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TUESDAY, AUGUST 15, 2017

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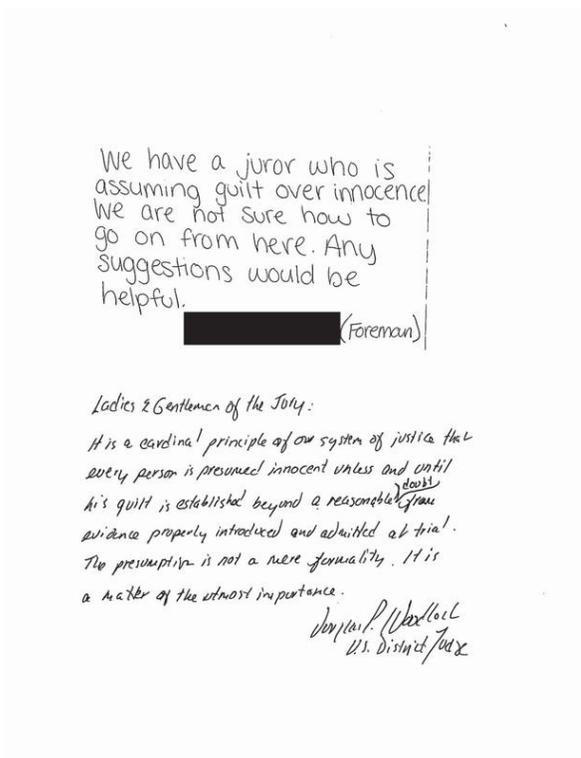
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McGovern: Holdout could help defense

Judge careful with words

Bob McGovern Tuesday, August 15, 2017



Credit: Courtesy

'FAIR RULES': The jury in the Teamsters extortion trial sent a note to Judge Douglas P. Woodlock indicating a juror was 'assuming guilt over innocence.' Woodlock responded with a push to adhere to a trial tenet: presuming innocence until proven guilty. Courtesy of the Department of Justice

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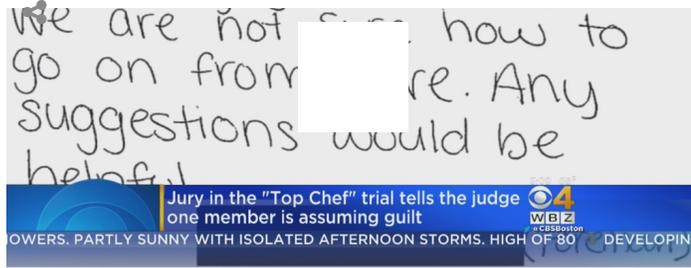
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McGovern: Holdout could help defense

'Top Chef' Trial Enters Day 4 Of Juror Deliberation

CBS Boston



Declaring someone guilty until proven innocent is an affront to the American criminal justice system, but for the Teamsters awaiting a verdict in the “Top Chef” extortion trial, hearing that a juror is thinking like that may provide some comfort.

It could mean that a frustrated jury has reached an impasse or that reasonable doubt is eluding just one juror. Either option is better than a guilty verdict.

And that’s probably why the defense attorneys who have litigated this case didn’t jump up and down when a note was handed to Judge Douglas P. Woodlock indicating that a juror was “assuming guilt over innocence.”

“If they think they are dealing with one holdout in favor of conviction, it may well be that the defense doesn’t want to overturn this applecart,” said Edward P. Schwartz, a longtime jury consultant.

“If you have a lopsided group in favor of acquittal, it may be that the defense believes that the holdout could flip,” Schwartz said.

There is some science behind this gamble, according to Schwartz. Studies have shown that a juror who is leaning toward acquittal is unlikely to budge. However, if a juror is the sole voice considering guilty, they are more easily swayed, Schwartz said.

“That’s based on some pretty sound, psychological research,” he said. “Pro-defense jurors tend to stick to their guns more readily.”

For Judge Woodlock, the decision on how to act was likely pretty clear. While he could have conceivably removed the juror or disrupted deliberations to parse out the problem, he instead sent a note back describing the presumption of innocence as a “cardinal rule.”

Anything more could have been seen as an overstep and opened the door to appeals or other 11th-hour headaches.

“You want to do what is necessary to clarify things without intervening in the deliberations,” said former U.S. District Judge Nancy Gertner. “Anything you do now can be seen as putting your finger on the scales.”



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If there is one juror who is holding up deliberations, Woodlock's note could also help other jurors push the holdout in their direction.

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If the juror starts going down the path of presuming guilt, the foreperson can hold up the judge's own words.

"Here it seems like the other jurors are frustrated, and it's gotten to the point where they decided to ask a judge for help," said Peter Elikann, a defense attorney not involved in the case.

"The judge's note can be an extra assist in getting the holdout to at least play by the fair rules," Elikann said.

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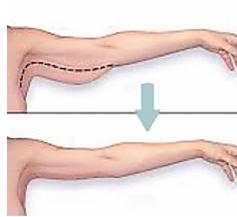
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