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## Serial (S3, E1): A Bar Fight Walks Into the Justice Center

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Pt. I: As you listen...

1. (~13:00) What is Anna charged with? Describe the incident that led to the charge.
  - a. Explain the **plea bargain** she is offered by the district attorney.
2. (16:00) Rus is a **public defender**. What does this mean?
  - a. What are the two types of clients he works with?
  - b. According to Rus, how does he treat these clients differently?
3. (~19:00) Jennifer is a lawyer for the **district attorney**. What is her role in this case?
  - a. What does Rus ask Jennifer to do? How does she interpret this request and react to it?
4. (~21:30) What bias does Jennifer have to deal with in her job? How might this affect how she tries cases?
5. (~22:00) How does Jennifer's version of the incident differ from Anna and Rus's?
  - a. Why does Jennifer see this incident so differently?
6. (~34:00) How do most cases in the Cleveland court system end?
7. (~37:00) Rus is worried about the judge that was randomly assigned to Anna's case. How might this judge affect Anna's fate?



**Transcript:**  
**Serial (S3, E1): A Bar Fight Walks Into the Justice Center**

**Sarah Koenig**

The Justice Center in Cleveland, Ohio, takes up a whole city block downtown. It's a cluster of concrete towers built in the 1970s. I could hedge here, but I'm just going to say it—the buildings are hideous, but practical.

[INDISTINCT CHATTER]

The Justice Center houses in one location everything a justice system needs—the city and county courts, the county jail, prosecutor's offices, the sheriff's office, and headquarters for the Cleveland police.

Roughly speaking, the building functions like most hierarchies—vertically. In this case, from the bowels up. The main court tower is 26 stories high, so the elevator really runs the place. If a person's arrested in Cleveland, they're coming into the Justice Center from the basement. Weary cops escort suspects from the underground parking garage. They get booked, go up a few floors to the jail.

Once they get a court date they're riding up to one of the courtroom floors. The lower floors are for lesser crimes, less hallowed proceedings—misdemeanors, housing court. And the higher floors, starting about halfway up the building, are for felonies. Detectives wearing lanyards often get off on the ninth floor where the prosecutor's office is. The court stenographers, always courteous, drag their squat wheelie cases on and off the elevator. Maybe they chat for a few floors with the officers from the sheriff's department, in search of a coffee and a muffin.

Defense attorneys are riding up and down all morning, muttering to each other, can you believe?, griping about judges who have their own judge elevators, so they're not overhearing. The elevator mainstays, of course, are crime victims and their families, and defendants and their families. Sometimes, those families are one in the same.

When I'm feeling optimistic I appreciate that an elevator car in a government building is one of the few places left in our country where different kinds of people are forced into proximity. I like to think that we can all stand so close to one another, with our sensible heels, and Timberland boots, and American flag lapel pins, and fake eyelashes, and Axe cologne, and orthopedic inserts, and teardrop tattoos, and to-go coffees. And when the elevator doors open up, spilling us out onto our floor, the fact that no one is bloodied or even in tears, it's a small, pleasing reminder that we're all in this together.

Other times, the shoulder-to-shoulder closeness only magnifies the obvious—we're not the same, not at all. Coming up from the lobby one morning a young black woman is holding a little portable speaker.

[HIP HOP MUSIC PLAYING]

The white people in the elevator give each other looks. I don't want to reciprocate their looks. Instead, I decide it's my duty to break the tension by saying the lamest thing I possibly can. To be clear, that wasn't my plan. That's just what came naturally to me, apparently.

**Sarah Koenig**

Quite a soundtrack for the elevator.

**Woman**

Mm-hmm.

**Sarah Koenig**

It's not like your Muzak you usually get.

She doesn't even bother with a "mm-hmm" this time. Now I keep my head down to avoid the looks the black people are probably giving each other. This place is primarily black and white. The majority of the courthouse staff is black. Clerks are mostly black. Most of their managers are white. In the sheriff's department, most of the security guards are black. Most of the deputies are white. Most of the attorneys are white.

Almost all the county judges are white, and their bailiffs are white. Most of the defendants and crime victims are black. In the cocoon of the elevator everyone's polite to each other, pretends nothing is weird about this. But if the elevators were calibrated to detect a power imbalance in the load, like a socially conscious clothes dryer, they'd be perpetually on the fritz.

From *This American Life* and WBEZ Chicago, it's *Serial*— one courthouse, told week by week. I'm Sarah Koenig.

If you've listened to *Serial* before, you probably know that our first season was about a murder case in Baltimore. Ever since that story aired, people have asked me and people I work with a question—what does this case tell us about the criminal justice system? Fair question. And to answer I usually say, um. Because the answer is that cases like that one, they are not what's filling America's courtrooms every day.

The defendant in that case, Adnan Syed, was charged with first-degree murder. He had never been in trouble before. His family hired an expensive defense attorney. And rarest of all, his case went to trial, and it lasted six weeks. None of that is typical of the vast majority of cases moving through the criminal courts in this country.

And even if it were, I don't think we can understand how the criminal justice system works by interrogating one extraordinary case. Ordinary cases are where we need to look. We need to spend at least a year watching ordinary criminal justice in the least exceptional, most middle of the road, most middle of the country place we could find—Cleveland.

When I first began reporting this story I called a former U.S. attorney there for advice, explained what I wanted to do. And he said, Cleveland's not a bad choice. And then he said, please don't be mean to Cleveland. You can be mean to the criminal justice system, but please don't be mean to Cleveland.

I told him I didn't plan on taking cheap shots at the Mistake by the Lake, because I'm a classy reporter. And anyway, we could have gone to lots of cities and the problems would look about the same. Minneapolis or Atlanta or Pittsburgh or Sacramento. Same sorts of crime, same struggle for fairness, same attempts at reform.

In most courts though, it's really hard to record. You might need permission from the State Supreme Court. Hello, Illinois. In other places, recording of any kind is barred in courtrooms. What is your problem, Pennsylvania? Cleveland though, they let our producer Emmanuel Dzotsi and me wander the courthouse unencumbered with microphones. Extraordinary.

We spent more than a year in the Justice Center, following criminal cases of all sizes. Tiny ones reporters don't usually pause over, like weed possession or driving under suspension. Heavier cases—assault, armed robbery. Up to the most serious crime there is—aggravated murder.

Every case Emmanuel and I followed, there came a point where we thought, no, this can't be how it works. And then we were like, oh—oh, my god, this is how it works. This is how it happens. People who have been through the system, who work in the system, maybe they know what I'm talking about. But millions more don't know.

This season, we're going to tell you the stories of the cases we followed. Sometimes they're going to overlap. They might span two or even three episodes. You'll see what we saw from the inside.

First case we're going to talk about is small. It's a bar fight. We're starting with this one because it's a simple case, and it's also an example of the system working. I want to show you what that looks like in this courthouse, so you have a baseline for what's considered functional justice in Cuyahoga County.

So, here we go. A bar fight walks into a Justice Center. How's it going to look when it walks back out?

**Russ Bensing**

Let me show you this video. I want to get your impression of it.

**Sarah Koenig**

One morning last spring Russ Bensing, a defense attorney, takes me into a little side room off the hallway on the 20th floor of the Justice Center. He wants to tell me about a case he's got. I'm calling the defendant Anna, which is not her name.

**Russ Bensing**

She's charged with assaulting a police officer, which is a fourth-degree felony.

**Sarah Koenig**

Russ is drafting me into a one-person focus group here. He wants to know whether an outsider like me will interpret the video the same way he does. I'm his stand-in for a juror.

**Sarah Koenig**

OK. So just explain what we're looking at.

**Russ Bensing**

OK. This is a surveillance tape at the bar. This incident occurred in a bar. OK. There she is right there in the lower left-hand corner.

**Sarah Koenig**

OK. I see her long hair.

**Russ Bensing**

Yeah. Yeah, long hair.

**Sarah Koenig**

And a T-shirt.

**Russ Bensing**

Yep, yep, yep.

**Sarah Koenig**

Anna's white, young-looking, small. She's wearing librarian glasses, skinny jeans, boots, and a T-shirt that fits her just so. Even in this terribly grainy video, she's attractive. She's leaning on the corner of the bar.

**Russ Bensing**

OK. There she is. You'll see somebody approach her from the rear and smack her ass.

**Sarah Koenig**

Is that what he just did?

**Russ Bensing**

Yeah. Well, you'll see it more.

**Sarah Koenig**

Anna had gone out that night with her friend and some other guy to a small corner bar on the west side of Cleveland. When I met Anna, she told me it's not the sort of place she usually hangs out. It was her first time there.

**Anna**

Just a little rougher. People are there—older people.

**Sarah Koenig**

She and her girlfriend noticed these two women down the bar looking at them.

**Anna**

I just noticed her and the other girl like constantly staring at us. But we still stayed there for about an hour. And that's when—

**Sarah Koenig**

Did they talk to you or anything?

**Anna**

No.

**Sarah Koenig**

So what was—why were they looking at you?

**Anna**

I have no idea. I personally think it's because we were pretty.

**Sarah Koenig**

[LAUGHS]

**Anna**

So I go and get a drink, and this guy is smacking me on my rear end and—

**Sarah Koenig**

It was a guy you had been talking to or no?

**Anna**

No, just some random guy at the bar.

**Sarah Koenig**

Are you serious? It was a random guy? I figured you knew that guy.

**Anna**

No, I did not know him.

**Sarah Koenig**

Why is he just smacking your butt?

**Anna**

Because men are dogs. [LAUGHS] They can be dogs. And at first I was like, haha, stop. And then he kept doing it, and I actually got mad and I got in his face.

**Sarah Koenig**

In the surveillance video, there's a perfect view of all this. First, one guy touches her butt. Anna lets it go. Then a second guy touches her butt. She pushes him back in a playful way. Then the first guy starts in again, hitting harder, smacking her ass three times, four times. Anna turns and lifts her foot at him, as in, cut it out. He slaps her a sixth time.

Behind her, a police officer walks slowly onto the screen. He's not seen any of the slapping. He'd just come from the bathroom downstairs. He had been working down the block and had come in the bar to pee. Meanwhile, back at the counter, smack, the guy hits Anna a seventh time. Anna spins around to confront the ass-slapper.

At that point, one of the women who had been staring at Anna from down the bar, a stocky blond, she storms over to Anna, gets between her and the ass-slapper, and immediately gets into it with Anna. This is what Russ wanted me to see, how Anna was provoked.

**Russ Bensing**

This other woman enters the picture frame, and they start arguing, and then they go at it. It's not clear if anybody threw the first punch or what.

**Sarah Koenig**

But Anna goes decisively for the lady's throat, and then it's just a mess. The people around them are trying to break it up, but Anna's not stopping. She's thrashing around. She gets swallowed up in the crowd.

**Russ Bensing**

A whole bunch of people knocked her to the ground, where this person kicks her.

**Sarah Koenig**

Oh. Oh. Oh, my god. Whoa. Whoa.

All these boozy patrons are piling in. People are grabbing Anna's long hair and her head is getting yanked around. Then she's pulled to the floor. It's awful to watch. The most disturbing moment to me is when the blond lady's friend takes off her eyeglasses, places them next to her beer, readies herself by sweeping back her hair, and then she doesn't just kick Anna, she gives her a ferocious stomp, like she's trying to kill a rat.

Anna gets back up, or maybe she's dragged back up. I can't even tell if she's fighting anyone in particular anymore. Anna later tells me she's got the heart of a fighter, but maybe not the skills. That looks about right. Someone behind Anna has got his big arm around her neck.

**Russ Bensing**

Now you see the cop. There's the cop right there. And people are still grabbing her and she's flailing.

**Sarah Koenig**

He's got her by the neck.

**Russ Bensing**

Yeah. And there's where she swings and hits—

**Sarah Koenig**

And hits the cop. Looks like she gets him on the left side of his face. And then the cop, who's a big dude, is on top of her, takes her to the ground, cuffs her. After that, it's four nights in the Cleveland City Jail, a \$5,000 bond to get out, and a fourth-degree felony charge—assault on a peace officer. The video ends.

**Russ Bensing**

So, you're on a jury, you see that. You convict her?

**Sarah Koenig**

No, I wouldn't convict her. I mean, I don't think I would. Yes, technically she connected with the cop's face. But to me, it looked accidental. That is the answer Russ is hoping for—a solid not guilty for his client. Better yet, he'd like a not guilty tinged with righteous indignation, which I can also provide.

How does the video we just watched add up to a felony charge? A young woman tries to stop a man from hitting her ass. She's then verbally and possibly physically attacked by some puffed-up buttinsky from down the bar, ends up fighting for all she's worth, defending herself—all 110 pounds of her—against a pack of strangers. Cops steps in, she hits him, from the looks of it, by accident.

The cop is not injured, by the way. Anna is the one who ended up scratched and bleeding. I get that bad behavior abounds in this episode, and Anna is included. But felony assault? To become a felon for this? That cannot be right. Russ thinks it's not right. He thinks that the system got this one wrong, that Anna's case should not be happening at all. He tells me, today, his plan is to go big.

**Russ Bensing**

I know that they'll offer me a misdemeanor assault on this case.

**Sarah Koenig**

But he doesn't want to settle for a misdemeanor assault on this one. He's got the surveillance tape, which reads like a closed circuit morality play. He feels like that alone ought to be strong enough evidence to force a course correction on the part of the state, to undo what's already been done.

Anna's race, her whiteness, is not really part of his calculation here. But at least it doesn't work against her. After many decades in this business, Russ says he's accepted the shameful truth that, as a general rule, it never helps to be black, it never hurts to be white. So today—

**Russ Bensing**

I'm going to try to see if the state will dismiss the charges. OK?

**Sarah Koenig**

He's going to ask the prosecutor to drop the whole thing. This is what I've come here to see. How is this adversarial system going to turn now? How is this going to play out? Russ gathers his stuff, we leave the little conference room. I follow him as he goes to look for Anna. He told her to be at the courthouse this morning by 9:00.

**Russ Bensing**

Mary, how you doing? What's your guy doing in the—

[SPEECH FADES]

**Sarah Koenig**

Russ has been an attorney for 41 years. He's head of the Cuyahoga Criminal Defense Lawyers Association. That's how I met him. I went to a meeting of the group and watched how all these people rushed him afterwards, as if he were wearing a pin that said, win your case now—ask me how!

It's like that all the time with Russ. He walks around the Justice Center and people just come at him for advice, ping-ponging the details of their cases off on him. An attorney corrals him in the hallway. So my guy was caught transporting the two kilos from Chicago to Cleveland, he says.

**Attorney**

OK. But he doesn't admit to being the guy that made the secret compartments.

**Russ Bensing**

Yeah.

**Sarah Koenig**

Yeah, yeah, OK, Russ will say, rocking a little on his heels, worrying the coins in his pant's pockets. Then he'll cite the case law they need or the new ruling out of the Eighth District they hadn't heard about. Russ has no personal secretary, no law clerk. It's just him.

He likes the action here. He likes the kibitzing. And he's a master of doleful TGIF courthouse repartee. Did I hear something about justice in this building? I like Russ. His colleagues like him, too. Not clear whether his clients like him. He can sometimes be a bit of an asshole to his clients, actually. They call him all day long.

One guy didn't show up at the courthouse today and was confused about where he's supposed to go. Russ tells him, to the Justice Center where the court is. You've been here before.

**Russ Bensing**

What? You don't have a warrant. You don't have a—just get down here, OK?

**Sarah Koenig**

Like most of the defense attorneys in this building, Russ has some paid clients. But he also has a lot of assigned clients, people who can't afford to hire a lawyer so the court provides one. That's how they do it in Cuyahoga County. Thirty to 35 percent of indigent defendants get a public defender, and the rest are assigned to private attorneys like Russ.

Russ says the difference between how he treats is paying clients and his nonpaying clients comes down to hand-holding. The actual lawyering part is the same, he says, but his bedside manner changes. With a paying customer, he might visit them in jail just to check in, make sure they're doing OK. He is not doing that with an assigned client. And I'm guessing a paying client, he is not talking to them like this.

**Russ Bensing**

Tell you what, Mike, OK, I've been doing this for 41 years. I'm going to be willing to bet that I can do a better job of researching the law than you can. So let me take that weight off your shoulders.

**Sarah Koenig**

He hangs up.

**Russ Bensing**

[SIGHS] Un-fucking-believable.

**Sarah Koenig**

Anna is also an assigned case, but so far she hasn't annoyed him. He's nice to her. He meets her up on the 20th floor. She's sitting in the waiting area under the TV. There's one on every floor, set to the Food Network always.

**Chef**

(ON TV) Just the right amount of nutmeg that just brings that nuttiness—

**Sarah Koenig**

Anna looks small and nervous. I'm not allowed to record their meeting. That would violate attorney-client confidentiality. Russ leads her to a conference room so he can explain what's happening today. A pretrial conference. It sounds formal, but it's not. All it means is that Russ will track down Anna's prosecutor, and they'll have a quick conversation about the case.

Anna doesn't even get to be there for it. She just has to sit and wait under the TV for Russ to report back. I don't know whether Anna knows this yet, but Russ for sure knows it. Prosecutors will almost always pursue a case that involves a cop. That's the way it is. Law enforcement code.

The next time I see Russ he's eating a piece of carrot cake that was on offer in a judge's chambers. He's had his pretrial with the prosecutor on Anna's case.

**Russ Bensing**

I made the marked request for a dismissal.

**Sarah Koenig**

Meaning, Russ asked the prosecutor to drop the case against Anna.

**Russ Bensing**

She said that was laughable, and the file would probably be marked as a felony. So it'll probably be tried.

**Sarah Koenig**

Wait. She wouldn't even knock it down to a misdemeanor—to a misdemeanor assault?

**Russ Bensing**

Well, she doesn't have the power to do anything. She has to take it to her supervisor, who's a hard marker. And—

**Sarah Koenig**

A hard marker means—

**Russ Bensing**

Yeah, just like it sounds. That it's not going to reduce much.

**Sarah Koenig**

Russ sounds matter of fact about this. And he is, sort of. He's not shocked that his dismissal request was shot down. But he is offended about the way it was shot down.

As the day wears on and I follow Russ around to his other pretrials on other cases—the kid caught driving a stolen car, a sex offender who violated a registration requirement, a guy nailed for having drugs and a scale in his car—Russ keeps circling back to how the prosecutor on Anna's case called his request laughable. He couldn't shake his irritation. He told me about it, he told other people waiting at the elevators about it.

**Russ Bensing**

Laughable. Laughable.

**Sarah Koenig**

He was irritated because he didn't make this dismissal request frivolously. He's been doing this a long time. He's good at it. He knows how disinclined prosecutors are to drop a case, how rarely that happens. He wouldn't ask for a dismissal without good reason. So to call it laughable feels disrespectful. He doesn't really know this prosecutor.

Her name is Jennifer King. He's heard she's a good lawyer, but she's a little young. Maybe she doesn't yet understand that if you call a person's earnest mark request laughable, that can erode the professional relationship. I talked to Jennifer King. Perhaps unsurprisingly, she had a different take on why they got off to a scratchy start.

Jennifer's been in the prosecutor's office for three years in the general felony unit. She's got a huge inviting smile. She told me Russ's request for a dismissal didn't sound like much of a request to her. She didn't like his tone.

**Jennifer King**

The defense attorney came to me at the first pretrial and said, you're going to dismiss this.

**Sarah Koenig**

Oh, he did?

**Jennifer King**

Yeah.

**Sarah Koenig**

He didn't say, will you dismiss this? He said, you're going to dismiss this.

**Jennifer King**

I mean, he was asking, but it wasn't in an asking manner.

**Sarah Koenig**

Did he mean, you guys are going to end up dismissing this. Like, by the time I'm through with you, you're going to wish you never—like, it was like that. Or was he saying, hey, can you dismiss this? What did you take from it?

**Jennifer King**

I took from it as being pretty aggressive. And no, you're going to dismiss this because this case is crap and you all are just charging random girls in this fight.

**Sarah Koenig**

Jennifer felt like Russ was telling her how to do her job.

**Jennifer King**

A young female prosecutor who has never worked with an older male prosecutor who has probably been practicing longer than I've been alive comes at me and says, you're going to dismiss this case.

**Russ Bensing**

I never told her you're going to dismiss this case. Never. I would never say that to any prosecutor. I would never—I'm not a confrontational guy.

### **Sarah Koenig**

Not to belabor this, but Russ remembered yet, a different interaction in which he thought Jennifer misinterpreted him. He says he tried to fix it after that first meeting. Told her he didn't mean any offense by anything he said. But his quasi-apology didn't go over well. He knows it's hard to be a female attorney in this building, especially a young one.

Female attorneys get short shrift, he says. There's a bias against them, principally among older white men, i.e., a lot of the criminal bar.

Jennifer told me whatever her personal feelings about a defense attorney, she is not going to take them out on the defendant. That does not influence my mark, she said. I thought maybe Jennifer would be a little sheepish about Anna's case, that they were prosecuting it at all, much less as a felony.

But, no. To Jennifer, Anna's case was uncomplicated. Anna was facing a felony because punching a cop is a felony. Jennifer had watched the same bar surveillance video that Russ had, and that I had, and she said, so, yeah, you can see what happened, but—

### **Jennifer King**

What you don't have is audio. You don't hear the officer saying, police, break it up. And she's still flailing. She's still kicking. And she punches an officer who's trying to keep people from being harmed right in the face. And her arm comes around, so we see, yes, there is an assault there.

### **Sarah Koenig**

Did that did that punch look deliberate to you? Or did it look like somebody flailing around trying to defend themselves?

### **Jennifer King**

Somewhere in between. I mean, no, it wasn't a duked up, straight punch to the face, I see you kind of a thing. But then again, it wasn't just like her arm flung back and happened to hit him in the face either. She is aggressively fighting at that point. And yes, there's lots of people on the floor, and there is another woman kicking her.

But really, if she had just stopped at that point, nothing probably would have come of this. She probably wouldn't have been charged with any sort of assault.

### **Sarah Koenig**

For the record, Anna says she never heard the officer say stop or break it up. She says she never even knew police were in the bar until someone arrested her. But that's Anna's word over a cop's. Jennifer will take the cop's.

Russ thinks this whole case is built on a misunderstanding, starting from the very beginning when the cop arrested Anna. Russ pointed out that the cop didn't watch the surveillance video that same night, so he must have thought Anna was the troublemaker. In his police report he writes that Anna quote, "initiated the fight." Russ said the cop didn't know Anna was being harassed by some skeezy dude in a baseball cap, didn't know the blond lady got in Anna's face, that Anna got stomped while she was on the floor.

If the cop had known, Russ said—

**Russ Bensing**

I don't think he would have charged her. I don't think anybody really knew the full story of what happened.

**Sarah Koenig**

Is that true though? The police were wearing body cameras that night in the bar. Listen here.

**Kristin**

Like, stop smacking my ass.

**Officer**

Smacking who's ass? Your friend's?

**Kristin**

Yeah. He was smacking her ass.

**Sarah Koenig**

This is Anna's friend Kristin, who was sitting next to her in the bar. Kristin talked to at least three different officers that night, including Sergeant Timothy Gill, the cop who got hit in the face. And she told them all the same story, same accurate story.

**Kristin**

So then he wouldn't stop, so she got pissed off. Like, yo, chill the fuck out. Stop smacking my ass. And then the other girl got in her face. Jumped up right away, said, don't talk to my friend like this, and then started going at it with her.

**Sarah Koenig**

This body camera footage is part of the evidence in Anna's case. I listened to all of it. And I've got to say, it contains some gems for Russ's case. First of all, the officer did know what happened. And yet, Anna is the only one who gets in any trouble that night, which seems extravagantly unfair.

At one point, Sergeant Gill tells Anna they're aware of the lady who got in her face, that they are going to file a report saying that lady assaulted Anna. That doesn't happen. They never even talked to that lady. She wisely hightailed it from the bar right after Anna was detained.

In his report, Sergeant Gill will describe the other woman not as an assailant, but as a quote, "mutual combatant." As for the ass-slapper, he did stick around. There's this whole exchange between Kristin and Sergeant Gill where he asks her, what'd the guy look like who was smacking your friend?

**Timothy Gill**

White guy, black guy, Hispanic guy?

**Sarah Koenig**

And Kristin demurs. She's like, I don't know. And then Gill says—

**Timothy Gill**

Sweetheart—

**Sarah Koenig**

Sweetheart, just give me what you got. And Kristin coughs it up. She says, that's him right there in the red jacket.

**Timothy Gill**

All right. We got to speak to the guy with the red jacket outside.

**Sarah Koenig**

The guy's taken outside, patted down, put in the back of a cruiser. And then the police let him go. Why would they do that? you ask. Well, maybe because back inside the bar, the remaining patrons say, oh, the guy in the red jacket? Nah.

**Troy**

I don't think he had anything to do with it, officer.

**Sarah Koenig**

I talked to this fellow afterwards. Troy. He's nice. He felt badly about what happened to Anna.

**Troy**

We all, as—there was about four or five people that said, we never seen that. He wouldn't do something like that.

**Sarah Koenig**

Did you know him?

**Troy**

No.

**Sarah Koenig**

OK.

**Troy**

But—

**Sarah Koenig**

But other people did know him?

**Troy**

Yeah.

**Sarah Koenig**

To say, like, that's—he wouldn't.

**Troy**

That's not him. He wouldn't do that.

**Sarah Koenig**

Troy believes this is why the ass-slapper was let go. Because they all vouched for him.

**Sarah Koenig**

OK. [LAUGHING] Huh. So the male cop is believing four men or six men over the women who say he slapped her ass.

**Troy**

Yeah.

**Sarah Koenig**

Also, the cop himself, Sergeant Gill, the victim, he doesn't appear to care that much about being punched. Consensus from the bar patrons is that the punch was essentially an accident. They don't think anyone should get hauled downtown, including Anna.

They give Sergeant Gill some sloppy push back. You've got to arrest her? Seriously? Sergeant Gill struggles a little to explain. In this tape, Sergeant Gill is in the background. He's saying, let me make this perfectly clear. Nobody wants to arrest the gal.

**Timothy Gill**

First of all, let me make this perfectly clear. Nobody wants to arrest the gal. Will I press charges? No, I'm not. Do I think it's the biggest deal in the world? No, I don't.

**Sarah Koenig**

It's hard to hear, but he says, will I press charges? No, I'm not. Do I think it's the biggest deal in the world? No, I don't. He says the same thing to Anna, who's outside the bar, sitting in the back of a police cruiser half handcuffed. One cuff had slipped off and was dancing every which way.

His tone with her is not exactly apologetic, but it is conciliatory. Gill tells her, sweetheart, don't worry. I'm not going to press charges.

**Timothy Gill**

Sweetheart, don't worry. I'm not—listen, I'm not going to press charges. It doesn't matter. You're fine. But I have to take you to jail because you hit a policeman. But it doesn't—hey, listen to me. It doesn't—roll down her window just two inches.

**Anna**

You guys are riding me for no reason.

**Sarah Koenig**

I'm not sure why Sergeant Gill is saying he's not going to press charges. Sergeant Gill isn't the only decider on this. He's the first link in a chain. Here's what's going to happen. A detective will come by the bar tomorrow and look at the surveillance tape. He'll see what he needs to see, that Anna's arm made contact with Sergeant Gill's face. And that will be probable cause for felony assault on a peace officer.

The prosecutors will take it from there. First, the city prosecutor, then the county prosecutor. Sergeant Gill could stop the whole thing right now as he's talking to Anna. He could let her out of that cruiser, send her home to bed. But he doesn't. Instead, he says this, which to me, is the most confounding sliver of audio from the whole night. Sergeant Gill says, I know you didn't mean to punch me.

**Timothy Gill**

I understand it was—I'm sure it was purely accidental. But the fact is, we've got to go.

**Sarah Koenig**

I'm sure it was purely accidental, he says. Maybe he's just trying to calm her down. Regardless, Anna is not placated. It's possible nothing could have placated her just then. She told me she was a little drunk and very angry sitting in the back of that cruiser.

**Anna**

Got me sitting in a fucking cop car for hours for no fucking reason. Why am I in the back of this car? This is bullshit! Why can't you guys tell me?

**Sarah Koenig**

Anna loosed a slurry of invective, of protest. For one hour she kept it up. I asked her, how was she not scared to talk to cops like that? She said, I hate to say it. I'm a white girl. You know what I'm saying? Sometimes you can get away with things, and you can say things. Do you understand what I'm saying? I did understand what she was saying.

**Anna**

[KNOCKING ON WINDOW]

Really?

**Sarah Koenig**

And the cops on the receiving end of this, these aren't even the cops who arrested her. Never went into the bar or anything. They happened to be on duty down the block when someone deposited Anna in their backseat. By the time they drive her to the Justice Center and shepherd her from the garage onto the elevator, they're arguing like family—tired and familiar.

**Officer**

We know just as much as you.

**Anna**

So why am I here? Why are you with me? Where's the police officer that I supposedly assaulted?

**Officer**

I don't know.

**Anna**

Yeah. Where is he?

**Officer**

I don't know. I can't answer that.

**Anna**

Not guilty.

**Officer**

That's fine. That's fine. But you still have to go through this.

**Sarah Koenig**

You still have to go through this. The message to Anna from the police officers that night was, we know you don't want to get on this train. But too late, you're already on it. Don't worry though, it'll stop for you—eventually. Like Sergeant Gill said to the bar patrons after one of his rhetorical Q&As, do I want to do it? No, I don't. He added, she'll get her day in court. That's coming up after this.

In his heart of hearts, Russ thinks the real reason the prosecutor's office is pursuing this case against Anna is because there was a cop involved, yes, but also because she's already got a record. No felonies, but she's got some misdemeanors. From Florida, there's a driving under suspension, a DUI. Then some local convictions, including a recent one, which looks pretty bad. A case that started out as two felony theft charges, but got dropped down to misdemeanors.

So Anna's not clean. Not that there are a lot of clean records in the Justice Center. Most of the defendants, many of the victims, too, have had some prior entanglement with the law. And even if it's small stuff—marijuana possession or trespassing—you get the stink on you, or what I've come to think of as the stink. You get a whiff of bad citizenry about you. An odor that causes the presumption of innocence to shrivel.

Russ understands why, I understand why. It's because everyone who works in this building has become accustomed to the likes of you. You are the usual suspect. And now it feels natural that the courthouse is where you belong. So with the aroma of prior misdemeanors clinging to Anna's file, the prosecutor moves from the laughable stage of negotiations to a solid plea offer. M1 assault, first-degree misdemeanor, just as Russ had predicted.

Russ knows the whole system is primed for him to take this misdemeanor offer, facts of the case be damned. Everyone here pleads. Ninety-six percent of convictions in this courthouse come from pleas. All day that's what people are doing—brokering, haggling, angling for plea deals. The tendency, even among defense attorneys, Russ says, is to go along with the flow.

**Russ Bensing**

We're trying to get rid of cases. If somebody is offered a plea to a misdemeanor, you take it. Be done. OK. That's a win in defense parlance. The feeling will be, well, she has a prior record anyway, so a plea to a misdemeanor is of

no consequence here. I remember one judge told me—and this is—one judge told me, in this county, innocence is a misdemeanor.

**Sarah Koenig**

What does that mean?

**Russ Bensing**

What that means is, if they don't have the evidence against you, they'll let you plead out to a misdemeanor. If they can't prove you're guilty, they'll give you a misdemeanor.

**Sarah Koenig**

Everyone around here, prosecutors, defense attorneys, judges, even defendants, has internalized this idea that a misdemeanor is of little consequence. A lawyer like Russ sometimes has to remind himself how mangled a principle that is. If the prosecution can't prove its case, they should drop it, not simply shrink it until it looks harmless enough to swallow.

What's more, if Anna does plead to this charge just to make her case go away, the judge understandably is going to treat her as if she did, in fact, assault a cop.

**Russ Bensing**

And she's going to give her a hard time about it. She's going to lecture her. And when your client didn't do anything, that's just—I don't—I just don't want to put her in that situation where she is belittled and accused of doing something that she didn't do, because she didn't do it.

**Sarah Koenig**

Anna rejects the state's offer. Russ agrees with her. Again, provocation, accidental hit, the glaring unfairness of it all. Why should his client plead to any kind of assault? They'll take it to trial. Another decision made. Except now, Russ is having cold feet.

**Russ Bensing**

Because I'm having second thoughts about this. I—you know?

**Sarah Koenig**

About what?

**Russ Bensing**

About trying the case. Because, first of all—

**Sarah Koenig**

Anna's case is no longer about what really happened in that bar. It's become a risk-benefit analysis. The surveillance video is great evidence, but Russ has a slim concern that the state might try to bring in the body cam video where Anna's on a tear. She says some ugly things in it. It's not incriminating or anything, but it doesn't help her look sympathetic.

And regardless of how well the trial goes for Anna, there's always that 5 percent of juries who do something weird, like convict on a case like this. If Anna does get convicted, then there's the matter of the room 20B, Judge Maureen Clancy. Judge Clancy used to be a prosecutor. She's got a reputation as law enforcement friendly. She can be a tough sentencer.

For Anna, this judge was an unlucky draw. In about 20 other rooms, Russ wouldn't worry about Anna getting sent to jail for this. But this room, it is conceivable. Those are the risks for Anna. But then, Russ admits, there are risks for him, too, in rejecting the misdemeanor assault. Risks that shouldn't matter when you're considering what's best for your client. But in reality, they do.

**Russ Bensing**

I know that when I tell the prosecutor that she's going to trial, I'm relatively certain I'll get blow back. You know, why are you taking up the court's time and not pleading this out to a misdemeanor? I would certainly get it from the prosecutor. It wouldn't surprise me if I get it from the bailiff and the judge.

**Sarah Koenig**

Wait. Have you gotten that blow back yet?

**Russ Bensing**

No, but I will.

**Sarah Koenig**

In what form?

**Russ Bensing**

I'll be viewed as somebody who's complicating things unnecessarily.

**Sarah Koenig**

Like, you'll just be seen as an irritant now in this case?

**Russ Bensing**

Well, as an obstructionist. Somebody who is impeding the disposition of cases. I will be—I'm not going to say subject to ridicule, but I will be regarded as an obstructionist, as I said. And you don't want to get a reputation for that.

**Sarah Koenig**

Reputation is everything around here. It's a closed and somewhat circular community, this courthouse. Everyone knows everyone. Word gets around very fast if you're a pain in the ass, if you grandstand, if you're a boat rocker, if you slow dockets down. It can affect your business. Colleagues might not refer clients to you, and judges might not assign you cases.

About half of Russ's income is from assignments. Some like Anna's, some appellate work. One by one, they don't pay much. He's not exactly paid by the hour. There's a fee cap. According to the court rules, the most he can get paid for Anna's case is \$800, whether he takes it to trial or not. The minimum he can get paid is curiously specific—\$256.

The best way to make money as an assignment attorney is to treat it like a volume business. Take lots of cases. Resolve them quickly, but not too quickly. The catch is, judges control the assignments, which can lead to a kind of subtle, self-inflicted pressure. Maybe I won't file this motion or take this case to trial, because that might annoy the judge, and then he might not assign me cases.

Russ has a good reputation. I doubt he's in real danger of reprisal. But if this courthouse veteran is worrying about whether he'll be seen as an obstructionist on a little case like this, imagine what a less secure attorney might do in his place.

Three weeks before the trial date, Russ and Anna make a last-ditch counteroffer. How about disorderly conduct, an M4? It's one of the smallest charges in the courthouse. Just one up from, say, a speeding ticket. The state rejects it. Nope, says Jennifer, this was definitely an assault. So it's either take the M1 or try to beat the felony charge at trial.

**Maureen Clancy**

We are here today in the case of—

**Sarah Koenig**

Anna shows up for her trial wearing a new dress she got at Marshall's, navy blue with white piping around the collar, cap sleeves, string of pearls, sparkly flats. She looks like an attorney, which she later told me was the look she was going for. She'll leave the tags on the dress in hopes of returning it. The shoes, she'll keep.

Russ is there, of course, standing with Anna at the defense table. At the prosecution's table across from them, no Jennifer. It's some other guy. A young prosecutor named Jonathan. And listen to how Jonathan characterizes the crime before them.

**Jonathan McDonald**

Disorderly conduct, a misdemeanor of the fourth degree, which would be in—

**Sarah Koenig**

Disorderly conduct, a misdemeanor of the fourth degree. It seems Jennifer was busy on a murder trial. So about a week ago she'd handed off the case to Jonathan McDonald. Jonathan watched the bar surveillance video. And this morning, before Anna's trial began, Russ saw Jonathan back in court chambers, and first thing he said to Russ was, you got your disorderly conduct. Anna takes it. In the courtroom she pleads guilty, happily.

Jonathan gives the judge a quick synopsis of the case. There was a fight, he says. It was chaotic. Multiple people were touching Anna. She was flailing. He closes it out with a fourth-degree use of the passive voice. Sergeant Gill, he tells the judge, was struck by a blow.

**Jonathan McDonald**

—by a blow. And I would agree with the defendant that—

**Sarah Koenig**

Sergeant Gill himself isn't there. He had come by earlier in the day, but he had to leave. Another officer was there. Judge Clancy double-checks with him. Like, you're cool with this outcome? The officer mentions Anna already spent four days in jail. He says, I mean, I would say that's adequate. Judge Clancy fines Anna \$200 and sends her on her way with a gentle good luck to you.

**Maureen Clancy**

All right. Good luck to you.

**Russ Bensing**

Thank you. Thank you, your honor.

**Sarah Koenig**

Everyone suddenly seems so chill about this felony assault on a peace officer. Just weeks earlier, Jennifer had firmly rejected the M4 disorderly. What happened? What changed? Obviously the prosecutor, for one. Fresh eyes on the case. In this instance, eyes attached to a guy who gets along well with Russ Bensing.

But personalities aside, Russ later told me, it's also the timing. The eve of trial can be a magical time, he riffed on a Samuel Johnson quotation. The prospect of going to trial concentrates a man's mind wonderfully. But clarity descends. Sometimes you learn things about your own case that you hadn't quite seen before. Like, that it sucks, maybe.

**Russ Bensing**

And I think that's probably what happened here, that they just took a look at it, came to realize certain things about it, that this was not a triable situation. In fact, I told Jonathan—I said, you couldn't find 12 people in your office who wouldn't convict her of—would all agree that she should be convicted of this. And he said, touche.

**Sarah Koenig**

When did you say that to him?

**Russ Bensing**

After we did the deal. After we did the plea.

**Sarah Koenig**

At this point, I was sincerely confused about what to make of Anna's case, just in a fundamental way. Was this thumbs up? Thumbs down?

**Sarah Koenig**

Is this an example of the system working or not working?

**Russ Bensing**

Oh, I think it achieved the right result. So it's an example of the system working. Had this gone to trial, that would be an example of the system not working, because this never should have—to be perfectly blunt, she never should have been charged with this.

**Sarah Koenig**

So setting aside that Russ believes Anna didn't commit a crime and that she just pled guilty to one, the system worked. I talked to Jennifer about this, too. She and Russ agree. She said she was glad the case went to a prosecutor who had a good rapport with Russ, and that she was fine with the result. And anyway, Jennifer said, at the end of the day, the difference between the initial offer of misdemeanor assault and the final offer, disorderly conduct, meh.

**Jennifer King**

Really, the difference between the M4 and the M1 is so negligible that it's like, OK, so it became an M4 and it worked out, the justice system worked.

**Sarah Koenig**

Can I please just point out—no. An assault versus a disorderly—I'm sorry, no. If it were your record or my record, or I dare say Jennifer's record we were talking about, the difference is not negligible. This is what rankles me most about Anna's case, the breeziness with which everyone's looking back on it now, clapping the dust off their hands and saying, right, that's done.

Small crime, small case, small punishment. All in proportion. Justice is served. What they're not saying, maybe because they're not seeing it, is the extent of Anna's punishment. Which when you take a minute to catalog the consequences, was not small. It did not fit the crime. I'm going to do that now, take you through, so that when they say, she got a fine and was sent on her way, could have been worse, you'll see why I'm arguing that it was worse—quite a lot worse.

First off, Anna sat in the back of a police car for at least an hour. Belligerent, yes, but also distraught. Then she's booked into the Cleveland City Jail, which is—

**Anna**

Disgusting. Disgusting.

**Sarah Koenig**

Agreed. I've seen parts of it. Anna spent four nights there. I can say it fast—four nights in jail. Or I can say it like it felt to Anna—Thursday night, then Friday night, Saturday night, then Sunday night. For a bar fight. Four days and nights. It was loud in there. People shouting and arguing up and down and across the cells.

Anna slept on a mat on the floor. No blanket, no sheet. A pathetic little sponge on a stick for a toothbrush. Because Anna's white and skinny, Anna said people assumed she was a heroin addict and gave her a hard time about that—called her a cluck and a junkie. Everyone's messing with each other just to pass the time. Everyone's bored.

**Anna**

There's no TV. They gave you maybe a magazine that's uninteresting. Like, where to eat in Cleveland.

**Sarah Koenig**

[LAUGHS] Is that a magazine they had?

**Anna**

[LAUGHS] Yeah. Mind you, their food sucks, and you're just sitting in there, like, ugh.

**Sarah Koenig**

Finally, Monday comes and Anna sees a judge, who sets her bond at \$5,000. That's a lot. The judge had other choices. Anna could have been let out of jail with just a promise to come back to court. But this was \$5,000 full payment, which Anna didn't have. Instead, she paid a bondsman a fee of \$500 to post the bond for her—money she doesn't get back.

If she hadn't been able to muster that fee, she'd have been sitting in jail for months, possibly. A condition of her bond is court-supervised release, sort of like pretrial probation. Every Wednesday she's got to come back downtown, check in, and

pee in a cup for a drug test. And these visits are on top of the pretrials. All told, Anna made more than 20 trips to the Justice Center for this case, and she does not live close by.

The judge fined her \$200 for the disorderly conduct plus court fees, which she has to pay because she pled guilty, she was convicted. If the state had dropped the charge or she had gone to trial and won, these fees would disappear. I showed them to Russ to ask if he could explain the itemized list. It's 14 different fees, some with names that suggested deep respect for catchall accounting—reparations, county operations, court special projects fund, something called add fee. Russ had no idea what this stuff was.

**Russ Bensing**

\$82. [LAUGHING]

**Sarah Koenig**

You're laughing. Why?

**Russ Bensing**

[LAUGHING] Oh, my. That's—

**Sarah Koenig**

Steep, is what it is. Anna owes the court a total of \$784.50 on top of the \$500 she paid the bondsman. Russ said there's a way he can petition the court to waive the fees if Anna can't pay. But she doesn't ask him to and he doesn't offer. Technically, he's not her lawyer anymore. The list of fees was a surprise to Anna, too.

**Sarah Koenig**

Have you seen this before—this number?

**Anna**

No.

**Sarah Koenig**

Did you know about all these fees?

**Anna**

Nope. No, I mean, I plan to pay it. I'm just—you know.

**Sarah Koenig**

Do you have a job?

**Anna**

No. [LAUGHS] I just lost my job, so—

**Sarah Koenig**

Oh, no.

## **Anna**

Just crazy. But, yeah, I'm getting hungry, Sarah.

## **Sarah Koenig**

She's pregnant. She just found out. She's happy about it. Hoping for a girl. A month later, Anna was working at McDonald's. Her online account with the court, meanwhile, has turned red, indicating that the county clerk has handed over the bill to the attorney general's office for collection. All this for an M4 disorderly.

A felony judge I was talking to for a different story in this series told me he was thinking of giving a defendant serious time. "What's serious time?" I asked. He explained, well, to someone with common sense, even one day in jail is devastating, life changing. To someone who's got no common sense, maybe they do three years, five years. Means nothing. They go right back out and commit more crimes.

I knew what he meant. Punishment is relative. What it takes to teach you a lesson depends on what you're used to. But there was a more disturbing implication as well. One that prows this courthouse and throughout our criminal justice system. That we are not like them. The ones we arrest and punish, the ones with the stink, they're slightly different species, with senses dulled and toughened.

They don't feel pain or sorrow or joy or freedom or the loss of freedom the same way you or I would. This little case for the state of Ohio wasn't little for Anna. In our interview, she couldn't bring herself to watch the bar surveillance video of that night. It was too upsetting.

She teared up a couple of times, thinking about what a horrible year it had been. And she blamed herself. She'd been stupid to go to a bar like that, she said, with people she didn't trust. Anna doesn't have money. She doesn't have a stable job. She's really young, just 21. Anna didn't feel the stress and outrage and shame of this case less than I would have. I think she felt it more.

Before Anna's final day in court when she ended up taking the plea, Russ had only one interaction with the judge regarding Anna's case. He was summoned to her chambers by her bailiff, who told Russ that Judge Clancy had a question for him. Russ waited around for 20 minutes.

Finally, the bailiff came out and just relayed the question. Out of curiosity, the judge would like to know, was the defendant in this case related to a county judge who had recently retired? Same last name. Russ told the bailiff, no, no relation. Russ told me this almost a year after it happened. I asked him, what if the answer had been, yes, Anna was related to the retired judge.

Oh, said Russ, it would have been dismissed. If they found out she was the judge's niece or related in some way, I don't think she even would've been charged. Huh. So is that how it works in Cleveland? Next time on *Serial*.

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