

FINDING THE JURY GUILTY:

The Bizarre Story of Case 483 U.S. 107, Tanner v. United States

By James Vest

From March 31 to June 22, 1987, the United States Supreme Court heard a case to overturn the convictions of Anthony R. Tanner and William M. Conover for committing mail fraud and conspiring to defraud the United States. At the heart of the case was whether the jurors verdict could be overturned after post-trial testimony revealed jurors consumed “copious amounts of alcohol, marijuana and cocaine during the course of the trial and deliberations.” The extent of abuse was illustrated by affidavits, describing jurors falling asleep in the courtroom, while another juror described himself as “flying” during the trial.

In 1979, William Conover was the procurement manager at Seminole, a corporation representing 11 rural electrical co-ops. Seminole had borrowed over a billion federal dollars to establish a coal-power electrical plant near Palatka, Florida which stipulated federal oversight and inspection of the construction project. Construction began in September of that year with plans calling for a flood-resistant, 51-mile utility road for heavy trucks to run between an area where transmission lines would be erected. By spring of 1981, Seminole’s contractor informed Conover that there wasn’t enough material available to complete the road and procuring additional sources of road material would drive up the price exponentially. As a result, the contract was terminated.

Conover contacted his friend, Anthony Tanner, who owned the Crystal River lime rock mine to discuss using limestone to complete the road. This wasn’t the first time Conover and Tanner

had done business; earlier that year, Conover was contracted by Tanner to install a sprinkler system and landscape a condominium complex Tanner owned. In turn, Tanner loaned Conover \$6,000 to close on a condominium at the complex. Seminole solicited bids for fill material and to complete the road and Tanner won both contracts, worth more than 1.5 million dollars. During this time, Tanner paid Conover over \$30,000, in allegedly unrelated personal transactions.

By June 1981, a member of the cooperative petitioned Seminole to end all business relations with Tanner. The road had not been completed and a dispute had erupted over whether Seminole or Tanner would be responsible for maintaining the road once construction was complete, and Conover helped guide Seminole to take over the responsibility.

During construction, it was determined that limestone was not an appropriate medium for the project as it weakened in Florida's wet climate and could not be used for flood-prone stretches of the road. Tanner's company switched to sand and charged Seminole a significantly higher price than their first contractor. A telling moment came when it was discovered that Tanner's bonding company hadn't been approved by the Treasury Department. In letters to another bonding company, Conover misreported the project's state of completion, helping build a case for fraud.

Two years after the road was completed, federal authorities completed their investigation and both Conover and Tanner were indicted. After one mistrial, Conover was convicted on all counts while Tanner was convicted on all but one count. The day before Tanner and Conover were to be sentenced, Tanner filed a motion seeking to delay sentencing, asking permission for juror interviews and a hearing to submit new evidence. Tanner's attorney also submitted a written statement regarding an unsolicited telephone call he received from one of the trial jurors, Vera Asbul.

During the trial, the judge and the defense counsel discussed the possibility that jurors were falling asleep in the courtroom, but no action had been taken. Asbul had told the attorney over the phone that multiple jurors had drank in excess over their lunch breaks and had fallen asleep on several occasions. Later at the hearing, courtroom personnel testified about juror behavior during the trial and even Tanner's own counsel took the stand and testified observing a juror "in a sort of giggly mood."

Jurors affidavits brought to light the details of the jury's misconduct. One juror described the group as "one big party," with jurors having drank up to three pitchers of beer over various recesses and the foreperson "having a liter of wine on each of three occasions." Four jurors smoked marijuana regularly throughout the trial while two other jurors ingested cocaine on multiple occasions. It was reported that jurors brought "marijuana, cocaine, and drug paraphernalia into the courthouse" and one juror bought a quarter pound of marijuana from another juror during the trial.

Juror Daniel Hardy stated in his testimony that he had come forward to clear his conscience over the outcome of the trial, stating "the people on the jury didn't have no business being on the jury." Despite the jury's gross misconduct, the United States Supreme Court found that the jury could not testify to invalidate their own verdict. Alcohol or drugs were seen as being an internal influence and not the required "outside influence" cited under Rule 606(b) of the Federal Rules of Evidence, which states jurors can only testify in regards to "extraneous prejudicial information" and when "outside influence was improperly brought to bear upon any juror."

The Supreme Court upheld the convictions of Tanner and Conover and both men served jail time for their crimes.