO THE GOVERNOR. ..	66
SCENE FIFTEEN – A FINAL CONVERSATION.....	70

## PLAY TITLED *OL' SPARKY*

### List of Cast Members In Order Of Appearance

1. **Brian Morrison:** A middle-aged unmotivated lawyer dressed in a cheap suit. Nothing seems to interest him and it is quite possible that he has come to the realization that he may have chosen the wrong profession. He does not exhibit an air of confidence or the illusion that he can win a case. He is tired and simply plods along doing the minimal that is required of him. Male about 45 years of age.
2. **Clarence:** A middle-aged lawyer who appears to have achieved some success in the practice of law. He has taken the time to dress properly and unlike Brian, Clarence enjoys being a lawyer in private practice. He finds that the profession often generates a feeling of accomplishment, satisfaction, and self-worth as he endeavors to assist his clients. Male about 45 years of age.
3. **Bobby Joe McCracken:** A 15-year old unsophisticated black adolescent male. He has worked most of his young life as an itinerant farm laborer.
4. **Male Prison Guard:** Unemotional at first, but with time he will ultimately show compassion toward McCracken.
5. **Assistant District Attorney Albert DeChambeau:** Dressed in a three-piece suit, he has no sense of humor, and is impressed with himself. Male and can be any age between 30 and 60.
6. **Judge Finneas Blackmoore:** A 60-year old male emotionless Judge.
7. **Archie:** The Parish (i.e. County) Executioner. He is dressed in soiled or torn work clothes and appears to be drunk. Male and can be any age between 30 and 60.
8. **Zeek:** A prison Trustee dressed in prison garments with black and white stripes. He is uneducated and appears to be drunk. Male and can be any age between 30 and 60.

9. **Father Kornfein:** A parish Priest dressed in black clerical garments with a white collar and a gold cross hanging from his neck. He is uninspired and shows little concern. Male and can be any age.
10. **Warden Resweber:** The prison warden. He is legitimately concerned with the welfare of his prisoners. Male and can be any age between 30 and 60.
11. **Governor Jimmy Davis:** An all-knowing bureaucrat whose only goal in life is to get re-elected.
12. **Attorney Bertrand DeBlanc:** Well-dressed attorney who gives the appearance of a professional who cares about his clients and is competent in the practice of law. Male and can be any age between 45 and 60.
13. **Attorney James Skelly Wright:** Respected attorney who is competent and well-mannered. He cares about his clients and the practice of law. Male and can be any age between 45 and 60.
14. **Justice Felix Frankfurter:** A polite and caring Supreme Court Justice who seeks to apply the law in a consistent and well-reasoned manner. Male who is about 60 years old.
15. **Amanda:** The sensitive and caring wife of Justice Frankfurter. Female and about 60 years old.

## SYNOPSIS

This play, titled “Ol’ SPARKY”, consists primarily of tragic scenes interspersed with moments of “gallows” humor.

The year is 1944 and Andrew Thomas, a life-long resident of St. Martinville, Louisiana, has been murdered during a burglary of his home. The crime remains unresolved for nine months until Bobby Joe McCracken, a 15-year-old migrant farm laborer, is arrested in August of 1945 as he attempts to pawn the victim’s gold watch.

McCracken, who is indigent, is assigned free legal counsel, and on September 12, 1945, his one-day trial takes place in the 16<sup>th</sup> Judicial District Court of the Parish of St. Martin, Louisiana. Two confessions extracted from McCracken by the police at a time when McCracken, an adolescent, was unrepresented, are submitted to the twelve jurors without objection from his Defense Counsel. McCracken never takes the witness stand, upon the questionable advice of his attorney, and never is given the opportunity to explain that he had obtained the watch from the actual murderer.

The jury returns with a verdict of guilty, and the Court sentences McCracken to be executed by electrocution in a portable electric chair that is transported from prison to prison. On May 3, 1946, two drunk executioners, one of whom is a prison trustee, carry the electric chair from a flatbed truck, strap McCracken into the electric chair known as “Ol’ Sparky”, and pull the switch. The resulting administration of electrical current, which is applied several times in succession, is sufficient to cause McCracken’s hair to catch fire, and to create multiple severe burns, but there isn’t enough electrical current to cause McCracken’s death. McCracken, who has been screaming in pain during this ordeal, is ultimately removed from the chair, and carried back to his prison cell to recuperate.

Upon learning of the torture suffered by this condemned prisoner, Bertrand DeBlanc, competent local Louisiana legal counsel, volunteers to assume representation of McKracken at no cost. DeBlanc files an appeal delaying a second execution by asserting that both the “Double Jeopardy” clause of the U.S. Constitution, the “Cruel and Unusual Punishment” clause, and the “Equal Protection Under the Law” clause preclude McKracken from facing a second electrocution.

The appeal proceeds through the federal appellate court system, and ultimately the U.S. Supreme Court determines the issues unique to this case deserve review by that tribunal. On November 18, 1946, oral argument takes place before the Court in the matter of “Louisiana ex rel. McKracken v. Resweber”, followed on January 13, 1947, by the issuance of a formal Decision as reported at 329 U.S. 459. Four Justices ultimately rule that a second execution may take place. Four other Justices rule that a second execution would be contrary to the law. The deciding concurrent (no pun intended) opinion of Justice Felix Frankfurter will ultimately determine if McKracken is to be placed in the electric chair a second time.

## SCENE ONE - A CHANCE MEETING AT LUNCH

Location: St. Martin Parish, St. Martinville, Louisiana - The Courthouse Cafeteria

Date: September of 1945.

(Brian and Clarence sit enjoying an informal impromptu lunch at the Courthouse cafeteria. They have been members of the local bar association for several years, and despite their different styles of practice and little that they share in common, they sometimes chance to meet during an unscheduled lunch where inevitably the conversation turns to the daily struggles encountered in the practice of law.)

BRIAN:

**“First time I’ve been to the Courthouse in over three days. The Judge left a message that he wanted to talk to me. Said he had a favor to ask. Could I drop by his chambers today?”**

CLARENCE:

**“Which Judge?”**

BRIAN:

(Emotionless – almost bored). **“Blackmoore.”**

CLARENCE:

**“That’s impressive! It’s not that often some Judge seeks my company. You should be honored.”**

BRIAN:

**“I’m not so sure. You wanna know what was on his mind?”**

CLARENCE:

**“I’m all ears!”**

BRIAN:

**“He’s not runnin’ for retention for another two years, so he wasn’t lookin’ for a contribution ... not just yet. Nope, he had other fish to fry. He asks me if I’d care to sit down in one of his plush over-stuffed chairs, and perhaps have a cigar. As if we was old friends or somethin’. That’s when I started to get nervous. Turns out with good reason, too.”**

CLARENCE:

**“You had no idea what was on his mind?”**

BRIAN:

**“Clueless. I was about to be blindsided. His Honor looks out the window, and starts talkin’ ‘bout the weather. Then he decides to stop dancin’, turns to me, and says just as nice as key lime pie that some fifteen-year-old kid tried to sell a gold pocket watch last week in New Iberia.”**

CLARENCE:

**“Near the Texas border?”**

BRIAN:

**“Maybe seventy miles from here. The watch was engraved with the initials ‘AJT’.  
Ring a bell?”**

CLARENCE:

**“AJT?”**

BRIAN:

**“Andrew J. Thomas.”**

CLARENCE:

(Thinks for a moment) **“Wasn’t he the guy who was shot dead in his ...”** (Brian interrupts)

BRIAN:

**“Shot five times in his house during a botched burglary. So they dragged the kid back here, charged him with murder, at which point he confesses, twice, in writing.”**

CLARENCE:

**“Did the kid have a lawyer when the confession was squeezed out of him?”**

BRIAN:

**“The son of a bitch shot one of our neighbors in cold blood, and your only question is whether somebody was holding the poor tyke’s delicate little hand when the cops closed in?”**

CLARENCE:

**“He’s innocent until proven guilty.”**

BRIAN:

**“Says who?”**

CLARENCE:

**“Maybe the kid found the watch, or got it from the real killer. Maybe he bought the watch at some pawn shop. Maybe ...”** (Brian interrupts)

BRIAN:

**“So the Judge has the nerve to look me in the eye and start his sales pitch. How the kid is penniless, has no home, no job, a drifter who left school, and how he’ll need a lawyer to represent him at trial.”**

CLARENCE:

**“You mean to tell me you’ve been appointed by the Court to ...”** (Brian interrupts.)

BRIAN:

**“And it’s my turn, says the Judge, my veritable duty, to take this pro bono case so the kid doesn’t walk into court without counsel.”**

CLARENCE:

**“It’s an honor that you’ve been chosen. You should be proud.”**

BRIAN:

**“It’s a nightmare. What miracle of a defense am I supposed to pull out of my ass? The watch speaks for itself, and the kid confessed. Trial starts in two weeks. TWO WEEKS is all I got!”**

CLARENCE:

**“I can think of a few things for starters, like visiting the kid in jail. Maybe find out his side of the story.”**

BRIAN:

**“I plan to visit my newest client in the next day or two.”**

## SCENE TWO - THE JAILHOUSE INTERVIEW

Time: Two days later in the afternoon.

Location: A cramped jail cell in which McKracken, alone and dressed in striped black and white prison garb, is imprisoned. He is playing the song "Swing Low, Sweet Chariot" on a harmonica that is probably his only possession. He plays the song slowly and artistically. Clearly he possesses natural musical talent.

McKracken stops playing the harmonica as a prison guard enters from off-stage. The prison guard, who is carrying a small metal bucket, is followed by Attorney Brian Morrison. The prison guard unlocks the cell door, and unceremoniously, unemotionally drops the bucket with no eating utensils on the ground as the prison guard, similar to a robot, addresses McKracken.)

PRISON GUARD:

**"Here's your grub. And this here (he points at Brian) says he's your 'mouthpiece'."**

McKRACKEN:

**"My what?"** (The prison guard ignores the question and walks off-stage.)

BRIAN:

**"You Bobby Joe – Bobby Joe McKracken?"**

MCKRACKEN:

**"I suppose. Whose askin'?"**

BRIAN:

**"Your lawyer, Attorney Morrison. Mind if I join you?"** (Brian sits down on the only other piece of furniture, an old uncomfortable wooden chair.)

MCKRACKEN:

**“I got a lawyer?”**

BRIAN:

**“And your trial is less than two weeks away.”**

MCKRACKEN:

**“I got a trial? Says who?”**

BRIAN:

**“You’re accused of murder. They say you killed somebody here in town.”**

MCKRACKEN:

**“Who says dat?”** (Brian ignores McKracken’s questions.)

BRIAN:

**“You got any family?”**

MCKRACKEN:

**“Mom and Dad is both gone – don’t know where to. Should I be talkin’ to you? Are you a cop?”**

BRIAN:

**“I’m your lawyer, and I’m here to prepare you for trial.”**

MCKRACKEN:

**“What’s a lawyer? What’s a trial?”** (Brian appears stunned and surprised by McKracken’s naivete.)

BRIAN:

**“How far’d you get in school?”**

MCKRACKEN:

**“Sixth, I’m thinkin’. Can’t truly recollect. Had-ta go ta work pickin’ in da fields.”**

BRIAN:

**“Got any brothers or sisters?”**

MCKRACKEN:

**“Nine. Maybe ten. Not sure.”** (Brian begins to write on his note pad).

BRIAN:

**“Where do you live?”**

MCKRACKEN:

(He begins to laugh) **“Here and derr. I go where da crops is growin’.”**

BRIAN:

**“How old are you?”**

MCKRACKEN:

**“Fifteen ... maybe.”**

BRIAN:

**“They say you shot a man in his house. Shot him five times.”**

MCKRACKEN:

**“I’ve ain’t never held no gun in my hands. (McCracken holds his hands up for inspection.) Wouldn’t know how ta shoot one.”**

BRIAN:

**“They say you tried to sell a gold watch that belonged to the man who was shot.”**

MCKRACKEN:

**“I took that watch from a nudder guy.”**

BRIAN:

**“Who?”**

MCKRACKEN:

**“Don’t know. Just came upon him in a bar room. Then I pawned the watch. After dat, the cops grabbed me while I was pickin’ peppers. All’s I did was try ta sell da watch.”**

BRIAN:

**“They say you confessed to the murder.”**

MCKRACKEN:

**“I don’t understand them big words you keep talkin’.”**

BRIAN:

**(Frustrated) “The cops say you wrote on a piece of paper that you shot and killed Andrew Thomas.”**

MCKRACKEN:

**“I ain’t good with words, so da cops, dey told me what ta write. Them cops promised if I writ the words dey said, den I could go home. So I did, but den dey locked me up anyways. I don’t exactly recollect what I writ.”**

BRIAN:

**“Do your people know you’re here in jail?”**

MCKRACKEN:

**“Doubt it - been on my own a long time now.”**

BRIAN:

**“Well here’s what I’m thinkin’, McKracken.”**

MCKRACKEN:

**“Bobby Joe. You can call me ‘Bobby Joe’. Just ‘bout everyone calls me ‘Bobby Joe’.”**

BRIAN:

**“Seems to me just ‘bout the last thing you wanna do is take the witness stand.”**

MCKRACKEN:

**“I don’t understand. You’s usin’ too many of dem big words.”**

BRIAN:

**“You shouldn’t testify ... say anything ... during the trial.”**

MCKRACKEN:

**“That don’t make no sense. I didn’t kill nobody. Shouldn’t I be tellin’ the judge ... or somebody?”**

BRIAN:

**“Problem is you had the dead man’s watch. How you gonna explain that?”**

MCKRACKEN:

**“Easy. I snatched dat watch from dis other guy sittin’ at the honky tonk.”**

BRIAN:

**“But that just goes to prove that you are prone to engage in criminal activity.”**

MCKRACKEN:

**“I do what?”**

BRIAN:

**“The other problem is that you gave a written confession – actually, two of them. If you open your mouth during the trial, the district attorney will demand to know if you was tellin’ the truth. If you says that you was, he’ll make it look like you did so voluntarily. If you say you wasn’t tellin’ the truth, he’ll make you out to be a liar. So you probably should keep your mouth shut.”**

MCKRACKEN:

**“But I didn’t kill nobody!”**

BRIAN:

**“If you don’t say anything at trial, the District Attorney will have to prove your guilt without your testimony. Nobody saw the dead man get shot, and the cops lost the gun that probably shot him. The case is circumstantial.”**

MCKRACKEN:

**“It’s what?”**

BRIAN:

**“I’ll just have to convince the jury that the confessions were coerced. That you didn’t mean to tell the cops you were guilty.”**

MCKRACKEN:

**“Like I said – the cops promised ifn I writ down what dey said, I could go home. So I did what I was told.”**

BRIAN:

(Scratches his head.) **“If that’s all you got to tell me, I suppose I’ll see you at trial.**

(Brian stands without shaking McKracken’s hand as he calls out to the off-stage prison guard.) **Guard – I’m done here!”**

### SCENE THREE - THE TRIAL

Time: Two weeks later.

(Location: A drab Louisiana Parish Courtroom. An unseen jury is sometimes addressed by the actors whenever they face the theatre audience.

Actors: Assistant District Attorney Albert DeChambeau

Defense Counsel Brian Morrison

Judge Finneas Blackmoore, who is seated on the bench at the front of the courtroom. On his left is displayed the American flag; on his right is displayed the Louisiana State flag. A sign above his head reads "In God We Trust".

DeChambeau, seated at the prosecution table, stands to address the unseen jury as he turns toward the audience. He is dressed in a three-piece suit, has no sense of humor, and is impressed with himself and his bureaucratic ability to condemn downtrodden defendants.)

DeCHAMBEAU:

**"Gentlemen of the jury, thank you for your attention during this brief, but important trial. There is no need for me to waste your time with a lengthy closing argument. You've heard all the undisputed facts that I have proven during today's proceeding, and so I expect you to do your duty and to find the Defendant, Bobby Joe McCracken, guilty of murder in the first degree. Clearly, McCracken over there (DeChambeau points with distain at McCracken who is dressed in striped prison garb and is seated with Attorney Morrison at the defense table) lay in wait near the garage of the poor unsuspecting victim, Andrew Thomas, one of your fellow citizens, and shot him five times dead in cold blood during a home burglary. How else could**

**McKracken have come into possession of Mr. Thomas' gold watch? Then the Defendant tried to pawn the watch, and that, of course, proved to be his undoing. It only took the authorities a day to two to track him down in a cotton field and bring him back here to the scene of the crime, and for justice to take its course.**

**Now defense counsel has argued that nobody saw McKracken shoot the victim, and that the eye witness at the pawn shop may have been mistaken. But that don't matter none, Gentlemen of the jury, since as you learned today during this trial, McKracken here (he points again) confessed to being the murderer. In fact, he confessed in writing on two separate occasions! Stands to reason nobody confesses to murder, unless they's guilty. You heard the confessions read during the trial, but I'd like to read 'em aloud again one more time, since those statements prove beyond any doubt that McKracken here is the murderer. (DeChambeau reaches for two documents lying on the prosecution desk. He reads the first document to the jury in dramatic theatrical fashion.)**

**This first confession was made to the arresting officers at the time of his capture:**

**(The confession is projected on a screen for the theatre audience to read.)**

**"I Bobby Joe McKracken now 16 years old I stole the gun from Mr. Ogise at St. Martinville La. And kill Andrew Thomas November 9, 1944 or about the time at St. Martinville La. It was a secret about me and him. I took a black purse with card 1280182 in it four dollars in it. I all so took a watch on him and sell it in new Iberia La. That all I am said I throw gun away .38 Pistol."**

**(DeChambeau, strutting about similar to a peacock, continues to address the jury.)**

**“As if one confession weren’t proof enough, the Defendant made a second confession after he was returned here to the parish jail: (DeChambeau produces another document and reads from it. The wording of the second confession is also projected on a screen for the theatre audience to read.)**

**“Yes Bobby Joe McKracken confess that he kill Andrew Thomas on November 8, 1944 i went to his house about 11:30 PM i hide backing his gorage about a half hour. When he came out the gorage i shot him five times, That all i remember a short story Sinarely Bobby Joe McKracken.”**

(DeChambeau continues to address the jury in a triumphant and confident manner). **“I expect you gentlemen to do your sworn duty, and to return a verdict of guilty. By doing so, you will assure that the ghostly soul of poor Mr. Thomas, your slain neighbor, will at last finally rest at peace in his grave.”** (DeChambeau bows his head in momentary silence as he appears to whisper a silent prayer.)

JUDGE BLACKMOORE:

**“Attorney Morrison, do you wish to present a closing argument to the jury?”**

BRIAN:

(Brian rises from the defense table and clears his throat.) **“Yes, Your Honor. Gentlemen of the jury: the District Attorney has failed to prove the state’s case, which is based entirely on the questionable ‘so-called’ eye witness testimony of an aged pawn shop owner with poor sight who hesitatingly identified my client as the kid who entered the pawn shop to sell a gold watch. Lots of 15-year-olds look just like my client, and that’s a fact.**

Now you might be askin' yourselves – why then did McKracken write those two so-called conflicting confessions that included different dates when he allegedly committed the murder? But think back when you was fifteen and still 'wet behind the ears'. The cops promised McKracken that if he simply wrote what they told him to write, he could go home. So he did!

So you see, there's no proof of nothin'. No gun was ever tested for prints. There was no witness to the shooting. Some other kid probably took that watch and tried to pawn it. If McKracken were the actual murderer, he woulda run away, far from here. Instead, the cops picked him up down the road apiece harvestin' cotton! That's 'cause he had nuttin ta hide from, 'cause he wasn't guilty of nothin'. If he had sold that watch and had received a bag of money, he'd have been on easy street, and wouldn't have needed to sweat in the hot sun. Instead, he was workin' in the fields, 'cause he was broke and didn't even know that the cops was lookin' for someone who maybe looked like him.

Them are the reasons I chose not to cross-examine any of the District Attorney's witnesses. Since my client is innocent, there wasn't no reason to ask any questions. Now it's time for you gentlemen, a jury of McKracken's peers, to do the right thing and find him not guilty, specially 'cause that's exactly what he is – an innocent youth of tender years.” (Brian returns to his seat at the defense table.)

JUDGE BLACKMOORE

“All right, Gentlemen of the jury. You've heard the testimony, and the closing arguments of both learned counsel. Now it's time for you to head on over across the hallway to the jury deliberating room, and to stay there until you come to

**a unanimous decision of guilt (the Judge's voice trails off) or innocence. You can tell the bailiff when you've reached a decision. If it gets real late, we'll feed you something for dinner. You are dismissed from the courtroom."**

#### **SCENE FOUR - THE JURY DELIBERATES**

(The stage lights illuminate a door upon which is situated a sign identifying the “JURY ROOM”. The theatre audience cannot see any of the jurors deliberating inside the room, but the audience is able to hear the deliberations as off-stage voices comprising the unseen jury engage in a discussion of McKracken’s fate.)

A JUROR:

**“There’s nothin’ quite like the smell of a good twenty-five cent cigar, don’t you guys think? The cheap stogies just don’t have the same quality or aroma.”**

A JUROR:

**“Says you. Smokin’ that smelly thing makes all our clothes stink, and I wear these here same pants to Church every Sunday. It’s hard ‘nuff trying to breath in here, even with the windows open.”**

A JUROR:

**“I’ve got extra cigars if anyone’s interested. Hard to have a serious discussion without a cigar or two, and that’s a fact.”**

A JUROR:

**“Can we get back to business. We’ve been talkin’ here for almost half an hour, and we still don’t have no unanimous decision. Didn’t the Judge say we need to be unanimous?”**

A JUROR:

**“Problem is nobody seen the kid pull the trigger. It’s hard to tell who might have been the shooter. The only evidence that suggests the kid was even involved is that**

gold watch. Like the lawyer said, maybe the kid simply took the lousy watch from somebody else. Who really knows?"

A JUROR:

"It's open and shut the way I see it. Open and shut. Didn't you guys notice the defendant's guilty eyes. The kid's face alone says he done it. Otherwise, why would he be sittin' in court now, facing these here charges? And he confessed to the murder – not once, but twice. It's plain as the nose on your face. He confessed and he's guilty!"

A JUROR:

"I ain't so sure 'bout that. Back when I was a fifteen-year-old kid, I woulda wrote anything if it meant the cops would release me and I could go back home. And this kid don't have much learnin'. Somebody, a parent, a lawyer, somebody shoulda been there to protect him. And another thing: The cops lost the gun before it could be tested for fingerprints, and the pawnshop owner says he wasn't positive McKracken was even the guy who tried to sell the watch."

A JUROR:

"That don't matter none. If the kid was really really innocent, he woulda took the witness stand to explain his side of the story. Instead, he just sat there with them guilty eyes. I agree with Clem over there: the kid has them guilty eyes for sure."

A JUROR:

"You can't let that influence your decision. And the Judge already told us the kid was under no obligation to testify."

A JUROR:

**“You actually think anybody believes that nonsense? If you’re innocent, you got to stand up in court and tell everyone. Somebody killed old man Thomas, and nobody but this here kid has been charged. Cops don’t make mistakes like that. The District Attorney wouldn’t have gone to trial if he wasn’t sure the kid was guilty as sin.”**

A JUROR:

**“We been here close to an hour. I got chores to do at home. Let’s take another vote. Them that think he’s guilty – raise your hands.”**

**(There is a momentary silence.)**

A JUROR:

**“Looks like eleven of us says the kid done it! You, pal, is the only one holdin’ out fur innocent. (Spoken with arrogance.) How can you be so stubborn when the evidence is as plain as the nose on your face? Wasn’t you payin’ attention in Court?”**

A JUROR

**“I just ain’t so sure the kid is guilty, and I sure don’t like bein’ pressured to change my mind. You shouldn’t condemn somebody to death unless they deserve to die. I don’t think the District Attorney proved his case beyond ... beyond ... a reasonable ... whatever the Judge said in court.”**

A JUROR

**“If we all don’t agree, they could keep us here overnight. They could even make us deliberate again tomorrow. And the next day, too. I got cows to milk. Tell you what.**

**I'll flip this here quarter. If it comes up 'heads' you gotta agree to change your mind. Fair 'nuff?"**

(The stage lights illuminate the courtroom. Judge Blackmoore is seated on his bench. Brian and DeChambeau are seated at their respective counsel tables. McKracken, who does not appear to be aware of the significance of the proceedings, is seated next to Brian.)

**JUDGE BLACKMOORE:**

**"The Defendant and his counsel will rise. (Brian stands and motions for McKracken to do the same. McKracken complies.) The jury having returned with a unanimous verdict of guilt, the Court is prepared to impose its sentence without further delay. Are there any motions on behalf of the Defendant, Attorney Morrison?"**

**BRIAN:**

**"None I can think of, Your Honor."**

**JUDGE BLACKMOORE:**

**"Very well. And now, this 14<sup>th</sup> day of September, in the year of our Lord 1945, you, Bobby Joe McKracken, are to suffer death in the manner provided by law under the mandatory death penalty provision of Article 740-30 of the Criminal Code of Louisiana. In accordance therewith, a warrant is directed upon Sheriff E.L. Resweber, the Warden of St. Martin Parish Prison, to carry out the execution of Defendant McKracken by causing to pass through the body of the said Bobby Joe McKracken a current of electricity of sufficient intensity to cause death, and the application of such current through the body of the said Bobby Joe McKracken is to continue until the said Bobby Joe McKracken is formally pronounced dead. There**

**being no further business before the Court, Court is adjourned.”** (The Judge bangs his gavel and withdraws from the bench. McCracken turns to Brian to ask him a question.)

MCKRACKEN:

**“Can I finally go home now?”** (The stage lights grow dim.)

## **SCENE FIVE - JUST ANOTHER DAY AT THE OLD PARISH PRISON**

(Location: St. Martinville Parish Prison. Two disheveled drunk incompetent executioners, Archie and Zeek, enter from stage left as they struggle to carry a large wooden portable electric chair to mid-stage. They will refer to the chair as “Ol’ Sparky”, which chair takes on a bizarre appearance of its own. A metal skull cap protrudes from the top of the chair, dangling from a spring similar to a toy ‘slinky’. Tangled wires protrude from multiple locations. Leather straps are attached to both arm rests and both legs of the chair. An unsecured electrical cord originating from the back of the chair dangles along the ground.)

Archie and Zeek are both perspiring profusely as Archie, breathing heavily, reaches under his torn shirt and locates a small silver flask. He unscrews the cap and takes a slow well-deserved drink. He is drunk and unsteady on his feet. Zeek, who is also inebriated, watches with obvious longing and some anticipation.)

**ZEEK:**

**“Archie ...You gonna drink it all? I could sure use a nudder sip myself. You need a relaxer in dis line of work, and luggin’ Ol’ Sparky in dis heat takes a lot outta a body.”** (Archie hesitatingly hands Zeek the precious flask.)

**ARCHIE:**

**“Just a sip. It’s gotta last until our next official duty this afternoon.”**

**ZEEK:**

**“Dats some of da best rot-gut your uncle ever brewed.”**

ARCHIE:

**"It don't just grow on trees, fur sure. I don't understand why dey sometimes schedule two of these here sit-downs on the same day."**

ZEEK:

**"I know. I know. After all, what's da rush? Da prisoner ain't goin' nowhere special."**

(Zeek takes a cautious drink and attempts to hand the flask back to Archie. In the process, Zeek trips over the electrical cord lying on the floor, as he falls to the ground.)

ARCHIE:

(Void of any sympathy) **"You're drunk! You're always drunk."**

ZEEK:

(Picks himself up as he dusts off his previously soiled pants.) **"Am not. Didn't spill narry a drop! (He points to the flask.) Gotta have a clear head to do dis kinda 'lectrical work. It ain't everybody dat knows where all deez wires, straps, and cords gotta go or how da gaz generator gets operational."** (Archie doesn't seem to care. He's heard it all before.)

ARCHIE:

(Disinterested, he reaches for the flask.) **"Whose gettin' it this mornin'?"**

ZEEK:

**"I heard tell it's some kid dat killed somebody. Now don't forget ... we got a schedule ta keep and no time ta lose. As soon as we is done here, we gotta load Ol' Sparky back on da truck and head on over ta Gainsville. (Zeek begins to fumble with various wires but doesn't seem to be making much progress.) Now if memory serves,**

**it's da brown wire comin' outta dat wall (he points) dat's positive, and da red wire dat's negative ... Or is it da udder way 'round ifn dey turn Ol' Sparky to da left? (Zeek turns to Archie) Did you remember ta bring nuff gaz for da generator? I hate when it starts ta spudder."**

(The stage lights focus upon the cramped jail cell in which Bobby Joe McCracken is incarcerated. McCracken is seated on his small bed. A priest, Father Kornfein, dressed in black clerical vestments, is seated nearby on an uncomfortable wooden chair. These two individuals face each other as they carry on a disjointed discussion. Curiously, Father Kronfein doesn't appear to hear or understand anything that McCracken has to say.)

FATHER KORNFEIN:

**"Shall we prey? (Kornfein places his hands together in prayer.) Lord in heaven, extend your mercy unto your servant, McCracken, who is about to enter your heavenly kingdom."**

MCKRACKEN:

**"I am?"** (Father Kornfein ignores McCracken and continues to ramble on.)

FATHER KORNFEIN:

**"At this time of need, we call upon you, Oh Lord, to extend your gracious love and protection to this young man as he begins his next journey."**

MCKRACKEN:

**"Journey? I'm goin' somewhere?"** (Father Kronfein continues to ignore McCracken.)

FATHER KORNFEIN:

**“My son, you may pass through the pearly gates unto eternal bliss if only you have faith. It matters not that you may have sinned while temporarily here. Even a murderer may enter the Kingdom Of Heaven if only he has faith.”**

MCKRACKEN:

**“Fodder Kornfeen ...”**

FATHER KORNFEIN:

(He corrects McKracken.) **“Kornfein ... F E I N. Lots of people make that mistake.”**

MCKRACKEN:

**“Fodder ...”**

FATHER KORNFEIN:

**“Yes, my son?”**

MCKRACKEN:

**“Do you tink dat I killed somebody?”**

FATHER KORNFEIN:

**“For truly it is written that they are blessed who believe in the Lord, our God. You only need have faith, my son.”**

MCKRACKEN:

**“Where did you get yours, Fodder?”**

FATHER KORNFEIN:

**“My what?”**

MCKRACKEN:

**“Faith.”**

FATHER KORNFEIN:

**“Initially from my dear parents, God rest their souls. They attended church every day, and passed their faith onto me.”**

MCKRACKEN:

**“Never met my fodder. Don’t know where my mudder is.** (Father Kornfein and McKracken sit silently for a moment as Kornfein pages through the Bible he is holding. McKracken poses another question). **Fodder ...”**

FATHER KORNFEIN:

**“Yes, my son?”**

MCKRACKEN:

**“Dey is gonna fry my ass like some omelet in ‘bout half an hour. Ain’t you a little curious wedder I kilt dat man dey say I kilt?”**

FATHER KORNFEIN:

**“My calling is to save thy soul. For it is written: ‘Judge not, that ye shall not be judged’.”**

MCKRACKEN:

**“Same wid dat free lawyer dey gave me. He never got ‘round ta askin’ neither. I got the feelin’, though, dat he thought I was guilty.”**

FATHER KORNFEIN:

**“I beg your pardon?”**

MCKRACKEN:

**“Dat ‘mouthpiece’ Morrison. Never asked if I kilt nobody. Told me ta keep my mouth shut. He said dat maybe the jury would furgit about them confessions dey pulled outta me.”**

FATHER KORNFEIN:

**“My son, confession is good for the soul.”**

MCKRACKEN:

**“Is it? It don’t seem ta done me much good. I just wanted ta go home.”**

FATHER KORNFEIN:

**“And soon ye shall, my son. Soon ye shall, if only you have faith.”**

MCKRACKEN:

**“Fodder, I got half an hour left. Ifn I tells you somethin’, you can take it to da bank, and dats a fact. Know what I mean?”**

FATHER KORNFEIN:

**“With so little time, perhaps we might pray together. (Kornfein bows his head as he places his hands together in prayer.) Heavenly Father, we beseech you in this moment of need to look upon your servant, McCracken, who is about to ...”** (McCracken interrupts.)

MCKRACKEN:

**“Fodder, it went down like dis: I never kilt nobody. I was sittin’ on dis barstool, drinkin’ a soda. Dis guy next ta me starts talkin’ ‘bout dis gold watch he snagged. How it was real pricy. One thing led to a nudder, so when he left, I followed him out da door and took it.”**

FATHER KORNFEIN:

**“Took what?”**

MCKRACKEN:

**“I klonked him on his head, and snatched da watch. A real beauty. I’m guilty of rollin’ the guy and takin’ da watch. I admit dat. But I ain’t guilty of nuttin’ else.”**

FATHER KORNFEIN:

**“My son, there is precious little time. Shall we prey? (Kornfein places his hands together and bows his head.) Holy Father, look with compassion upon your servant, McKracken, and usher him into the Kingdom of ...” (McKracken interrupts.)**

MCKRACKEN:

**“Not guilty. And dat’s a fact.”**

(Warden Resweber appears at the cell door with a prison guard.)

RESWEBER:

**“Did you enjoy your lunch? Mrs. Resweber always tries to make it real special ... you know ... when it’s the last one. What did you think of the dessert?”**

MCKRACKEN:

**“Dey didn’t give me none yet.”**

RESWEBER:

**“That’s a shame. Maybe some other time. And speakin’ of time, it’s arrived, McKracken. Have you made your peace with God?”**

MCKRACKEN:

**“It’s kinda hard ta tell, Warden. Maybe you should ask da Fodder, here. But I’m not sure he knows either.”**

## SCENE SIX - THE ELECTROCUTION

The stage lights focus upon Ol' Sparky, the electric chair, poised mid-stage, silently awaiting its next victim. Archie and Zeek attend to last minute preparations as they attempt to unravel electrical cords that have become entangled. These executioners appear to be rather confused.

ARCHIE:

**"Last time we was here, I told dem to invest in some new fuses and maybe a breaker panel or two. Dey build deez prisons like a hundred years ago, don't upgrade nuttin', and den expect me ta be some miracle worker. And some of deez cords gotta stretch tight just to plug into the wall socket. I used two extensions already. Dey better not pop out."**

ZEEK:

**"Nuttin's easy. The back-up generator seems a bit sluggish too, what with them usin' dat same old cracked fanbelt. I don't think it's ever been tightened. But does anybody listen to me? Nope, 'cause I'm just the assistant parish executioner, the low man on the 'token' pole."**

ARCHIE:

**"That's 'totem pole' you moron."**

ZEEK:

**"You sure? Is there time for another swig of your uncle's thunder and lightnin'?"**

(Warden Resweber and a prison guard approach from the darkness, as they accompany McCracken, who is handcuffed, followed by Father Kornfein, who carries his

Bible as he quietly mumbles a prayer. Resweber addresses McKracken as he removes the handcuffs.)

RESWEBER:

**“Take a seat, McKracken. Don’t make this no harder than it has to be.”**

(McKracken silently takes a seat as Father Kornfein genuflects. Archie and Zeek tighten the arm and leg straps around McKracken’s limbs as McKracken watches the procedure with some interest. Resweber produces a black hood from his pocket, and places it over McKracken’s head. He next places the metal skull cap on McKracken’s head.)

RESWEBER:

**“You got any last words, McKracken? (McKracken remains silent.) Then by the power vested in me as Warden of this here prison, I am directed by the death warrant issued by Louisiana Governor Jimmie Davis setting May 3, 1946, at high noon as the date of execution, to pass a current through the body of Bobby Joe McKracken until he be certified dead. The sentence will now be carried out. Good-bye, McKracken.”**

(The Warden motions to Archie and Zeek. Archie walks over to a panel on the wall, and unceremoniously throws a switch. There is a buzzing sound, as McKracken strains in pain. The stage lights begin to flicker. Soon smoke begins to rise from McKracken’s head.)

MCKRACKEN:

(Screams in pain as smoke continues to rise from his head. He strains in the chair.)

**“Turn it off. Turn it off! Can’t you guys see I’m burnin’ up!”**

RESWEBER:

(Horried, Warden Resweber screams at Archie and Zeek.) **"You two gotta give Ol' Sparky more juice! What you waitin' fur?"**

ARCHIE:

(Archie appears agitated as he turns to Zeek. Archie does not appear to be concerned about McKracken.) **"Are you sure you didn't cross them wires? Wouldn't be the first time. Did you put the positive where the negative goes, you moron?"**

MCKRACKEN:

(Screaming.) **"Somebody help me. I'm on fire!"**

ZEEK:

**"I can't hear you. The kid's screamin' too loud! What did you say?"**

ARCHIE:

**"I said you is a moron! Certifiable. Probably got the wires crossed again!"**

ZEEK:

**"Am not. Am not! It could be the generator – maybe. The fanbelt might be a little loose, again. Hard to tell. We're gonna need to check that sometime, I'm thinkin'."**

ARCHIE:

**"Check what?"**

MCKRACKEN:

**"I'm burnin' up! Are you tryin' ta kill me?"**

FATHER KORNFEIN:

(He lifts his arms up to the sky.) **"Lord, have mercy. Help McKracken to find the way."**

ZEEK:

**“The fanbelt. It’s old.”**

ARCHIE:

**“But that don’t necessarily fix this here little problem. Ifn I keep throwin’ the switch, it could damage Ol’ Sparky some. She could get singed or burned. You want that should happen? The old girl could be on overload this very moment.”**

(Archie continues to throw the switch back and forth, as McKracken painfully reacts to each application of the electrical current. The stage lights flicker.)

MCKRACKEN:

**“I’m still on fire! Somebody do something!”**

FATHER KORNFEIN:

**“It’s a miracle. He may be dead, and yet he speaks! Praise be to the Lord!”**

ARCHIE:

(Exasperated) **“That’s all the juice there is! There ain’t no more! The generator’s probably not goin’ full blast! We may need to pick up a new fanbelt.”**

ZEEK:

**“Da generator’s been on its last legs fur some time now! You want maybe I should hit the kid with a rock? I can probably find a big rock somewhere.”**

ARCHIE:

(He throws the switch again and again as McKracken reacts in pain.) **“See what I mean? There’s only so much juice. They may need to spring fur a couple of new fuses, too. I’ve told prison maintenance over and over to upgrade things, so Ol’ Sparky can operate safe and nobody gets hurt, but does anybody ever listen?”**

ZEEK:

**“Dat’s ‘cause we is low man on da tokem pole. Don’t go blamin’ Ol’ Sparky. It’s da lack of a nuff ‘lectric dat’s da problem, not our reliable chair.”**

ARCHIE:

**“Come ta think of it, maybe da skull cap’s a might loose. Da kid seems ta have a small head.”**

ZEEK:

**“Good thinkin’.”**

ARCHIE:

(Archie approaches McKracken.) **“I’m just gonna adjust this here skull cap a little. Let me know if it’s too tight.”** (Archie makes the adjustment. He returns to the switch on the wall and starts to move it up and down. The stage lights flicker as McKracken reacts in pain.)

RESWEBER:

(Mortified) **“Stop the damn execution and unstrap the prisoner! I’ve seen enough for one day. Take McKracken back to his cell! When he comes to, somebody give him a glass of water.”**

ARCHIE:

(He addresses Zeek) **“Be careful Zeek you don’t touch Ol’ Sparky fur awhile. She could still be activated.”**

ZEEK:

**“I don’t think so. We already wasted most of the juice on that kid.”**

(The prison guard complies with the Warden's order, and drags McKracken off stage as McKracken's hair continues to smoke. The hood has not been removed.)

This scene is not essential to the storyline and may be deleted if production would become unduly complicated by the introduction of a song.

### SCENE SEVEN – A MUSICAL INTERLUDE

(McCracken is seated in his jail cell. His forehead is wrapped in white gauze, as are his hands. Despite his severe burns from the unsuccessful electrocution, he is still able to play a song on his harmonica: *Ol' Man River*. The prison guard stands at the edge of the stage, unnoticed by McCracken, as McCracken artistically plays the four lines of the introduction to the song. The prison guard is transfixed, as he holds a small metal bucket in his hand.

McCracken, having finished the introduction to the song, then slowly begins to play the well known melody. The prison guard is obviously moved by McCracken's artistry, and uninvited, accompanies McCracken in song with the prison guard's melodious voice.)

#### PRISON GUARD:

**"Ol' Man River  
Dat Ol' Man River  
He mus' know sumpin'  
But don't say nuthin'.  
He jes' keeps rollin'  
He keeps on rollin' along.**

**He don' plant taters,  
He don't plant cotton,  
An' dem dat plants' em'is soon forgotten,  
But Ol' Man River,  
He jes keeps rollin' along.**

**You an' me, we sweat an' strain,  
Body all achin' an' rack'd wid pain,  
Tote dat barge!  
Lif' dat bale!  
Git a little drunk  
An' you land in jail.**

**Ah gits weary  
An' sick of tryin'  
Ah'm tired of livin'  
An'skeered of dyin'.  
But Ol' Man River,  
He jes' keeps rollin' along."**

(McKracken concludes his playing of the song as the prison guard slowly approaches McKracken.)

**“You in any pain?”**

McKRACKEN:

**“Some.”**

PRISON GUARD:

**“I brung your lunch. But I’m goin’ back to the kitchen to git you a knife and fork, too. You’ll need em’, since your hands is burnt.”**

McKRACKEN:

**“Much appreciated. Hasn’t been easy eatin’ with just some of my fingers.”**

PRISON GUARD:

(He contemplates for a moment.) **“I’m sorry.”**

McKRACKEN:

**“Sorry?”**

PRISON GUARD:

**“Fur what they done to ya... I’ll be back with them utensils, and maybe some cream to put on your hands.”** (The stage lights slowly dim to black.)

## **SCENE EIGHT - A SECOND DEATH WARRANT**

Location: The Governor's Office.

Time: One week after the botched electrocution.

Characters present:

Governor Jimmy Davis who is seated at his ornate desk. The State flag of Louisiana stands next to his desk. Also seated at the desk facing the Governor is Assistant District Attorney Albert DeChambeau.

GOVERNOR:

**"As you probably know, Albert, the executioners botched the electrocution last week. It seems like they don't know how to kill someone the first time around."**

DeCHAMBEAU:

**"I heard tell, Governor."**

GOVERNOR:

**"So I asked you here today 'cause I need to make sure everything is done legal-like. The death warrant I initially issued for a May 3, 1946 electrocution has expired."**

DeCHAMBEAU:

**"That's correct, Governor. You will need to issue a second warrant."**

GOVERNOR:

**"Fair enough. No reason to delay matters. I intend to sign the paperwork scheduling execution for next week."**

DeCHAMBEAU:

**"That's the correct procedure, Governor. If the kid doesn't want to sit in the chair a second time, he can take an appeal and try to have the second warrant delayed."**

GOVERNOR:

**“This whole mess is an embarrassment to the State of Louisiana. The newspapers have picked up on this fiasco.”**

DeCHAMBEAU:

**“No need to be embarrassed, Governor. I’ve done a little research. This isn’t the first time difficulties were encountered during an electrocution.”**

GOVERNOR:

**“No kiddin’.”**

DeCHAMBEAU:

**“Actually, that honor goes to the great State of New York. History tells us that on August 6, 1890, William Kemmler, a drunk who killed his common-law wife with a hatchet, became the first electric chair victim. They threw the switch, and for seventeen seconds the victim was subjected to the introduction of an electrical current. Two physicians who were present determined that Kemmler was dead, so they turned off the juice. Upon further evaluation, it was found that the condemned man’s heart was still beating, so additional current had to be applied. About four minutes later Kemmler was deemed to be really dead. The records reflect that afterward it took his body several hours to cool off.”**

GOVERNOR:

**“Who woulda thought!”**

DeCHAMBEAU:

**“It’s interesting to note that Thomas Edison helped design the first electric chair, despite the fact that he was opposed to the death penalty.”**

GOVERNOR:

**“I don’t understand.”**

DeCHAMBEAU:

**“Edison was engaged in an ongoing dispute with his competitor, George Westinghouse. Westinghouse asserted that alternating current should be utilized in electrical devices. Edison championed use of direct current. In order to demonstrate that Westinghouse’s form of current was dangerous, Edison designed an electric chair that used Westinghouse’s alternating current. To prove his point, Edison assembled a public demonstration at Coney Island, New York, during which he used Westinghouse’s alternating current to electrocute a circus elephant named Topsy.”**

GOVERNOR:

**“Well, I’ve fired the two drunks who botched the first electrocution and I’ve engaged an electrician to confirm that the chair is safe for human consumption. The second electrocution should go without a hitch. I sure hope the kid don’t do somethin’ stupid, like take a frivolous appeal.”**

DeCHAMBEAU:

**“Highly unlikely, Governor. He doesn’t have two nickels to rub together, so finding an attorney won’t be easy.”**

## **SCENE NINE – A TELEPHONE CONVERSATION**

(The stage lights focus at stage left upon Attorney Bertrand DeBlanc, who is seated in his Spartan law office in Louisiana. On his desk is situated an old black rotary telephone, a pencil, paper, and some law books. At stage right appears Attorney James Skelly Wright, who is seated at a desk in his law office located in Washington, D.C. He is also serviced by a black telephone and some scattered law books. The two lawyers talk to each other by long distance telephone conversation.)

DeBLANC:

**“Bertrand DeBlanc calling. Is this Attorney James Skelly Wright?”**

WRIGHT:

**“At your service. My secretary advises me you’re located in Louisiana?”**

DeBLANC:

**“Yes, counselor.”**

WRIGHT:

**“Just call me ‘Jim’.”**

DeBLANC:

**“Thank you. Please call me ‘Berty’.”**

WRIGHT:

**“Fair enough. What can I do for you, Berty?”**

DeBLANC:

**“I’m told you are often called upon to argue before the U.S. Supreme Court.”**

WRIGHT:

**“Guilty as charged. I’ve engaged in that honor on occasion.”**

DeBLANC:

**“You should know, before I take another minute of your time, that this call won’t generate a nickel in fees. I’m dealing with a Pro Bono case, from start to finish, and I’m looking for your assistance before the Supreme Court. It’s my understanding that you have, on occasion, taken on such burdens when the issue has involved constitutional significance.”**

WRIGHT:

**“I’m listening. You haven’t scared me away quite yet. Tell me your tale.”**

DeBLANC:

**“I’ll get to the point. About six months ago, a fifteen year-old-kid, a transient migrant worker, was charged with the murder of a resident of St. Martinville Parish down here in Louisiana.”**

WRIGHT:

**“Is the kid white or black?”**

DeBLANC:

**“Black.”**

WRIGHT:

**“Go on. Sorry for the interruption.”**

DeBLANC:

**“The adolescent defendant, name’s ‘Bobby Joe McCracken’, was picked up when an aged pawn broker with bad eye sight claimed McCracken had tried to sell the victim’s watch. McCracken was arrested and then interrogated without the**

assistance of counsel. Along the way, McKracken was compelled by the cops to give two rambling disjointed so-called written confessions.”

WRIGHT:

“Did the kid ultimately recant the confessions?”

DeBLANC:

“Yes. Said he stole the watch when he assaulted the actual murderer. He spoke to his court-appointed lawyer only once for thirty minutes before they picked a jury. The defendant was arrested August 8, 1945; the half-day trial took place September 12. The jury returned a verdict of guilt in less than forty-five minutes. Rumor has it there may not have been unanimity, but pressure was brought to bear on the hold out.”

WRIGHT:

“What was the sentence?”

DeBLANC:

“Death by electrocution.”

WRIGHT:

“Ut Oh! The kid still alive?”

DeBLANC:

“Sorta.”

WRIGHT:

“Sorta?”

DeBLANC:

**“The story takes a strange twist. The trial was a mockery of the judicial system. The cops found what was probably the murder weapon. They sent the handgun to the FBI to run the fingerprints. The gun got lost in the mail and was never recovered. No stenographic transcript was taken during the trial, so there is no lower court record. Court-appointed defense counsel was at best disinterested and incompetent. He failed to adequately cross-examine the state’s witnesses, and decided not to put McKracken on the stand. He never objected to the introduction of the two so-called confessions. The jury never heard McKracken’s side of the story. Since there was no lower court record, the incompetent defense counsel was unable to take an adequate appeal to a higher Court. The Louisiana Supreme Court merely affirmed the sentence of the trial Court.”**

WRIGHT:

**“How then has this matter progressed through the federal system to the United States Supreme Court?”**

DeBLANC:

**“The murder occurred on November 8, 1944. The trial took place on September 12, 1945. On March 29, 1946, the state prepared to execute the Defendant who was then all of sixteen years old. The Louisiana executioner, accompanied by his assistant, a prison trustee, shows up at the parish prison. It’s not yet high noon, and they are both drunk. They proceed to connect a portable electric chair to the prison’s inadequate and ancient electrical system which includes a back-up gasoline powered generator. The executioner straps our client into the chair and they pull the switch**

several times, but are successful only in administering first, second, and third degree burns. McKracken's hair catches fire, some of his clothing is set ablaze, but despite multiple attempts, they are unable to kill him. So they carry him back to his jail cell, after which the electric chair and its antiquated power source undergo evaluation."

WRIGHT:

"McKracken is presently alive?"

DeBLANC:

"Yes. Two weeks later, he had recovered sufficiently to the point that he was able to sit up in his prison hospital bed and take nourishment. He ate some of the dessert they had failed to serve him as part of his last meal."

WRIGHT:

"How did you become involved?"

DeBLANC:

"A month goes by and a man shows up at my office. Says he's McKracken's uncle. He told me the story, and implored me to 'do something'. I initially found his story implausible, but when it proved to be true, I realized that several appellate issues, some perhaps on the federal level, might require review."

WRIGHT:

(He begins to muse.) "Obviously, double jeopardy ... cruel and unusual punishment ... equal protection under the law ... just to name a few. There are some problems, however."

DeBLANC:

**“Like what to do with the defendant now! Do we ask that McKracken be set free since he has arguably already served his punishment? Do we suggest a lesser jail sentence? At any rate, I initiated a petition in federal district court, proceeded up through the circuit court level, and lo and behold, now the Supreme Court has granted certiorari. The Justices want to hear oral argument. That’s where you come in. Might you consider helping this kid out?”**

## **SCENE TEN - ARGUMENT BEFORE THE SUPREME COURT**

(The stage lights focus upon Attorney Wright, who alone faces the theatre audience. He addresses an unseen panel of Justices of the U.S. Supreme Court, the members of which will pose questions by use of off-stage voices.)

**WRIGHT:**

**“Mr. Justices, if we take the argument of the State of Louisiana to its illogical conclusion, that state can again, with impunity, strap Mr. McKracken into the electric chair for a second time, and cause him to once again become the victim of cruel and unusual punishment, which is a most bizarre form of double jeopardy, contrary to the equal protection clause of this country’s constitution.”**

**FIRST OFF STAGE VOICE OF A SUPREME COURT JUSTICE:**

**“While your argument is compelling Counselor, I fail to understand how a plausible remedy can be promulgated by this Court. Granted, the fickle hand of fate may have orchestrated an unusual situation, that is, the possibility of the second administration of an electrical current. However, the record suggests that this was not an intentional attempt by the State of Louisiana to subject Mr. McKracken to a form of torture engaged in by an unfeeling governmental entity. To the contrary, by mere chance and no more, there existed an insufficient electrical current to carry out the valid sentence of the state court. Upon second appropriately monitored application, this situation will probably be remedied.”**

**SECOND OFF STAGE VOICE OF ANOTHER SUPREME COURT JUSTICE:**

**“I share my brother Justice’s dilemma. Furthermore, consider this scenario: suppose Mr. McKracken had been strapped in the electric chair, and by some**

happenstance a minor stream of electricity, barely felt, had been caused to enter his body. Are you in effect asking this Court to determine how many electrons and the intensity thereof that must be experienced before we establish that a second administration of the punishment would be contrary to the tenants of the federal constitution?"

THIRD OFF STAGE VOICE OF ANOTHER SUPREME COURT JUSTICE:

"I'd like to follow up on that hypothetical as well. I'm not so sure that the sentence of the Louisiana Trial Court has thus far been carried out. If one looks at the definition of 'electrocution' as found in 'Webster's Unabridged Dictionary', it requires, and I quote, that 'sufficient electrical current pass through the body in order to cause death.' I don't believe that act has occurred yet. Mr. McKracken may have been subjected to some degree of shock, but arguably, he hasn't yet been electrocuted."

FOURTH OFF STAGE VOICE OF ANOTHER SUPREME COURT JUSTICE:

"I have great compassion for Mr. McKracken, who may have experienced a difficult moment. However, if this Court were to find that a breach of the Constitution has in fact occurred, what remedy awaits him? Open the jail house door, pat Mr. McKracken on the head, and wish him well? Are we to override the express sentence of the trial court as determined by a jury of his peers, and substitute some jail sentence in place of the death penalty? After all, the young man was unanimously found guilty of the murder of a fellow citizen."

WRIGHT:

**“It is the compassion of a nation that exists as the true measure of its place in history. If we ignore the sanctity of life based upon a technicality, if we permit the unfeeling administration of a punishment upon one individual who in all probability was innocent of the original crime charged, by turning such a blind eye we call into question the composition of our collective moral timbre. Today this Court has the honor and the obligation to right a wrong, and to proclaim that even the most humble among us is to be treated with equal protection under the law, assured that the mandates of our blessed Constitution apply without exception to all who stand before this Court. To render any other Ruling would be a step back from an acknowledgment of the principals upon which this country was founded.”**

FIFTH OFF STAGE VOICE OF ANOTHER SUPREME COURT JUSTICE:

**“Thank you, Counselor, for your compelling argument, and its thoughtful insights. The Court will now close this proceeding and retire, ultimately to issue its Opinion.”**

## **SCENE ELEVEN - A MATTER OF INTERPRETATION**

(The stage lights illuminate the U.S. Supreme Court conference room where Justice Felix Frankfurter addressed the other eight Justices, none of whom can be seen by the theatre audience. Rather the other eight Justices are depicted by off-stage voices. The Justices have convened to informally discuss disposition of the Bobby Joe McKracken case.)

JUSTICE FRANKFURTER:

**“Up next for discussion is the ‘Bobby Joe McKracken’ case. Briefs were received and have been distributed. You gentlemen will recall that oral argument took place last month. What are your thoughts? Is there a consensus?”**

JUSTICE REED (Off Stage Voice):

**“May I begin?”**

JUSTICE FRANKFURTER:

**“Certainly, Andrew.”**

JUSTICE REED (Off Stage Voice):

**“I’ve studied the record as submitted. We must assume that the state officials tasked with the responsibility of executing the defendant carried out their duties under the death warrant in a careful and humane manner. There is nothing in the sparse lower court documents to suggest to the contrary. Accidents happen for which no man is to blame. Had the state officials displayed incompetence or sought intentionally with cruel forethought to administer multiple applications of electricity, I might be compelled to view this peculiar occurrence in a different light.”**

JUSTICE BLACK (Off Stage Voice):

**“I tend to agree. When an accident, with no suggestion of malevolence, prevents the consummation of a lawful sentence, double jeopardy has not occurred tantamount to a denial of federal due process during the proposed execution.”**

JUSTICE JACKSON (Off Stage Voice):

**“Nor has anything taken place here that amounts to cruel and unusual punishment in the constitutional sense. The Defendant’s suggestion that because he once underwent the psychological strain of preparation for electrocution that such an ordeal should preclude him from again being subjected to a second procedure is without merit. Simply stated, the fact that the Defendant has already been subjected to a current of electricity does not make his subsequent execution any more cruel in the constitutional sense than any other execution. The fact that an unforeseeable accident prevented the prompt consummation of the sentence cannot, it seems to me, add an element of cruelty to a subsequent execution.”**

JUSTICE REED (Off Stage Voice):

**“Furthermore, were we to rule otherwise, a precedent would be set requiring us in the future to determine the minimal amount of electricity, the administration of which would constitute a constitutional violation. In truth, no successful electrocution has yet taken place, and as a result, the sentence of the court has not yet been carried out. Therefore, any decision by us that ignores the lawful sentence of the Louisiana Court would obviously be premature.”**

JUSTICE BLACK (Off Stage Voice):

**“A punishment only becomes cruel when it involves torture or a lingering death. The record is devoid of any such act.”**

JUSTICE JACKSON (Off Stage Voice):

**“The Defendant’s final argument, that he was represented by incompetent counsel at time of trial is without any factual basis. The record suggests to the contrary. Counsel pursued an intentional strategy predicated upon the Defendant exercising his right not to incriminate himself by taking the witness stand. Had the Defendant testified, he would undoubtedly have been cross-examined regarding the two voluntary confessions he submitted to the police.”**

JUSTICE FRANKFURTER:

**“I concur. The Federal Bill of Rights protects an accused from being a witness against himself. Similarly, the Due Process Clause of the Fourteenth Amendment does not preclude the freedom of a State to enforce its own notions of fairness in the administration of criminal justice. The first attempt by the State of Louisiana to execute the Defendant was the stuff of innocent misadventure. As a result, we must abstain from interference with State action, no matter how strong one’s personal feeling of revulsion against a State’s insistence on its pound of flesh.”**

JUSTICE BLACK (Off Stage Voice):

**“It’s noteworthy that any remedy extended to the Defendant would be fraught with uncharted legal mine fields. Do we even have the authority to set aside a valid jury verdict? Can we substitute a prison sentence in place of a sentence of death? Do we simply open the jail house door and set the Defendant free, based upon an**

**inadequate source of electrical power? Are we authorized to propose some form of executive clemency? Can we substitute our vision of Justice for that pursued by the State of Louisiana?”**

**JUSTICE BURTON (Off Stage Voice):**

**“My fellow Justices, with all due respect, you have failed to focus upon the issue at hand. I have briefly caucused with Justices Douglas, Murphy, and Rutledge, and we believe that the unusual facts before us require that the judgment of the Supreme Court of Louisiana that has affirmed the sentence of the Trial Court be vacated, and that this case be remanded for further proceedings not inconsistent with our findings. Those proceedings should include the determination of certain material facts not previously established, including the extent, if any, to which electrical current was applied to the Defendant during his attempted electrocution on May 3, 1946.”**

**JUSTICE DOUGLAS (Off Stage Voice):**

**“The Fourteenth Amendment to the Constitution of the United States provides ‘ ... nor shall any State deprive any person of life, liberty or property, without due process of law...’ The capital case before us presents an instance of the violation of constitutional due process that is more clear than would be presented by many lesser punishments prohibited by the Eighth Amendment or its state counterparts. Taking human life by unnecessarily cruel means shocks the most fundamental instincts of civilized man. It is unthinkable that any state in modern times could ever envision the enactment of a statute expressly authorizing capital punishment by repeated applications of an electric current separated by intervals of days or hours**

until finally death shall result. But that is exactly the end result should the majority of this court follow its present reasoning.”

JUSTICE MURPHY (Off Stage Voice):

“A reading of the Louisiana statute makes it clear that a second execution is unauthorized. It provides that ‘Every sentence of death imposed in this State shall be by electrocution; that is, causing to pass through the body of the person convicted a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of the person convicted until such person is dead ...’ The statute does not provide for electrocution by interrupted or repeated applications of electric current at intervals of several days or even minutes. It does not provide for the application of electric current of an intensity less than that sufficient to cause death. It prescribes expressly and solely for the application of a current of sufficient intensity to cause death and for the continuance of that application until death results. In the case of capital punishment, it should be construed strictly. There can be no implied provision for a second, third or multiple application of the current. There is no statutory or judicial precedent upholding a delayed process of electrocution.”

JUSTICE RUTLEDGE (Off Stage Voice):

“I agree. It was the statutory duty of the state officials to make sure that there was no failure to carry out the sentence of the trial court. If the state officials deliberately and intentionally had placed the Defendant in the electric chair five times and, each time, had applied electric current to his body in a manner not sufficient, until the final time, to kill him, such a form of torture would rival that of

**burning at the stake. I believe that remand of this cause to the Supreme Court of Louisiana in the manner indicated would not mean that the Defendant necessarily is entitled to a complete release. It would mean merely that the Louisiana Supreme Court must examine the facts, both as to the actual nature of the punishment already inflicted and that proposed to be inflicted.”**

**JUSTICE FRANKFURTER:**

**“It would appear at first blush that if no member of this Court is inclined to reconsider, the final decision will reflect a five to four vote in favor of sustaining the Louisiana Supreme Court. Gentlemen, this informal discussion is concluded. I thank you for your valuable time and insights.” (Stage lights extinguished.)**

## **SCENE TWELVE - A QUIET DINNER AT HOME**

(Two months have passed since Oral Argument took place before the United States Supreme Court. The stage lights focus upon Supreme Court Justice Frankfurter who is enjoying a quiet dinner at home with his wife, Amanda. They are seated at their dining room table.)

AMANDA:

**“Another hard day at work, dear?”**

JUSTICE FRANKFURTER:

**“Had I known before accepting the President’s appointment to the Supreme Court that I would have to battle on a daily basis such traffic as only Washington D.C. has to offer, I might have thought twice before ascending to the Bench. Going to and from Court is truly a struggle. They really should provide a limo, don’t you think?”**

AMANDA:

**“I certainly understand, dear. Would you like some more potatoes?”**

JUSTICE FRANKFURTER:

**“And it doesn’t help that two of the Justices only recently returned after extended absences from the Court. We’re under considerable pressure to review a number of complex issues.”**

AMANDA:

**“Anything of interest – something you might share?”**

JUSTICE FRANKFURTER:

(He thinks for a moment) **“Actually, there is – a truly fascinating case.”**

AMANDA:

**“Tell me all about it, dear. You know how I always enjoy hearing about your thought provoking cases.”** (She places more potatoes on his plate.)

JUSTICE FRANKFURTER:

(Enthusiastically) **“OK. You’re just gonna love this one. See, the State of Missouri enacted a tax on the privilege of doing business within its borders. A vendor has to pay a penny on every ten dollars of sales transacted. Seems simple enough, but how do you determine what sales actually occurred within the state? What if some purchaser ordered goods by phone while located in another state, and the goods are ultimately mailed to that foreign location? Get my drift? And this is a self-reporting tax, no less. The Court heard oral argument some months back, and today we published the formal opinion. Obviously, if the goods were ordered from out-of-state ...”** (Amanda interrupts.)

AMANDA:

**“Pardon me, dear, but issues about taxation in Missouri just don’t get my blood flowing, if you know what I mean. Does it really matter if some sales tax didn’t get paid?”**

JUSTICE FRANKFURTER:

(Slightly agitated.) **“Business privilege tax. Sure it does! If vendors don’t pay the tax, how will government be able to afford to stay in business?”**

AMANDA:

**“Seems to me governments always figure out a way to keep operating. Don’t get me wrong - I certainly wish Missouri well and I’m pleased the problem has now been**

**resolved. You folks always come up with such good answers. But is that truly the most interesting case you've considered recently?"**

**JUSTICE FRANKFURTER:**

**"Yes ... well ... perhaps not. We did issue another Opinion this week – one that dealt with this kid in prison."**

**AMANDA:**

**"There's more roast beef, if you're interested. (She becomes attentive.) What young child ... in which prison?"**

**JUSTICE FRANKFURTER:**

**"I think I will have some more of your delicious roast beef. (She hands him a tray.) A kid named Bobby Joe McKracken. He may have shot someone and ..." (She interrupts.)**

**AMANDA:**

**"You're not sure?"**

**JUSTICE FRANKFURTER:**

**"No, I'm not. But that's not the point. It doesn't really matter if he's guilty or innocent. The question is whether he should be electrocuted a second time."**

**AMANDA:**

**"Why would you electrocute the child once or even twice if the poor soul might be innocent? I'm not sure I quite understand."**

**JUSTICE FRANKFURTER:**

**"It's not up to us to determine guilt or innocence. That was already decided by a jury of his peers."**

AMANDA:

**“Other children his age passed judgment?”**

JUSTICE FRANKFURTER:

**“Of course not! Twelve mature citizens residing in the local community.”**

AMANDA:

**“Where, exactly, did all this take place?”**

JUSTICE FRANKFURTER:

**“Louisiana.”**

AMANDA:

**“Oh dear! Not exactly a ‘hotbed’ of Justice.”**

JUSTICE FRANKFURTER:

**“Hot or cold - that wasn’t the issue we were called upon to address.”**

AMANDA:

**“How old is he?”**

JUSTICE FRANKFURTER:

**“Who? McKracken? Fifteen. Maybe sixteen now. He’s been locked up for a while.**

**Do you want to hear about this case or not?”**

AMANDA:

**“Please do continue.”**

JUSTICE FRANKFURTER:

**“So the defendant ...”** (Amanda interrupts as she ponders out loud.)

AMANDA:

**“A child of fifteen years. I own some socks older than that.”**

JUSTICE FRANKFURTER:

(Intent on proceeding despite the interruptions.) **“So the defendant is sentenced to die in the electric chair.”**

AMANDA:

**“Felix, did you actually think that the ‘Missouri Business Something Tax Case’ was more interesting than this?”**

JUSTICE FRANKFURTER:

**“So on the day set to carry out the sentence, they strap this kid into the chair, pull the switch a couple of times, but can’t quite kill him. There wasn’t enough electrical power.”**

AMANDA:

**“Good God!”**

JUSTICE FRANKFURTER:

**“His hair caught on fire, but he didn’t quite die. (Amanda stops eating, puts down her fork, and stares at Frankfurter.) The issue is really quite simple: can Louisiana place the defendant back in the electric chair, or does such an act constitute ‘double jeopardy’ and ‘cruel and unusual punishment’, contrary to the equal protection clause of the federal constitution?”**

AMANDA:

**“And what exactly have you determined?”**

JUSTICE FRANKFURTER:

**“Well, it’s not just me. Nine Justices have to reach a decision. (He pauses for a moment in silent thought.) Nine of us ... Justices.”**

AMANDA:

**“Was there ever a question in your mind what was the right thing to do?”**

JUSTICE FRANKFURTER:

**“It’s not that simple. See, we don’t have the power to alter the sentence of the trial court. And actually it could be argued that the sentence has not yet been carried out. An electrocution only occurs if the subject dies. And so, we have been called upon to decide if ...”** (Amanda interrupts.)

AMANDA:

**“There’s some doubt in your mind as to what to do? I hope you decided to ...”**  
(Frankfurter interrupts.)

JUSTICE FRANKFURTER:

**“Now, that’s the interesting part. See, if an electrocution didn’t actually take place yet, then it would be premature for us Justices to alter the sentence of the trial court.”**

AMANDA:

**“Good God! You’re not suggesting that ...”**

JUSTICE FRANKFURTER:

**(Agitated) “I didn’t go to law school to fight Washington traffic twice a day. And I certainly didn’t become a judge so I could be compelled to make life and death decisions. You think this has been easy? I really do prefer to rule on business privilege tax cases from Missouri.”**

AMANDA:

**“This whole process may be a little tough on McKracken, too. Suppose we had a sixteen-year-old son. Would you strap him in the chair a second time? Hopefully, dear, you did the right thing and made the correct decision. (Frankfurter remains silent.) You did do the right thing, didn’t you, dear?”**

JUSTICE FRANKFURTER:

**“Just what is that, exactly?”**

### SCENE THIRTEEN - SWEET DREAMS

(The stage lights focus upon Justice Frankfurter who is asleep in his bed. He tosses and turns in an agitated manner. At times, he calls out while sleeping. Also on stage is Ol' Sparkie, the electric chair.)

JUSTICE FRANKFURTER:

**"I did what the law requires. I can't be blamed for that, now can I?"**

(The ghost of Bobby Joe McCracken, draped in black, handcuffed, and wearing a hood that covers his face, emerges from the shadows, and enters Frankfurter's bedroom. At no time in this scene does this ghost speak.)

JUSTICE FRANKFURTER:

(Frankfurter, startled, awakens.) **"Who's there?** (McCracken motions for Frankfurter to follow McCracken. Frankfurter in obedient compliance, slowly gets out of bed.) **Do I know you? I don't think we've ever been introduced."** (Frankfurter and McCracken approach the electric chair as Archie and Zeek appear on stage and stand on each side of Ol' Sparky.)

ARCHIE:

**"All rise. The Judge is here. Pardon me, but aren't you Justice Frankfurter, I mean THE JUSTICE FRANKFURTER? It's hard to tell when you're just wearing pajamas."**

JUSTICE FRANKFURTER:

**"Why yes, I am."**

ARCHIE:

**“Please be seated, Mr. Justice. You can sit right there. (Archie points at the electric chair. Frankfurter reluctantly takes a seat as Archie and Zeek begin to strap Frankfurter’s arms and legs and place the metal skull cap on his head.) And if I’m not mistaken, you serve on the Supreme Court of the United States?”**

JUSTICE FRANKFURTER:

**“That’s me!”**

ARCHIE:

**“Then you must be ... like really really smart.”**

JUSTICE FRANKFURTER:

**“Sometimes, I suppose.”**

ZEEK:

**“That’s good, ‘cause we could sure use some help. Do you know if the brown wire is positive, and the red wire is negative, or is it vercie vice?” (Zeek holds up a bunch of tangled wires.)**

JUSTICE FRANKFURTER:

**“I don’t know. See, that’s not actually my field of expertise.”**

ZEEK:

**“What is?”**

JUSTICE FRANKFURTER:

**“What is what?”**

ZEEK:

**“Your field of ... what you just said.”**

JUSTICE FRANKFURTER:

**“Justice. I dispense significant quantities of Justice, quite often on a regular basis.  
By the way, that left leg strap could be a little tighter.”**

(Zeek tightens the strap as Warden Resweber walks on stage.)

RESWEBER:

**“Well, I guess we better get started. No time like the present.”**

JUSTICE FRANKFURTER:

**“Are you sure this is absolutely necessary?”**

RESWEBER:

**“Of course it is. See, the Supreme Court has recently ruled that we can fry people  
more than once until we get it right. Death by installment.”**

JUSTICE FRANKFURTER:

**“But that’s ‘double jeopardy’!”**

RESWEBER:

**“Not according to a majority of the Justices. I think the vote was five to four. I’ve  
bet on horses with worse odds.”**

JUSTICE FRANKFURTER:

**“But I’m innocent! Believe me when I tell you that. I wouldn’t fib at a time like  
this.”**

RESWEBER:

**“I’m not so sure that’s relevant. See, the jury has already made its decision.”**

JUSTICE FRANKFURTER:

**“But you’re making a terrible mistake! Sitting here has helped me to look at this situation from an entirely new perspective. It’s a lot more interesting than business privilege tax ... especially when you’re personally involved.”**

ARCHIE:

**“Does that mean the brown wire is positive or negative? I’d love to talk some more, but we really do have a schedule to keep.”**

JUSTICE FRANKFURTER:

**“I don’t understand how you can be so cavalier. Life is precious. Just as soon as I awaken from this awful dream, I intend to do something about this entire unfortunate episode. I really do.”**

RESWEBER:

**“Mr. Justice, do you have any last words?”**

JUSTICE FRANKFURTER:

**“You betcha! Do something to wake me up.”**

(Archie throws the switch several times as the stage lights blink on and off. A buzzing noise can be heard as the electric chair is activated.)

#### **SCENE FOURTEEN: A TELEPHONE CALL TO THE GOVERNOR**

(The stage is divided into two portions. At stage left sits Justice Frankfurter in his office with telephone in hand. At stage right sits the Governor of Louisiana, Jimmie Davis, in his office. He is reading a newspaper as his secretary, who is off-stage, interrupts his thoughts.)

OFF-STAGE SECRETARY:

**“Pardon the interruption, Governor. I know you said to hold your calls, but this one might be important.”**

GOVERNOR:

**“Who is it? I haven’t even finished my coffee or the sports page yet.”**

OFF-STAGE SECRETARY:

**“Says he’s some judge or something. I didn’t actually catch the name, but it sounded like some sorta hotdog.”**

(Governor Davis puts down his newspaper with some agitation as he reaches for his telephone.)

GOVERNOR:

**“Governor Davis here. Who’s calling?”**

JUSTICE FRANKFURTER:

**“Good morning. It’s Justice Frankfurter. Is this Governor Davis of the State of Louisiana?”**

GOVERNOR:

**“Jimmie Davis, at your service. And who did you say you were? Justice who?”**

JUSTICE FRANKFURTER:

**“Justice Felix Frankfurter. I serve on the Supreme Court.”**

GOVERNOR:

**“Which Court? Felix who?”**

JUSTICE FRANKFURTER:

**“Frankfurter, and thank you for taking my call.”**

GOVERNOR:

(Still confused.) **“Frankfurter ... Supreme Court ...”**

JUSTICE FRANKFURTER:

**“I’m calling about the ‘Bobby Joe McKracken’ case.”**

GOVERNOR:

**“Who’s case? Wait a minute! Is that the guy we tried to execute a while back? I recently signed another death warrant.”**

JUSTICE FRANKFURTER:

**“Precisely. He’s about to be executed for the second time.”**

GOVERNOR:

**“I recall now. Yah, his next execution has already been scheduled. What can I do for you, Mr. Justice?”**

JUSTICE FRANKFURTER:

**“Upon further reflection, I believe you might find that it is possible the second death warrant may have been issued in haste. I’m calling to ask that you reconsider.”**

GOVERNOR:

**“Reconsider what? I was just followin’ your Court’s Order. Didn’t you guys up there in Washington D.C. recently conclude that there wasn’t nothin’ more to do, and that the sentence of death could be carried out? Or am I mistaken? Sometimes I get things confused.”**

JUSTICE FRANKFURTER:

**“A slim majority ruled that the sentence COULD be carried out. But that doesn’t mean that it MUST be carried out. You see, sir, as Governor, you have the ability to invoke Executive Clemency.”**

GOVERNOR:

**“Pardon the criminal? After he up and killed one of my fellow citizens? Somebody who may have been a registered voter? Is that what you’re suggestin’? Wasn’t that your job? After you guys poked your nose into Louisiana’s business, you could have reversed things, and showed us hillbillys down here how things is done right. But cha didn’t. Let me ask ya somethin’. Are Justices appointed to life terms on the Court?”**

JUSTICE FRANKFURTER:

(Surprised at the question) **“Why yes ... we are. But what has that got to do with ...”**

(The Governor interrupts.)

GOVERNOR:

**“Well, I ain’t. I’m runnin’ for a second term next year. Now supposin’, just supposin’ I let this here murderer go, what might the voters of the great state of Louisiana think next time they enter the voter’s booth? Nah ... you guys had your**

chance and you blew it. Ifn it's so important, then why don't you simply rewrite your opinion."

JUSTICE FRANKFURTER:

(Admonished) "That's the problem. Once a formal opinion has been issued, it can't be reversed until another case comes along."

GOVERNOR:

"Well, Mr. Justice, I don't quite see how that's necessarily my problem. After all, I'm a patient guy, and I'm willin' to wait for the next case to appear. Now you have a nice day, and why don't we both just relax and let Justice take its course." (The Governor hangs up his phone as the stage lights are extinguished.)

## SCENE FIFTEEN - A FINAL CONVERSATION

(The stage lights illuminate McKracken's cramped prison cell. McKracken is seated on his bed. The prison guard opens the cell door and motions for Attorney DeBlanc to enter. DeBlanc, who holds a set of documents in his hand, appears tired and concerned. The guard locks the cell door behind DeBlanc and leaves.)

MCKRACKEN:

**"Hi, Attorney DeBlanc. Nice of you to stop by."** (McKracken motions for DeBlanc to sit on the only other piece of furniture in the cell, an old wooden chair.)

DeBLANC:

**"Bobby Joe, I have some news."**

MCKRACKEN:

**"I heard tell."**

DeBLANC:

**"You did?"**

MCKRACKEN:

**"The prison guard showed me today's newspaper. I'm in the paper ... again ... me ... Bobby Joe."**

DeBLANC:

**"The Supreme Court has rendered its Decision, and I've brought you an official copy. It arrived in the mail this afternoon."** (DeBlanc hands McKracken a packet of papers. McKracken slowly turns the pages as he stops to rub one of the pages with his fingers.)

MCKRACKEN:

**“What’s this here lump?”**

DeBLANC:

(DeBlanc takes a look.) **“That’s the raised seal of the Court. They squeeze the page where their signatures appear with a device that makes an imprint. That way you know you’ve received a certified copy. Each lawyer in the case receives one verified copy.”**

MCKRACKEN:

**“The guard said it was close. The Decision was close.”**

DeBLANC:

**“Four Justices have ruled that the judgment of the Supreme Court of Louisiana affirming execution should be vacated and that you should not be subjected to electrocution until a determination is first made regarding the degree to which electric current was initially applied. If it were determined that you already experienced a form of cruel and unusual punishment, a further review of other sentencing options might be warranted.”**

MCKRACKEN:

**“I don’t understand all them big words.”**

DeBLANC:

**“They found in your favor, Bobby Joe. There would be a delay, perhaps permanent. They observed that ‘death by installment’ is unconstitutional.”**

MCKRACKEN:

**“Four of them Supremes decided that? I sorta agree.”**

DeBLANC:

**“Yes ... four ruled in your favor.”**

MCKRACKEN:

**“What about them other Supremes?”**

DeBLANC:

**“Five Justices have decided differently.”**

MCKRACKEN:

**“That I should be put back in the chair? Is that what dey said?”**

DeBLANC:

(Despondent) **“I’m truly sorry, Bobby Joe.”**

MCKRACKEN:

(Philosophically) **“Five to four. Close. When’s it gonna happen? When is they comin’ fer me?”**

DeBLANC:

**“This Tuesday. The Governor has submitted the paperwork for Tuesday.”**

MCKRACKEN:

**“Tuesday?”**

DeBLANC:

**“At twelve noon.”**

MCKRACKEN:

(He slowly processes the information he has received.) **“Attorney DeBlanc ...”**

DeBLANC:

**“Yes, Bobby Joe?”**

MCKRACKEN:

**“What’s a ‘Popper’?”**

DeBLANC:

(Confused.) **“A ‘Popper’?”**

MCKRACKEN:

**“Dey say I’m gonna be dumped in a popper’s grave. What’s a popper?”**

DeBLANC:

**“A poor person. But I don’t want you to give up hope just yet, Bobby Joe. I have a call into the Governor. I’ve asked him to reconsider.”**

(McCracken does not appear to be listening. He has entered into a detached mindset.)

MCKRACKEN:

**“It’s strange ... knowin’ the exact moment you’s gonna die. Not many people have an idea when their time’s up. (DeBlanc doesn’t answer. He is too distraught.) I’ve been thinkin’. Tell ya what I’d like to have writ on my gravestone.”**

DeBLANC:

(Caught off guard.) **“Tell me, Bobby Joe.”**

MCKRACKEN:

***“It took two times to kill an innocent man.”***

DeBLANC:

**“I’m still looking at other options. There’s still hope.”**

MCKRACKEN:

**“Ain’t necessary. When you know your time’s come, you get tired, and just want things to end. I’ve been in this cage comin’ up on a whole year. That’s a long time. I don’t mean no disrespect. I know you’ve worked hard to make things right, but sometimes there’s nothin’ more ta do.”**

DeBLANC:

(He tries to interrupt, but McCracken has other thoughts on his mind): **“Bobby Joe ...”**

MCKRACKEN:

**“Funny. When they pulled the switch the first time, I thought I was dead. Then it come to me that I was still alive. I was kinda disappointed.”**

DeBLANC:

**“I don’t understand.”**

MCKRACKEN:

**“It wasn’t so bad as people think...bein’ dead. There’s worse things than that.”**

DeBLANC:

**“I’m not sure I ...”**

MCKRACKEN:

(He interrupts): **“Like bein’ trapped in this here box for over a year for no particular reason. Ain’t seen the sun for a long time. I use ta hate pickin’ crops in da hot sun. Now I’d give anything fer just an hour back in the fields. By the way, I was wonderin’ where da Supremes hang out?”**

DeBLANC:

**“The who?”**

MCKRACKEN:

**“Them nine Justices. Seems ta me they shoulda showed up personal-like to hand me the news themselves. That’s the least they could do. (There is a pause in the conversation.) And another thing ...”**

DeBLANC:

**“What’s that, Bobby Joe?”**

MCKRACKEN:

**“If the priest decides to come again, I hope he has somethin’ more important to say. The first time he showed up, he failed to bring any comforting words. I can help him out, if he wants. Then he could borrow my words if he needs ‘em to comfort the next guy they decide to fry.”**

DeBLANC:

**“You’ve found some soothing words?”**

MCKRACKEN:

**“People’s been readin’ ‘bout my case in the papers. Some have followed what’s been happenin’ since my first execution. Some have sent me letters of encouragement and hope. I do surely appreciate their thoughts.”**

DeBLANC:

**“There’s no question that lots of people have been interested in your case. Law professors, lawyers, judges, and many other caring individuals. Several have contacted me.”**

MCKRACKEN:

**“A while back, I got this letter from a guy in Germany. We just fought them in the big war.”**

DeBLANC:

**“I recall.”**

MCKRACKEN:

**“This guy wrote to me in German. It took a while, but they finally got it translated for me. Wanna see the letter? (McKracken searches among his few possessions and locates a stack of letters bound together by some string. He produces a letter and hands it to DeBlanc as he points to a specific sentence.) Read that line there, the one I got underlined.”**

DeBLANC:

(He reads aloud): **“Mein Angstberg ist gestiegen das mich so traurig macht.”**

MCKRACKEN:

**“Now, read the translation.”**

DeBLANC:

**“My mountain of anguish has been climbed that made me so tired.”**

MCKRACKEN:

**“I’ve finally climbed the mountain. It took a while. (McKracken pauses for a moment.) Do you think you will remember me? I know dat I’ll remember you - forever.”**

DeBLANC:

(Overcome with emotion.) **“Yes, Mr. McKracken, I will never forget you. Not ever.”**

MCKRACKEN:

**“Glad to hear. Dat helps a lot. It truly do.”**

(Stage lights extinguished. End of play.)